

REPORT

OF THE

REGISTER

OF THE

STATE LAND OFFICE,

NOVEMBER 16, 1865.

J. A. HARVEY, Register.

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## REPORT

STATE LAND OFFICE, IOWA,  
DES MOINES, November 16th, 1865. }

To His Excellency, Wm. M. Stone, Governor of Iowa :--

Sir:—In the last Biennial Report from this office, it was my design to present such a history of the several different land grants and the proceedings of the State thereunder, as would make a repetition unnecessary; leaving it for future reports to give only the current subsequent transactions of the office. But the law then in force provided for the publication of but one thousand copies of that Report, which was insufficient to supply the demand. Most of them were distributed by the members of the last General Assembly early in the session, and before its close it was quite difficult for some of the members to procure enough for their own use.

I was able to retain only about twenty-five copies, and now not a half dozen remain in the office. I have been compelled to refuse numerous special calls for them during the past two years. Under these circumstances, to require the next General Assembly to look to that Report for information concerning the history of, and previous transactions under these land grants, would make it, at least, *very inconvenient* for the members.

From this consideration, and in view of the fact that the law now provides for the publication of *three thousand* copies—a more reasonable and adequate number—I shall, in this Report, cover the same ground and embody the same information contained in that; correcting the errors, and making the necessary changes, and such improvements as a greater familiarity with the business of the office may suggest, and the additions necessary to bring it up to the present time, observing the following order:

1st—The 500,000 Acre Grant.

2d—The 16th Section Grant.

- 3d—The Mortgage School Lands.
- 4th—The University Grant.
- 5th—The Saline Grant.
- 6th—The Des Moines River Grant.
- 7th—The Des Moines River School Lands.
- 8th—The Swamp Land Grant.
- 9th—The Railroad Grant.
- 10th—The Agricultural College Grant.

1ST—THE 500,000 ACRE GRANT.

The State, upon her admission into the Union, became entitled to 500,000 acres of 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 lands, for the purposes of internal improvements; and also 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 purposes, make the amount of 500,000 acres, all to be selected within the limits of the State.

The Constitution adopted by the Convention which met 7th of October, 1844, to frame a Constitution for the State of Iowa, provided that the proceeds of these lands, together with all other lands that had been or might thereafter 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,*" assented to this diversion of the grant, but at the same time rejected the ordinance passed by the Convention, and very materially changed the boundaries of the State, as fixed in said Constitution.

(For this Act see Rev. 1860, p. 965.)

By this act the northern boundary of the State would run some seventy miles north of where it now is, and the western boundary would run north and south about on the line along the west side of Kossuth and Webster counties, cutting off one-third, or what now constitutes thirty-one counties of our State, and excluding us from the Missouri river.

In consequence of this change in the boundaries, the citizens of the territory, in voting on said Constitution as modified by said

act of admission, at their following April election, refused to ratify it, and thereby rejected not only the Constitution, but said act of admission, and with it the consent of Congress to the proposed diversion of this grant, from internal improvements to the support of common schools.

Another Convention to frame a Constitution for the new State met on the 18th of May, 1846, and adopted a Constitution, which was ratified by the people at the next October election.

In the mean time Congress, by an act *approved August 4, 1846*, had repealed so much of the act of March 3d, 1845, above referred to, as relates to the boundaries of the State, and established them as they now exist.

(See this Act, 9 U. S. Stat. at Large, p. 52.)

This second Constitution makes the same provision concerning these lands, and Congress, by the act entitled "*An Act for the admission of the State of Iowa into the Union,*" approved Dec. 28, 1846, admitted the State into the Union with said Constitution, unaltered, and thereby consented to the diversion. The day of the approval of this act, admitting Iowa into the Union, to-wit: "28th of Dec., 1846," is the day from which the existence of our State government dates.

(See 9 U. S. Stat. at Large, p. 117.)

And still later, Congress, by the act entitled "*An Act declaratory of the Act for the admission of the State of Iowa into the Union,*" approved March 2, 1849, reiterates and expressly declares the assent of the United States to the diversion of these lands from internal improvement to the support of common schools.

(See 9 U. S. Stat., 349.)

The same provision is contained in our present 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 of the State, by an act entitled "*An Act to provide for the management and disposition of the School Fund,*" approved Feb. 25, 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. 25, 1847,*" approved January 15, 1849. This last act appoints Commissioners to select the remainder of these lands, under the instructions of the Commissioner

of the General Land Office. A far greater amount of land was thus selected, than was contemplated by the grant.

On the 12th of September, 1854, these lands were certified and approved to the State, and by oversight there was embraced in the list of lands so certified an excess or an amount over and above the 500,000 acres the State was entitled to under the grant. This excess is claimed by the Department to be and has been treated in the previous reports from this office as 22,660.25 acres, making the amount certified 522,660.25 acres. But I am unable to make the amount of the lands as given on the book of township diagrams, furnished from the General Land Office, and which is in fact *the certification of the land to the State*, agree with this computation. The area of the lands as given in the table hereinafter, showing the quantity in each county, is taken from these township diagrams or maps, and foots up, as will be observed, 523,432.32 acres, making the excess 23,432.32 acres. The difference is accounted for in the fact that the area of some of the tracts, as given on these maps, differs from the area given in the lists of sections, by which the Commissioner was probably governed in making his computation. The Commissioner had greater facilities for ascertaining the amount accurately, and while our figures will not agree, we will take his, and consider the excess as 22,660.25 acres.

Upon discovering this error, the Commissioner of the General Land Office, in a communication dated Nov. 4, 1854, called upon his Excellency, Governor Hempstead, to release to the United States of the lands so certified an amount equivalent to said excess of 22,660.25 acres.

Upon coming into office as Executive of the State, and being apprised of the facts, Governor Lowe caused an examination to be made to ascertain what amount of these lands then remained unsold, as by the act of the General Assembly of January 15, 1849, they had been placed in the care of and subject to sale by the School Fund Commissioners of the several Counties, under the direction of the Superintendent of Public Instruction. From said examination it appeared that only 13,915.25 acres remained unsold; and the Governor, in response to the communication of the Commissioner of the General Office to Governor Hempstead above referred to, did, on the 8th of February, 1859, on behalf of

the State, release or attempt to release these unsold lands to the United States, having in the meantime withdrawn them from sale by the School Fund Commissioners.

At that time it was agreed between the State through her Executive and the General Land Office, that for that portion of the excess of said lands, to-wit: the 8,745 acres sold by the State, the United States should retain out of the five per cent. fund coming to the State an amount equivalent thereto at the rate of \$1.25 per acre. At the date of my last official report, I was of the impression that this arrangement had been consummated; but it now appears that from the insufficiency of that fund the matter has not been thus settled.

The Commissioner of the General Land Office was not satisfied with the release executed by Governor Lowe, and called upon his successor, Governor Kirkwood, for a more formal deed of reconveyance to the United States of the 13,915.25 acres. The Governor not feeling authorized to execute such conveyance without authority from the Legislature, laid the matter before the Ninth 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 to execute the necessary conveyance. (Acts 1862, p. 58).

Nothing was done under said act, and on coming into office our present Executive found the matter all unsettled. An agreement for its settlement, however, has since been made between the United States, through the Interior Department, his Excellency, Governor Stone, on behalf of the State, and the Des Moines Valley Railroad Company, upon the following terms, to-wit:

1. The State to retain all these lands as school lands under this grant.
2. The United States to deduct the amount of the excess from the lands the State is entitled to under the act of Congress of July 12, 1862, extending the Des Moines River grant to the northern boundary of the State; and,
3. The State to account to the said R. R. Co., (the beneficiary of said Des Moines River Grant,) for said land at the rate of \$1.25 per acre, in the payment of claims against the State on account of the improvement of the Des Moines river; which claims, by the

terms of the contract between said company and the State, the former are bound to pay.

Understanding that the adjustment of this matter on these terms was fully agreed upon, and with the approbation of His Excellency, I did on the 8th of August last, issue, and transmit to the Clerks of the several counties in which these lands are situate,—*except the county of Harrison*,—a circular notifying them of the terms of the adjustment, and removing the restriction heretofore imposed as aforesaid, by Governor Lowe on the sale of these lands; thus placing them under the control of and making them subject to sale by the Boards of Supervisors precisely as the other school lands.

[My reasons for excluding Harrison county from the operation of said circular will appear fully hereinafter.]

Since removing the restriction on the sale of these lands as aforesaid, I am informed that the *Burlington & Missouri River Railroad Co.*, claim such of them as lie within twenty miles of their line of road, under the Act of Congress of June 2, 1864, extending the limits of said road from fifteen to twenty miles. And some of these lands lying in Adams county are designated particularly as being thus claimed. It is claimed by the R. R. Co., that Governor Lowe, by his act above referred to did actually release all the right of the State to these lands, and that therefore they were included in said Act of June 2, 1864. Whether said Company could, under any circumstances acquire any right to said lands by virtue of that act, would of course depend upon the fact, whether the right of the State was released or not. Until this is done, the land is the property of the State, notwithstanding the excess, just as much as any other part of the land certified under the Grant.

After declining to receive said release as sufficient, and demanding another more formal and complete from the State, I cannot believe the Department will now ask to have it considered valid. When the Department refused to accept it, the State should not be bound by it. But if, as I am informed, (and I have it also in a letter from the Commissioner of the General Land Office,) the mode of adjustment above mentioned, has been agreed to, for *all* this excess of 22,660.25 acres, it proves that the Department

does not consider said release of any validity, and the claim of the R. R. Co., cannot avail.

It matters but very little however, to the State, whether she retains these as school lands or not, for if she does, she must account for them at \$1.25 per acre. But if the claim of the R. R. Co., is recognized, it will occasion some conflicts of title, and perhaps litigation, as no doubt, some of the lands have been sold by the County officers since the issuing of the circular above referred to. Some of the counties were, and had for some time been urging a removal of the restriction, that they might sell the land, and avoid further waste by trespassers destroying the timber &c., on the land.

The Act of the General Assembly above referred to, approved Jan. 15, 1849, placed the care and selling of these lands in the hands of the School Fund Commissioners under the direction of the Superintendent of Public Instruction.

The Act of Jan. 25, 1855, required the School Fund Commissioner to offer and sell *all School lands* as therein directed, withdrawing them altogether from the supervision of the Superintendent of Public Instruction. (Acts 1855, p. 200.)

The 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 23d, 1858, abolished the office of School Fund Commissioner, and required that officer in each county 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 and sell the lands of the 500,000 acre Grant! (Acts of 1858, Chap. 158.)

This difficulty was remedied, however, by the Act of April 3d, 1860, placing these lands as well as the 16th sections, under the control of the Boards of Supervisors in the several counties, and authorizing them to sell the same as provided in said Act. (Rev. 1860, p. 348.)

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

By the Acts of the 10th General Assembly, entitled "*An Act requiring reports from the Clerks of the several Boards of Supervisors in this State, concerning School Lands,*" approved March 24, 1864, said Clerks are required on the first day of May, 1864, or immediately thereafter to report to the State Land Office, under their official certificates the amount of these lands in their counties respectively; giving a description of the lands, with the allotments thereof, where the same have been allotted; and the valuation where they have been appraised, and designating the sold from the unsold lands. Said act also requires said Clerks to make similar reports to the State Land Office on the 1st of Nov. 1864, and every six months thereafter, showing all subsequent sales, appraisments, allotments &c. (See Acts 1864, p. 79.)

As required in the 5th Sec. of said Act, I prepared and sent to the Clerk of each county in which any of these lands lie, the printed blanks, properly ruled and conveniently arranged for such report, and received the same filled up and certified back as required by said Act, from forty counties. But from eleven counties I have received no reports. Sec. 3, of said Act has not, except in a *very few* instances been complied with. Only three or four reports, as required by that section have been made. I am therefore unable to report what amount of these lands remain unsold in each county at this time.

The following table which is the most full, complete and accurate that I can make from all the means of information at my command, will show in what counties these lands lie, with the amount patented,—the amount un-patented, and the total amount in each county.

COUNTIES.	NO. ACRES PATENTED.	NO. ACRES UN-PATENTED.	TOTAL IN EACH COUNTY.
A dair.....	2,027.50	364.39	2,391.89
Adams.....	440.00	1,480.00	1,920.00
Alamakee.....	65,007.47	5,212.06	70,219.53
Appanoose.....	2,040.00	360.00	2,400.00
Benton.....	10,021.10	1,770.70	11,791.80
Black Hawk.....	7,917.74	465.00	8,382.74
Boone.....	812.12	240.00	1,052.12

COUNTIES.	NO. ACRES PATENTED.	NO. ACRES UN-PATENTED.	TOTAL IN EACH COUNTY.
Bremer.....	17,172.13	1,988.44	19,160.57
Buchanan.....	1,445.69	1,039.75	2,485.44
Butler.....	478.51	.....	478.51
Cedar.....	5,041.17	1,771.27	6,812.44
Chickasaw.....	2,489.21	790.05	3,279.26
Clarke.....	12,820.75	3,188.25	16,009.00
Clayton.....	18,834.40	3,982.62	22,817.02
Clinton.....	19,594.52	1,346.83	20,941.35
Dallas.....	12,262.95	1,436.31	13,699.16
Davis.....	765.06	174.15	939.21
Decatur.....	34,633.16	6,004.32	40,637.48
Delaware.....	11,115.12	280.00	11,395.12
Dubuque.....	14,926.53	1,268.34	16,194.87
Fayette.....	28,918.95	1,928.90	30,847.85
Floyd.....	2,771.68	710.00	3,481.68
Hardin.....	1,320.00	40.00	1,360.00
Hamilton.....	5,605.03	1,056.35	6,661.38
Harrison.....	1,573.44	5,951.42	7,524.86
Iowa.....	13,850.93	10,125.24	23,976.17
Jackson.....	287.50	520.00	807.50
Jasper.....	1,594.94	80.00	1,674.94
Jones.....	25,308.32	4,632.14	29,940.46
Keokuk.....	590.64	80.00	670.64
Linn.....	9,996.63	1,049.44	11,046.07
Louisa.....	640.00	.....	640.00
Lucas.....	440.00	200.00	640.00
Madison.....	8,703.26	682.76	9,386.02
Mahaska.....	9,147.75	80.00	9,227.75
Marion.....	1,254.61	160.00	1,414.61
Marshall.....	6,035.86	120.00	6,155.86
Monroe.....	986.57	.....	986.57
Muscataine.....	.....	357.33	357.33
Polk.....	2,425.62	.....	2,425.62
Poweshiek.....	4,022.02	8,693.22	12,715.24
Ringgold.....	269.22	337.98	607.20
Shelby.....	.....	56.81	56.81
Story.....	2,974.08	821.66	3,796.74
Tama.....	8,254.33	3,397.09	11,651.42
Union.....	8,291.42	2,463.54	10,754.96
Wapello.....	6,761.57	280.00	7,041.57
Warren.....	5,043.97	600.00	5,643.97
Wayne.....	13,315.87	2,262.97	15,578.84
Webster.....	8,373.10	530.47	8,903.57
Winneshiiek.....	23,869.18	580.00	24,448.18
Total.....	442,471.62	80,960.70	523,432.32

## HARRISON COUNTY.

In 1851 and 1852 numerous pioneers settled on the public lands in this county. At that time there was no land office at Kanesville, (as Council Bluffs was then called), and the public lands in that part of the State were not in market, and there was no opportunity whatever for the settlers to obtain title to their land; and for the protection of their selected homes against the numerous speculators that began to infest that county, spying out the choice lands in anticipation of the opening of the Land Office, they had recourse to the usual *club* arrangements and *club laws*.

During this condition of affairs, the agent of the State, selecting under the 500,000 acre grant, desiring to select these lands thus settled on, (and probably with a view to secure the occupants an early title), represented to these men that if their lands were selected and returned as school lands they would be enabled to purchase them and obtain title much sooner than if they remained the property of the Government, and that they could have them from the State at \$1.25 per acre. Relying on these representations, the occupants made no objection, and these lands were selected and reported as a part of the 500,000 acre grant, and were certified as such as aforesaid on the 12th of September, 1854. It appears that they were at one time ordered into market at \$2.50 per acre, but expecting to get them at \$1.25, as represented to them by the agent, they hesitated paying this increased price. And about that time also it was discovered that more lands had been certified to the State than the grant authorized, and these lands appearing unsold, were accounted as a part of the *excess*, and ordered to be withdrawn from sale by Governor Lowe as above stated, with the design of re-conveying them to the General Government. These settlers were very desirous that the lands should be re-conveyed, so they could secure them under the *pre-emption* or *homestead* law, and made efforts at this office, and also at the General Land Office, to have it accomplished. Failing in this, and learning that by the adjustment of this excess these lands would remain the property of the State, for the benefit of the School Fund, as the balance of said grant, a number of these occupants have filed in this office their application to enter the lands, and thus secure their homes and improvements, as soon as the same could lawfully be done.

Under the general law for the sale of school lands, if these lands

are put in market they must be offered for sale at public auction, thus giving others an opportunity to bid, and compel the settlers to pay more than they ought, under the circumstances, to be required to pay. For this reason, and at the request of the parties interested, I excluded this County from the operation of the circular before referred to, and allowed the restriction on the sale of said lands to continue, to the end that our next General Assembly may, by special legislation, secure to these parties their rights in the premises, on terms just and equitable.

These applications to enter are as follows, to-wit:

- 1st.—Daniel Brown, for the s. w.  $\frac{1}{4}$  sec. 18, t. 79, r. 43.
- 2d.—Isaac Bedsaul, e.  $\frac{1}{2}$  of n. w.  $\frac{1}{4}$  sec. 33, t. 80, r. 43.
- 3d.—Oliver M. Bedsaul, e.  $\frac{1}{2}$  of s. e.  $\frac{1}{4}$  and e.  $\frac{1}{2}$  of n. e.  $\frac{1}{4}$  sec. 28, t. 80, r. 43.
- 4th.—Isaac F. Bedsaul, w.  $\frac{1}{2}$  of n. e.  $\frac{1}{4}$  and w.  $\frac{1}{2}$  of s. e.  $\frac{1}{4}$  sec. 28, t. 80, r. 43.
- 5th.—A. W. Lockling, w.  $\frac{1}{2}$  of s. e.  $\frac{1}{4}$  and n. e. of s. e. and e.  $\frac{1}{2}$  of s. w. sec. 7, t. 79, r. 43.
- 6th.—Wm. McDonald, w.  $\frac{1}{2}$  of s. e. and s. w. of n. e. and e.  $\frac{1}{2}$  of n. w. sec. 18, t. 79, r. 43.
- 7th.—John Mathews, s. w. of s. w. of sec. 7, and n. w. of n. w. sec. 18, t. 79, r. 43, and n. e. of n. e. sec. 24, t. 79, r. 44.
- 8th.—Ezra Vincent, s. e. s. e. sec. 7, and e.  $\frac{1}{2}$  of n. e. and n. w. of n. e. sec. 18, t. 79, r. 43.
- 9th.—Josiah Crum, n. w.  $\frac{1}{4}$  sec. 28, t. 80, r. 43.
- 10th.—John Thompson, s. e. of s. e. sec. 12, t. 79, r. 44.

These applications, (except the last one, which is not supported with any statement or affidavit), are accompanied with affidavits and letters showing the residence of the applicants on the land, under the circumstances above stated, as follows, to-wit:

The 1st, thirteen years; 2d, ten years; 3d, ten years; 4th, for many years, except the last three, which he spent in the military service of the United States; 5th, twelve years; 6th, ten years; 7th, three years; 8th, sixteen years; 9th, eleven years; that the 6th, 7th, and 9th, as above mentioned, bought out prior actual settlers, whose claims and settlement dated back prior to the selection of these claims as school land, and that all said applicants are still living on said lands and own valuable improvements thereon.

The last named applicant is probably in the same situation as to

residence, improvements, &c., but his application is not accompanied with any evidence of those facts.

A State should never hesitate to deal justly with her citizens; and under the circumstances it is but just and right that these lands should be secured to these settlers on as reasonable terms as they would have obtained them from the Government if the State had not by her selection prevented it.

Having no doubt that the Legislature would, on a full representation of the facts, without hesitation, by special enactment, secure to these parties their rights, I have been thus particular in detailing these facts and circumstances; and I trust his Excellency will especially call the attention of the General Assembly to the matter, and recommend the above or some other adequate mode of relief.

The above are all the cases that have been reported to me. There may be others in Harrison County, but I suppose not. I think there are no similar cases in any other County.

#### 2D—THE SIXTEENTH SECTIONS.

By virtue of the Act of Congress, entitled "*An Act Supplemental to the Act for the admission of the State of Iowa and Florida into the Union,*" approved March 3, 1845, and the Act of the General Assembly of the State of Iowa, entitled "*An Act and Ordinance accepting the propositions made by Congress on the admission of Iowa into the Union as a State,*" approved January 15, 1849, there was granted to the State the 16th Section in every township in the State, and where that section had been sold or otherwise disposed of, other lands of like amount in lieu thereof for the use of Schools. (Rev. 1860, pp. 966 and 981.)

These, together with the lands before treated of, constitute what is known as the "*School Lands,*" and by Sec. 2, of Art. 9 of the Constitution adopted on the 18th of May 1846, and Sec. 3, of the 2d division of Art. 9 of our present Constitution, the proceeds thereof are set apart as a part of the permanent School Fund.

The General Assembly, by the Act of Feb. 25, 1847, provided for the sale of these lands, and placed 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 23, 1858. By that Act they were placed in the hands of the County Judge, in connection with the Township Trustees. (Acts 1858, Chap. 158.)

The Act passed April 3, 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 Jan. 1861, and transferred the care and management of these lands to the Boards of Supervisors and the Township Trustees, and they remain under their control. This Act (sec. 1970) in providing for the allotment and valuation of these lands preparatory to sale, requires the Township Trustees to "appraise each tract at what they believe to be its true value," without fixing a minimum price. Under this provision some of these lands were sold as low as 25 cents per acre. This defect in the law is cured by Sec. 3 of Chap. 118 of the Acts of the Tenth General Assembly, which provides that "Hereafter no School lands shall be sold for less than one dollar and twenty-five cents per acre. (Acts 1864, p. 152.)

The Act of the 10th General Assembly, entitled "*An Act requiring reports from the Clerks of the several Boards of Supervisors in this State concerning School Lands,*" approved March 24, 1864, requires said Clerks to report to this office on the 1st of May 1864, the amount of these lands in their respective counties, with the description, allotments, and valuation thereof, so far as allotted or appraised, and designating in said reports the sold from the unsold land. It also requires them to report on the 1st of Nov. 1864, and every six months thereafter, all sales, allotments and appraisements made after the first of May, 1864.

As required in the 5th Sec. of said Act, I furnished the Clerk in each organized county in the State with the necessary blanks properly ruled and conveniently arranged on which to make such reports. And have up to this time received these reports (which should have been made on the 1st of May, 1864, or soon after,) from seventy-seven counties, leaving twenty counties which have not yet reported.

The subsequent reports required by Sec. 3, of said Act, have not, save in very few instances been made.

If these reports had been promptly made I would be able to present at this time, not only the amount of these lands in the



several counties, but also the amount patented, and the amount sold and not patented in each. As it is, I am unable to do this. But with the aid of these reports so far as made, and by resorting to every other available means of information, I am able to present in the following table, with reasonable certainty, the amount of these lands patented, the amount unpatented, and the total amount in each county in the State.

COUNTIES.	PATENTED.	UN-PATENTED.	TOTAL AM'T.
Adair.....	645.00	9,595.00	10,240.00
Adams.....	1,400.00	6,280.00	7,680.00
Alamakee.....	8,760.00	2,760.00	11,520.00
Appanoose.....	9,140.00	1,100.00	10,240.00
Audubon.....	441.00	7,239.00	7,680.00
Benton.....	11,196.10	1,603.90	12,800.00
Black Hawk.....	5,581.15	4,658.85	10,240.00
Boone.....	4,060.00	6,180.00	10,240.00
Bremer.....	4,080.00	3,600.00	7,680.00
Buchanan.....	8,280.00	1,960.00	10,240.00
Buena Vista.....		10,240.00	10,240.00
Butler.....	3,220.00	7,020.00	10,240.00
Calhoun.....	160.00	10,080.00	10,240.00
Carroll.....	520.00	9,720.00	10,240.00
Cass.....	240.00	10,000.00	10,240.00
Cedar.....	9,442.36	797.64	10,240.00
Cerro Gordo.....	957.00	9,283.00	10,240.00
Cherokee.....		10,240.00	10,240.00
Chickasaw.....	3,800.00	3,880.00	7,680.00
Clarke.....	4,560.00	3,120.00	7,680.00
Clay.....		10,240.00	10,240.00
Clayton.....	11,171.67	2,543.41	13,715.08
Clinton.....	9,902.74	3,114.03	13,016.77
Crawford.....	640.00	9,600.00	10,240.00
Dallas.....	5,251.80	4,988.20	10,240.00
Davis.....	8,800.00	1,440.00	10,240.00
Decatur.....	7,400.00	2,840.00	10,240.00
Delaware.....	10,068.98	171.02	10,240.00
Des Moines.....	5,652.79	1,790.02	7,392.81
Dickinson.....		7,680.00	7,680.00
Dubuque.....	11,006.10	230.00	11,236.10
Emmett.....		7,680.00	7,680.00
Fayette.....	7,280.00	5,520.00	12,800.00
Floyd.....	2,660.00	5,020.00	7,689.00
Franklin.....	1,630.00	8,610.00	10,240.00
Fremont.....	2,400.00	7,680.00	10,080.00
Greene.....	1,096.00	9,144.00	10,240.00
Grundy.....	800.00	8,160.00	8,960.00

COUNTIES.	PATENTED.	UN-PATENTED.	TOTAL AM'T.
Guthrie.....	2,400.00	7,840.00	10,240.00
Hamilton.....	1,120.00	9,120.00	10,240.00
Hancock.....		10,240.00	10,240.00
Hardin.....	5,160.00	5,080.00	10,240.00
Harrison (estimated).....	1,300.47	10,859.53	12,160.00
Henry.....	7,410.00	270.00	7,680.00
Howard.....	1,195.69	9,044.31	10,240.00
Humboldt.....	1,373.12	6,306.88	7,680.00
Ida.....		7,680.00	7,680.00
Iowa.....	7,338.00	2,902.00	10,240.00
Jackson.....	10,599.50	530.75	11,130.25
Jasper.....	8,920.00	3,880.00	12,800.00
Jefferson.....	7,550.00	130.00	7,680.00
Johnson.....	9,281.29	1,598.71	10,880.00
Jones.....	8,237.10	2,002.90	10,240.00
Keokuk.....	7,605.00	2,635.00	10,240.00
Kossuth.....	1,360.00	16,560.00	17,920.00
Lee.....	9,376.44	505.81	9,882.25
Linn.....	12,175.97	624.03	12,800.00
Louisa (estimated).....	6,999.99	437.01	7,437.00
Lucas.....	5,420.00	2,260.00	7,680.00
Lyon.....		11,520.00	11,520.00
Madison.....	8,020.00	2,220.00	10,240.00
Mahaska.....	9,887.67	352.33	10,240.00
Marion.....	8,600.00	1,640.00	10,240.00
Marshall.....	7,720.00	2,520.00	10,240.00
Mills.....	2,960.00	5,040.00	8,000.00
Mitchell.....	6,120.00	4,120.00	10,240.00
Monona.....	154.79	15,633.95	15,788.74
Monroe.....	7,240.00	440.00	7,680.00
Montgomery.....	2,560.00	5,120.00	7,680.00
Muscatine.....	6,836.75	1,100.08	7,936.83
O'Brien.....		10,240.00	10,240.00
Osceola.....		7,680.00	7,680.00
Page.....	2,500.00	7,740.00	10,240.00
Palo Alto.....		10,240.00	10,240.00
Plymouth.....		14,720.00	14,720.00
Pocahontas.....		10,240.00	10,240.00
Polk.....	7,509.93	2,730.07	10,240.00
Pottawattamie (estimated).....	12,285.91	5,240.00	17,525.91
Poweshiek.....	7,000.00	3,240.00	10,240.00
Ringgold.....	5,990.00	4,250.00	10,240.00
Sac.....		10,240.00	10,240.00
Scott.....	8,235.97	398.50	8,632.47
Shelby.....	880.00	9,360.00	10,240.00
Sioux (estimated).....		13,280.00	13,280.00

COUNTIES.	PATENTED.	UN-PATENTED.	TOTAL AM'T.
Story.....	3,600.00	6,640.00	10,240.00
Tama.....	6,380.00	6,420.00	12,800.00
Taylor.....	1,880.00	8,360.00	10,240.00
Union.....	1,550.00	6,130.00	7,680.00
Van Buren.....	7,995.00	2,245.00	10,240.00
Wapello.....	6,752.19	927.81	7,680.00
Warren.....	7,040.00	3,200.00	10,240.00
Washington.....	7,986.11	2,253.89	10,240.00
Wayne.....	7,420.00	2,820.00	10,240.00
Webster.....	4,416.67	8,383.33	12,800.00
Winneshago.....	280.00	7,400.00	7,680.00
Winneshiek.....	10,968.00	1,832.00	12,800.00
Woodbury.....	160.00	15,520.00	15,680.00
Worth.....	680.00	7,000.00	7,680.00
Wright.....	1,360.00	8,880.00	10,240.00
Aggregate.....	450,594.25	563,019.96	1,013,614.21

## 3D—MORTGAGE SCHOOL LAND.

The Ninth General Assembly, by an Act entitled "*An Act for the better protection of the School Fund,*" approved April 8, 1862, provides "That the several Boards of Supervisors shall hold and manage the securities given to the School Fund in their respective counties; and, also, 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 seventh 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 eleventh 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 solvent 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 school 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 1863, 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 a form for the report, and urging them to continue such reports from time to time as occasion may require. If these instructions are complied with, we have in this office a full and correct record of this class of lands as fast as the title becomes vested in the State.

The following table exhibits the number of acres and town lots reported in the several counties, and also such as have been patented to the State:

COUNTIES.	Amount Patented.	Amount Unpatented.	Total Amount.	No. Lots Patented.	No. Unpatented.	Total No. of Lots.
Appanoose.....	.....	130.00	130.00	1	1	2
Benton.....	602½	400.00	1002.0½	1	1	2
Bremer.....	320.00	320.00	640.00	.....	10	10
Cedar.....	.....	40.00	40.00	3	3	6
Cerro Gordo.....	.....	.....	.....	.....	2	2
Clayton.....	.....	.....	.....	2	.....	2
Clinton.....	52.00	40.00	92.00	4	2	6
Dallas.....	40.00	.....	40.00	.....	.....	.....

COUNTIES.	Amount Patented.	Amount Unpatented.	Total Amount.	No. Lots Patented.	No. Unpatented.	Total No. of Lots.
Davis	40.00		40.00			
Decatur	400.00	1800.00	2200.00	4	20	24
Delaware	203.72	240.00	443.72		4½	4½
Des Moines		41.22	41.22			
Dubuque	50.00	80.00	130.00	2	6	8
Fayette	50.00		50.00			
Hamilton	160.00		160.00			
Hardin	20.00	80.00	100.00			
Harrison	40.00		40.00			
Henry	80.00		80.00	2		2
Iowa		220.00	220.00			
Jones	280.00		280.00	5		5
Louisa	116.00	533.54	649.54		3	3
Madison	40.00	440.00	480.00			
Mills		214.00	214.00			
Page		2040.00	2040.00			
Poweshiek	160.00	1320.00	1480.00		1	1
Ringgold		1200.00	1200.00			
Scott	76.80	90.00	166.80	1	5	6
Story	160.00	140.00	300.00		10	10
Washington	267.00	470.00	737.00			
Wayne	260.00	2056.00	2316.00	6	7	13
Webster	610.00		610.00			
Winneshiek	80.00		80.00	1		1
	1,377.00	2,666.00	4,043.00	32	75½	107½

## 4TH—UNIVERSITY LANDS.

By an Act of Congress entitled "An Act granting two townships of land for the use of a University in the Territory of Iowa," approved July 20, 1840, it is provided "That the Secretary of the Treasury be, and he is hereby, authorized to set apart and reserve from sale out of any of the public lands within the Territory of Iowa, to which the Indian title has been or may be extinguished and not otherwise appropriated, a quantity of land not exceeding two entire townships, for the use and support of a University within said Territory when it becomes a State, and for no other purpose whatsoever, to be located in tracts of not less than an entire section corresponding with any of the legal divisions into which the public lands are authorized to be surveyed."

(6 U. S. Stat. at Large, chap. 90, p. 810—Private Laws.)

This Act is the original University Grant. But the "Act sup-

plemental to the Act for the admission of the States of Iowa and Florida into the Union," approved March 3d, 1845, again grants and conveys these lands to the State "to be appropriated solely to the use and support of such University, in such manner as the legislature may prescribe." (See Rev. 1860, 967.)

Under this Grant there were set apart and approved by the Secretary of the Treasury for the use of the State, lands, as follows, to-wit:

1. In the Iowa City Land Dist., Feb. 26, 1849... 20,150.49 acres.
2. In the Fairfield Land Dist., Oct. 17, 1849... 9,685.20 acres.
3. In the Iowa City Land Dist., Jan. 28, 1850... 2,571.81 acres.
4. In the Fairfield Land Dist., Sept. 10, 1850... 3,198.20 acres.
5. In the Dubuque Land Dist., May 19, 1852... 10,552.24 acres.

Total No. acres..... 45,957.94

But they were not certified to the State till the 19th of November, 1859, when at the instance of Hon. Anson Hart, then Register, this office was furnished with the list duly certified by the Commissioner of the General Land Office.

Are these all the State is entitled to under this Grant? The original Grant says, "a quantity of land not exceeding two entire townships." The second Grant refers to this land as "seventy-two sections," &c.

Every entire township contains thirty-six sections. So there is no conflict in the Acts in this respect—two entire townships do contain seventy-two sections. The terms are equivalent. But it does not follow that each of these sections contains 640 acres. There are fractional sections in every township, some containing more, some less, than that quantity.

These Acts both designate and grant the land by the section and not by the acre. The first Act requires it to be selected in tracts not less than a section.

Of the lands approved and certified as above there are only seventy sections. They are taken by sections—some of them containing more than 640 acres and some of them less. But all that contain less are accounted to the State at 640, while all those that contain more are computed at their full quantity; and in this way the seventy sections are certified to the State as 45,957.94 acres, although they do not contain that amount. This, however,

is the general rule of the Government under these grants, and I do not complain of it. The point I make is this: When the Grant is made by sections, or of *so many sections*, has the Secretary the right to measure it by the *acre*? Instead of *seventy-two sections* can he give us seventy only? Was this a grant of *seventy-two sections*? If so, we are entitled to two sections more, for we have received only seventy. But if it was a grant of 46,080 acres we are entitled to but 122.06 acres more.

The Commissioner of the General Land Office in his letter transmitting the list admits that this amount of 122.06 acres is still due the State; and the General Assembly, by an Act approved April 7, 1862, authorize the Governor to adopt the necessary measures to obtain it, specifying this as the deficit.

But how can this amount be obtained? The original Grant requires the land to be taken in tracts *not less than* a section. Can we then expect a tract of less to be set apart and certified? If we find a fractional section with not more than the amount under the general rule, it would have to be certified as 640 acres, and there not being so much due, would not the Secretary refuse to certify?

It appears to me that the Secretary misconstrued this Grant, and that he should have set apart and approved to the State *seventy-two sections* without counting the excess or deducting the deficit of those that were fractional.

Since the passage of the Act of April 7, 1862, nothing has been done to secure this deficit, whatever it is.

These lands are by law placed under the control and management of the "Board of Trustees of the Iowa State University" at Iowa City, and the proceeds are exclusively appropriated to the benefit of that institution.

For the several Acts of the General Assembly on this subject see chap. 84 Rev. 1860—chap. 126 Acts 1862, and chaps. 59 and 78 Acts 1864.

The following table shows the counties in which these lands lie, with the amount patented, amount unpatented, and total in each county, at this date:

COUNTIES.	No. Patents	Acres Patented.	Unpatented.	Total.
Appanoose .....	7	520.00	120.00	640.00
Boone .....	21	1,675.84	937.64	2,613.48
Davis .....	2	80.00	1,217.36	1,297.36
Dallas .....	.....	.....	572.07	572.07
Decatur .....	1	40.00	2,520.00	2,560.00
Hardin .....	106	7,672.74	2,652.80	10,325.54
Iowa .....	7	325.68	320.97	646.65
Jasper .....	13	1,270.27	3,341.08	4,611.35
Jefferson .....	12	1,040.00	240.00	1,280.00
Lucas .....	27	2,119.53	2,425.91	4,545.44
Polk .....	18	1,657.94	3,536.25	5,194.19
Scott .....	3	405.16	240.00	645.16
Story .....	27	2,235.89	2,985.51	5,221.40
Union .....	2	239.79	398.41	638.20
Wapello .....	11	1,289.68	630.32	1,920.00
Warren .....	25	2,320.00	898.00	3,218.00
Total .....	282	22,892.52	23,036.32	45,928.84

Add for fractional sections taken as full, 29.10 acres, and we have the amount certified 45,957.94 acres, leaving a deficit of 122.06 acres.

#### 5TH—SALINE LANDS.

By the act before referred to, supplemental to the act for the admission of the States of Iowa and Florida into the Union, approved March 3, 1845, Congress granted to the State, under certain restrictions, the use of the salt springs in the State not exceeding twelve in number, with six sections of land contiguous to each—the title still remaining in the Government. (Rev. 1860, 967.) And by the act entitled "*An Act to relinquish to the State of Iowa the lands reserved for Salt Springs therein,*" approved May 27, 1852, Congress relinquished and granted these springs and lands to the State in fee simple, "to be disposed of and the proceeds to be applied as the Legislature shall direct." (32d Congress, 1st Session, Chapter 42).

These lands—seventy-two sections, amounting in the aggregate to 46,101.53 acres—were certified to the State on the 19th of December, 1856, and constitute what is known as the *Saline Lands*.

The following is a summary of the legislation of the State in reference to these lands:

1. "An Act in relation to the Salt Springs granted to the State," approved Feb. 24, 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. 5, 1861.

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." That officer was the Register of the Des Moines River Improvement. The third and fourth sections provide for pre-emptions, and the fifth provides that "the proceeds of the sale of said lands shall constitute a fund for founding and supporting a Lunatic Asylum." (Acts 1851, 227).

Under this Act, it appears no sales were made.

3. "An Act to dispose of the Saline Lands," approved Jan. 23, 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. (Acts 1853, p. 126.)

4. "An Act to amend Chapter 65 of the Code of Iowa, and to provide for the sale of the Saline, School and University Lands," approved Jan. 25, 1855. By this Act it is made the duty of the persons in charge of Saline, School or University lands, to offer and sell the same as therein prescribed.

It requires the Trustees of the State University to elect a Treasurer, and provides for transferring to such Treasurer, all moneys, books, notes and other papers in the hands of the State Treasurer belonging to the University or Saline funds. (Acts 1855, chap. 136.)

5. "An Act for a further appropriation for the State Insane Asylum," approved July 14, 1856. 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 14, 1856." Approved March 23, 1858. This Act repeals that part of the Act of 14th July, 1856, which appropriated the proceeds of 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 26, 1860. This Act confers on the Judge and Treasurer of the county all the powers in relation to the Saline Lands, that were by the Act approved Jan. 25, 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 2, 1860. This Act makes the Saline Lands and Funds a part of the permanent fund of the State University, and requires the proceeds of the lands to be paid over to the Treasurer of that institution. (Rev. 1860, p. 346.)

9. "An Act for extending the time for claimants to prove up and purchase certain Saline Lands," which became a law without approval March 31, 1862.

This Act is amendatory of the Act of March 26, 1860, and extends the time for proving up, and purchasing certain specified tracts, but in all respects, except as to time, according to the provisions of said Act of March 26, 1860. Such was in brief the substance of the State legislation upon this subject prior to the meeting of the last General Assembly.

In consequence of the difficulties in the administration of this Grant, and the embarrassments both to this office, and the State University, resulting from these imperfect and conflicting statutes, (as more fully set forth in my previous report, but which it is unnecessary to repeat,) the last General Assembly passed the Act entitled "An Act authorizing the Trustees of the State University to sell the Saline Lands, and for other purposes," approved March 25, 1864.

That Act places these lands, with the proceeds of the same, and all notes, contracts, and other securities therefor, under the control of the Board of Trustees of the State University. It authorizes said Board to sell the lands and make certificates of final payment, on which patents shall be issued, and legalizes patents previously issued on certificates of the Treasurer of said University, and the Clerk of Lucas County. (Acts 1864, p. 84.)

The amount of lands thus placed at the disposal of the Trustees for the benefit of said University is 46,101.53 acres, which added to the lands donated and certified under the University Grant, make 92,030.37 acres dedicated to the support of that institution.

The following table exhibits the counties in which these lands

lie, with the number of patents issued, the amount patented, amount unpatented, and total amount in each up to this date.

COUNTIES.	NO. PAT'S.	AMOUNT PATENTED.	AMOUNT UNPATENTED.	TOTAL AMOUNT.
Appanoose.....	81	7,465.93	5,393.35	12,859.28
Davis.....			640.00	640.00
Decatur.....	36	2,160.00	400.00	2,560.00
Lucas.....	181	23,428.03	2,363.43	25,791.46
Monroe.....	15	960.00	160.00	1,120.00
Van Buren.....	14	640.00		640.00
Wayne.....	11	1,132.30	1,358.49	2,490.79
Total.....	338	35,786.26	10,315.27	46,101.53

Before closing this part of my Report, I would call especial attention to the following facts:

By error or mistake of some one, section No. 36, in township No. 70, N., in range No. 17 W., in Appanoose county, was placed on the Tract Book of the Saline lands in this office, as a part of the lands certified under this Grant, and I am informed that under a similar mistake, they were marked on the records of the U. S. Land Office, at Chariton, as Saline lands, and were withdrawn from sale by the General Government.

Under these circumstances, believing said section to be a part of the Saline lands, and by virtue of the provisions of the acts of Jan. 22, 1853, and Jan. 25, 1855, the officers of Appanoose county sold most of the land in said section, as follows, to-wit:

The  $w \frac{1}{2}$  of  $n \frac{1}{2}$  S. 36, T. 70, N. R. 17, to Blake H. Swaim, Aug. 4, 1853.

The  $n \frac{1}{2}$  of  $s \frac{1}{2}$  S. 36, T. 70, N. R. 17, to William Hedgecock, Oct. 10, 1853.

The  $n \frac{1}{2}$  of  $n \frac{1}{2}$  S. 36, T. 70, N. R. 17, to William Cross, Jan. 27, 1854.

The  $s \frac{1}{2}$  of  $s \frac{1}{2}$  S. 36, T. 70, N. R. 17, to Jas. Cafferts, March 6, 1854.

The  $n \frac{1}{2}$  of  $s \frac{1}{2}$  S. 36, T. 70, N. R. 17, to Blake H. Swaim, Jan. 8, 1855.

The  $n \frac{1}{2}$  of  $n \frac{1}{2}$  S. 36, T. 70, N. R. 17, to Enos Hiatt, Dec. 5, 1862.

The  $n \frac{1}{2}$  of  $n \frac{1}{2}$  S. 36, T. 70, N. R. 17, to Wm. Cross, Dec. 5, 1862.

The  $n \frac{1}{2}$  of  $n \frac{1}{2}$  S. 36, T. 70, N. R. 17, to Ephraim Ralstan, Dec. 5, 1862.

These sales were all made at \$1.25 per acre. In some the price was paid down, but in most of them only a part, and they were made in good faith, no doubt, both on the part of the officers and the purchasers.

This section, however, is no part of the Saline lands. It was never selected or approved as such, and the State has received all she can claim under the grant without it. The forty acres sold to Hedgecock, it appears, was patented to him by the State Sept. 20, 1854, but the title to the entire section remains in the United States. In a communication on this subject, dated March 25, 1864, the Commissioner of the General Land Office writes that "said section has not been disposed of by the United States," and that "a reasonable time will be allowed the State to pay for it, or to reconvey a like amount of this, or any other class of land unencumbered, in lieu of it." These purchasers paid their money in good faith, expecting a good title, and probably have, ere this, valuable improvements on the land.

The State should either perfect their title or refund their money, with interest, and release the land to the United States, and let them look to that source for title. They could secure the land under the pre-emption or homestead law, and if necessary to protect their interests, Congress would not, under the circumstances, hesitate to provide by special act therefor. It seems to me, however, that the better way would be to release, instead of the lands sold in this section, an equal amount of other lands of this grant, which are unsold, or adjust it in a similar manner to the adjustment of the excess of the 500,000 acre grant.

#### 6TH—THE DES MOINES RIVER 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 should be taken by the next General Assembly to remove, if possible, the difficulties, and protect the rights and interests of *bona fide* purchasers from the State, and actual settlers upon the lands.

To facilitate a full and comprehensive understanding of the present condition of this Grant, and the position of the several

grantees holding under title from the State and the General Government, I have compiled the following synopsis of the laws of Congress and of the State, and decisions of the General Land Office relating thereto; and have also, with great care, prepared several *tabular statements*, which will be found in the appendix, embodying much valuable information concerning these lands.

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: *Pro-*

*vided, 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 August 8, 1846.

The State of Iowa, by Joint Resolution of the General Assembly, approved January 9, 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 24, 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, 1847, 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 obedient servant,

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 Com-

missioner) 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 "inclosed 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. Stuart 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 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,.....	<u>271,572.24</u>

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 obedient servant,

JOHN WILSON, Commissioner.

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 amount 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 Assembly provided for the election of a Commissioner by the people, and appointed George G. Wright, of Van Buren County, and Uriah Biggs, of Wapello County, Assistant Commissioners, with authority to make a contract, selling the lands of the Improvement for \$1,300,000, and if necessary to sell water-rents, tolls, &c.

Accordingly, on the 9th June, 1849, the Commissioner and Assistant Commissioners made a contract with the Des Moines

Navigation and Railroad 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 Railroad 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. Stuart, 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 un-

dertaken (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 Commissioner 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 (inadvertantly) 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 grossly 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 oscillation 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. McClellan,) 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 advice 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 pur-

pose 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 & Railroad 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, 205,489.64 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 & Railroad 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 States 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, where-soever 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 & Rail Road 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 & Rail Road 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 & Rail Road 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 & Rail Road 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.

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.

ELLIAM 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 256,703.64 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 land 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 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 the Raccoon Fork, supposed to have been

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.

"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.

ELLIAM 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 Railroad Company by the passage of the following act, which was approved March 22d, 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 Rail Road 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 Rail Road Company, a body corporate created and existing under the laws of the State of Iowa, to aid in the construction of a Rail Road 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 Rail Road 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 Rail Road 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 Rail Road 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 Rail Road Company, as contained in the joint resolution passed at the present session of the General Assembly; 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 appointed 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, Fort Des Moines and Minnesota Railroad Company shall be liable to pay the State the amount of said deficiency.

Sec. 3. Whenever 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 issue 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 exclu-

sively 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 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 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 appeared from the reports of the Commissioners on file in this office at the date of my last report, there had been thirty-two claims presented to them and settled, amounting in the aggregate to \$85,890.86; but on the 20th of December, 1863, the Hon. Edward Johnston, chairman of said Board of Commissioners, filed in this office a certificate showing that a claim of \$4,035.62 had been allowed in favor of Meek & Son. And on the 16th of February, 1864, a similar certificate or report, signed by Mr. Johnston and Mr. Jewett, two of said Commissioners, was filed showing an allowance of \$150 in favor of O. H. P. Scott. Reports of these two claims, it is averred, were not filed on account of some laches of the Secretary of the Commissioners.

Since the last session of the General Assembly, and under the provision of the Act of March 28, 1864, as appears from additional reports now on file in this office, there have been presented to and allowed by said Commissioners four additional claims, amounting to \$19,502.89,—making in the aggregate of these claims allowed and unpaid the sum of \$109,579.37; all of which are more fully exhibited in the following table.

As yet there are no lands available to meet any portion of these claims, and no other provision for their satisfaction.

CLAIMANT.	Amount Claimed.	Filed before Commissioners.	When Allowed.	Amount Allowed.	When Filed in Land Office.
Jas. J. Kinnerly,...	\$20,000 00	Aug. 29, 1860	Feb. 5, 1861	\$9,000 00	June 23, 1861
Jonas Houghton,...	5,000 00	Oct. 26, 1860	" "	3,904 80	" "
Adam Hine,....	880 00	Dec. 12, 1860	" "	880 00	" "
Wm. Baker,.....	2,000 00	Feb. 18, 1861	Apr. 23, 1861	700 00	" "
R. Jackson, for the heirs of A. Miller,	2,600 00	Feb. 18, 1861	Apr. 23, 1861	750 00	" "
Geo. C. Allender,...	50,000 00	Aug. 29, 1860	Feb. 5, 1861	8,037 25	" "
Wm. Armstrong,...	500 00	Feb. 18, 1861	Apr. 23, 1861	100 00	" "
Edwin Manning,...	245 52	Aug. 29, 1860	" "	45 00	" "
John Parker,....	1,000 00	Feb. 18, 1861	" "	400 00	" "
H. D. Steward,....	100 00	Apr. 18, 1861	" "	100 00	" "
Van Buren Co.,....	316 00	Dec. 11, 1860	" "	114 00	" "
Meek & Bros.,....	3,000 00	Aug. 29, 1860	Feb. 5, 1861	1,652 68	" "
Joseph Benning,...	800 00	Feb. 18, 1861	Apr. 23, 1861	250 00	" "
George Gray,....	2,000 00	" "	" "	700 00	" "
D. Kennedy,....	1,500 00	" "	" "	700 00	" "
S. Dwight Eaton,...	500 00	Feb. 5, 1861	" "	300 00	" "

CLAIMANT.	Amount Claimed.	Filed before Commissioners	When Allowed.	Amount Allowed.	When Filed in Land Office.
Peter Tobie,.....	238 51	Nov. 1, 1860	Feb. 5, 1861	265 92	June 22, 1861
Thos. H. Harlan,....	1,000 00	Feb. 18, 1861	Apr. 23, 1861	550 00	" "
Guy Wells,.....	1,500 00	Dec. 12, 1860	" "	1,000 00	" "
Jas. A. Brown,....	25,000 00	Aug. 29, 1860	Feb. 5, 1861	19,159 21	" "
J. P. Gray,.....	4,000 00	Feb. 18, 1861	Apr. 23, 1861	1,400 00	" "
Rob't P. Gray,....	2,000 00	" "	" "	700 00	" "
Felix Decker,....	1,000 00	" "	" "	600 00	" "
John Stafford,....	1,400 00	" "	" "	550 00	" "
Jo. Benning, (adm.)	500 00	" "	" "	100 00	" "
Wm. McCowan,....	500 00	" "	" "	100 00	" "
Isaac P. Gray,....	2,000 00	Aug. 29, 1861	" "	800 00	Feb. 10, 1862
Adam Hine,.....	300 00	Feb. 25, 1861	" "	800 00	" "
Gray & Co.,.....	25,000 00	Aug. 29, 1860	Feb. 5, 1861	10,215 00	" "
Wells, Childster & Gray,.....	30,000 00	Nov. 27, 1860	Feb. 5, 1861	867 20	" "
Greene, Bragg & Co	40,000 00	Aug. 29, 1860	" "	8,150 00	July 18, 1862
E. T. Coltan,.....	21,000 00	" "	" "	13,500 00	June 22, 1862
Meeck & Sons,....	"	"	July 18, 1861	4,035 63	Dec. 20, 1863
O. H. P. Scott,....	150 00	Feb. 4, 1861	Feb. 5, 1861	150 00	Feb. 16, 1864
Peter Tobie,....	9,097 20	June 16, 1864	June 16, 1864	9,097 20	July 6, 1864
H. K. Love & Co.,	2,634 81	" "	" "	2,634 81	" "
O. H. P. Scott,....	7,270 88	" "	" "	7,270 88	" "
J. J. Kinnersly,...	2,000 00	June 15, 1864	" "	500 00	July 29, 1864

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. (See 23 How. 66.)

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 view to dispose of the same until future legislation is had.—(*Acts Ex. Ses. 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.

Nothing has been done in this matter since my last report.

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.

The last General Assembly passed the following Act, to-wit:

AN ACT supplemental to Chapter ninety-nine of the laws of the Seventh General Assembly, approved March 22, 1858, and relating to the Des Moines River Land Grant, and for the payment of certain audited claims and releasing to the United States certain occupied lands included in said grant.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa, That all the title and interest of the State of Iowa in and to any portions of the lands granted by the act of Congress, approved July 12th, 1862, situated north of township number ninety, north, which was entered upon by a head of a family as a homestead or as a pre-emption claim, and who had prior to the first day of Jan. 1863, filed in the proper land office a declaratory statement, and who actually occupied the said land with his family, as a homestead, on the first day of December last, and has continued to hold and occupy the same, shall be relinquished to the United States upon the condition hereinafter mentioned. The said claimants shall, within ninety days from the taking effect of this act, make due proof before the Register of the Land Office at Fort Dodge, of such filing, entry, and continued occupation, and any person claiming an interest in the said lands, after giving all contesting parties ten days' notice of the time and place, may appear before the Register within thirty days after the expiration of the said ninety days, and contest the validity of such claims, and the whole evidence having been reduced to writing and certified to by said Register of the Land Office at Fort Dodge, shall be deposited in said Land Office, and a complete list of such claims and the evidence relating thereto shall be filed in the office of the Governor at Des Moines,*

within one hundred and forty days from the date of the taking effect of this act. The Governor shall execute a release of such lands to the United States, when lists of the same, duly certified by the Register of the Land Office at Fort Dodge, shall be furnished him, and he shall be satisfied from the evidence so filed with the Register that the said claims have been established in accordance with the provisions of this act.

*Provided, That if any of the said claimants shall fail to perfect their claims upon any of the aforesaid lands in the manner required by the laws of the United States relating to pre-emptions and homesteads, then such unclaimed lands shall belong to the State of Iowa, and be held and disposed of as provided by the said act of Congress, approved July 12th, 1862, and*

*Provided further, That if any purchase money shall be paid by said claimants to the United States for such lands, the same shall inure to the benefit of the parties legally entitled thereto.*

SEC. 2. No person or persons, company or corporation, claiming said lands, or any part thereof, shall be entitled to receive a certificate, or other conveyance of said granted lands, until such person or persons, company or corporation, shall execute and file in the office of the Register of the State Land Office a deed of release to the State of Iowa of the lands described in Section one of this act.

SEC. 3. Charles Pomeroy, of Boonsboro, and John R. Needham, of Oskaloosa, are hereby appointed commissioners to classify the lands granted to the State of Iowa by the act of Congress of July 12, 1862, and it shall be their duty,

*First*—To file an oath in the office of the Register in such form as shall be prescribed by that officer, to discharge fairly and impartially the duties imposed by this act.

*Second*—After the filing of said official oath, and as soon as practicable after said lands are certified to the State of Iowa, to arrange said lands with reference to their value, in three separate classes or grades; the lands in each class to be as nearly as practicable of equal value.

*Third*—To file in the office of the Register lists of the lands in each grade or class.

SEC. 4. As soon as said lists are filed in the office of the Register of the State Land Office, it shall be the duty of such Register to reserve and set apart of those lands lying in place upon the Des Moines River above township number ninety, seventy thousand acres, taking the same as nearly as practicable from the lands next north of said township.

*Provided, That in the setting apart of said seventy thousand acres, ten sections of land upon which S. H. Taft has located a colony shall be excluded, and the Governor is hereby authorized to convey said ten sections of land to S. H. Taft for not less than one dollar and twenty five cents per acre, and the money received for the same shall be deposited in the State Treasury for the use of the Keokuk, Fort Des Moines and Minnesota Railroad Company, when they shall become entitled thereto under the provisions of this act, which land so reserved shall be held to secure the payment of the claims and discharge of existing liabilities against the Des Moines River Improvement in the manner hereinafter provided.*

SEC. 5. The commissioners hereinbefore named, shall set apart from the indemnity lands, so called, fifty-eight thousand eight hundred and thirty acres, one-third from each class or grade to be used, or so much thereof as may be necessary

for that purpose by the State in adjusting the titles of its grantees to lands sold prior to June 9th, 1854, as contemplated by act of Congress approved July 12, 1862.

SEC. 6. After the lands as granted have been so classified and graded, and the reservations provided for in sections four and five of this Act, have been set apart by the Register, the Keokuk, Fort Des Moines and Minnesota Railroad Company, shall select two hundred and forty sections of those remaining; less the ten sections to be conveyed to S. H. Taft, as provided in Section four of this Act, and shall file in the office of the Register a list showing the same, after which a number of sections of said lands equal in value to one-fourth of all the lands including the two hundred and forty sections to be selected by said company as herein provided, granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, except the reservation provided for in Sections four and five of this Act, shall be selected by Charles Pomeroy, who shall cause a list of the same to be filed in the office of the Register of the State Land Office; all of said selections shall be made as nearly as practicable one-half in each case from the lands in place and one-half from the indemnity lands, so called, and in making all of said selections one-third shall be taken from each of the three grades in which such lands shall be classed.

SEC. 7. That upon the filing of certificate in the office of the Register of the State Land Office by the Keokuk, Fort Des Moines and Minnesota Railroad Company, verified by the oath of the President and Secretary thereof, showing that such Company has forty miles of its road, from the town of Bentonsport up the valley of the Des Moines River, completed and in operation, it shall be the duty of the Register to certify to said company the two hundred and forty sections of land selected by said company as above provided, and upon the presentation of such certificate to the Governor, he shall, if satisfied that the above provision has been complied with, issue to said company a patent therefor.

SEC. 8. That the lands selected by Charles Pomeroy as above provided for, shall be set apart by the Register of the State Land Office, to be applied in the construction of said Railroad from the city of Des Moines to Fort Dodge, and said lands so reserved shall be divided into four equal parcels, one of which shall be certified and patented to said company upon the completion of each fourth in distance of that portion of said road.

SEC. 9. Upon the payment or satisfaction by said Railroad Company of the claims against the Des Moines River Improvement, which have been duly allowed and certified by the commissioners and audited by the Register of the State Land Office, according to an act of the Eighth General Assembly, approved March 3d, 1860, entitled an act in relation to the Des Moines River Improvement and abolishing the office of Commissioners thereof, including the amount paid by the State in accordance with Chapter Forty-four of the Acts of the Ninth General Assembly to Brown and Allender; also the amount paid W. C. Drake in accordance with Chapter Fifty-three of the acts of the 8th General Assembly, also to the Estate of E. Mayne, balance for services as Commissioner, one hundred and sixteen dollars and eighty cents; to Ed. Johnston balance for similar services, ninety-one dollars and fifty cents; to J. E. Jewett, balance for similar services, ninety dollars; to Semple and Kinley, counsel fees, twenty dollars; also all interest accruing on all or any of said claims as now fixed by law; together with the

costs and expenses incurred in grading or classing the lands in said grant as required by the terms of this Act. The Register shall certify to said company the lands set apart and reserved by Section four of this Act, and the Governor shall, if he is satisfied that the foregoing provisions have been complied with, and provided said Keokuk, Fort Des Moines and Minnesota Railroad Company shall have filed with the Secretary of State, a bond in the sum of one hundred thousand dollars, with sureties to be approved by the Governor, conditioned that said R. R. Company will pay all just and legal claims against the State of Iowa on account of or growing out of the improvement of the Des Moines River, issue a patent therefor, except for so much as shall have been released to the United States in compliance with the provisions of this Act, and upon the payment or satisfaction of any portion of said claims by said company, it shall be entitled to a certificate and patent for a portion of said lands in the ratio of one thousand acres of land for every three thousand dollars of said claims so paid or satisfied.

SEC. 10. The bond provided for in section nine of this Act, shall not bind the Keokuk, Fort Des Moines and Minnesota Railroad Company to pay any claims except such as have grown out of contracts for the construction and completion of the works at Keosauqua, Plymouth and Croton, and which have been allowed by the Commissioners appointed under the act of March 3d, 1860, or their successors, or which shall be allowed, not exceeding twenty thousand dollars, within sixty days from the taking effect of this Act. All claims not presented within the said sixty days shall be forever barred. Said Commissioners are authorized to hear and determine such claims as may be presented to them within the said sixty days, and to fix the time and place of their meeting, and to give thirty days' notice thereof in the Keosauqua Republican and Keokuk Gate City, as provided in said Act of March 3d, 1860.

*Provided*, That as to all claims not mentioned in this section, the bar imposed by the Act of March 3d, 1860, is to continue in full force.

SEC. 11. All assignments of said claims, or of any part thereof, shall be filed in the office of the Register of the State Land Office on or before the first day of July next, and no assignment not thus filed shall entitle the holder thereof to any claim in the trust fund provided to pay such claims, and the Register or Company shall be justified in paying any funds applicable to the payment of said claims, to any person who appears by the papers on file with or in the claim to be entitled thereto.

SEC. 12. In case the said Company shall not have paid all the claims mentioned in the ninth section of this Act, as follows: At least one-half in amount thereof within one year from the time the certificate of such lands shall be delivered to the State, and the remaining part within one year thereafter, then the Register of the State Land Office shall cause said reserved lands to be appraised so that the prices of the three classes shall average three dollars per acre. He shall thereupon offer the same for sale at public auction, in such parcels as will bring the greatest price, after giving two months' notice of such sale in the "Iowa State Register," the "Keosauqua Republican," and the "Pt. Dodge Republican." *Provided*, That in no case shall the lands be sold for less than the minimum price so fixed, unless hereafter directed by the General Assembly. At such sale the owners of any of the said claims may bid on such lands, and the Register shall receive their claims as aforesaid, receipted as money paid on such bids.

Sec. 13. The Register shall, from the moneys received from such sale, pay as follows: 1st—The expenses of such classification, appraisalment, advertisement and sale. 2d—Sums due the State for moneys advanced or due other parties, as mentioned in section nine of this Act. 3d—The claims unpaid and not used in the purchase of said lands. And in case there shall not be in his hands moneys sufficient to pay all of said claims, the payments thereon shall be pro rata. And after the application of all the moneys so received, the claimants may enter upon and select any of said lands not disposed of, to the amount of their said unpaid claims, at the minimum price fixed thereon; and the Governor shall, in all cases of the above disposition of any of said lands, issue patents therefor. Should any of the said reserved lands remain undisposed of after the payment of such claims, they shall be treated as other lands subject to be certified to said Company.

Sec. 14. In case the said Railroad Company shall procure from all persons having valid claims against the Des Moines River Improvement, or the State, arising out of contracts for the completion of the locks and dams in said Improvement, or for leases, water-rents and other contracts from which future liabilities may arise by reason of said locks and dams not being completed, full releases from all such contracts, claims and demands, and shall file the same in the office of the Register aforesaid; then the said Company shall be released from any obligation to complete said locks and dams at Croton, Plymouth and Keosauqua, as provided by section two of said Act of March 22d, 1858; and the said Company is hereby released from any obligation to complete and keep in repair the lock and dam at Bentonsport; and in case the said Company shall expend any sums of money upon any of said works, or in procuring said releases, then, for every three thousand dollars so expended, the Register shall certify to said Company one thousand acres of the lands above reserved not required to pay the claims of section nine of this Act, and in the same rates for any less sums so expended.

Sec. 15. Whenever it shall be made to appear to the satisfaction of the Governor and the Register of the State Land Office, that in accordance with any contract with the Keokuk, Fort Des Moines & Minnesota Railroad Company, and for a consideration paid by said Company, the completion of either of the locks and dams remaining uncompleted at Croton, Plymouth and Keosauqua, has been assumed by some proper party, and the State and said Company discharged from any further payments therefor, and that the State and said Company have been discharged from all liabilities arising out of any contracts for the completion of either of such locks and dams heretofore entered into or assumed by the State as trustee, or out of any and all contracts or leases of water-power heretofore executed or assumed by the State as such trustee, or otherwise, it shall be the duty of the Governor and Register of the State Land Office, first, if so requested by such Company, to execute to such party as the Company shall designate, a conveyance in the name of the State of Iowa, without warranty, of all the interests of the said State in such lock and dam, and in the land appurtenant thereto, and the water-power thereto belonging, and in any material prepared for the construction of such lock and dam; and if any of such material shall have been improperly taken possession of by any person, the State or its grantee may replevin the same. That said conveyance shall contain a covenant on the part of the grantee, that said dam shall at all reasonable times be kept in condition to pass boats without unnecessary hindrance or delay, and that for boats passed through the locks of

such dam, the toll charged shall not exceed the maximum rates prescribed by the contract by the State with the Des Moines Navigation and Railroad Company. Second, to certify to said Keokuk, Fort Des Moines & Minnesota Railroad Company, or to such person as it may designate, for every three thousand dollars so paid, one thousand acres of land from the seventy thousand acres reserved by this Act, and in the same ratio for sums less than three thousand dollars.

Sec. 16. When said Railroad Company shall, in the manner prescribed in Section seven of this Act, establish the fact that it has completed and is operating twenty miles of its road, in addition to that for which it shall have received lands of this grant prescribed in this Act: *Provided*, The said Company shall have then satisfied all the claims mentioned in Sections nine and ten of this Act, to be evidenced by receipts filed in the office of said Register, or by the receipt of the State Treasurer, for moneys paid to such Treasurer in default of the proper claimants receiving the same, the said Company shall be entitled to a certificate and patent for one hundred and twenty sections of said lands, to be selected, as nearly as practicable, one-half from the lands in place, and one-half from the indemnity lands, so called, and one-third from each of said grades or classes, until there shall remain of the lands within said grant, undisposed of, only the lands reserved by the preceding sections of this Act: *Provided*, That it is also made to appear to the satisfaction of the Governor and the Register of the State Land Office, that said road has been constructed over the most practicable route up the valley of the Mchakianock Creek, and that a depot has been established on the line of said road at the point nearest the city of Oskaloosa, and on the east side of said creek, or that the Mahaska County Railroad Company has consented to a different route and a different point for the location of said depot.

Sec. 17. When the Keokuk, Fort Des Moines and Minnesota Railroad Company shall, in like manner have established the fact that it has completed and is operating its road one-fourth of its distance between the city of Des Moines and Fort Dodge, it shall be entitled to a certificate and patent for one-fourth of the lands reserved by Section eight of this Act; and upon the completion of each additional one-fourth of said road between Des Moines and Fort Dodge, said Company shall be entitled to receive a certificate and patent for one-fourth of the lands so reserved: *Provided*, however, that the Railroad Company building westwardly from McGregor shall have the right of way for their road across the lands embraced in this Act, and the same is hereby granted to said Company: And, *Provided further*, That the State shall in no event whatever, be liable to said Keokuk, Fort Des Moines & Minnesota Railroad Company, or to any of its grantees, or any other persons to whom lands may be sold or patented under the provisions of this Act, for any failure of title to any of the lands so sold or patented.

Sec. 18. The time in which the first seventy-five miles of the Keokuk, Fort Des Moines and Minnesota Railroad from the town of Bentonsport up the valley of the Des Moines River, shall be completed, is hereby extended to the first day of May, 1865, after which the said Company is required to build and equip thirty-three miles of its road for each year for five years, and the remainder of the whole line within three years thereafter, or on the first day of May, 1874; and in case of a failure to so build and equip said road, the lands then remaining uncertified

to said Company shall belong to the State, to be disposed of as provided by the act of Congress of July 12th, 1862, and the laws of this State.

SEC. 19. The Commissioners hereinbefore named shall each receive as compensation for services rendered in the discharge of their duties imposed by this act the sum of three dollars per day, for the number of days engaged therein, and their necessary expenses; and the bills therefor shall be audited by the Register of the State Land Office, and paid by the Keokuk, Fort Des Moines and Minnesota Railroad Company. If either of said Commissioners shall neglect or refuse to discharge the duties imposed by this act, the Governor shall appoint some competent person to act in his place.

SEC. 20. The said Keokuk, Fort Des Moines and Minnesota Railroad Company shall assent to and accept the provisions of this act by a written instrument under the seal of said corporation, with the signature of the proper officers, before any lands shall be patented to them by the Governor, as provided by this act, which said acceptance shall be filed in the office of the Secretary of State, and be by the Secretary recorded in the book by him kept for the recording of articles of association. Said Company accepting the provisions of this act, shall at all times be subject to all the rules and regulations, and all the restrictions and conditions not inconsistent with this act, provided in an act passed March 3d, 1860, an act passed March 22d, 1858, and an act passed July 14th, 1856, by the General Assembly of the State of Iowa.

SEC. 21. This act being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the Iowa Homestead, newspapers published in Des Moines.

Approved March 28th, 1864. (Acts 1864, p. 130.)

Nothing whatever has been accomplished under this Act. Several settlers sought to have the lands claimed by them released by the State as provided for in section 1, with a view to perfect their titles by obtaining the lands from the United States under the pre-emption and Homestead laws. But very few of them complied with the requirements of the Act so as to authorize the Governor to release the lands, and those whose proof was considered sufficient failed to file in this office the release required by Sec. 2, of said Act. In view of the fact that so many for whose benefit this act was passed had failed to bring themselves within its provisions, it was thought, that further legislation would probably be considered necessary by the next General Assembly, and on the suggestion of Hon. G. W. Bassett, who was acting in behalf of these settlers, it was concluded to do nothing further as to them, until the matter can be considered by the General Assembly.

These lands have not been certified under the Act of Congress of July 12, 1862, and consequently nothing has been done by way of grading and classifying them. The Des Moines Valley R. R.

Company has not accepted the provisions of the foregoing act of the General Assembly, as required by Sec. 20 thereof, nor has said company done any act, so far as this office is concerned indicating an intention to accept, or conform to the provisions of said Act.

I will close this part of my report by reverting to the conflicting claims to these lands, and stating as briefly and concisely as possible, the facts as they exist.

The tabular statements before referred to and which will be found in the appendix, will contain the following information:

*Table No. 1* exhibits all the land in odd sections falling within the limits of the Des Moines River Grant above the Raccoon Fork so far as the survey had been completed at the time of making the certificate of Oct. 30, 1851, amounting to 107,195.78 acres, and also of these lands, such as were disposed of by the United States, subsequent to the 24th of August, 1848, (the date of the receipt at the Local Land Office, of the Secretary's decision of August 7th, 1848, limiting the Grant to the Raccoon Fork,) and previous to the 16th June, 1849, (the date of the receipt, at said office of notice of the Secretary's subsequent decision, construing the Grant to extend to the Northern boundary of the State,) amounting to 25,487.87 acres.

*Table No. 2* exhibits in the 1st column, the lands certified to the State, and approved under the Des Moines River Grant on the 30th of Oct. 1851, amounting to 81,707.93 acres; in the second column the lands sold and deeded by the State to individuals; in the third the lands patented to the "*Des Moines Navigation and Railroad Company*;" and in the fourth, such of these lands as have since been certified and approved to the State as Railroad land under the act of May 15, 1856.

*Table No. 3* exhibits in the 1st column the 143,908.37 acres approved as Des Moines River lands on the 10th March 1852; in the 2d such of these as have been sold and deeded by the State to individuals; in the 3d, such as were patented to the "*D. M. N. & R. R. Co.*;" and in the 4th those since approved and certified as R. R. lands under the Act of May 15, 1856.

*Table No. 4* exhibits in the 1st column the 33,142.43 acres approved as Des Moines River land on the 17th December, 1853; in the 2d, those sold and deeded by the State to individuals; in the 3d, those patented to the "*D. M. N. & R. R. Co.*;" and in the

4th, those since approved as Railroad land under the Act of 1856.

Table No. 5 exhibits in 1st column the 12,813.51 acres, approved as Des Moines River lands, on the 30th December, 1853, all of which had been selected and part of which had been sold by the State as School land; in the 2d column, of those lands such as were sold by John Tolman, School Fund Commissioner of Webster County; in the 3d, those patented to the "*D. M. N. & R. R. Co.*," and in the 4th, the lands the contracts for which as School land, have been cancelled according to the Act of April 2, 1860, and the amount of money refunded by the State therefor.

Of the lands certified and approved to the State as Des Moines River lands on the 30th of October, 1851, (as shown in Table No. 2,) all of which have been disposed of by the State, there have been since certified as Railroad land 69,293.12 acres, as follows, to-wit: For the benefit of the M. & M. R. R. 34,269.81 acres, of which the State had sold and deeded to individuals 19,074.48 acres, and patented to the D. M. N. & R. R. Co. 15,195.33 acres; and for the benefit of the Iowa Cen. Air line R. R. 35,023.31 acres, of which the State had deeded to individuals 16,804.44 acres, and patented to D. M. N. & R. R. Co. 18,218.87 acres.

Of the lands certified to the State as Des Moines River lands on the 10th of March, 1852, (exhibited in Table No. 3,) there have been certified as Railroad land 120,245.15 acres, as follows, to-wit: 74,279.78 acres for the benefit of I. C. A. L. R. R., of which 13,542.50 acres had been sold and deeded to individuals by the State, and 60,737.28 acres patented to the D. M. N. & R. R. Co. And for the benefit of the D. & S. C. R. R. 45,965.37 acres, of which 2,988.22 acres had been deeded to individuals, and 42,977.15 acres patented to the D. M. N. & R. R. Co. by the State.

And of the lands certified as Des Moines River lands on the 17th day of December, 1853, (exhibited in Table No. 4,) there have been certified for the benefit of the D. & S. C. R. R. 11,221.82 acres, of which 446.84 acres had been sold and deeded to individuals, and 10,774.98 acres patented to the D. M. N. & R. R. Co. by the State; from which it appears that of the 271,572.24 acres above the Raccoon Fork actually certified and approved to the State under the Des Moines River grant, 200,760.09 acres have now been certified under the Railroad Grant—52,856.48 acres of which had been sold and deeded to individuals, and 147,903.61 acres pa-

tented to the Des Moines Navigation & Railroad Co., to-wit: For the benefit of M. & M. R. R. 34,269.81 acres—deeded to individuals 19,074.48 acres, and patented to D. M. N. & R. R. Co. 15,195.33. For the benefit of the I. C. A. L. 109,303.09 acres—deeded to individuals 30,346.94 acres, and patented to D. M. N. & R. R. Co. 78,956.15 acres. And for the benefit of the D. & S. C. R. R., 57,187.19 acres—deeded to individuals 3,435.06, and patented to D. M. N. & R. R. Co. 53,752.13 acres.

The lands certified under the Des Moines River grant on the 30th of December, 1853, do not, from the Railroad lists in this office, appear to be certified under the railroad grant. The whole amount of lands included in the list of that date (12,813.51 acres) have been patented to the Navigation and Railroad Company, notwithstanding the fact that 3,194.28 acres of them had previously been sold by John Tolman, School Fund Commissioner of Webster County, as school lands, under the direction of State Superintendent of Public Instruction. (See Table No. 5.)

That it is advisable for the State, by appropriate legislation, to settle these conflicting claims, and to protect the integrity of the titles derived from her and particularly those held by actual settlers, it appears to me no one can doubt. I do not wish to be importunate, nor to be considered as attempting to impose my opinion on the Legislature, whose duty it is to guard the interests of every resident of the State, and most especially to protect the right of the weak and poor citizen against the crushing influence of powerful and moneyed corporations and monopolies of every kind, but it cannot be regarded as improper for me again to call your attention to this matter, and request you to recommend some adequate mode of relief.

Many good, industrious, and faithful citizens purchased of these lands of the State in the utmost good faith, paid their money, and received her patents therefor with full confidence in her integrity and her title. They had been improving them for years before the railroad grant was passed; and if the Railroad Companies are permitted to hold the lands, the patents issued by the State are void, and the grantees must buy again of the Railroad Companies, or give up their lands and look to the State for indemnity. Aside from the damage and even ruin that would result to the claimants

in many cases from such a course, it would occasion much controversy and numerous applications to the State for relief.

For the reasons given in my last report, as well as others that might be assigned, I would renew my recommendations then made, to-wit: "To require the several Railroad Companies to release to the State their right to all these lands which were disposed of by the State as Des Moines River lands, and in lieu of so much thereof as have been certified as railroad lands within their respective limits, to take an equal amount of the land granted as indemnity by the act of Congress of July 12, 1862, 300,000 acres of which have been selected as before stated," and the act of June 2, 1864. By this means all the titles to these lands from the State would become good, and the State safe from any further trouble or liability therefrom; and the Railroad Companies would each receive the same amount of land as if permitted to hold the lands as certified by the Commissioner of the General Land Office, the only difference being in the value of the land.

Two years more have confirmed me in the opinion then expressed that this is the best and most satisfactory (if not the only) way to settle this matter.

As the Railroad Companies will probably oppose such an adjustment on account of the difference between the value of the lands they would then get and those they now claim, the question will at once arise as to the right or power of the State to do this. It is admitted by all legal minds not in the railroad interests, that the companies having failed to comply with the conditions of their grants, the State has the *right* to resume and take from them these lands and any others within their limits, the title to which has not vested absolutely in them, and grant them to other companies, or sell them and appropriate the proceeds towards the completion of the roads; or she might withhold them until they would, by the terms of the original grant, revert to the United States. So far as the *abstract legal right* is concerned it is not an open question. Now, if the State were to resume these lands and withhold them, or if she simply resumes, what would be the effect under the resolution of Congress of March 3, 1861, but to perfect the title to the purchasers of the State? The law giving to the State the power to resume, and thus take them all away from the Railroad Compa-

nies, there can be no doubt of her *legal right* to impose this condition upon them as a consideration for future indulgence.

Again: by virtue of Section 8 of the act of Congress, approved June 2, 1864, "*upon failure of either company to complete either section as aforesaid, to be annually built, the portion of land remaining uncertified shall become subject to the control and disposition of the Legislature of the State of Iowa, to aid in the completion of said road.*"

Some of these companies have failed to comply with the requirements of this act, to-wit: "*to build not less than twenty miles of road within one year from the first of July, 1864, and in each year thereafter an additional section of twenty miles,*" (Sec. 8.) If either company failed to build and complete the twenty miles, between the first of July, 1864, and the first of July, 1865, then by virtue of the provision above quoted, the lands along that line "*become subject to the control and disposition of the Legislature,*" &c. Then so far as the companies which have so failed are concerned, there would seem to be no doubt under this act, which is the last Congress has passed on the subject, of the *power* of the Legislature to impose this condition. Sec. 7 grants or recognizes the power in the Legislature to modify the *conditions and limitations of the grant*; while the last proviso in the 4th section expressly provides for the actual settlers on these lands under color of title from the State or the United States, and forbids that their lands shall be conveyed to the companies under the railroad grant, and grants other lands in lieu of them to such companies. (See Acts 1st Session 38th Congress, 101, copied in subsequent part of this report, under title of "Railroad Grants.")

It may be objected that this would be a diversion of the lands from the object for which Congress designed them—that the "*control and disposition of these lands is given to the Legislature of the State of Iowa to aid in the completion of said road*; and that they cannot be diverted from that object." The premise may be correct, but the conclusion is erroneous. Where a grant of lands is made to a State for a particular purpose, or to enable such State to do a particular thing, to the exclusion of all others, "*the trust created is a personal trust reposed in the public faith of the State, and not a property trust fastened upon the land itself by the terms of the grant, and following it into whosoever hands it may pass.*"



This is settled by the Supreme Court of Missouri in the case of "*Dunklin County vs. The District Court*," &c., 23 Mo. 449, (2 Jones,) and by the Supreme Court of the United States in *Cooper v. Roberts*, 18 How. 173.

Then, if these lands are granted to the State to aid in the construction of these roads, and their use even forbidden, for any other purpose, the State is under a *moral obligation* to carry out that design by thus appropriating the lands, but that obligation could not affect any title she might make. She has the *legal right* to use them for any other purpose, and her conveyance would be good; that is, if the power to convey rests in her at all, as I think it does under Section eight of the Act of June 2, 1864, provided the Companies are in default.

I am dealing, it will be remembered, only with the *legal right or power* of the Legislature over these lands. And whether we consider only the conditions and provisions of the several grants from the General Government to the State, and from the State to the Railroad companies, or view the subject on general principles, in the light of legal decisions the conclusion is the same.

As to the propriety of disregarding the trust reposed in the good faith of the State, it may be said that the purchasers of these lands from the State have also reposed confidence in her *good faith*, and that they have claims on her equal, if not far superior under the circumstances, to the claimants under the Railroad Grant.

But the course recommended could not fairly be considered a diversion. It is the same in principle, as selling the lands and appropriating the proceeds to the building of the roads—a power which all will admit the General Assembly does possess whenever the lands are under their control and subject to their disposition.

As to the *expediency* of the measure, the General Assembly will be the competent and appropriate judges. It seems to me, however, that in this, as in all other matters, as well of State legislation as of private transactions, it is *expedient to do right*.

#### 7TH—DES MOINES RIVER SCHOOL LANDS.

Under the Act of Congress of September 4, 1841, known as the 500,000 *Acre Grant*, the selecting agent of the State selected and reported 28,378.46 acres in Webster county; which county then embraced the territory now embraced in Webster and Hamilton.

These selections were approved by the Commissioner of the General Land Office on the 20th of February, 1851. On the 6th of June, 1853, the Hon. Thomas H. Benton, Jr., Superintendent of Public Instruction, by virtue of the authority vested in him by law, and relying on said selection and approval, ordered said lands into market, and authorized John Tolman, the School Fund Commissioner of said county, to sell the same as school lands, as provided by the laws then in force for the disposition of the lands of the 500,000 Acre Grant.

Afterwards, when the Executive officers of the General Government changed their construction of the Act of 1846, (the Des Moines River Grant), and held that that Grant extended above the mouth of the Raccoon, they concluded that these lands, so far as they were in odd sections and within five miles of the Des Moines River, were appropriated by that Act. Of the lands thus in odd sections and falling within those limits, selected and approved as aforesaid, there were 12,813.51 acres. These were set apart and approved to the State by the Secretary of the Interior, on the 30th of December, 1853, as a part of the Des Moines River Grant, under the Act of 8th of August, 1846. On the 6th of January, 1854, the Commissioner of the General Land Office transmitted to the Superintendent of Public Instruction, a certified copy of the list of these lands, with the said Secretary's approval thereon, with the letter of that date hereinbefore given. These lands are referred to in the preceding division, and are particularly described in *Table No. 5*, in the Appendix, and are known as the "*River School Lands*."

Previous to the reception of notice of this action of the Department, the said John Tolman had sold 3,194.28 acres of these as School Lands, as will appear by reference to said *Table No. 5*.

The patents issued by the State to the "*Des Moines Navigation & Railroad Co.*," on the 3d of May 1858, referred to in the preceding part of this report include all these lands, as will also appear from said table.

For the relief of the purchasers of these lands from Tolman, 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 Lands*," approved April 2, 1860, provide that upon application therefor, and the proper showing, 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, principal and interest, on the contract 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 cent. per annum.

Under this Act five applications for relief were made prior to the last session of the General Assembly. The proof presented being full and satisfactory, the applications were allowed as provided in the Act, and each applicant received his warrant from the Auditor for principal and interest, as provided, to-wit: George C. Goss, \$100.56; Thomas G. Pierce, \$321.90; Rosco Royster, \$107.18; E. H. West, \$116.96; and Wesley McKinney, \$302.93. The contracts cancelled covered 630.01 acres, leaving of the lands sold by Tolman, 2,564.27 acres, the contracts for which are uncancelled and unsatisfied, and the purchasers of which are still looking to the State for relief. No applications under this act have been made since the last session of the Legislature.

The General Assembly, by an act entitled "*An Act to require the Dubuque and Sioux City Railroad Company to release certain Swamp, School, and River Lands on the line of said road, and providing for the compensation therefor by an extension of the time of building said road,*" approved April 7, 1862, forbid the issuing to said Railroad Company, by the Governor, any certificate of the completion of any part of said road, or any conveyance of lands, until they execute and file in this office a release, 1st, to certain *Swamp Lands*; 2d, to these *Des Moines River Lands* sold by Tolman, and 3d, to certain other River Lands, &c. (See Acts of 1863, p. 177.) The act provides that said "Company shall transfer their interest in those tracts of land in Webster and Hamilton Counties, heretofore sold by John Tolman, School Fund Commissioner," &c., \* \* "to the Register of the State Land Office, in trust, to enable said Register to carry out and perform said contracts in all cases where he is called upon by the parties interested to do so before the first day of January, A. D. 1864."

On the 27th of *February*, 1864, (during the last session of the Legislature,) said Company filed in this office their release of these Tolman lands, protesting at the same time that they had no claim whatever on them, and never had pretended or sought to claim them. From the approved lists of railroad lands in this office it

does not appear that any of these lands have ever been certified or approved for the benefit of that road, and they do not lie within the limits of the others. The other releases required by said act have never been filed in this office.

The purchasers of these lands regarded the passage of this act as equivalent to a declaration by the Legislature that the claim of said Railroad Company was the only obstacle in the way to prevent the carrying out, on the part of the State, of their contracts with Tolman, and since the last session have been forwarding to this office their certificates of final payment and demanding patents. Being doubtful of the power to issue patents in these cases, in view of the failure of the Railroad Company to comply with the act in the time and as required, and the patents previously issued to the Des Moines Navigation and Railroad Company, and unwilling to act on my own judgment in a matter of so much interest and surrounded by so many doubts and difficulties, I did on the 27th of May, 1864, submit the matter to the Hon. C. C. Nourse, Attorney General, for his opinion.

On the 3d of August following he delivered an elaborate and well-considered written opinion, deciding that patents may legally be issued in all these cases where contracts were made prior to the 23d of December, 1853, and remain uncancelled under the act of 1860, and advising the refusal of patents in all cases where the contracts were made subsequent to that date. This opinion will be found in full in the Appendix, No. 6.

I immediately notified the parties interested, through their agents, of the tenor of this opinion, and that I would proceed as soon as practicable to carry the same into execution. But before doing so, to-wit: on the 27th of August, 1864, a suit in chancery was commenced in the District Court of Polk County, by the Des Moines Navigation and Railroad Company, to enjoin the issuing of said patents; and on the 30th of said month a writ of injunction, issued in said case in pursuance of an order of allowance by the Hon. C. C. Cole, Judge of the Supreme Court, was served upon me, restraining further proceedings in the premises. I at once notified these purchasers of this proceeding on the part of the Des Moines Navigation and Railroad Company that they might employ counsel and make the necessary defense, which they proceeded to do.

The case is undisposed of, but will probably be tried and deter-

mined at the next January term of said Court. In the meantime this office can do nothing in the matter.

The applications for patents in these cases enjoined, now in this office, are but five, covering 602.33 acres, but the writ of injunction specifically describes 1,984.52 acres, covering all these lands sold by Tolman prior to Dec. 23, 1853, except one forty acre tract, (omitted probably by oversight,) the contracts for which remain uncancelled.

#### 8TH—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 continued 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 Congress assembled*, That the pro-

visions 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 next regular session of our Legislature adjourned April 8, 1862; hence the time for making selections of lands surveyed prior to the 2d of March 1860, expired under this Act April 8, 1864. But all the land in the State was not, (as I supposed in my last report) at that time surveyed. Townships No. 99 and 100, in Range No. 36, W., in Dickinson County; Township No. 98, R. 40, W., in Osceola County, and an Island in Clear Lake, in Township No. 96, R. 22, W., in Cerro Gordo County, have been surveyed since; to-wit: in 1861; and notice of the completion of these surveys was not given to the Governor of this State until the 15th of this present month, (Nov. 1865). The counties interested will therefore have two years from the adjournment of the next session of the General Assembly in which to make selection of Swamp and overflowed lands in the Townships and Island above designated.

The following is a brief synopsis of State legislation on this subject up to the present 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 selecting agent to make 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 January 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 January 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 and 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 Extra Sess.* 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 January 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 Chapter 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 the 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.)

14. "An Act for the sale of the Swamp Lands in the several Counties in this State," approved March 22, 1864.

This Act provides that the several Boards of Supervisors *may* appoint three citizens to examine and appraise the swamp and overflowed lands within their respective counties, and report the same to said Boards. And that after such report, such Boards may sell the same, either at private or public sale for not less than the appraised value thereof, providing however, that

Swamp Land "not lying in, along, or contiguous to navigable streams, and not subject to periodical overflows during the summer months," shall not be appraised or sold for less than \$1.00 per acre. (Acts 1864, p. 74.)

Under the Act of April 8, 1862, there have been appointed a number of special Agents at the solicitation of counties, and several general and District Agents to make settlement of these swamp land matters with the General Government.

Since, soon after the last session of the General Assembly however, there has been but one General Agent, Wm. Baker, Esq., of Louisa County, who has been all the time at Washington urging the claims of the State to settlement as rapidly as the tardy machinery of the Land Department can be induced to move.

The following table exhibits the number of acres of lands selected—the number of acres certified as enuring to the State—the number certified as having been entered with land warrants, and also with cash prior to selection—number patented to the State and by the State to the counties,—number of acres for which Indemnity Scrip has been issued—number of acres patented to the State as Indemnity and by the State to the Counties, and the amount of cash Indemnity which has been allowed and for which warrants have been drawn on the Treasury.

COUNTIES.	No. of Acres selected.	No. acres certified as enuring to the State.	No. acres certified as entered with Land Warrants prior to selection.	No. acres certified as entered with cash prior to selection.	No. acres patented and by the State to the Counties.	No. Acres Indemnity—scrip issued.	No. Acres Indemnity—patented by the State and by the Counties, therefor.	Amount cash indemnity allowed and warranted by the State, therefor.
Adair	8,720.00	480.00	1,760.00	4,634.83	360.00	2,595.13	.....	\$ 8,690.25
Adams	640.00	3,680.00	80.00	937.78	3,680.51	748.70	747.18	4,303.45
Alamakee	25,740.00	13,449.34	6,723.11	4,917.24	12,484.60	6,331.48	6,329.01	6,259.30
Appanoose	.....	9,259.55	3,903.08	2,397.06	8,744.18	3,880.00	.....	2,475.44
Audubon	11,234.74	2,056.92	.....	.....	2,056.92	3,572.84	3,572.24	3,623.49
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	4,858.01	.....	.....
Boone	.....	11,212.63	1,116.08	2,578.47	18,166.69	1,049.69	.....	1,869.33
Bremer	33.87	11,132.72	2,968.03	6,523.58	11,087.72	3,243.00	.....	8,450.01
Buchanan	.....	560.00	960.00	1,182.22	560.00	1,839.80	1,839.08	.....
Butler	14,393.29	1,316.07	5,808.49	6,782.14	1,276.07	11,056.15	.....	15,125.66
Buena Vista	62,682.72	.....	.....	.....	200.00	.....	.....	.....
Calhoun	46,849.48	200.00	.....	.....	.....	.....	.....	.....
Carrroll	36,460.00	.....	.....	.....	.....	.....	.....	.....
Cass	29,567.24	1,687.08	.....	.....	1,607.78	560.00	560.00	.....
Cedar	.....	598.50	920.00	137.88	518.50	6,466.56	6,466.51	7,098.93
Cerro Gordo	74,664.55	160.00	.....	.....	80.00	.....	.....	.....
Cherokee	26,359.59	1,616.56	.....	.....	1,233.91	.....	.....	.....
Chickasaw	44,280.00	718.80	19,916.16	26,144.25	440.00	19,769.95	18,740.66	.....
Clarke	4,970.62	.....	.....	.....	.....	.....	.....	.....
Clay	67,787.36	17,430.38	.....	.....	18,230.97	.....	.....	.....
Clayton	.....	1,910.29	195.33	299.26	1,827.29	208.33	.....	245.18
Clinton	.....	8,231.39	560.00	219.34	7,655.23	600.00	.....	111.36
Crawford	25,337.51	.....	.....	.....	.....	.....	.....	.....
Dallas	.....	5,285.98	200.00	1,200.00	5,405.98	200.00	.....	1,300.00

COUNTIES.	No. of Acres selected.	No. acres certifi'd as enuring to the State.	No. acres certifi'd as enter'd with Land Warrants prior to selection.	No. acres certifi'd as enter'd with cash prior to selection.	No. acres patented to State and by the State to the Counties.	No. Acres Indemnity—Scrip issued.	No. Acres Indemnity—patented to State and by the State to the Counties.	Amount cash indemnity allowed and warrants issued therefor.
Davis.....	11,776.13							
Decatur.....	19,240.00	8,484.73	2,879.30	4,505.72	9,151.73	2,639.40		\$ 4,937.18
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		501.60
Dickinson.....	50,064.08							
Dubuque.....		31.70	2,795.89	3,000.17	31.70	840.00		
Emmett.....	97,507.62							
Fayette.....		95.20	4,651.18	5,210.18	95.20	4,372.22		
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	1,904.00	1,903.86	6,232.01
Guthrie.....	11,760.00	400.00	4,594.37	3,160.40	360.00	4,634.30	4,440.00	2,841.18
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	2,765.72
Henry.....			1,316.56	725.68		1,000.00		607.09
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	3,434.42		7,386.18
Ida.....		158.76			278.76			
Jackson.....		3,277.42	1,912.50	1,100.95	3,267.97			
Jasper.....		4,438.75	2,479.61	4,712.77	8,191.98	2,239.61		4,204.39

Jefferson.....		683.26		76.10	683.46			
Johnson.....		1,888.52	2,581.69	1,952.60	1,148.52	15,412.99	15,115.10	9,818.09
Jones.....		1,495.93	4,513.16	4,292.67	742.25	6,222.07	6,221.07	8,168.74
Keokuk.....		8,333.09	3,943.91	3,860.84	8,186.36	4,895.24	4,891.60	
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	12,316.32	11,835.30	2,312.75
Lucas.....	7,300.00	120.00	1,320.00	2,034.10	40.00			
Madison.....								
Mahaska.....		5,898.10	875.87	273.84	5,858.10	2,233.62	2,240.60	195.10
Marion.....		1,091.00	120.00	220.08	1,051.00	120.00		287.60
Marshall.....		676.39	3,329.07	4,052.47	2,663.84	5,827.30	5,722.28	
Mills.....		19,998.25			22,261.25	4,180.27		12,546.62
Mitchell.....	54,110.23			40.00				
Monona.....	104,576.24	46,940.50			40,210.58	10,313.67	10,234.16	8,078.04
Monroe.....	3,855.10	435.10	280.00	560.00	355.10			
Montgomery.....	19,320.00	1,392.95			1,232.93	4,740.00	4,618.37	9,630.50
Muscatine.....		3,144.47	1,174.98	307.20	2,980.67			
O'Brien.....	23,192.76	520.00			520.00			
Osceola.....								
Page.....	20,910.46	9,891.43			9,891.43	600.00	600.00	4,292.39
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	3,975.92		7,249.17
Pottawattamie.....	56,640.19	22,519.34			22,367.43	4,352.45		10,250.85
Poweshiek.....								



COUNTIES.	No. Acres se- lected.	No. acres cer- tified as enur- ing to the State.	No. acres cer- tified as enter'd with Land War- rents prior to section.	No. acres cer- tified as enter'd with cash prior to selection.	No. acres pat- ented to State and by the State to the Coun- ties.	No. Acres In- demnity—Scrip issued.	No. Acres In- demnity—pat- ented to State and by the State to the Counties; therefor.	Amount cash indemnity allowed and warrants issued therefor.
Ringgold.....	25,072.52	2,462.35	120.00	3.23	2,446.13	.....	.....	.....
Scott.....	.....	5,064.43	.....	.....	5,012.10	.....	.....	.....
Sioux.....	10,380.34	2,610.35	.....	.....	2,530.35	.....	.....	.....
Shelby.....	23,898.76	3,845.97	1,537.78	1,296.61	7,517.48	1,288.50	1,280.13	1,270.76
Story.....	.....	3,811.55	.....	.....	3,861.55	.....	.....	.....
Tama.....	33,752.14	80.00	3,357.18	3,754.50	40.00	1,032.04	1,029.99	1,150.00
Taylor.....	12,940.00	1,934.08	1,039.96	3,262.86	1,794.08	.....	.....	.....
Union.....	16,314.34	.....	280.00	160.00	.....	.....	.....	.....
Van Buren.....	.....	360.00	.....	.....	360.00	.....	.....	.....
Wapello.....	.....	.....	.....	.....	.....	.....	.....	.....
Warren.....	30,834.33	.....	.....	.....	.....	.....	.....	.....
Washington.....	.....	2,427.94	3,040.42	1,427.40	2,995.44	5,320.00	5,319.23	2,620.66
Wayne.....	10,560.00	40.00	1,188.59	4,456.11	40.00	.....	.....	.....
Webster*.....	75,320.00	16,535.16	4,689.00	3,656.45	15,702.06	.....	.....	.....
Winnemago.....	47,434.90	4,420.32	.....	.....	4,222.02	.....	.....	.....
Winneshiek.....	10,266.00	720.00	4,500.87	.....	6,035.59	.....	.....	.....
Woodbury.....	40,024.38	7,821.68	18,376.65	.....	6,268.12	.....	.....	.....
Worth.....	35,485.00	.....	.....	.....	.....	.....	.....	.....
Wright.....	17,862.92	.....	.....	.....	.....	.....	.....	.....
Total.....	1897,198.66	583,419.06	164,831.99	158,075.85	588,171.32	174,393.98	115,306.37	166,899.02

\*Includes Hamilton and a part of Humboldt.

The selections of some of the counties were sent directly to the Surveyor-General, and except in one or two instances the lists of such selections have not been obtained at this office; hence we are unable to give *all* the selections made.

The indemnity (both cash and scrip) for Lucas county was delivered by the United States to the *special agent* for that county, and no account of it has been received at this office.

The scrip for the counties of Appanoose, Clayton, Clinton, Dallas, Des Moines, Fayette, Henry, Iowa, Jasper and Marion has not been located, but remains in this office awaiting the appointment of agents to locate. An agent is required to be appointed and duly commissioned for the location of each and every scrip, and after selecting the land his commission must be sent with his list of selections and the scrip to the General Land Office.

This scrip should all have been located ere this. The General Government for the purpose, among other things, of enabling the State to make these locations, some time since closed the offices against the entry of public lands, permitting only the selection of Railroad lands, the location of scrip and taking of homesteads.

The agents are appointed on the recommendation of the Boards of Supervisors, or other county officers, and after giving bond as the law requires. These ten counties have failed to recommend the appointment of agents. It should be done soon, as vacant land is becoming very scarce in this State, and the scrip can be located nowhere else.

The Scrip for other counties so far as issued has all been located, although in a few instances the Agents failed to report to this office as the law requires. These indemnity lands have, however, been patented only so far as shown in the foregoing table, and all those have been patented to the respective counties. The patents, however, are not all delivered, but will probably be before the meeting of the Legislature.

Notwithstanding the lapse of fifteen years since the passage of the Act, this grant is not only far from being settled, but the prospect for a speedy adjustment is not as flattering as could be desired.

The legislation of the State has been extensive, and in some instances unnecessary; but the difficulty encountered in the administration and adjustment of the grant is not attributable to that fact; but to the course pursued by the Land Department at Wash-

ington,—a course that seems all the while to be marked with the most determined and persistent hostility to the interest of the State.

The Act requires the Secretary of the Interior to make out lists of the Swamp Lands, and transmit them to the Governors of the States; but he permitted the States desiring to do so, to ascertain by examination in the field, which were the swampy and overflowed lands.

The State made her selections by Agents appointed for that purpose who proceeded to survey, list and report the lands according to the forms and instructions furnished by the Department; but before the selections were all made, and while the lists for a number of counties were awaiting the action of the Department, to-wit: on the 23d of June, 1860, the Commissioner of the General Land Office changed the ruling and acquired a different form to be observed for the affidavit or certificate of the selecting officer; one difficult if not impossible to comply with. (Appendix No. 7 and 8.)

The selections for O'Brien and some other counties, sworn to in the form and manner prescribed and formerly received and recognized as sufficient, were rejected. The rejected reports were returned by the State to the Surveyor General to await the result of an effort to procure a modification of the form. No modification has yet been effected and these selections still stand rejected.

By reference to a few other decisions and acts of the Department (which it seems proper to notice, both in vindicating the State and giving a correct history of this matter) 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 affect 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 of 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. 9*.) 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. 10 and 11.*) 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.

Again. After our agent, pursuing the matter with commendable energy, had got this business started and the Department was "working up" these claims with some show of ultimate success, the Commissioner of the General Land Office was in some way notified that fraud had been perpetrated in the selections made in Dickinson county. He thereupon appointed a special agent, on the 20th of March last, to visit that county, examine the land, and report the result of his observations. On the 26th and 27th of May said agent wrote the Commissioner, alledging that fraud had been committed in said county, and stating in substance in his letters "that of fifteen tracts that day examined by him, which had been selected, ~~and~~ could not in any sense be claimed as Swamp land—that some of it is high, dry, and arable; and in successful cultivation, and among the best lands in the county;" and giving it as his opinion that "great injustice had been done the General Government in the selection of Swamp lands in this State."

At that time the claims of Fayette, Dubuque, Washington, Mahaska, Guthrie, Buchanan and Black Hawk counties for cash indemnity, were before the Commissioner for examination of proof; but on receipt from said agent of the above communications, the Commissioner at once suspended all further examination of proof and allowance of these claims. All further proceedings of the claims of the counties mentioned, and all others in the State, are

stopped to await the developments in the case of Dickinson county. Thus this matter has stood since May last.

Mr. Baker, on behalf of the State, protested against this suspension in the cases of the other counties in consequence of alledged fraud in Dickinson, and promptly appealed to the Secretary of the Interior; and has, I think, correctly and ably presented the case to the head of the Department, in his reply to reports of the Commissioner on the subject.

What will be the decision is unknown to the State, but it is difficult to perceive any rule of law, or principle of reason, by which this extraordinary and arbitrary action of the Commissioner can be sustained.

Fraud may have been perpetrated in Dickinson county, but that is no sufficient reason for the suspension of the claims of other counties against which no charge has been made. As well might you accuse every person in the community, because of the crime of one, as to impute the fraud of one county to all others in the State. Where there is fraud let it be ferreted out; and where there are sufficient grounds let the claims of the county accused be suspended till the matter can be investigated. The Commissioner in his report on this subject to the Secretary of the Interior says: "It is not claimed that any distinct charges of fraud have been brought to the attention of this office, against the particular counties in question." Then what grounds are there for the suspension of their claims?

It looks like another of the successive contrivances of the Department to delay the settlement of this matter and defeat the rights of the State under this grant. This agent was appointed March 20th, and sent to Dickinson county. He wrote the General Land Office from his field of labor in May, since which time he has not been heard from—at least no further reports have been received from him, and the suspension of these cases still rests on his letters above referred to. At this rate of progress some succeeding generation will have to close up the administration of this grant!

The time since March has been spent in doing literally nothing, so far as these claims are concerned. No charges are yet made against the other counties, and no assurance that any will be, or any examination for fraudulent selections ordered, yet the claims

must remain suspended, and the counties be deprived still longer of the use of money, which they should have had years ago!

I trust the Secretary will see the propriety of at once withdrawing the suspension, and ordering the examination of proof and the allowance of these claims to proceed—at least as to the counties not charged with fraud.

Since the suspension, however, the Department has been patenting to the State the lands on which indemnity scrip had been located. All of which, so far as received up to this time, are exhibited in the foregoing table.

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 anything 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 this office to this subject, as early as May 31st, 1862, by the following letter:

GENERAL LAND OFFICE, }  
MAY 31, 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 obedient 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 September, 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. 12,) 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 Northwestern 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 September 28, 1850.

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. 18, 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 Office 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 degree if not altogether, may be attributed the difficulty we there meet with.

I do not claim that *all* the lands selected are swamp within the meaning of the grant, but I do say that neither the State nor the Counties (except possibly in one or two instances), designed any fraud upon the Government, and that the dry land selected is not sufficient in quantity to warrant the imputation of unfairness on the part of the State.

Many of these lands were selected in 1854 and 1855, immediately after several successive and remarkably wet seasons, and it was but a natural consequence then to select some which would not appear as swampy after a few of the succeeding dry seasons.

It is easy to account for the dry land (if any there be) in the later selections, consistent with good faith, except perhaps in one or two counties, and of the truth of the charges of fraud as to those this office is not advised.

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 Sec-*

retary of the Interior, of October 11, 1861—Appendix No. 13.) 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 as to demand a patent, she has the title already vested. (*See Atty Gen. Black's Opinion, Appendix No. 9.*) 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. 14.*) 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 were no interests 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 least 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 land-

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 under the Railroad Grant.

From the opinion of the Attorney General of this State, dated March 4, 1862, and submitted to the General Assembly, (see Appendix No. 15,) and from a letter from the then Acting Commissioner of the General Land Office, of August 20, 1856, (Appendix No. 16,) 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 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.

The counties of Fremont and Mills have commenced legal pro-

ceedings to test the validity of the act of the Department in certifying and approving under the Railroad Grant land selected and reported as swamp land prior to the third of March, 1857. Said counties for that purpose, and to settle the title to these disputed lands, amounting in the former to 12,754.49, and in the latter to 23,274.96 acres, have brought suit in the District Court of the State against the B. & M. R. R. Co., who claim title to the lands by virtue of the certification for the benefit of their road by the Department.

The cases will probably be decided by that Court in a short time; having been submitted to be examined and determined by the Judge in vacation.

#### 9TH—THE RAILROAD GRANT.

The following is the act of Congress known as the Railroad Grant:

"A Bill making a Grant of Lands to the State of Iowa, in alternate sections, to aid in the construction of certain Railroads in said State.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of Railroads from Burlington, on the Mississippi river, to a point on the Missouri river, near the mouth of Platte river; from the City of Davenport, via Iowa City and Fort Des Moines to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel; across the said State of Iowa to the Missouri river; from the city of 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, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or the right of pre-emption has attached to the same, then it shall be lawful for any agent or

agents to be appointed by the Governor of said State to select subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa, for the use and purpose aforesaid: *Provided*, that the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, that the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever. *And provided further*, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved from the operations of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States.

Sec. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than the double minimum price of the public lands when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

Sec. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the Legislature thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other

charge upon the transportation of any property or troops of the United States.

Sec. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the Governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so from time to time until said roads are completed, and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

Sec. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may by law direct; *provided*, that until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved May 15, 1856.

The General Assembly convened in special session accepted the Grant and made disposition of the lands in the following Act, approved July 14, 1856:

"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 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 15, 1856.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That the lands, rights, powers and privileges granted to, and conferred upon, the State of Iowa, by the 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 15, 1856," be and the same are hereby accepted upon the terms, conditions and restrictions, contained in said act of Congress.

Sec. 2. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursu-



ance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington, on the Mississippi river, to a point on Missouri near the mouth of Platte River, are hereby disposed of, granted and conferred upon the Burlington and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad via Iowa City and Ft. Des Moines to Council Bluffs, are hereby disposed of, granted and conferred to and upon the Mississippi and Missouri Railroad Company, a body corporate, created, and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri river, are hereby disposed of, granted and conferred to and upon the Iowa Central Air Line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri river at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the Governor of the State of Iowa, and also in the office of the Secretary of State of the State of Iowa. It shall be the duty of the Governor,

after affixing his official signature, to file such map in the Department having the control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the Governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid, and borne by each of said Railroad Companies respectively, upon and for its own line.

SEC. 7. The Iowa Central Air Line Railroad Company shall furnish, equip and operate the branch of their Railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road near Maquoketa, in the same manner with their main line from the west, and as completely as though the same was a continuation of said main line, and shall never give any preference to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch to their Railroad.

SEC. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition, that in case either of such Railroad Companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this 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.

SEC. 9. The roads aforesaid shall be constructed upon a guage with a width of four feet, eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the

said roads shall be completed and finished in a style and of a quality equal to the average of other first class western roads, and when the roads, or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other Railroad Company now constructed, or hereafter to be constructed, it shall be the duty of such road or roads, receiving the benefit of this act, to furnish all proper and reasonable facilities and to join such other company in making all necessary crossings, turnouts, sidelings and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefitted by this act, or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

SEC. 10. All persons, who at the time said grant was made, held valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person, wishing to avail himself of the provisions of this act, shall within three months of the passage thereof, file his application for that purpose with the Judge of the county where such lands may be situate, and shall prove to the satisfaction of said Judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made, such Judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder or his *bona fide* assignee to enter such land at the rate of two dollars and fifty cents per acre; *Provided*, that no person, claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act; *And provided further*, that the person asserting a claim, whether as claimant or assignee, shall file his affidavit that he has not either directly or indirectly received the benefits of the provisions of this act. Before any rights shall be acquired under such certificate, a copy of the same together with the evidence shall be served on the secretary of the company interested, and such company shall have the right to appeal from the decision of such Judge to the District Court, in the same manner as appeals are taken

from the decisions of Justice of the Peace at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the Supreme Court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate on being filed with the secretary of the company upon whose line of road such lands may be situate, when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the possession of said land, until the title shall become vested in the company; upon payment thereafter to the Treasurer of the company for said land at the price above designated, such person shall receive from the Secretary of the Company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the Secretary of State, and be by the Secretary recorded in the book by him kept for the recording of articles of association.

SEC. 14. Said Railroad Companies, accepting the provisions of this act, shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General Assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefits of this act, to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the Secretary of State.

SEC. 16. *Be it further enacted*, That any of said companies accepting the grants of lands under this act, shall take the same with the conditions imposed and incumbrances specified in this

act, and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances or conditions in this act imposed.

SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter, and Iowa City Republican." (Acts Extra Session 1856, p. 1.)

Approved July 14th, 1856.

The several companies accepted the grant on the conditions and under the restrictions imposed in said acts, and proceeded to locate their roads and make selection of the lands falling to them under the grant, between the six and fifteen mile limits.

The Iowa Central Air Line Railroad Company, however, failing to comply with the requirements of the grant, the General Assembly resumed the lands on that line of road by the following act, approved March 17, 1860, to-wit:

An Act to resume all rights conferred upon the Iowa Central Air Line Railroad Company, by an Act approved July 14, 1857, and to repeal certain laws in relation thereto.

WHEREAS, By the act of Congress approved May 15, 1856, there were granted to the State of Iowa certain lands to aid in the construction of certain railroads in said State, upon certain terms, conditions, and restrictions under which said lands might be disposed of; and whereas, the General Assembly of the State of Iowa, by an act approved July 14, 1856, accepted said grant of lands upon the terms, conditions and restrictions contained in said act of Congress, and contracted with the Iowa Central Air Line Railroad Company for the sale upon certain terms of that portion of said lands granted by said act of Congress, to aid in the construction of a railroad from Lyons City north-westerly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence on said main line running as near as practicable to the forty-second parallel across the said State to the Missouri River, in consideration of the undertaking on the part of said Company, and subject to the conditions and restrictions contained in said act and the act of Congress aforesaid; and whereas, the said Iowa Central Air Line Railroad Company has wholly failed to perform on their part the conditions of said acts, and has utterly failed to construct any part of said railroad as required by law, and by the terms of their contract, and has failed

to complete and equip any portion of said road, thereby, at the option of said State, annulling all their rights to the lands and privileges, under and by virtue of said acts by reason whereof the State of Iowa has the right to resume all said rights and privileges, and all the rights in relation to said lands so as aforesaid conferred upon said Company by said State; and whereas, no part of said lands have been actually conveyed by this State to said Company, nor by said Company disposed of pursuant to the provisions of said acts, and inasmuch as the interest of the State in said lands and the construction of the road to aid which said lands were granted by Congress, as also the good faith of the State in executing the trust conferred to it by Congress, require that the State should resume said rights and privileges and all rights to the lands aforesaid; now therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That all rights to the lands, interests, rights, powers, and privileges heretofore conferred or intended to be upon the Iowa Central Air Line Railroad Company, by an act approved July 14, 1856, 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 making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State,' approved May 15, 1856," be and the same are hereby absolutely and entirely resumed by the State.

SEC. 2. The fourth section of said act approved July 14, 1856, and all other acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the Daily Iowa State Register and Daily Iowa State Journal, published at the City of Des Moines. (Special Acts 1860, p. 29.)

The same session, by the following act, granted these lands to the "Cedar Rapids and Missouri River R. R. Co." to-wit:

"AN ACT to carry into execution the trust conferred upon the State of Iowa, in respect to the lands granted by an act of Congress, approved May 15, 1856, to aid in the construction of a railroad from Lyons City, across the State of Iowa, and near the forty-second parallel to the Missouri river."

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That so much of the lands, interests, rights, powers and privileges as have been or may be granted and conferred in pursu-

ance of the 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 15, 1856, to aid in the construction of a railroad from Lyons City, north-westerly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence on said main line running as near as practicable to the forty-second parallel across the State of Iowa to the Missouri river, are hereby disposed of, granted and conferred to and upon the Cedar Rapids and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa; *Provided, however,* That no portion of the grants of land provided for in this act shall be applied to the liquidation of any debt or obligation heretofore made or contracted by the said Cedar Rapids and Missouri River Railroad Company, or of the Chicago, Iowa and Nebraska Railroad Company; *Provided, further,* That it is hereby declared to be the true intent and meaning of this act, that the State of Iowa according to the conditions herein specified, conveys and grants to the Cedar Rapids and Missouri River Railroad Company, her right, title to and interest in the aforesaid lands, and nothing more; and in no event shall said Company have any claim or recourse against the State for any defect in the title or conveyance of said lands.

SEC. 2. The grant by this act conferred upon said Company is made upon the express condition that in case said Company shall fail to have completed and equipped forty miles of its road along the route aforesaid, and west from some convenient point on the Cedar river, near the forty-second parallel, within one year from the first day of December next, after the passage of this act, thirty miles in addition, each year thereafter, for two years, and the remainder of their whole line of road in two years thereafter, or by the first day of December, 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon said Company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of to the Company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 3. The provisions of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth sections of the first chapter of

the laws of Iowa, passed at the extra session of the Fifth General Assembly, and approved July 14, 1856, so far as the same are applicable to this Company under the provisions of this act, and the one hundred and eighty-second chapter of the laws of this State, enacted by the Sixth General Assembly, and approved January 28, 1857; and the eighty-fifth chapter of the laws of this State, enacted by the Seventh General Assembly, and approved March 20th, 1858, so far as said enactments are not inconsistent with the provisions of this act, be and the same are hereby made applicable to this Company, receiving the benefits of the grant hereby conferred; and it is further provided, that said Railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; and if the said Company shall accept this grant upon the condition aforesaid, which acceptance shall appear by an express writing, under the seal of said corporation, with the signatures of its President and Secretary, and shall be filed in the office of the Secretary of the State of Iowa, within ninety days after the approval of this act by the Governor, it shall take the same with the conditions imposed, and incumbrances specified in this act; and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances or conditions in this act imposed.

SEC. 4. It is hereby further provided, that said Cedar Rapids and Missouri River Railroad Company shall be entitled to the full amount of land authorized by said act of Congress, as the work progresses, for the first three sections of road, of twenty miles each, which shall be constructed by said Company; but thereafter as the work progresses, they shall be entitled to an equal *pro rata* apportionment of the lands remaining subject to appropriation in aid of this work, to be ascertained by a division of the quantity of lands so remaining by the number of whole sections of twenty miles each, extending from the point of construction then reached to the Missouri river.

SEC. 5. It is further expressly provided, that this act shall not be so construed as to give title to any portion of said lands to the Company, accepting the provisions hereof, otherwise than as the work progresses, and as provided in the act of Congress aforesaid,

conferring the lands upon the State of Iowa, namely: When they shall have completed each section of twenty miles of road aforesaid, they shall be entitled to the amount of land apportioned thereto, and not before; and they shall not become entitled to the first one hundred and twenty sections authorized by act of Congress, until such first section of their road shall have been completed, at which time they shall become entitled to the first apportionment of land. Nor shall this act be so construed as in any manner to prevent the General Assembly of this State from resuming, upon failure of either of the conditions named in the second section of this act, all lands to which the said Company shall not have then become entitled by completion of one or more sections as aforesaid of the said road.

SEC. 6. And it is further expressly provided that said Company shall build, or cause to be built, before the first day of January, 1861, a Railroad of like gauge and equal in quality to the Chicago, Iowa and Nebraska Railroad, from Pearl street, in Lyons City, to a point of intersection with the said Chicago, Iowa and Nebraska Railroad within the corporate limits of Clinton City, with such switches and side tracks as the business of said town of Lyons may require; and to operate or cause to be operated the same by running passenger and freight cars, of the same class with those used by the Chicago, Iowa and Nebraska Railroad, in close connection forever with all regular trains at any time run on said Chicago, Iowa and Nebraska Railroad, without occasioning any unnecessary delay to freight or passengers at said point of intersection; and the charge per mile for transportation of freight or passengers shall never exceed the regular charges for like service on the Chicago, Iowa and Nebraska Railroad; the intent and meaning of this section being to secure to the citizens of Lyons the same privileges and benefits of a Railroad connection that are enjoyed by any other place on said Chicago, Iowa and Nebraska Railroad; and it is hereby expressly provided that no lands shall be certified by the Governor to said Cedar Rapids and Missouri River Railroad Company until they have complied with all the requirements of this section.

SEC. 7. Said Company shall not commence to build or construct said road at any point further west from the Mississippi River than the town of Marion, in Linn county, Iowa, and the Governor of

the State shall not certify any of the lands herein transferred to said Company, until that portion of the road between said town of Marion and the city of Cedar Rapids, together with so much more of said road as to make in the aggregate at least twenty miles, shall be completed, equipped and operated by said Company or its successors.

SEC. 8. And be it further enacted, that it shall be deemed a felony for the President and Directors or Managers of the said Railroad Company accepting the grant of land to be conveyed by this act, to wilfully misapply any of the land herein granted, to any other purpose than the carrying into effect the true meaning and intent of this act, and the President, Directors or Managers of said Railroad Company who may be guilty of any such wilful misapplication of the lands herein granted, shall be liable to a fine of not less than five thousand dollars, or imprisonment in the county jail not less than twelve months and not more than three years, or both such fine and imprisonment, at the discretion of the court before whom any case may be tried.

SEC. 9. It is further expressly provided, that if said Cedar Rapids and Missouri River Railroad Company shall fail or refuse to accept of this grant upon the conditions hereby imposed, and in time and manner, as aforesaid, the Census Board of this State is hereby authorized, by proper writing with the seal of State affixed thereto, to confer the same upon such party or company as shall in their judgment, be competent to carry out the enterprise hereinbefore provided for in good faith, and which shall accept the grant by a proper written instrument duly executed and attested, and shall file the same in the office of Secretary of this State, subject to all the preceding sections of this act, and the same shall in that case be applicable to such grantee, subject to all the foregoing terms and conditions of this act, as fully as if named and originated herein.

SEC. 10. This act shall take effect and be in force from and after its publication in the Iowa State Register and in the Iowa State Journal."

Approved March 26th, 1860. (Special Acts 1860, p. 40.)

The Grant was duly accepted by said Company.

The 9th General Assembly passed the following Act in reference to the "Dubuque & Sioux City Railroad Company," to-wit:

"AN ACT to require the Dubuque and Sioux City Railroad Company to release certain Swamp, School and River Lands, on the line of said Road, and providing for the compensation therefor by an extension of the time of building said Road.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That from and after the taking effect of this Act, the Governor of the State of Iowa shall not certify to the Secretary of the Interior that any part of the road is completed on the line of the Dubuque and Sioux City Railroad, as now provided for by section four (4) of the Act of Congress making said grant, approved May 15th, A. D. 1856; nor shall said road be entitled to receive any certificate for lands on said line of road until said Company shall have executed a deed of release of all the swamp and overflowed lands now approved, or that may be hereafter approved by the Surveyor General, in any county within the fifteen mile limits of said road, to the county in which such swamp and overflowed lands may be situated, including all such swamp or overflowed lands as were returned and certified to the General Land Office, and ratified to the State by Act of Congress of March 3d, 1857, nor until said Dubuque and Sioux City Railroad Company shall transfer their interest in those tracts of land in Webster and Hamilton counties, heretofore sold by John Tolman, School Fund Commissioner of Webster county, within the fifteen mile limits of the grant of said road (whether the same are held by patents from the State, or contracts made with said Commissioner), to the Register of the State Land Office, in trust, to enable said Register to carry out and perform said contracts in all cases where he is called upon by the parties in interest to do so, before the first day of January, A. D. 1864, (after which day he is authorized and required to reconvey those tracts aforesaid not demanded or claimed as aforesaid at that time, to said Railroad Company), nor until the said Dubuque and Sioux City Railroad Company shall execute deeds of release to the State of Iowa of all lands sold by the State prior to the 7th day of May, A. D. 1854, of the odd sections above the Raccoon Fork of the Des Moines River within five miles of said River, and of such other of said lands as have been sold since that date and prior to the first day of January, A. D. 1862, and now improved and occupied by actual settlers residing thereon, who have purchased the same in good faith, not exceeding, however, one hundred and sixty acres to any one land settler.

SEC. 2. The deeds of release herein provided for shall be executed and acknowledged by said Company, in the same manner as any other deed for the conveyance of real estate, but it shall not be necessary to describe the separate parcels of said lands, and a general release of each kind of land herein described, viz: as "swamp lands," &c., to the State, shall be a valid and legal release of each separate parcel of said lands to the county in which any part thereof may be, and of the Des Moines River Lands and School Lands aforesaid, to the present claimants of title by sale through the State or said School Fund Commissioner, as the case may be.

SEC. 3. The said deeds of release shall be filed and recorded in the office of the State Register of the State Land Office, and either the record or the certificate of said Register shall be sufficient evidence of the compliance of said Companies with the provisions of this Act.

SEC. 4. In consideration of the foregoing relinquishment by said road, the time of completion of any part of said road not now completed, shall be extended one year beyond the time of the taking effect of this Act; *Provided,* That the entire road shall be completed by the time provided for by said Act of Congress.

SEC. 5. All Acts and parts of Acts in any manner conflicting with the provisions of this Act, are hereby repealed.

SEC. 6. This Act shall take effect and be in force from and after its publication according to law."

Approved April 7th, 1862.

The D. & S. C. R. R. Co. filed in this office on the 27th February, 1864, a release as to all lands sold by John Tolman, as School Lands. None of these, however, have been certified or approved as Railroad Lands.

No release has been made as to the other lands mentioned in said act.

Excepting the act of January 28, 1857, authorizing the Companies to mortgage the lands, the foregoing are all the Acts passed in reference to these lands up to June 2, 1864,—the date of an Act of Congress hereafter particularly referred to.

There is a diversity of opinion as to the effect and proper construction of this grant, occasioned no doubt, by want of a closer

attention, and better acquaintance with its terms. Here I have given the several Acts in full.

The Act of Congress grants the land to the *State*,—making no reference whatever to Railroad Companies, and provided for its *sale*, as prescribed in the Act; evidently contemplating that the *State would sell the land* and appropriate the proceeds in the construction of the roads.

By the Act the *State* was authorized to sell the land (not exceeding 120 sections) along the first twenty miles of each of said roads; and then, when twenty miles of road was completed, and that fact was certified to the Secretary of the Interior by the Governor, the *State* was authorized to sell the lands along the next twenty miles (not exceeding 120 sections) and so on until the roads are completed, provided it be done within ten years. (Sec. 4.)

The Interior Department proceeded to list and approve to the *State* for the use of these several roads all the lands within their respective limits, in the opinion of the Secretary, subject to the grant, thus at once conferring on the legal title to be held till by the terms of the grant she might sell and convey the lands. The lists of lands thus approved are forty-three in number—nine for the B. & M. R.—seven for the M. & M.—thirteen for the Air Line—ten for the D. & S. C. The original lists are filed for record in the General Land Office, and certified copies sent to the *State* and also to the Railroad Companies.

These certified lists, under the Act of Congress, entitled "*An Act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them,*" approved Aug. 3, 1854, convey to the *State* "the fee simple title to all the lands embraced in such lists that are of the character contemplated by such Act of Congress, (Act May 15, 1856) and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such Act of Congress, and were not intended to be granted thereby, said lists so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim or interest shall be conveyed thereby." (Chap. 201, 1st Session 33d Congress.)

The lists are evidence of title in the *State*, and confer the fee simple the same as a patent, so far as the lands certified "embraced

in the Act and intended to be granted thereby." As to all other lands they are void.

The following tables exhibit the number of acres of lands thus certified:

## BURLINGTON AND MISSOURI RIVER RAILROAD.

Land District.	6 Mile Limit.	15 Mile Limit.	Total.
Council Bluffs. ....	95,002.88	148,556.66	243,559.54
Chariton .....	18,480.62	25,058.18	43,538.80
Total .....	113,483.50	173,614.84	287,098.34

## MISSISSIPPI AND MISSOURI RIVER RAILROAD.

Land District.	6 Mile Limit.	15 Mile Limit.	Total.
Council Bluffs. ....	149,973.56	229,045.00	379,018.56
Chariton .....		80.00	80.00
Ft. Des Moines. ....	33,893.53	61,682.27	95,575.80
Total .....	183,867.09	290,807.27	474,674.36

## IOWA CENTRAL AIR LINE RAILROAD.

Land District.	6 Mile Limit.	15 Mile Limit.	Total.
Dubuque .....	1,809.74	3,998.57	5,808.31
Fort Dodge .....	576.00	72,543.56	73,119.56
Fort Des Moines. ....	59,722.74	72,284.90	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
Total .....	295,607.73	479,846.46	775,454.19

## DUBUQUE AND PACIFIC RAILROAD.

Land District.	6 Mile Limit.	15 Mile Limit.	Total.
Dubuque .....	2,361.08	5,901.49	8,262.57
Fort Dodge .....	159,974.53	231,784.39	391,758.92
Sioux City .....	354,607.62	480,929.21	826,536.83
Total .....	507,943.23	718,615.09	1,226,558.32

## RECAPITULATION.

For the B. and M. R. R. R. ....	287,098.34
For the M. and M. R. R. R. ....	774,674.36

For the C. R. and M. R. R. R. . . . . 775,454.19  
 For the D. and S. C. R. R. . . . . 1,226,558.32

A part of these lands were selected as swamp under the act of September 28, 1850.

The exact extent of the conflict between the claims under the two grants it is impossible to determine from the records of this office for want of a copy of the swamp land selections of some of the counties. But the Commissioner of the General Land Office has reported a list of lands claimed by the State as swamp, under the act of September 28, 1850, and claimed also by the Railroad Companies under the act of May 15, 1856, the claim to which as swamp has been rejected by the Department and the land certified as railroad land, amounting to 553,293.33 acres. (For further particulars as to this conflict, see Swamp Land.)

These lands belong to the State for the purposes of the grant, and the companies must look to her for title. (*State ex. rel. Lockwood et al. v. Kirkwood, 14 Iowa 162.*)

There has been no mode prescribed for passing the title from the State. The Burlington & Missouri River Railroad Company believing that some act on the part of the State, besides the act of July, 1856, was necessary to confer title on them, procured George Lowe to certify to them on the 9th of November, 1859, (commencing at the Missouri river.)—187,207.44 acres; and on the 27th of Dec. 1859, 43,775.70 acres; total 231,073.14 acres—by attaching to the certified lists his official certificates under the Seal of the State, in the following form:

STATE OF IOWA, EXECUTIVE OFFICE,  
 DES MOINES, December 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.  
 (Signed.)  
 ELIJAH SELLS, Secretary of State.

RALPH P. LOWE.

These are the only lands certified by the State with any apparent design of passing title, or furnishing evidence of title. The subsequent lists delivered to that company, it is true, have been also certified to by the Governor, but only to the effect that they are correct copies or duplicates of those lists furnished the State. These subsequent lists contain the lands claimed as swamp.

The other companies have obtained no certificates of this character, and seem to think that nothing but the act of the Legislature of July 14, 1856, is necessary to complete their title. In other words, it is claimed that that act grants all the rights, powers, &c., to the companies which the Act of Congress of May 15, 1856, conferred on the State—*putting the companies in the place of the State* as a party to the grant from Congress—and that that which completes the title to the State will by virtue of this Act of the Legislature enure to, and complete the title of the companies.

There are several objections which I think fatal to this position.

1st. This grant was made to the State *in trust* for a specific object—the title is vested in her to enable her to perform the trust. The Government knows only the State in this matter, and looks to her for the execution of the trust; and she cannot, after accepting the trust, evade the responsibility by transferring it to another. She has no power to *substitute* another to carry out the trust. "A trustee cannot delegate his trust" is a well settled principle of law. The legislature had no power to confer on the companies to the extent claimed, rights under the Act of Congress.

2d. It is evident from the Act of July 14, 1856, that the Legislature did not understand that the State thereby was to lose the control of these lands, but that she was still to retain a supervision over them, with the right to resume and withdraw from the companies all rights and powers conferred, in case of failure on their part. Otherwise, why did they impose additional restrictions and reserve to themselves the right to judge of the failure of the companies? If the Act of the Legislature conferred on the companies *all* the rights and powers conferred on the State by the Act of



Congress, then the companies (and not the State) are the judges of their compliance with the grant, and they are amenable directly to the United States. And the State having stripped herself of *all* rights and powers in the premises, has nothing further to do with it.

3d. The certified lists from the General Land Office operate as a patent and convey title, only by virtue of the Act of August 3, 1854. Without them there would be no evidence of title. The title conveyed thus, by virtue of said Act stops in the State. That far (so to speak) the act accompanies the certification of the officer and vitalizes it, but goes no farther. By virtue of this Act and certification, the title passes into the State, but beyond that they cannot go. They cannot be the means, or the avenue by which the title passes out of the State. Then these certified lists from the General Land Office cannot serve as title, or evidence of title in the companies. They must look to the State for some adequate mode of conveyance. And if the Act of July 14, 1856, is not sufficient for that purpose, and does not vest the title in the Companies (as we have seen it does not) then some other means should be provided.

It is suggested that the certificate of the Executive, (as in the case of the B. & M. R. R. R.) may be sufficient for this purpose. I think not for two reasons: 1st. The Governor has no power to convey land on behalf of the State except as provided for by law, and there is no law authorizing him to convey in this case; and 2d. An official certificate is not sufficient to convey title to real estate unless especially authorized thereto by legislative enactment, and there is no such authority given by any Act to the Governor of this State. Such certificates are not authorized or required by the Act of July 14, 1856, nor any other Act; hence they convey no title.

The correct position is this: That the Act of July 14, 1856, when accepted by the companies, became a *conditional contract* to ripen into a sale of the land, from time to time as the work progresses, and as the State thereby becomes authorized under the Act of Congress to sell.

The completion of the roads as required, gives the companies the *right* to the land, and it appears to me that some mode should be provided to convey the lands from the State to them, as they progress with the work.

Of the amount of road built by the several companies, I omit to speak for the reason that the Executive Office is more fully advised on that subject. That matter concerns this office only as it affects the lands.

The following is the act of Congress approved June 2, 1864:

"An Act to amend an Act 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."

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Mississippi and Missouri Railroad Company, a corporation established by the laws of the State of Iowa, and to which the said State granted a portion of the land grant mentioned in the title of this act, to aid in the construction of a railroad from Davenport to Council Bluffs, in said State, may modify or change the location of the uncompleted portion of its line, as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more expeditious line for connection with the Iowa branch of the Union Pacific Railroad; *Provided, nevertheless,* that said new line, if located, shall in every case pass through the corporate limits of the cities of Des Moines and Council Bluffs; and the right of way over the public lands of the United States is hereby granted to said Railroad Company for that purpose; *Provided,* that said line shall pass through the town of Newton, in Jasper County, or as near said town as may be found practicable, and not further north of said town than the north line of section twenty-two, township eighty, north of range nineteen, according to the United States surveys, if the citizens of the County of Jasper shall first pay to said Company the difference in cost, if any, between the line proposed by the Company and the one contemplated by this proviso, including extra cost of right of way if any, said difference in cost to be estimated by competent engineers to be selected by the parties.

SEC. 2. *And be it further enacted,* That whenever such new location shall have been established, the said Railroad Company shall file in the General Land Office in Washington a map definitely showing such new location; and the Secretary of the Interior shall cause to be certified and conveyed to said Company from time to time, as the road progresses, out of any public lands now

belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption claim or right of homestead settlement has not attached, and on which a *bona fide* settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within six miles of such newly located line, an amount of land per mile equal to that originally authorized to be granted to aid in the construction of said road by the act to which this is an amendment; and if the amount of land granted by the original act to aid in the construction of said railroad shall not be found within the limits of six miles from such line, then such selections may be made along such line within twenty miles thereof; *Provided*, that the said Company shall not be entitled to and shall not receive any land under this grant which is situate within fifteen miles of the line of the Burlington and Missouri River Railroad, as indicated by the map of said road now on file in the General Land Office.

SEC. 3. *And be it further enacted*, That the Burlington and Missouri River Railroad Company, a corporation organized under the laws of the State of Iowa, and to which said State granted a portion of the land grant mentioned in the title of this act to aid in the construction of a railroad from Burlington, in said State, to the Missouri River, shall be entitled to receive, and the Secretary of the Interior shall cause to be certified and conveyed to said Company from time to time, as the road progresses, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption claim or right of homestead settlement has not attached, and on which a *bona fide* settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within six miles of said road as now located, an amount of land per mile equal to that mentioned in the act to which this act is an amendment, as intended to aid in the construction of said road; and if the amount of land granted by the original act to aid in the construction of said road shall not be found within the limit of six miles from the line of said road, then such selections may be made along such line within twenty miles thereof.

SEC. 4. *And be it further enacted*, That the Cedar Rapids and Missouri River Railroad Company, a corporation established under the laws of the State of Iowa, and to which the said State granted

a portion of the land mentioned in the title to this act, may modify or change the location of the uncompleted portion of its line as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more expeditious line to the Missouri River, and to a connection with the Iowa branch of the Union Pacific Railroad, and for the purpose of facilitating the more immediate construction of a line of railroad across the State of Iowa, to connect with the Iowa branch of the Union Pacific Railroad Company aforesaid, the Cedar Rapids and Missouri [River] Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi and Missouri Railroad Company; and the Cedar Rapids and Missouri River Railroad Company shall be entitled, for such modified line, to the same lands and to the same amount of lands per mile, and for such connecting branch the same amount of land per mile as originally granted to aid in the construction of its main line, subject to the conditions and forfeitures mentioned in the original grant, and, for the said purpose, the right of way through the public lands of the United States is hereby granted to said Company. *And it is further provided*, that whenever said modified main line shall have been established, or such connecting line located, the said Cedar Rapids and Missouri River Railroad Company shall file in the General Land Office of the United States a map definitely showing such modified line and such connecting branch aforesaid; and the Secretary of the Interior shall reserve and cause to be certified and conveyed to said company, from time to time, as the work progresses on the main line, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement has not attached, and on which a *bona fide* settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within fifteen miles of the original main line, an amount of land equal to that originally authorized to be granted to aid in the construction of the said road by the act to which this is an amendment; and if the amount of land per mile granted, or intended to be granted, by the original act to aid in the construction of said railroad shall not be found within the limits of the fifteen miles therein prescribed, then such selections may be made along such modified line and connect-

ing branch within twenty miles thereof; *Provided, however*, that such new location or modified line shall pass through or near Boonsboro, in Boone County, and intersect the Boyer River not further south than a point at or near Dennison, in Crawford County. *And provided further*, that in case the main line shall be so changed or modified as not to reach the Missouri River at or near the forty-second parallel north latitude, it shall be the duty of said Company, within a reasonable time after the completion of its road to the Missouri River, to construct a branch road to some point in Monona County, in or at Onawa City; and to aid in the construction of such branch the same amount of lands per mile are hereby granted as for the main line, and the same shall be reserved and certified in the same manner; said lands to be selected from any of the unappropriated lands as hereinbefore described within twenty miles of said main line and branch; and said Company shall file with the Secretary of the Interior a map of the location of the said branch. *And provided further*, that the lands hereby granted to aid in the construction of the connecting branch aforesaid shall not vest in said Company nor be encumbered or disposed of except in the following manner: When the Governor of the State of Iowa shall certify to the Secretary of the Interior that said Company has completed in good running order a section of twenty consecutive miles of the main line of said road west of Nevada, then the Secretary shall convey to said Company one-third, and no more, of the lands granted for said connecting branch; and when said company shall complete an additional section of twenty consecutive miles, and furnish the Secretary of the Interior with proof as aforesaid, then the said Secretary may convey to said Company another third of the lands granted for said connecting branch; and when said Company shall complete an additional section of twenty miles, making in all sixty miles west of Nevada, the Secretary, upon proof furnished as aforesaid, may convey to the said Company the remainder of said lands to aid in the construction of said connecting branch; *provided, however*, that no lands shall be conveyed to said Company on account of said connecting branch road until the Governor of the State of Iowa shall certify to the Secretary of the Interior that the same shall have been completed as a first class road. And no land shall be conveyed to said Company situate and lying within fifteen miles of the origi-

nal line of the Mississippi and Missouri Railroad, as laid down on a map on file in the General Land Office. *Provided further*, that it shall be the duty of the Secretary of the Interior, and he is hereby required, to reserve a quantity of land embraced in the grant described in this section sufficient, in the opinion of the Governor of Iowa, to secure the construction of a branch railroad from the town of Lyons, in the State of Iowa, so as to connect with the main line in or west of the town of Clinton, in said State, until the Governor of the State shall certify that said branch railroad is completed according to the requirements of the laws of said State. *Provided further*, that nothing herein contained shall be so construed as to release said Company from its obligations to complete the said main line within the time mentioned in the original grant. *Provided further*, that nothing in this act shall be construed to interfere with or in any manner impair any rights acquired by any Railroad Company named in the act to which this is an amendment, or the rights of any corporation, person or persons, acquired through any such Company; nor shall it be construed to impair any vested right of property, but such rights are hereby reserved and confirmed. *Provided, however*, that no land shall be conveyed to any company or party whatsoever, under the provisions of this act and the act amended by this act, which has been settled upon and improved in good faith by a *bona fide* inhabitant under color of title derived from the United States, or from the State of Iowa, adverse to the grant made by this act or the act to which this act is an amendment; but each of said companies may select an equal quantity of public lands as described in this act within the distance of twenty miles of the line of each of said roads in lieu of lands thus settled upon and improved by *bona fide* inhabitants in good faith, under color of title as aforesaid.

SEC. 5. *And be it further enacted*, That the Mississippi and Missouri Railroad Company shall have the right to transfer and assign all or any part of the grant hereby made to said company to any other company, or persons, if in the opinion of said company, the construction of said railroad across the State of Iowa will be thereby sooner and more satisfactorily completed; but such assignee shall not in any case be released from the liabilities and conditions accompanying this grant nor acquire perfect title in any other manner than the same would have been acquired by the

grantee herein named: *Provided*, That said transfer and assignment shall first be authorized by the Governor of the State of Iowa.

SEC. 6. *And be it further enacted*, That the Dubuque and Sioux City Railroad Company may so far change their line between Fort Dodge and Sioux City as to secure the best route between those points; said change shall not impair the right to, nor change the location of their present land grant. A map of the change shall be filed with the Commissioner of the General Land Office within one year after the passage of this act.

SEC. 7. *And be it further enacted*, That all of the conditions and limitations contained in the act to which this act is an amendment, and not expressly changed by this act, shall attach to and run with the grants made by this act, except as the said conditions and limitations have been modified, and may hereafter be modified, by the General Assembly of the State of Iowa.

SEC. 8. *And be it further enacted*, That no lands hereby granted shall be certified to either of said companies until the Governor of the State of Iowa shall certify to the Secretary of the Interior that the said company has completed, ready for the rolling stock, within one year from the first day of July next, a section of not less than twenty miles from the present terminus of the completed portion of said railroad, and in each year thereafter an additional section of twenty miles; but the number of sections per mile originally authorized shall be certified to each company upon proof, as aforesaid, of the completion of the additional sections of the road as aforesaid. And upon the failure of either company to complete either section as aforesaid, to be annually built, the portion of land remaining uncertified shall become subject to the control and disposition of the legislature of the State of Iowa, to aid in the completion of said road.

SEC. 9. *And be it further enacted*, That all lands hereafter certified to either of the land grant railroads in said State, and lying opposite any completed section of such road, shall be offered for sale by the company to which they shall be certified within three years from the completion of such section, if then certified; and if not, then within three years from the date of such certificate at reasonable prices; and if not all sold within that period, then during the fourth year all such lands remaining unsold shall be ex-

posed to public sale, after previous notice posted at the county seat of the county in which such lands shall be situated, to the highest bidder, and in tracts not exceeding one hundred and sixty acres each."

Approved June 2, 1864.

It is somewhat difficult to determine the design and effect of this Statute. Congress appears to have acted to some extent in ignorance of the proceedings of both the General Government and the State under the grant of 1856. Notwithstanding the fact that the State accepted the grant on the terms proposed in that act, and undertook to carry out the trust and thereby obtained the control of these lands for that purpose, until May 15, 1866; and the further fact, that under that act the Secretary has already certified and conveyed to the State, all these lands falling within fifteen miles of the present lines of the roads, (and this act will cover very little additional land) *this act* requires him to certify on certain conditions these lands *directly to the companies*, apparently ignoring all that had been done by the State and by the United States under the former act.

When the Secretary of the Interior certified the lands to the State under the act of 1856 the United States was divested of title, until the lands revert at the end of the ten years. The Interior Department has recognized this fact, and refused to review its action in so certifying, and refused all investigations asked for the purpose of establishing adverse claims (except in cases of pre-emptors) on the ground that the United States *had parted with her title and had no power over the land*.

The action of the Department was certainly correct. Congress cannot *now* require another conveyance to be made for these lands. They have already disposed of them by the act of 1856. This act being an amendment to that, can make no difference. It cannot undo the acts done under that act. Therefore the Secretary cannot certify the lands to the companies, which have already been certified to the State, until they revert to the United States at the expiration of the ten years, as provided in the original grant. But all lands covered by this act of June 2, 1864, which were not covered by the former act and certified under it, may be certified and approved to the companies as provided in this last act.

The effect of this act on the land already certified, can only be

to apply, at the time of the expiration of the original grant, to such as may revert to the United States, and *then* grant them directly to the companies. Probably this was all Congress designed; at all events it is all they could effect unless the terms of the act be ratified or consented to by the Legislature of the State. The companies cannot legally change their lines, even under this act, without the consent of the State. Their contracts, both as to the line and completion of the roads, are with the *State*, and the general government has no power to change or authorize a change in those contracts without the consent of the State.

Section 8 provides that "upon failure of either company to complete either section as aforesaid, to be annually built, the portion of land remaining uncertified shall become subject to the control and disposition of the Legislature of the State of Iowa, to aid in the completion of said road."

The first section required by this act to be built is twenty miles from the terminus of the road at the date of the grant, to be built by the first of July, 1865; and then an additional section of twenty miles every year thereafter.

If any of the companies have failed to build the first section of twenty miles before the first of July last, (as two at least have,) the lands along their lines have become, by virtue of section 8 of this act, subject to the control and disposition of the Legislature. As to the companies so failing, this act, instead of withdrawing the lands from the control of the State, gives her the unrestricted and absolute control and disposition of them, and relinquishes the right of reversion thereto in the United States.

Deeming it advisable for the State to know what construction the Interior Department will place upon this act of June 2, 1864, I addressed the Hon. James Harlan, Secretary of the Interior, on the 16th of October last, asking his opinion as to several points, but he declined giving his views until a case be presented and regularly appealed from the General Land Office.

It would be well for you to call the attention of the General Assembly particularly to this act, that they may determine what action, if any, is necessary on the part of the State.

M'GREGOR AND SIOUX CITY RAILROAD.

On the 12th of July, 1864, Congress made a grant of lands to the

State of Iowa, for the use and benefit of the McGregor Western Railroad Company, to aid in the construction of a Railroad from McGregor to Sioux City by the following act:

"An Act for a grant of lands to the State of Iowa, in alternate sections to aid in the construction of a railroad in said State.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river; also, to said State for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said roads; but in case it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid; *Provided*, That the land so selected shall in no case be located more than twenty miles from the lines of said roads; *Provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other

manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be and the same are hereby reserved and excepted from the operations of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within ten miles on each side of said roads, shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid: *Provided*, That actual bona fide settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the increased minimum price: *And provided, also*, That settlers under the provisions of the homestead law, who comply with the terms and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted*, That the lands hereby granted shall be subject to the disposal of the Legislature of Iowa, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

SEC. 4. *Be it further enacted*, That the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only, and in manner following, namely: When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner as a first class railroad, then the Secretary of the Interior shall issue to the State patents for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid. When the Governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secre-

tary of the Interior shall issue patents to said State in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of land shall be patented as aforesaid, until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other: *Provided*, That if the said McGregor Western Railroad Company, or assigns, shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the State may resume said grant, and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time, as the State shall determine: *Provided further*, That if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine: *And provided further*, That said lands shall not in any manner be disposed of or incumbered, except as the same are patented under the provisions of this act; and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

SEC. 5. *And be it further enacted*, That as soon as the Governor of said State of Iowa shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

SEC. 6. *And be it further enacted*, That the United States mail shall be transported on said roads and branch, under the direction of the Post-Office Department, at such price as Congress may by law provide; *Provided*, That until such price is fixed by law, the Post-Master General shall have power to fix the rates of compensation.

SEC. 7. *And be it further enacted*, That there be, and is hereby, granted to the State of Minnesota, for the purpose of aiding in the construction of a Railroad from St. Paul and St. Anthony, *via*. Minneapolis, to a convenient point of junction west of the Missis-

issippi, to the southern boundary of the State, in the direction of the mouth of the Big Sioux River, four additional alternate sections of land per mile, to be selected upon the same conditions, restrictions, and limitations, as are contained in the act of Congress entitled "An Act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of a certain Railroad in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain Railroad in said State," approved March 3d, 1857. *Provided*, That the land to be so located by virtue of this section, may be selected within twenty miles of the line of said road, but in no case a greater distance therefrom."

Approved May 12th, 1864.

Nothing has been done under this grant, on the part of the State.

The attention of the Legislature should be called to it, that any action necessary may be taken.

#### 10TH—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. (Chapter 91, Acts 7th General Assembly.)

The 11th section of that 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 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.

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. (*Chap. 146, 2d Sess. 37th Congress.*) By these Acts, the five sections of land in Jasper county, approved to the State to aid in the erection of public buildings, under Act of Congress entitled "*An Act supplemental to the Act for the admission of the States of Iowa and Florida into the Union*," approved March 3d, 1845, have been

fully appropriated for the benefit of the "*Iowa Agricultural College and Farm*," and have nearly, or quite all, been sold by the Trustees of said institution.

The Agricultural College and Farm are located in Story county, and seven hundred and twenty-one acres of land in that county have been donated by individuals for the use of the institution, and two hundred in Boone, as appears from the reports filed in 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 1860: *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 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 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 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 hereby 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 improvements and experiments made, with their cost and result, 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 double the minimum price, in consequence of railroad grants, they shall be completed 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, 1863.

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. (U. S. Stat. 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 the Mechanic Arts*, approved July 2, 1862." 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, and providing that no lands shall be selected under said grant that are claimed by any county as Swamp Lands, requiring said Agent to report to the Governor and making it the duty of the Governor to lay the list of selections before the Board of Trustees of the Agricultural College at their next meeting for their approval &c.; and appropriating \$1,000.00 to carry out the provisions of the Act. (Acts Ex. Session, 1862, p. 25.)

The State having eight Senators and Representatives in Congress, thus becomes entitled to 240,000 acres of land for the purpose of establishing and maintaining in this State an Agricultural College.

Peter Melendy of Black Hawk County was appointed under the act of the Legislature to select the lands. He made the selections during August, September and December, 1863, in the Des Moines, Sioux City and Fort Dodge Land Districts.

These selections were certified by the Commissioner of the General Land Office, on the 8th of December, 1864, and approved to the State by the Secretary of the Interior on the 13th of said month. The title to said lands is vested in fee simple in the State without any danger of conflicts with claims under other grants.

These lands are approved to the State as 240,000.96 acres, but 35,691.66 acres lie within Railroad limits and are therefore computed at double their quantity making the actual quantity approved under the Grant 204,309.30 acres located as follows, to-wit:

## IN THE FORT DES MOINES DISTRICT.

COUNTIES.	Amount in R. R. limits.	Outside R. R. limits.	Total acres.
Worth .....	.....	196.56	196.56
Winnebago .....	.....	2,429.75	2,429.75
Greene .....	4,178.65	.....	4,178.65
<b>Total in this district .....</b>	.....	.....	<b>6,804.96</b>

## IN THE SIOUX CITY DISTRICT.

COUNTIES.	In R. R. limits.	Outside R. R. limits.	Total.
Buena Vista .....	1,765.33	4,072.25	5,837.58
Cherokee .....	2,249.62	.....	2,249.62
Clay .....	.....	8,719.42	8,719.42
Dickinson .....	.....	5,159.67	5,159.67
Emmett .....	.....	8,594.15	8,594.15
Ida .....	5,212.32	3,426.55	8,638.87
Lyon .....	.....	1,120.00	1,120.00
O'Brien .....	.....	1,600.00	1,600.00
Palo Alto .....	.....	1,600.00	1,600.00
Plymouth .....	1,760.00	2,082.60	3,842.60
Sac .....	320.00	.....	320.00
Sioux .....	.....	1,280.00	1,280.00
Woodbury .....	3,201.17	6,902.29	10,103.46
<b>Total .....</b>	<b>14,518.44</b>	<b>44,556.93</b>	<b>59,075.37</b>

## IN THE FORT DODGE DISTRICT.

COUNTIES.	In R. R. limits.	Outside R. R. limits.	Total.
Calhoun .....	3,068.00	.....	3,068.00
Emmett .....	.....	8,054.84	8,054.84
Hamilton .....	2,481.50	.....	2,481.50
Humboldt .....	.....	3,063.13	3,063.13
Kossuth .....	.....	84,198.29	84,198.29
Palo Alto .....	.....	26,118.14	26,118.14
Pocahontas .....	3,549.04	.....	3,549.04
Webster .....	3,249.72	.....	3,249.72
Wright .....	4,645.45	.....	4,645.45
Total .....	16,994.57	121,434.40	138,428.97

Aggregate number of acres, 204,309.30.

The Tenth General Assembly by an act entitled "*An Act authorizing the Trustees of the Iowa State Agricultural College and Farm to sell all lands acquired, granted, donated or appropriated for the benefit of said College, and to make an investment of the proceeds thereof,*" approved March 29, 1864, appropriate and grant these lands to said College, and authorize the Trustees to sell or lease the same as therein prescribed. (Acts 1864, p. 148.)

Said Trustees have taken possession of said lands, and proceeded to appraise about 50,000 acres of them, and offer the same for sale and lease as authorized in said act, having opened an office at Fort Dodge, and appointed Hon. G. W. Bassett an Agent for that purpose. None of said lands have yet been sold absolutely, but 45,504.82 acres have been leased, the valuation of which as appraised is \$89,558.77.

There are, according to the records of this office, of lands appropriated to the benefit of said institution, and under the control of the Trustees thereof, as follows, to-wit:

Under the Act of July 2, 1852, .....	204,309.30 Acres
Of the five-section Grant .....	3,200.00 "
Lands donated in Story County .....	721.00 "
Lands donated in Boone County .....	200.00 "
Total, .....	208,430.30 Acres

Of the first, as above stated, no absolute sales have been made. Of the second (known as the Jasper County, or 5-section lands) the reports of the Secretary of the College, filed in this office, show

that 2,560 acres have been sold for the aggregate sum of \$12,123.20; and 1,120.00 acres thereof have been patented to the purchasers.

Of the donated lands in Story County, (as per said reports) 40.00 acres have been sold for \$240.00. No other sales have been reported to this office.

## ERRORS IN PATENTS.

I would call attention to the fact, that the last session of the General Assembly repealed chap. 56 of the Acts of the Ninth General Assembly, (Acts 1862, p. 58,) authorizing the Register to correct errors in the description of land conveyed by the State upon proper evidence. (See sec. 6, chap. 103 Acts 1864.)

It is immaterial to this office whether such an act be in force or not, but to the parties interested *it is* material.

I find numerous errors in the description of lands, occasioned sometimes by the illegibility of the certificates, and sometimes clerical errors, or inadvertance in this office, and running back through the several years since the State commenced issuing patents.

In some instances the grantee has received his patent, had it recorded in the county office, and remained satisfied for several years that he had a patent for *his own* instead of his *neighbor's* farm.

In such case it is hardly right to require the grantee to apply to a Court of Chancery, or to the Legislature for relief, but now there is no other course. Under the Act of 1862, the Register was authorized to correct such errors. It would be much better for the grantees in such cases if he still had that power. The objection was, that he might exercise the power improperly. The objection is sufficiently answered by the fact, that if he should he would convey no title thereby, and it would cost no more to investigate his act, than to resort to Court for the correction of the error.

## EXPENSES OF THE STATE LAND OFFICE.

On the first of November, 1863, the close of the last fiscal year reported from this office, there was in the Treasury a balance of the Contingent Fund, previously appropriated for this office, ..... \$437.67

The Act approved Feb. 29, 1864, appropriates for the payment of a clerk the additional sum of..... 1,230.00

Making in all..... \$1,667.67

The expenditures from this fund have been as follows :

To John Browne, for services as clerk in November, 1863..... \$50.00  
 To D. E. Jones, regular clerk, from Nov. 1, 1863, to Feb. 1, 1864, (3 months @ \$58.33 $\frac{1}{3}$ .) 175.00  
 To D. E. Jones, from Feb. 1, 1864, to Jan. 1, 1865, (11 months @ \$62.50,)..... 687.50  
 To D. E. Jones, from Jan. 1 to Oct. 1, 1865.. 755.08

Total..... \$1,667.67

For all of which receipts have been taken and remain of record in the office.

It will be seen that there is nothing left of the funds appropriated to pay for the services of Mr. Jones after the first of October last. He has been a faithful and efficient clerk, and deserves more pay than he has received.

The appropriation made would allow paying to the clerks and deputies in the several offices of Secretary, Treasurer and Register only \$62.50 per month or \$750.00 per year. This was insufficient to support a family at the high cost of living, and Mr. Jones was compelled to draw upon other funds for this purpose.

It was therefore agreed to allow them at the rate of \$1,000.00 per year or \$83.33 $\frac{1}{3}$  per month after the first of January, 1865, and trust to the Legislature to make up the deficiency, which they will doubtless do if you call their attention to the matter.

The amount of pay allowed this office during the last three years has been entirely inadequate to the labor performed, both as to *principal* and *clerk*; but especially the latter.

All of which is respectfully submitted.

J. A. HARVEY, Register.

APPENDIX.

TABLE NO. 1.

Exhibiting the lands in odd sections above the Raccoon Forks, falling within the limits of the Des Moines River Grant, so far north as the United States had completed the survey prior to Oct. 30th, 1851; and also the tracts disposed of by the United States to individuals, between the 24th of August, 1848, and the 16th of June, 1849:

WITHIN THE LIMITS OF THE GRANT.				SOLD BY U. S. TO INDIVIDUALS.	
Parts of Sections.	S.	T.	R.	Parts of Sections.	Acres.
sw sw.....	5	79	23	.....	40.00
all.....	7	79	23	.....	669.44
n $\frac{1}{2}$ n $\frac{1}{2}$ se n $\frac{1}{2}$ sw.....	17	79	23	ne se, e hf ne, nw ne.....	160.00
nw ne, n $\frac{1}{2}$ nw.....	21	79	23	.....	120.00
w $\frac{1}{2}$ nw, w $\frac{1}{2}$ sw, se sw.....	31	80	23	.....	232.00
ne nw, nw sw, lots 1, 2, 3, 4.....	3	78	24	ne nw, nw sw lots 1, 2, 3, 4.....	223.38
all.....	5	78	24	all.....	700.74
.....	7	78	24	.....	652.18
nw ne nw lots 1, 2, 3, 4, 5, 6, 7.....	9	78	24	all but lot 6.....	450.08
all.....	17	78	24	ne, e hf nw, sw nw, lot 2.....	360.00
.....	19	78	24	.....	653.12
nw nw.....	21	78	24	.....	40.00
nw ne, nw, ne sw, w $\frac{1}{2}$ sw.....	29	78	24	.....	320.00
ne, e $\frac{1}{2}$ nw, nw nw, n $\frac{1}{2}$ se.....	31	78	24	.....	363.08
all.....	1	79	24	s hf nw, n hf sw.....	160.00
.....	3	79	24	all but sw nw.....	633.52
.....	5	79	24	e hf ne, nw ne, ne nw, e hf	620.79
.....	7	79	24	[se, lot 1, 2, 3, 4.....	432.34
.....	9	79	24	se ne, n hf se.....	120.00
.....	11	79	24	all.....	640.00
.....	13	79	24	e hf ne, nw, ne sw, ehf s e.....	360.00
.....	15	79	24	w hf nw.....	80.00
.....	17	79	24	.....	640.00
.....	19	79	24	se ne, w $\frac{1}{2}$ nw, lots 1, 2, 3, 4, 5, 6.....	385.95
.....	21	79	24	.....	646.74
.....	23	79	24	e hf sw, lots 1, 2, 3, 4, 5, 6, 7, 8.....	427.05
nw, w $\frac{1}{2}$ sw.....	25	79	24	.....	640.00
all.....	27	79	24	all.....	240.00
.....	29	79	24	s hf ne, s hf nw, s hf.....	606.10
.....	31	79	24	e hf, sw.....	480.00
.....	33	79	24	all.....	661.28
n $\frac{1}{2}$ ne, se ne lt 1, 2, 3, 4, 5, 6, 7, 8.....	35	79	24	.....	640.00
all.....	3	80	24	.....	512.05
.....	.....	.....	.....	.....	708.23

TABLE NO. 1—CONTINUED.

WITHIN THE LIMITS OF THE GRANT.				SOLD BY U. S. TO INDIVIDUALS.			
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.			
all	5 80 24	709.84	all	709.84			
"	7 80 24	665.18	all but s hf sw	578.57			
"	9 80 24	640.00					
"	11 80 24	640.00					
w 1/2, w 1/2 se, sw ne	13 80 24	440.00					
all	15 80 24	640.00	sw	160.00			
"	17 80 24	640.00	w hf, se	480.00			
"	19 80 24	628.61	w 1/2 ne, e 1/2 nw, nw nw, n 1/2 se [lot 1, 2, 3, 4, 5, 6, 7,	548.61			
"	21 80 24	640.00	all	640.00			
"	23 80 24	640.00					
"	25 80 24	640.00					
"	27 80 24	640.00	s 1/2 ne, nw ne, s 1/2 nw, n 1/2 sw	280.00			
"	29 80 24	615.55	w 1/2 ne, e 1/2 nw, nesw, nw se, [lot 2, 3, 4, 5, 6,	486.14			
"	31 80 24	604.26	lots 1 and 7	76.83			
"	33 80 24	640.00	ne, sw, e 1/2 se	400.00			
"	35 80 24	640.00	all but e hf ne	560.00			
w 1/2 sw, se sw	7 81 24	127.32					
all	19 81 24	642.08					
sw sw	21 81 24	40.00					
w 1/2 sw	27 81 24	80.00					
all	29 81 24	640.00					
"	31 81 24	635.88	n hf sw	475.88			
"	33 81 24	640.00					
"	1 78 25	698.16	ne ne	51.51			
e 1/2 nw e 1/2 sw	3 78 25	617.12					
all	11 78 25	640.00	nw ne, ne nw, sw nw, s hf	440.00			
"	13 78 25	598.70	nw nw, s 1/2 sw, sw se lots 1, [2, 3, 4, 5	366.25			
ne, e 1/2 se	23 78 25	240.00	ne	160.00			
ne e 1/2 nw, nw nw, e 1/2 se nw se & ne sw	25 78 25	440.00	e hf ne, sw ne, se nw	160.00			
all	1 79 25	684.80	s hf	320.00			
"	3 79 25	681.70					
n hf ne	5 79 25	99.91					
e 1/2, e 1/2 nw, nw nw, e hf sw	9 79 25	520.00					
all	11 79 25	640.00					
"	13 79 25	640.00	w 1/2 ne, se ne, nw, w 1/2 sw, se	520.00			
"	15 79 25	640.00					
e hf ne, e hf se	21 79 25	160.00					
all	23 79 25	640.00	ne ne	40.00			
"	25 79 25	640.00	e hf ne, e hf se	160.00			
e hf, nw, e hf sw, nw sw	27 79 25	600.00					
all	35 79 25	640.00					
"	1 80 25	707.56	all but s hf ne	627.56			
"	3 80 25	664.36	n hf ne, and ne nw	167.15			
"	5 80 25	689.74					
"	7 80 25	652.00					
"	9 80 25	640.00					
"	11 80 25	599.63	ne nw, ne se	360.00			
"	13 80 25	596.83	e 1/2 ne, sw ne, e 1/2 se, nw se [lots 1, 2, 5, 6	416.65			
"	15 80 25	640.00					
"	17 80 25	640.00					
"	19 80 25	653.04					
"	21 80 25	640.00					
"	23 80 25	640.00					

TABLE NO. 1.—CONTINUED.

WITHIN THE LIMITS OF THE GRANT.				SOLD BY THE U. S. TO INDIVIDUALS.			
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.			
all	25 80 25	640.00					
"	27 80 25	640.00					
"	29 80 25	640.00	e hf se, nw se	120.00			
ne, e hf nw, ne se	31 80 25	280.00					
all	33 80 25	640.00					
"	35 80 25	640.00					
"	3 81 25	616.55					
"	5 81 25	617.84					
"	7 81 25	674.16					
"	9 81 25	640.00					
"	11 81 25	640.00					
"	13 81 25	640.00					
"	15 81 25	640.00					
"	17 81 25	640.00					
"	19 81 25	676.38	sw nw, w hf sw	147.21			
"	21 81 25	640.00	w hf	320.00			
"	23 81 25	640.00					
"	25 81 25	640.00					
"	27 81 25	640.00	w hf ne, e hf nw, s hf	480.00			
"	29 81 25	600.76	w 1/2 sw, se sw, se se, lts 1, 2, 3, 4	332.39			
"	31 81 25	675.62					
"	33 81 25	561.25	ne se, lots 1, 7, 8, 9, 10, 11, 12, 13	309.36			
"	35 81 25	640.00	all	640.00			
"	5 82 25	635.18					
"	7 82 25	658.86					
w 1/2 nw, w 1/2 sw, se sw	9 82 25	200.00					
all	17 82 25	640.00					
all	19 82 25	663.92	all	663.92			
w 1/2 se, w 1/2 ne, se nw	21 82 25	600.00	se se	40.00			
w 1/2 nw, w 1/2 sw 1/2	27 82 25	160.00	nw nw	40.00			
all	29 82 25	640.00					
all	31 82 25	663.10					
all	33 82 25	640.00					
w 1/2 ne, w 1/2 se, w 1/2	7 83 25	467.98					
all	19 83 25	653.08					
w 1/2 nw, sw	29 83 25	240.00					
all	31 83 25	665.52					
all	1 80 26	698.18					
all	3 80 26	701.92					
e 1/2, nw, ne sw	5 80 26	578.78					
e 1/2, nw, e 1/2 sw	9 80 26	560.00					
all	11 80 26	640.00					
all	13 80 26	640.00					
n 1/2, n 1/2 se	15 80 26	400.00					
ne ne	23 80 26	40.00					
ne, ne nw, e 1/2 se	25 80 26	280.00					
all	1 81 26	609.38	n 1/2, sw	449.38			
"	3 81 26	580.56	s 1/2 sw	80.00			
"	5 81 26	595.26					
"	7 81 26	612.08					
"	9 81 26	640.00					
"	11 81 26	598.73	s 1/2 nw, nw sw lots 1, 2, 3, 4	296.69			
"	13 81 26	631.42	sw 1/2 w 1/2 se, lot 2	222.07			
"	15 81 26	640.00					
"	17 81 26	640.00					
"	19 81 26	612.00					
"	21 81 26	640.00					
"	23 81 26	640.00	sw	160.00			

TABLE NO. 1.—CONTINUED.

WITHIN THE LIMITS OF THE GRANT.			SOLD BY THE U. S. TO INDIVIDUALS.		
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Acres.
all	27 81 26	625.42	w 1/2 nw	80.00	
"	27 81 26	640.00	"		
"	29 81 26	640.00	"		
nc, ne nw, e 1/2 se, nw se	31 81 26	320.00	"		
all	33 81 26	640.00	"		
"	33 81 26	640.00	"		
"	1 82 26	637.84	nw, e 1/2 ne, ne sw, nw se	310.88	
"	3 82 26	648.00	"		
"	5 82 26	589.23	ne se, lots 1, 2, 3	140.33	
"	7 82 26	608.00	"		
"	9 82 26	598.46	"		
"	11 82 26	640.00	sw	160.00	
"	13 82 26	640.00	"		
"	15 82 26	597.58	"		
"	17 82 26	640.00	"		
"	19 82 26	613.24	"		
"	21 82 26	640.00	"		
"	23 82 26	640.00	sw	160.00	
"	25 82 26	640.00	all	640.00	
"	27 82 26	590.91	sw sw, lots 8, 9	110.55	
"	29 82 26	640.00	"		
"	31 82 26	521.69	"		
"	33 82 26	640.00	"		
"	35 82 26	640.00	"		
"	1 83 26	521.60	"	320.00	
"	3 83 26	525.98	e 1/2 ne, se	211.12	
"	5 83 26	532.00	w 1/2 ne, nw	159.00	
"	7 83 26	587.72	e 1/2 ne, w 1/2 nw, w 1/2 sw, e 1/2 se [lots 1, 3, 4, 5, 6, 7, 8	544.57	
"	9 83 26	640.00	"		
"	11 83 26	640.00	n 1/2 sw, sw nw	120.00	
"	13 83 26	640.00	"		
"	15 83 26	640.00	"		
"	17 83 26	640.00	e 1/2, e 1/2 sw	400.00	
"	19 83 26	594.30	sw sw, lot 5	80.80	
"	21 83 26	616.98	"		
"	23 83 26	631.32	"		
"	25 83 26	640.00	"		
"	27 83 26	640.00	"		
"	29 83 26	640.00	"		
"	31 83 26	592.30	"		
"	33 83 26	620.00	"		
"	35 83 26	574.92	"		
"	35 83 26	640.00	s 1/2 sec	80.00	
Total		107,105.78		35,487.87	

TABLE NO. 2.

Showing, 1st, the 81,707.93 acres certified to the State under the Des Moines River Grant on the 30th of October, 1851; 2d, those that were sold and patented by the State to individuals; 3d, those that were patented to the Des Moines Navigation and Railroad Company, and 4th, those subsequently certified and approved to the State as Railroad Lands, under act of 1856.

CERTIFIED UNDER D. M. GRANT.			SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
sw sw	5 79 23	40.00			sw sw	40.00		40.00
all	7 79 23	669.44	all but ne ne	629.44	ne ne	40.00	all	669.44
sw ne, nw, n hf sw, nw se	17 79 23	320.00	sw ne, nw qr nw sw, nw se	280.00	ne sw	40.00	nw, n hf sw, sw ne, nw se	320.00
nw ne, n hf nw	21 79 23	120.00			n hf nw, nw ne	120.00		
w hf nw, w hf sw, se sw	31 80 23	232.00	sw nw, w hf sw	143.34	se sw, nw nw	88.66	w hf nw, w hf sw, se sw	232.00
lot 6	9 78 24	43.75	lot 6	43.79			lot 6	43.75
s hf and fr on left bnk	17 78 24	320.47	s hf and fr on left bank	320.47			s 1/2 lot 1, fr on left bnk	320.47
all	19 78 24	653.12	all	653.12			all	653.12
nw nw	21 78 24	40.00	nw nw	40.00			nw nw	40.00
nw ne, nw, w hf sw, ne sw	29 78 24	320.00	nw ne, e hf nw, nw nw, n hf sw, se sw	280.00	sw nw	40.00	nw, nw ne, n hf sw, sw sw	320.00
ne, e hf nw, nw nw, n hf se	31 78 24	363.08	ne qr, e hf nw, n hf se	320.00	nw nw	43.08	ne, e hf nw, nw nw, n hf se	363.08
e hf, n hf nw, s hf sw	1 79 24	508.62	e hf, n hf nw, s hf sw	508.62			ne, n hf nw, s hf sw, se sw nw	508.62
sw nw	3 79 24	40.00	sw nw	40.00			sw nw	40.00
w hf sw lots 5, 6, 7	5 79 24	188.45	nw sw, lots 5, 6	121.70	sw sw, lot 7	66.75	nw sw, lots 5, 6, 7	148.45
n hf ne, sw ne, s hf se, w hf	7 79 24	523.42	n hf ne, sw ne, s hf se, w hf	523.42			all	523.42

TABLE NO. 2—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R.R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
w hf ne, w hf se, w hf sw, se sw	11 79 24	280.00	w hf ne, w hf se, w hf sw, se sw	280.00			w hf ne, w hf se, w hf sw, se sw	280.00
e hf, sw, e hf nw	13 79 24	560.00	e hf, sw, e hf nw	560.00			ne, e hf n w, s hf	560.00
all	15 79 24	640.00	all	640.00			all	640.00
w hf sw, se sw, lots 7, 8, 9	17 79 24	208.25	w hf sw, se sw, lots 7, 8, 9	208.25			w hf sw, se sw, lots 7, 8, 9	208.25
all	19 79 24	646.74	all	646.74			all	646.74
w hf sw, sw nw, lot 3	21 79 24	140.30	w hf sw, sw nw	120.00	lot 3	20.30	sw nw, w hf sw, lot 3	140.30
all	23 79 24	640.00	all except ne ne	600.00	ne ne	40.00	all	640.00
nw, w hf sw	25 79 24	240.00	s hf nw, w hf sw	160.00	n hf nw	80.00	nw, w hf sw	240.00
n hf ne, n hf nw	29 79 24	160.00	n hf ne, n hf nw	160.00			n hf ne, n hf nw	160.00
nw	31 79 24	169.96	nw	169.96			nw	169.96
all	3 80 24	708.23	all	708.23			all	708.23
s hf s w	7 80 24	86.61	s hf sw	86.61			s hfsw	86.61
all	9 80 24	640.00	sw qr	160.00	n hf, se	480.00	all	640.00
all	11 80 24	640.00	all	640.00	all	640.00	all	640.00
sw ne, w hf, w hf se	13 80 24	440.00			w hf, w hf se, sw ne	440.00	w hf, w hf se, sw ne	440.00
n hf, s e qr	15 80 24	480.00	nw, se	320.00	ne	160.00	n hf, se	480.00
ne	17 80 24	160.00	ne ne	40.00	s hf nw nw ne	120.00	ne	160.00
e hf ne	19 80 24	80.00	e hf ne	80.00			e hf ne	80.00
all	23 80 24	640.00	ne, w hf	480.00	se qr	160.00	all	640.00
all	25 80 24	640.00	w hf ne qr	480.00	se qr	160.00	all	640.00
ne ne, n $\frac{1}{2}$ nw, s $\frac{1}{2}$ sw, se	27 80 24	360.00	ne ne, sw sw, se	240.00	n hf nw, se sw	120.00	ne ne, s hf sw, se qr	280.00
e hf se, sw se lot 1	29 80 24	129.41	e hf se, sw se	120.00	lot	9.41	e hf se, sw se lot 1	129.41
w hf nw, ne nw, sw, lots 2, 3, 4, 5, 6	31 80 24	527.43	all	527.43			all	527.43
nw, w hf s e	33 80 24	240.00	nw, w hf se	240.00			nw, w hf se	240.00
e hf n e	35 80 24	80.00	e hf ne	80.00			e hf ne	80.00

w hf sw, se sw	7 81 24	127.32			w hf sw, se sw	127.32	w hf sw, se sw	127.32
all	19 81 24	642.08			all	642.08		
sw sw	21 81 24	40.00			sw sw	40.00		
w hf sw	27 81 24	80.00			w hf sw	80.00	w hf sw	80.00
all	29 81 24	640.00			all	640.00	all	640.00
se	31 81 24	160.00			se qr	160.00	se	160.00
all	33 81 24	640.00			all	640.00	all	640.00
all but ne ne	1 78 25	643.65	all ne ne	643.65			w hf ne, se ne, nw, s hf	643.65
all	3 78 25	617.12	all	617.12			e hf, nw, e hf sw	617.12
e hf ne, sw ne, nw nw, se nw	11 78 25	200.00	e hf ne, sw ne nw nw se nw	200.00			e hf ne, sw ne, se nw	160.00
e hf se lots 6, 7, 8	13 78 25	231.55	ne se	40.00	se se, lots 6, 7, 8	191.55	e hf se qr, lots 6, 7, 8	231.55
e hf se	23 78 25	80.00			e hf se	80.00	e hf se	80.00
nw ne, n hf nw, ne sw, e hf se, nw se	25 78 25	280.00			n hf nw, nw ne, n hf se, ne sw, se se	280.00	ne, e hf nw, nw nw, e hf se, nw se, ne sw	440.00
n hf	1 79 25	364.80			n hf	364.80	n hf	364.80
all	3 79 25	681.70			all	681.70	all	681.70
n hf ne	5 79 25	99.91			n hf ne	99.91	n hf ne	99.91
e hf nw, nw nw, e hf sw, e hf	9 79 25	520.00			e hf, e hf nw, e hf sw nw nw	520.00	e hf, e hf nw, nw nw, e hf sw	520.00
all	11 79 25	640.00			all	640.00	all	640.00
ne ne, e hf sw	13 79 25	120.00			ne ne, e hf sw	120.00	ne ne, e hf sw	120.00
all	15 79 25	640.00			all	640.00	all	640.00
e hf ne, e hf se	21 79 25	160.00			e hf ne, e hf se	160.00	e hf ne, e hf sw	160.00
w hf ne, se ne, w hf se	23 79 25	600.00	w hf ne, se ne, w hf se	600.00			s hf, s hf ne, nw ne, nw	600.00
all	25 79 25	640.00	all	640.00			all	640.00
all but sw sw	27 79 25	600.00	all but sw sw	600.00			n hf, n hf sw, se sw, se	600.00
w hf ne, w hf se, w hf s hf ne	35 79 25	480.00	w hf ne, w hf se, w hf s hf ne	480.00			w hf, w hf ne, w hf se	480.00
s hf ne	1 80 25	80.00	s hf ne	80.00			s hf ne	80.00
s hf ne, e hf se, lots 1, 2, 3, 4, 5, 6, 7	3 80 25	497.21	lots 2, 3, 4, 6	212.04	s hf ne, e hf se, lots 1, 5, 7	285.17	s hf ne, e hf se, lots 1, 2, 3, 4, 5, 6, 7	497.21

TABLE NO. 2—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	5 80 25	689.74	ne ne, se nw, e hf sw, se	332.81	s hf ne, nw ne, n hf nw, sw nw, w hfsw	356.93	all	689.74
all	7 80 25	652.00	ne, w hf, e hf se	560.00	w hf se	80.00	all	652.00
all	9 80 25	640.00	lots 1, 2, 6	105.83	lots 3, 4, 5, 7	133.80	all	640.00
lots 1, 2, 3, 4, 5, 6, 7.	11 80 25	239.63	lots 3, 4, 7, 8	180.18			lots 1, 2, 3, 4, 5, 6, 7..	239.63
lots 3, 4, 7, 8	13 80 25	180.18	n hf, se sw, sw se, n hf se	480.00	n hf sw, sw sw, se se.	160.00	lots 3, 4, 7, 8	180.18
all	15 80 25	640.00	sw ne, s hf nw, n hf sw, se sw, w hf se..	320.00	e hf ne, nw ne, e hf se, n hf nw, sw sw.	320.00	all	640.00
all	17 80 25	640.00	ehf ne, ehfnw, nwnw	200.00	s hf, w hf ne, sw nw	440.00	all	640.00
all	19 80 25	653.04	e hf, e hf nw, e hf sw, sw sw	520.00	w hf nw, nw sw	120.00	all	653.04
all	21 80 25	640.00	all but sw se	600.00	sw se	40.00	all	640.00
all	23 80 25	640.00	e hf ne, nw ne, w hf sw, e hf se	280.00	s hf, sw nw, w hf se, sw ne	360.00	all	640.00
all	25 80 25	640.00	sw ne, se nw, n hf sw, sw se	200.00	s hf sw, e hf ne, n w ne, w hf nw, ne nw.	320.00	all	640.00
all	27 80 25	640.00	nw, e hf sw, se	400.00	ne, e hf nw, ne se	280.00	all	640.00
ne qr, w hf, sw se	29 80 25	520.00	e hf ne, nw, e hf se	320.00	sw, w hf ne, w hf se	320.00	all	640.00
ne qr, e hf nw, ne se	31 80 25	280.00	w hf	307.06	e hf	309.49	all	640.00
all	33 80 25	640.00	all	617.84			all	616.55
all	35 80 25	640.00	n hf nw, se	248.54	ne, s hf nw, sw	425.62	all	617.84
all	3 81 25	616.55	w hf ne, nw, nw sw, se sw, sw se	360.00	e hf se, nw se, e hf ne, ne sw, sw sw	280.00	all	674.16
all	5 81 25	617.84					all	640.00
all	7 81 25	674.16					all	640.00
all	9 81 25	640.00					all	640.00

all	11 81 25	640.00	nw, s hf	480.00	ne	160.00	all	640.00
all	13 81 25	640.00	nw, s hf	480.00	ne	160.00		
all	15 81 25	640.00	ne, sw nw, e hf sw, sw sw, se	480.00	e hf nw, nw nw, nws w	160.00		
all	17 81 25	640.00	ne, ne nw, nw sw, se sw, e hf se, sw se	400.00	nw se, shfnw, nw nw, ne sw, sw sw	240.00		
e hf, ehfnw, nwnw, ehfnw	19 81 25	529.17	e hf, e hf nw, nwnw, e hf sw	529.17				
e hf	21 81 25	320.00	ne ne, s hfne, se qr	280.00	nw ne	40.00		
all	23 81 25	640.00	s hf ne, w hf, se	560.00	n hf ne	80.00		
all	25 81 25	640.00	sw ne, w hf, w hf se qr	440.00	e hf ne, nw ne, e hf se	200.00		
e hf ne, w hf nw	27 81 25	160.00	e hfne, e hf nw	160.00				
n hf ne lots 5, 6, 7, 8	29 81 25	268.37	n hf ne, lots 5, 6, 7, 8	268.37	sw, s hf se	259.75		
all	31 81 25	675.62	ne, nw, n hf se	415.87				
sw sw lots 2, 3, 4, 5, 6	33 81 25	251.91	lots 2, 3, 4, 5, 6, sw sw	251.91				
all	35 81 25							
all	5 82 25	635.18			all	635.18	all	635.18
all	7 82 25	658.86			all	658.86	all	658.86
w hf nw, w hf sw, se sw	9 82 25	200.00			w hf nw, w hf sw, se sw	200.00	w hf nw, w hf sw, se sw	200.00
all	17 82 25	640.00			all	640.00	all	640.00
w hf, w hf ne, se ne, w hf se, ne se	21 82 25	560.00			w hf ne, se ne, w hf w hf se, ne se	560.00	w hf ne, se ne, w hf se, ne se	560.00
sw nw, w hf sw	27 82 25	120.00			w hf sw, sw nw	120.00	w hf sw, sw nw	120.00
all	29 82 25	640.00			all	640.00	all	640.00
all	31 82 25	663.10			all	663.10	all	663.10
all	33 82 25	640.00			all	640.00	all	640.00
w hf, w hf ne, w hf se	7 83 25	467.98			w hf, w hf ne, w hf se qr	467.98	w hf, w hf ne, w hf se	467.98
all	19 83 25	653.08			all	653.08	all	653.08
w hf nw, sw qr	29 83 25	240.00			sw, w hf nw	240.00	w hf nw, sw	240.00
all	31 83 25	665.52			all	665.52	all	665.52
all	1 80 26	698.18			all	698.18	all	698.18

TABLE NO. 2—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	3 80 26	701.92			all	701.92		
e hf, nw, ne sw	5 80 26	578.78			e hf, nw, ne sw	578.78		
e hf, nw, e hf sw	9 80 26	560.00			e hf, nw, e hf sw	560.00		
all	11 80 26	640.00	n hf ne, nw se	120.00	w 1/2 s 1/2 ne, e 1/2 se, sw se	520.00	all	640.00
all	13 80 26	640.00	w hf nw	80.00	e hf, sw, e hf nw	560.00	all	640.00
n hf, ne se	15 80 26	400.00			n hf, n hf se	400.00	n hf, n hf se	400.00
ne ne	23 80 26	40.00			ne ne	40.00	ne ne	40.00
ne, ne nw, e hf se	25 80 26	280.00			ne, e hf se, ne nw	280.00	ne, ne nw, e hf se	280.00
se	1 81 26	160.00	n hf se, sw se	120.00	se se	40.00	se	160.00
all but s hf sw	3 81 26	500.56	all but s hf sw, nw sw	460.56	nw sw	40.00	e hf, nw, n hf sw	500.56
all	5 81 26	595.26	all but sw nw	555.26	sw nw	40.00	all	595.26
all	7 81 26	612.08			all	612.08	all	612.08
all	9 81 26	640.00	n hf, n hf ne, sw ne, n hf sw, se sw	560.00	sw sw, se se	80.00	all	640.00
sw sw lots 5, 6, 7, 8, 9	11 81 26	302.04	sw sw, lots 5, 6, 7, 8, 9	302.04			sw sw, lots 5, 6, 7, 8, 9	302.04
n hf, e hf se lot 1	13 81 26	409.35	e hf ne, sw ne, nw, e hf se	360.00	nw ne, lot 1	49.35	ne nw, e hf se lot 1	409.35
all	15 81 26	640.00	n hf ne, nw, s hf	560.00	s hf ne	80.00	all	640.00
all	17 81 26	640.00			all	640.00	all	640.00
all	19 81 26	612.00			all	612.00	all	640.00
all	21 81 26	640.00	n hf	320.00	s hf	320.00	all	640.00
n hf, se	23 81 26	480.00	n hf, se	480.00			e hf nw	480.00
s hf, se nw, lots 1, 2, 3, 4	25 81 26	545.42	s hf, se nw lots 1, 2, 3, 4	545.42				
all	27 81 26	640.00	ne, e hf nw, n hf se	320.00	sw, s hf se qr, w hf nw	320.00		
all	29 81 26	640.00			all	640.00		
ne, ne nw, e hf se, nw se	31 81 26	320.00			ne, ne nw, e hf se, nw se	320.00		
all	33 81 26	640.00			all	640.00		
all	35 81 26	640.00	nw ne	40.00	e hf ne, sw ne, w hf se	600.00		
n hf ne, e hf se, sw se, w hf sw, se sw	1 82 26	317.96	n hf ne, se se, s hf sw	197.96	nw sw, ne se, sw se	120.00	n hf ne, e hf se, sw se, w hf sw, se sw	317.96

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all	3 82 26	648.00	n hf ne, sw ne, e hf nw nw nw, e hf sw, w hf se, se se	448.00	se ne, sw nw, w hf sw, ne se	200.00	all	648.00
nw ne, w hf nw, ne nw, w hf sw, se sw lots 4, 5, 6, 7, 8	5 82 26	448.90	nw ne, nw nw, w hf sw, se sw, lot 4	245.93	ne nw, sw nw, lots 5, 6, 7, 8	202.97	nw ne, n hf nw, sw nw, w hf sw, se sw, lots 4, 5, 6, 7, 8	448.90
all	7 82 26	608.00	n hf, se	240.00	s hf ne, w hf	368.00	all	608.00
all	9 82 26	598.46	n hf ne, e hf sw, sw sw, s hf se, sw nw lots 3, 5, 7	443.70	lots 1, 2, 4, 6 nw sw	151.76	all	640.00
e hf, nw	11 82 26	480.00	w hf ne, se ne, n hf nw, sw nw, n hf se, se se	360.00	ne ne, se nw, sw se	120.00	e hf, nw	480.00
all	13 82 26	640.00	w hf nw, ne sw, w hf sw	200.00	e hf, e hf nw, se sw	440.00	all	640.00
all	15 82 26	597.58	e hf ne, nw nw, n hf se, se se lots 5, 6, 7	363.49	lots 1, 2, 3, 4, 8	234.09	all	597.58
all	17 82 26	640.00	ne, ne nw, sw, ne se, w hf se	480.00	nw nw, s hf nw, se se	160.00	all	640.00
all	19 82 26	613.24	w hf ne, se nw	120.00	e hf ne, ne nw, w hf nw, s hf	493.24	all	613.24
all	21 82 26	640.00	nw ne, ne nw, s hf nw, n hf sw, se	400.00	ne ne, s hf ne, nw nw, s hf sw	240.00	all	640.00
e hf, nw	23 82 26	480.00	w hf ne, w hf nw, ne se, w hf se	280.00	e hf ne, e hf nw, se se	200.00	e hf, nw	480.00
all but sw sw lot 8, 9	27 82 26	480.36	n hf nw, e hf se lots 1, 2, 3, 5, 6, 7	380.01	sw nw, nw sw lot 4	100.35	w hf nw, ne nw, e hf se lots 1, 2, 3, 4, 5, 6, 7	440.00
all	29 82 26	640.00	se ne, nw sw, n hf se	160.00	n hf ne, sw ne, e hf sw, sw sw, nw, s hf se	480.00	all	640.00
all	31 82 26	621.60	e hf ne	80.00	w hf ne, w hf, se qr	541.60	all	621.60
all	33 82 26	640.00	n hf ne, nw, s hf se, ne se	360.00	s hf ne, sw, nw se	280.00	all	640.00

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TABLE NO. 2—CONTINUED.

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CERTIFIED UNDER D. M. GRANT.			SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
s hf.....	35 83 26	320.00	s hf.....	320.00	s hf.....	320.00	s hf.....	320.00
all.....	1 83 26	321.60	w hf ne, nw sw, w hf se.	391.20	e hf ne, e hf se.....	130.40	all.....	521.60
w hf ne, w hf.....	3 83 26	314.86	w hf ne, w hf.....	314.86	.....	.....	w hf, w hf ne.....	314.96
e hf ne, s hf.....	5 83 26	373.00	e hf se, nw se, e hf ne.	383.00	sw se.....	40.00	s hf, e hf ne.....	373.00
lot 2.....	7 83 26	43.15	sw qr.....	43.15	.....	.....	lot 2.....	43.15
all.....	9 83 26	640.00	all.....	640.00	.....	.....	all.....	640.00
e hf, e hf nw, nw nw,	11 83 26	520.00	nw ne, e hf nw, nw	280.00	e hf ne, sw ne, e hf se,	240.00	e hf, e hf nw, nw nw,	520.00
s hf sw.....	.....	.....	nw, s hf sw, nw se.	.....	sw se.....	.....	s hf sw.....	520.00
all.....	13 83 26	640.00	.....	.....	all.....	640.00	all.....	640.00
w hf sw, nw.....	15 83 26	240.00	w hf sw, n hf nw.....	160.00	s hf nw.....	80.00	nw, w hf sw.....	240.00
ne, n hf nw, lots 1, 2,	17 83 26	513.50	n hf ne, nw nw, sw ne,	219.17	se ne, ne nw, lots 1, 3,	294.33	ne, n hf nw, lots 1, 2,	513.50
3, 4, 6, 7, 8.....	.....	.....	lots 2, 8.....	.....	4, 6, 7.....	.....	3, 4, 6, 7, 8.....	513.50
all.....	19 83 26	616.98	n hf.....	308.74	s hf.....	308.24	all.....	616.98
all.....	21 83 26	631.32	e hf, w hf nw, s hf sw	476.22	e hf nw, ne sw, lot 1.	155.10	all.....	631.32
all.....	23 83 26	640.00	all but ne ne.....	600.00	ne ne.....	40.00	all.....	640.00
all.....	25 83 26	640.00	e hf nw, nw nw.....	120.00	e hf, sw, sw nw.....	520.00	all.....	640.00
all.....	27 83 26	640.00	all but ne ne.....	600.00	ne ne.....	40.00	all.....	640.00
all.....	29 83 26	592.36	se ne, n hf sw, se sw,	271.91	w hf nw, sw sw, lots	320.45	all.....	592.36
all.....	31 83 26	620.00	lots 4, 8, 9.....	.....	1, 2, 3, 5, 6, 7.....	.....	all.....	620.00
all.....	33 83 26	574.92	ne, e hf nw, ne se, s hf	360.00	w hf nw, sw, nw se.....	260.00	all.....	574.92
all.....	.....	.....	se.....	315.80	w hf ne, nw sw, lots 1,	259.12	all.....	.....
all.....	.....	.....	e hf ne, e hf se, sw sw,	.....	3, 4, 5, 7.....	.....	all.....	.....
all.....	.....	.....	lots 2, 6, 8.....	.....	.....	.....	all.....	.....

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w hf, ne, n hf se.....	35 83 26	560.00	w hf ne qr, n hf se...	560.00	w hf ne, n hf se.....	560.00
.....	.....	.....	.....	.....	.....	12,313.69
Total.....	81,707.93	41,089.60	40,618.27	60,202.12	.....	.....

\*In the limits of the M. & M. R. R., 34,269.81; deeded to individuals, 19,074.48, and to Nav. & R. R. Co., 15,195.33 acres: and in the limits of the Central Air Line, 35,023.31; deeded to individuals, 16,804.44, and to Nav. & R. R. Co., 18,218.87 acres.

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TABLE NO. 3.

Showing the Lands approved to the State under the Des Moines River Grant, on the 10th of March, 1862; of those such as have been sold by the State to individuals, and such as have been patented to the D. M. N. & R. R. Co., and such as have since been certified to the State as Railroad Lands.

CERTIFIED UNDER D. M. GRANT.				SOLD BY STATE TO INDIVIDUALS		PATENTED TO NAVIGATION CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	
sw sw	31 84 25	42.48			sw sw	42.48	sw sw	42.48	
all	3 84 26	713.70			all	713.70	all	713.70	
all	5 84 26	718.52	e hf, e hf nw, nw nw, sw qr	598.52	s hf se qr, sw nw	130.00	all	718.52	
all	7 84 26	603.01	n hf ne, se ne, ne nw, se se	200.00	nw ne, se nw, e hf sw, n hf se, sw se, lots 1, 2, 3, 4, 5	403.01	all	603.01	
all	9 84 26	640.00	e hf, sw nw, sw qr	520.00	n hf nw, se nw	130.00	all	640.00	
all	11 84 26	640.00	all	640.00	all	640.00	all	640.00	
all	15 84 26	640.00	w hf	320.00	e hf	320.00	all	640.00	
all	17 84 26	640.00	all except nw ne	600.00	nw ne	40.00	all	640.00	
all	19 84 26	634.50	all except nw ne	584.50	nw ne	40.00	all	634.50	
all	21 84 26	640.00	all	640.00	all	640.00	all	640.00	
w hf, w hf ne, ne ne, w hf se	23 84 26	520.00	s hf nw, sw qr w hf se	320.00	w hf ne, ne ne, n hf nw	200.00	w hf, w hf ne qr, ne ne, w hf se	520.00	
w hf sw	25 84 26	80.00			w hf sw	80.00	w hf sw	80.00	
all	27 84 26	640.00	all	640.00	all	640.00	all	640.00	
all	29 84 26	640.00	all	640.00	all	640.00	all	640.00	
all	31 84 26	599.76	e hf ne nw ne, s hf nw, se se, lot 1	275.66	sw ne, n hf nw, n hf se, sw se, lots 2, 3	324.10	all	599.76	
all	33 84 26	640.00	all except w hf sw	560.00	w hf sw	80.00	all	640.00	
all	35 84 26	640.00	sw nw, w hf sw, se sw, s hf se	240.00	ne qr, e hf nw, nw nw, ne sw, n hf se	400.00	all	640.00	
s hf nw, nw nw, sw qr	3 85 26	277.28			nw nw, s hf nw, sw qr	277.28	w hf nw, se nw, sw	277.28	
all	5 85 26	629.54			all	629.54	all	629.54	
all	7 85 26	611.98			all	611.98	all	611.98	
all	9 85 26	640.00			all	640.00	all	640.00	
sw ne, w hf, w hf se, se se	15 85 26	480.00			sw ne, w hf, w hf se, se se	480.00	w hf, w hf se qr, se se, sw ne qr	480.00	
all	17 85 26	640.00	sw sw	40.00	all but sw sw	600.00	all	640.00	
all	19 85 26	616.30	e hf ne, e hf nw, e hf se	240.00	w hf ne, w hf se, sw qr, w hf nw	376.30	all	616.30	
all	21 85 26	640.00			all	640.00	all	640.00	
w hf nw, sw qr	23 85 26	240.00			w hf nw, sw qr	240.00	w hf nw, sw	240.00	
all	27 85 26	640.00			all	640.00	all	640.00	
all	29 85 26	640.00	n hf ne, sw, se qr	520.00	s hf sw, nw sw	120.00	all	640.00	
all	31 85 26	618.16	w hf ne, se ne, w hf nw, se nw, s hf se, se sw	348.54	ne ne, ne nw, n hf se, w hf sw, ne sw	269.62	all	618.16	
all	33 85 26	640.00	ne qr, e hf nw, sw nw, e hf sw, nw sw, w hf se, se se	520.00	nw nw, sw sw, ne se w hf ne, w hf, w hf se	120.00	all	640.00	
w hf ne, w hf, w hf se	35 85 26	480.00			w hf ne, w hf, w hf se	480.00	w hf, w hf ne, w hf se	480.00	
all	3 86 26	635.92			all	635.92	all	635.92	
all	5 86 26	624.86			all	624.86	all	624.86	
all	7 86 26	606.82			all	606.82	all	606.82	
all	9 86 26	640.00			all	640.00	all	640.00	
w hf ne, ne ne, w hf, w hf se	11 86 26	520.00			w hf ne, ne ne, w hf, w hf se	520.00	w hf ne, ne ne, w hf, w hf se	520.00	
all	15 86 26	640.00			all	646.00	all	640.00	
all	17 86 26	640.00			all	640.00	all	640.00	
all	19 86 26	607.76			all	607.76	all	640.00	
all	21 86 26	640.00			all	640.00	all	640.00	
all	23 86 26	640.00			all	640.00	all	640.00	
all	25 86 26	640.00			all	640.00	all	640.00	
all	27 86 26	607.84			all	607.84	all	607.84	

TABLE NO. 3—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD BY STATE TO INDIVIDUALS.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	33 86 26	640.00			all	640.00	all	640.00
all except w hf sw	5 87 26	583.98			all except w hf sw	583.98	all except w hf sw	583.98
s hf	9 87 26	320.00	s hf se	80.00	sw qr, n hf se	240.00	s hf	320.00
n hf	15 87 26	320.00	se ne, se nw	80.00	n hf ne, sw ne, n hf nw, sw nw	240.00		
all	17 87 26	640.00	nw ne, w hf nw, nw sw, se sw, s hf se	280.00	ne ne, s hf ne, e hf nw, ne sw, sw sw, n hf se	360.00		
s hf	21 87 26	320.00	se sw	40.00	se qr, w hf sw, ne sw w hf se	280.00		
w hf se	23 87 26	80.00			e hf, sw qr	480.00		
e hf and sw qr	27 87 26	480.00			e hf ne, w hf nw, nw sw, e hf se	280.00		
e hf ne, w hf nw, w hf sw, e hf se	29 87 26	320.00	sw sw	40.00	all	640.00		
all	33 87 26	640.00			all	640.00		
all	35 87 26	640.00			all	640.00		
sw sw	29 88 26	40.00			sw sw	40.00	sw sw	40.00
all	31 88 26	580.68			all	580.68	all	580.68
all	1 81 27	593.64			all	593.64	all	593.64
ne qr, e hf se	11 81 27	240.00			ne qr, e hf se	240.00	ne qr and e hf se	240.00
n hf, se qr, e hf sw	13 81 27	560.00			n hf, se qr, e hf sw	560.00	n hf, se, e hf sw	560.00
e hf ne	25 81 27	80.00			e hf ne	80.00		
all	1 82 27	633.66			all	633.66	all	633.66
all	3 82 27	639.68			all	639.68	all	639.68
ne qr, e hf se	9 82 27	240.00			ne qr, e hf se	240.00	ne qr, e hf se	240.00
all	11 82 27	640.00			all	640.00	all	640.00
all	13 82 27	640.00			all	640.00	all	640.00
all	15 82 27	640.00			all	640.00	all	640.00
all	23 82 27	640.00			all	640.00	all	640.00
all	25 82 27	640.00			all	640.00	all	640.00
ne ne	27 82 27	40.00			ne ne	40.00	ne ne	40.00

e hf, e hf nw, e hf sw	35 82 27	480.00			e hf, e hf nw, e hf sw	480.00	e hf, e hf nw, e hf sw	480.00
all	1 83 27	481.07	w hf nw, sw sw, lots 1, 2, 3, 4, 7, 8, 9	412.97	lots 5, 6	68.10	all	481.07
all	3 83 27	528.04			all	528.04	all	528.04
all	5 83 27	525.24			all	525.24	all	525.24
all	7 83 27	646.08			all	646.08	all	646.08
all	9 83 27	640.00			all	640.00	all	640.00
all	11 83 27	640.00	s hf ne, nw qr, n hf se, sw se	360.00	n hf ne, se se, sw qr	280.00	all	640.00
all	13 83 27	640.00	sw ne, n hf sw	120.00	e hf ne, nw ne, nw qr s hf sw, se qr	520.00	all	640.00
all	15 83 27	640.00			all	640.00	all	640.00
all	17 83 27	640.00			all	640.00	all	640.00
all	21 83 27	640.00			all	640.00	all	640.00
all	23 83 27	640.00			all	640.00	all	640.00
all	25 83 27	640.00	ne ne, nw qr, n hf sw	280.00	s hf ne, nw ne, s hf sw, se qr	360.00	all	640.00
all	27 83 27	640.00			all	640.00	all	640.00
e hf	33 83 27	320.00			e hf	320.00	e hf	320.00
all	35 83 27	640.00			all	640.00	all	640.00
all	1 84 27	657.85	lots 1, 2, 3	133.62	w hf nw, sw qr, lots 4, 5, 6, 7, 8	524.23	all	657.85
all	3 84 27	710.78	se sw	40.00	n hf, w hf sw, ne sw, se qr	670.78	all	710.78
all	5 84 27	706.24			all	706.24	all	706.24
all	7 84 27	643.84			all	643.84	all	643.84
all	9 84 27	640.00			all	640.00	all	640.00
all	11 84 27	640.00	s hf ne, se nw, n hf sw, ne se	240.00	n hf ne, n hf nw, sw nw, s hf sw, s hf se, nw se	400.00	all	640.00
all	13 84 27	585.56	all but nw nw	545.56	nw nw	40.00	all	585.56
all	15 84 27	640.00	se sw, se se	80.00	n hf, n hf sw, sw sw, n hf se, sw se	560.00	all	640.00
all	17 84 27	640.00			all	640.00	all	640.00
all	19 84 27	643.84			all	643.84	all	643.84

TABLE NO. 3—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD BY STATE TO INDIVIDUALS.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	21 84 27	640.00	se ne, sw sw, ne se ..	120.00	n hf ne, sw ne, nw qr, e hf sw, nw nw, s hf se, nw se ..	520.00	all	640.00
all	23 84 27	579.25	all but lot 8.....	558.09	lot 8.....	21.16	all	579.25
all	25 84 27	629.74	n hf, n hf se, ne sw, lot 2 ..	471.70	nw sw, se se, lots 1, 2,	158.04	all	629.74
all	27 84 27	635.53	ne nw, e hf se, lots 1, 2	195.53	w hf ne, s hf nw, nw nw, sw qr, w hf se	440.00	all	635.53
all	29 84 27	640.00	.....	.....	all	640.00	all	640.00
all	31 84 27	645.20	.....	.....	all	645.20	all	645.20
all	33 84 27	640.00	.....	.....	all	640.00	all	640.00
all	35 84 27	599.22	se qr, lots 1, 2, 3.....	261.25	sw nw, sw qr, lots 4, 5, 6, 7 ..	337.97	all	599.22
all	1 85 27	627.58	e hf sw, e hf se.....	160.00	n hf, w hf se, w hf sw	467.58	all	627.58
all	3 85 27	582.14	se ne, nw nw, ne se, lot 7 ..	170.20	ne ne, sw sw, lots 1, 2, 3, 4, 5, 6, 8.....	402.94	all	582.14
all	5 85 27	643.58	.....	.....	all	643.58	all	643.58
all	7 85 27	638.60	.....	.....	all	638.60	all	638.60
all	9 85 27	640.00	ne ne ..	40.00	s hf ne, nw ne, nw $\frac{1}{2}$ , s $\frac{1}{2}$	600.00	all	640.00
all	11 85 27	590.64	se sw, w $\frac{1}{2}$ se, lots 3, 5, 6, 7	273.31	e $\frac{1}{2}$ ne, e $\frac{1}{2}$ se, lots 1, 2, 4	317.33	all	590.64
all	13 85 27	640.00	ne qr, nw se.....	200.00	w hf, s hf ne, ne ne.....	440.00	all	640.00
all	15 85 27	605.51	e hf se ..	80.00	w $\frac{1}{2}$ nw, se nw, sw $\frac{1}{2}$ , w $\frac{1}{2}$ se, lots 1, 3, 4.....	525.51	all	605.51
all	17 85 27	640.00	.....	.....	all	640.00	all	640.00
all	19 85 27	644.80	.....	.....	all	644.80	all	644.80
all	21 85 27	640.00	.....	.....	all	640.00	all	640.00
all	23 85 27	617.57	e hf ne.....	80.00	w $\frac{1}{2}$ ne, se nw, s $\frac{1}{2}$ , lot 1, 2, 3	537.57	all	617.57
all	25 85 27	640.00	ne ne, nw qr, se sw, nw se.....	280.00	w $\frac{1}{2}$ ne, se ne, n $\frac{1}{2}$ sw, sw sw, e $\frac{1}{2}$ se, sw se.....	360.00	all	640.00

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all	27 85 27	597.60	sw sw, lots 5, 7.....	140.54	w $\frac{1}{2}$ nw, ne nw, nw sw, se se, lots 1, 2, 3, 4, 6, 8.....	457.06	all	597.60
all	29 85 27	640.00	.....	.....	all	640.00	all	640.00
all	31 85 27	645.40	.....	.....	all	645.40	all	645.40
all	33 85 27	640.00	.....	.....	all	640.00	all	640.00
all	35 85 27	621.60	s hf ne.....	80.00	n $\frac{1}{2}$ ne, w $\frac{1}{2}$ nw se, l't 1, 2, 3	541.60	all	621.60
all	e $\frac{1}{2}$ se, sw se, lots 5, 6, 7, 8	1 86 27	326.39	.....	.....	326.39	.....	.....
all	3 86 27	574.46	se se, lots 6, 7.....	157.35	nw ne, nw $\frac{1}{2}$ , nw sw, lots 1, 2, 3, 4, 5.....	417.11	.....	.....
all	5 86 27	627.58	.....	.....	all	627.58	.....	.....
all	7 86 27	629.00	.....	.....	all	629.00	.....	.....
all	9 86 27	640.00	.....	.....	all	640.00	.....	.....
all	n hf.....	11 86 27	320.00	.....	n hf.....	320.00	all	640.00
all	13 86 27	640.00	.....	.....	all	640.00	.....	.....
all	15 86 27	630.65	se ne, ne sw ..	80.00	n $\frac{1}{2}$ ne, sw ne, se nw, s $\frac{1}{2}$ sw nw sw, se $\frac{1}{2}$ , lot 1, 2, 3	550.65	.....	.....
all	17 86 27	640.00	.....	.....	all	640.00	.....	.....
all	19 86 27	632.60	.....	.....	all	632.60	all	632.60
all	21 86 27	596.88	lots 3, 4.....	60.38	nw $\frac{1}{2}$ , w $\frac{1}{2}$ sw, se sw, lots 1, 2, 5, 6, 7, 8.....	536.50	all	596.88
all	23 86 27	640.00	sw sw.....	40.00	all but sw sw.....	600.00	all	640.00
all	25 86 27	640.00	.....	.....	all	640.00	all	640.00
all	27 86 27	591.16	n hf ne, lot 1.....	111.13	nw ne, w $\frac{1}{2}$ sw, ne se, lots 2, 3, 4, 5, 6, 7, 8	480.03	all	591.16
all	29 86 27	640.00	.....	.....	all	640.00	all	640.00
all	31 86 27	634.72	.....	.....	all	634.72	all	634.72
all	33 86 27	640.00	.....	.....	all	640.00	all	640.00
all	35 86 27	640.00	e hf nw, n hf se, se se, s hf ne, s hf nw.....	200.00	ne $\frac{1}{2}$ , w $\frac{1}{2}$ nw, sw $\frac{1}{2}$ , sw se $\frac{1}{2}$	440.00	all	640.00
n hf, e hf se.....	1 87 27	426.44	.....	160.00	n $\frac{1}{2}$ ne, n $\frac{1}{2}$ nw, e $\frac{1}{2}$ se.....	266.44	n hf, e hf se qr.....	426.44
all	3 87 27	673.90	.....	.....	all	673.90	all	673.90
all	5 87 27	681.60	.....	.....	all	681.60	all	681.60
w hf, and se qr.....	7 87 27	480.00	.....	.....	w hf, se qr.....	480.00	w hf, se qr.....	444.30
s hf.....	9 87 27	320.00	.....	.....	s hf.....	320.00	s hf.....	320.00
w hf.....	11 87 27	320.00	n hf nw, w hf sw.....	160.00	n hf nw, e hf sw.....	160.00	w hf.....	320.00
lots 1, 2, 5, 6, 7, 8, e hf ne, sw nw, w hf sw	15 87 27	472.80	sw nw, sw sw, lot 7, 8	182.20	e hf ne, nw sw lot 1, 2, 3, 4, 5, 6.....	290.60	.....	.....

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TABLE NO. 3—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD BY THE STATE TO INDIVIDUALS.		PATENTED TO D. M. N. & R.R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	17 87 27	611.25			all	611.25		
all	21 87 27	587.82			all	587.82		
lots 1, 2, 3, and sw sw	23 87 27	121.00	lots 2, 3	79.10	sw sw, lot 1	41.90		
e hf	27 87 27	320.00			e hf	320.00		
w hf	33 87 27	320.00			w hf	320.00		
all	35 87 27	640.00			all	640.00		
sw nw, w hf sw	3 88 27	120.00			sw nw, w hf sw	120.00	sw nw, w hf sw	120.00
all	5 88 27	701.30			all	701.30	all	701.30
all	7 88 27	598.86			all	598.86	all	598.86
all	9 88 27	640.00			all	640.00	all	640.00
w hf, w hf ne, w hf se	15 88 27	480.00			w hf ne, w hf se, w hf	480.00	w hf ne, w hf, w hf se	480.00
all	17 88 27	640.00			all	640.00	all	640.00
all	19 88 27	599.10			all	599.10	all	599.10
all	21 88 27	640.00			all	640.00	all	640.00
s hf, s hf ne, s hf nw	23 88 27	480.00			s hf, s hf ne, s hf nw	480.00	s hf, s hf ne, s hf nw	480.00
all	25 88 27	640.00			all	640.00	all	640.00
all	27 88 27	640.00			all	640.00	n hf, n hf sw, sw sw, nw se	480.00
all	29 88 27	640.00			all	640.00	all	640.00
e hf ne, w hf nw, sw qr	31 88 27	285.28	w hf nw, se sw	101.92	e hf ne, ne sw, w hf sw	183.36	e hf ne, w hf nw, sw qr	301.92
all	33 88 27	640.00			all	640.00	all	640.00
all	35 88 27	640.00			all	640.00	n hf se, n hf sw, n hf	480.00
w hf, w hf ne, se qr	19 89 27	583.00			w hf, w hf ne, se qr	583.92	w hf, w hf ne, se qr	583.92
s hf sw	21 89 27	80.00			s hf sw	80.00	s hf sw	80.00
s hf nw, sw qr, w hf se, se se	27 89 27	360.00			s hf nw, sw, w hf se, se se	360.00	s hf nw, sw, w hf se, se se	360.00
all	29 89 27	640.00			all	640.00	all	640.00
all	31 89 27	663.72			all	663.72	all	663.72
all	33 89 27	640.00			all	640.00	all	640.00

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w hf nw, se nw, sw qr, w hf se	35 89 27	360.00			w hf nw, se nw, sw, w hf se	360.00	w hf nw, se nw, w hf se, sw	360.00
e hf, n hf nw, ne sw	1 83 28	352.25			e hf, e hf nw fr ne sw	352.25	e hf, e hf nw, ne sw	352.25
all	1 84 28	696.26			all	696.26	all	696.26
e hf ne	11 84 28	80.00			e hf ne	80.00	e hf ne	80.00
e hf, e hf nw, e hf sw	13 84 28	480.00			e hf, e hf nw, e hf sw	480.00	e hf, e hf nw, e hf sw	480.00
all	25 84 28	640.00			all	640.00	all	640.00
all	1 85 28	645.60			all	645.60	all	645.60
e hf	11 85 28	320.00			e hf	320.00	e hf	320.00
all	13 85 28	640.00			all	640.00	all	640.00
e hf ne, e hf se, sw se	23 85 28	200.00			e hf ne, e hf se, sw se	200.00	e hf ne, e hf se, se se	200.00
all	25 85 28	640.00			all	640.00	all	640.00
e hf	35 85 28	320.00			e hf	320.00	e hf	320.00
all	1 86 28	627.88			all	627.88		
n hf, ne sw, se	3 86 28	503.02			n hf, ne sw, se qr	503.02		
all	11 86 28	640.00			all	640.00		
all	13 86 28	640.00			all	640.00		
e hf ne, e hf se	15 86 28	160.00			e hf ne, e hf se	160.00	e hf ne, e hf se qr	160.00
all	23 86 28	640.00			all	640.00	all	640.00
all	25 86 28	640.00			all	640.00	all	640.00
e hf ne, e hf se	27 86 28	160.00			e hf ne, e hf se	160.00	e hf ne, e hf se qr	160.00
all	35 86 28	640.00			all	640.00	all	640.00
all	1 87 28	622.58	sw nw lot 8	93.35	ne ne, w hf sw, lots 1, 2, 3, 4, 5, 6, 7, 9, 10,	529.23	all	622.58
n hf, sw qr	3 87 28	518.28			n hf, sw qr	518.28	w hf, ne qr	518.28
all	5 87 28	673.98			all	673.98	all	673.98
all	7 87 28	621.98			all	621.98	all	621.98
all	9 87 28	640.00			all	640.00	all	640.00
w hf, se qr	11 87 28	480.00			w hf, se qr	480.00	w hf, se qr	480.00
all	13 87 28	640.00			all	640.00		
all	15 87 28	640.00			all	640.00		
all	17 87 28	640.00			all	640.00		
all	21 87 28	640.00			all	640.00		
all	23 87 28	640.00			all	640.00		
all	25 87 28	640.00			all	640.00		
all	27 87 28	640.00			all	640.00		

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TABLE NO. 3—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD BY THE STATE TO INDIVIDUALS.		PATENTED TO D. M. N. & R. E. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
n hf ne, se ne, ne se.	29 87 28	160.00			w hf ne, se ne, ne se.	160.00		
ne qr, ne nw, n hf se, se se.	33 87 28	320.00			ne qr ne nw, n hf se, se se.	320.00		
all.	35 87 28	640.00			all.	640.00		
all.	1 88 28	709.10			all.	709.10	all.	709.10
all.	3 88 28	719.64	sw qr.	160.00	n hf, se.	559.64	all.	719.64
n hf, lot 4.	5 88 28	439.87	lot 4.	38.43	n hf.	401.44	n hf, lot 4.	439.87
se qr.	7 88 28	160.00			se qr.	160.00	se qr.	160.00
all.	9 88 28	640.00	n hf.	320.00	s hf.	320.00	all.	640.00
s w qr, s hf nw.	11 88 28	240.00			sw qr, s hf nw.	240.00	s hf nw, sw.	240.00
n hf se qr.	13 88 28	480.00			n hf, se qr.	480.00	n hf, se qr.	480.00
all.	15 88 28	599.68	se se, lot 1, 2, 3, 4, 5, 6, 8	394.13	nw nw, s hf sw, sw se, lot 7.	205.55	all.	599.68
n hf se, e hf sw.	17 88 28	510.55	all but ne qr.	350.55	ne qr.	160.00	ne hf se, e hf sw.	510.55
w hf, se qr, w hf ne.	19 88 28	541.58			w hf, se qr, w hf ne.	541.58	s hf, nw, w hf ne.	541.58
n hf.	21 88 28	320.00			n hf.	320.00	n hf.	320.00
all.	23 88 28	606.68	s hf sw, s hf se lot 4.	218.88	se ne, n hf se, lots 1, 2, 3, 5, 6, 7.	387.80	all.	606.68
w hf.	25 88 28	320.00	nw qr, w hf sw.	240.00	e hf sw.	80.00	w hf.	320.00
all.	27 88 28	619.88	lot 1.	32.60	s hf, s hf nw, nw nw, lots 2, 3, 4.	587.28	all.	619.88
all.	29 88 28	640.00			all.	640.00	all.	640.00
all.	31 88 28	619.08			all.	619.08	all.	619.08
sw qr.	33 88 28	160.00			sw.	160.00	sw.	160.00
all.	35 88 28	593.25	e hf ne.	80.00	w h nw, w hf sw ne se, lots 1, 2, 3, 4, 5, 6, 7, 8.	513.25	lots 3, 4, 5, 6 n hf, w hf sw, ne se.	593.25
w hf, sw ne, w hf se.	1 89 28	414.03			w hf, sw ne, w hf se.	414.03	w hf, sw ne, w hf se qr.	414.03
all.	3 89 28	589.02			all.	589.02	all.	589.02
all.	5 89 28	606.16			all.	606.16	all.	606.16

all.	7 89 28	312.99			nene, lots 1, 2, 3, 4, 5, 6	312.99	lots 1, 2, 3, 4, 5, 6, nene	312.99
all.	9 89 28	640.00			all.	640.00	all.	640.00
all.	11 89 28	640.00			all.	640.00	all.	640.00
w hf, w hf ne, w hf se, se se.	13 89 28	520.00			w hf, w hf ne, w hf se, se se.	520.00	w hf, w hf ne, w hf se, se se.	520.00
all.	15 89 28	640.00			all.	640.00	all.	640.00
all.	17 89 28	640.00	w hfnw, w hf sw, se sw	200.00	e hf, e hf nw, ne sw.	440.00	all.	640.00
all.	21 89 28	640.00			all.	640.00	all.	640.00
all.	23 89 28	640.00			all.	640.00	all.	640.00
all.	25 89 28	640.00			all.	640.00	all.	640.00
all.	27 89 28	640.00			all.	640.00	all.	640.00
all.	29 89 28	558.21	n hf ne, e hf nw, nw nw, lots 1, 2.	318.21	s hf ne, se qr.	240.00	lots 1, 2, 3, 4 ne, e hf nw, nwnw.	455.91
all (fr).	31 89 28	1.41			lot 1.	1.41	lot 1.	1.41
all.	33 89 28	640.00			all.	640.00	all.	640.00
all.	35 89 28	640.00			all.	640.00	all.	640.00
w hf, w hf ne, w hf se.	1 90 28	469.75			w hf, w hf ne, w hf se.	469.75		
all.	3 90 28	642.18			all.	642.18		
all.	5 90 28	638.94			all.	638.94		
all.	7 90 28	640.54	sw sw.	40.15	all except sw sw.	600.39	all.	640.54
all.	9 90 28	640.00			all.	640.00	all.	640.00
all.	11 90 28	640.00			all.	640.00	s hf.	320.00
w hf nw.	13 90 28	80.00			w hf nw.	80.00	w hf nw.	80.00
all.	15 90 28	640.00			all.	640.00	all.	640.00
all.	17 90 28	640.00			all.	640.00	all.	640.00
all.	19 90 28	640.13			all.	640.13	all.	640.13
all.	21 90 28	640.00			all.	640.00	all.	640.00
all.	23 90 28	640.00			all.	640.00	all.	640.00
sw nw, w hf sw.	25 90 28	120.00			sw nw, w hf sw.	120.00	w hf sw, sw nw.	120.00
all.	27 90 28	640.00			all.	640.00	all.	640.00
all.	29 90 28	640.00			all.	640.00	all.	640.00
all.	31 90 28	490.27			e hf, lots 1, 2, 3, 4.	490.27	all.	490.27
all.	33 90 28	640.00			all.	640.00	all.	640.00

TABLE NO. 3—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD BY STATE TO INDIVIDUALS		PATENTED TO NAVIGATION CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	35 90 28	640.00			all	640.00	all	640.00
Total		143,995.37		17,477.39		126,430.98		*120,343.15

\*In limits of Iowa Central Air Line R. R., 74,279.78 acres—sold to individuals 13,542.50, and to D. M. N. & R. R. Co., 60,737.28 acres, and in limits of Dubuque and Sioux City R. R., 45,965.87 acres—sold to individuals 2,988.22, and to D. M. N. & R. R. Co., 42,977.15 acres.

TABLE NO. 4.

Exhibiting the Lands certified and approved to the State under the D. M. Grant, on the 17th December, 1853; those sold by the State to individuals; those patented by the State to the D. M. N. & R. R. Co.; and those subsequently certified and approved as Railroad Lands.

CERTIFIED UNDER D. M. GRANT.			SOLD BY THE STATE TO INDIVIDUALS.		PATENTED TO NAVIGATION CO.		CERTIFIED UNDER THE R. R. GRANT.	
Parts of Sections.	S. T. R.	Amt.	Parts of Sections.	Amt.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
all	19 80 28	446.84	all	446.84	all	599.67	all	446.84
se 1/4 nw 1/4 sw ne, lot 1, 2	5 91 27	599.67			all	668.54		
all	7 91 27	668.54			w hf nw	97.00		
w hf nw	31 91 27	97.00			all	691.80		
all	5 92 27	691.80			all	658.24		
all	7 92 27	658.24			all	640.00		
all	9 92 27	640.00			w hf nw	80.00		
w hf nw	15 92 27	80.00			all	640.00		
all	17 92 27	640.00			all	665.92		
all	19 92 27	665.92			all	615.05		
all	21 92 27	615.05			all	639.84		
all	29 92 27	639.84			all	668.68		
all	31 92 27	668.68			all	635.52		
all	1 91 28	635.52			all	627.42		
all	3 91 28	627.42			all	636.08		
all	5 91 28	636.08			lots 1 and 2	32.00		
lots 1 and 2	7 91 28	32.00			all	640.00		
all	9 91 28	640.00			all	640.00		
all	11 91 28	640.00			all	640.00		
all	13 91 28	640.00			all	640.00		
all	15 91 28	640.00			c 1/2 e 1/2 nw, sw 1/4 lots 1, 2	626.60		
lots 1, 2, c 1/2 e 1/2 nw, sw 1/4	17 91 28	626.60			lots 1, 2, 3, 4	188.30		
lots 1, 2, 3, 4	19 91 28	188.30			all	640.00		
all	21 91 28	640.00			all	640.00		
all	23 91 28	640.00			all	640.00		
all	25 91 28	640.00			all	640.00		
all	27 91 28	640.00			all	640.00		

TABLE NO. 4—CONTINUED.

CERTIFIED UNDER D. M. GRANT.			SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS R. R. LANDS.	
Parts of Sections.	S. T. R.	Amt.	Parts of Sections.	Amt.	Parts of Sections.	Acres.	Parts of Sections.	Acres.
lots 1, 2, 3, 4, e $\frac{1}{2}$ , e $\frac{1}{2}$ nw, ne sw	29 91 28	612.25			all	612.25		
lot 1	31 91 28	35.70			lot 1	35.70		
all	33 91 28	640.00			all	640.00		
all	35 91 28	640.00			all	640.00		
all	1 92 28	690.80			all	690.80		
lots 1, 2, 3, ne $\frac{1}{2}$ , e $\frac{1}{2}$ nw, n w nw, e $\frac{1}{2}$ se, nw se,	3 92 28	564.44			all	564.44		
n hf, se, lots 1 and 2	11 92 28	598.80			n hf, se qr, lots 1, 2	598.80		
all	13 92 28	640.00			all	640.00		
lots 1 and 2	15 92 28	18.70			lots 1 and 2	18.70		
all	23 92 28	640.00			all	640.00		
all	25 92 28	640.00			all	640.00		
lots 1, 2, 3, 4, se ne, se $\frac{1}{2}$	27 92 28	415.18			se ne, se $\frac{1}{2}$ , lots 1, 2, 3, 4	415.18		
lot 1	31 92 28	20.90			lot 1	20.90		
s $\frac{1}{2}$ ne, s $\frac{1}{2}$ , lots 1, 2, 3, 4	33 92 28	581.62			s $\frac{1}{2}$ ne, s $\frac{1}{2}$ , lots 1, 2, 3, 4	581.62		
all	35 92 28	640.00			all	640.00		
all	1 87 29	668.16			all	668.16	all	668.16
ne ne	3 87 29	46.90			ne ne	46.90	ne ne	44.42
all	1 88 29	679.73			all	679.73	all	688.39
all	3 88 29	733.18			all	733.18	all	727.92
all	5 88 29	740.10			all	740.10	all	733.08
all	7 88 29	613.28			all	613.28	all	612.48
all	9 88 29	640.00			all	640.00	all	640.00
all	11 88 29	640.00			all	640.00	all	640.00
all	13 88 29	640.00			all	640.00	all	640.00
all	15 88 29	640.00			all	640.00	all	640.00
all	17 88 29	640.00			all	640.00	all	640.00
all	21 88 29	640.00			all	640.00	all	640.00
all	23 88 29	640.00			all	640.00	all	640.00
all	25 88 29	640.00			all	640.00	all	640.00
all	27 88 29	640.00			all	640.00	all	640.00

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n hf ne	29 88 29	80.00	n hf ne	80.00	n hf ne	80.00
all	35 88 29	640.00	all	640.00	all	640.00
lots 1, 2 and 3, se se	1 89 29	149.10	se se, lots 1, 2, 3	149.10	lot 1, 2, 3, and se se	149.10
lot 1	1 90 29	4.15	lot 1	4.15	lot 1	4.15
lots 1, 2, 3, 4, se ne, se qr	13 90 29	406.90	se ne, se $\frac{1}{2}$ , lots 1, 2, 3, 4	406.90	lots 1, 2, 3, 4, se ne, se	406.84
lots 1 and 2	25 90 29	73.88	lots 1 and 2	73.88	lots 1 and 2	73.88
e hf ne, e hf se	1 88 30	186.56	e hf ne, e hf se	186.56	e hf ne, e hf se qr	186.56
Total		33,142.43		446.84		32,695.59
						*11,221.82

\*All within the limits of the D. & S. C. R. R. Co.

APPENDIX.



TABLE NO. 5.

Exhibiting the lands certified as a part of the Des Moines River Grant on the 80th December 1853, which had previously been approved to the State as a part of the 500,000 Acre Grant; showing, also, such as were sold as School Lands by John Tolman, School Fund Commissioner of Webster county. Also such as have been patented by the State to the "Des Moines Navigation & Railroad Company," and the few tracts, the contracts for the sale of which, as school land, have been canceled under the Act of April 3, 1860, and the amount of money refunded by the State to purchasers therefor.

APPROVED TO THE STATE UNDER THE D. M. GRANT.				SOLD BY JOHN TOLMAN AS SCHOOL LANDS.		PATENTED TO D. M. N. & R. R. CO.		CONTRACTS CANCELED AND MONEY REFUNDED.		
Parts of Sections.	S. T. R.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Parts of Sections.	Acres.	Amount.	
w hf sw.....	5 87 26	80.00	w hf sw.....	80.00	w hf sw.....	80.00	w hf sw.....	80.00	\$107.18	
all.....	7 87 26	597.92	all.....	597.92	all.....	597.92	nw qr.....	137.64	321.90	
n hf.....	9 87 26	320.00	.....	.....	n hf.....	320.00	.....	.....	.....	
s hf.....	15 87 26	320.00	se qr.....	160.00	s hf.....	320.00	.....	.....	.....	
all.....	19 87 26	609.18	nw nw, s hf sw, s hf se.....	184.74	all.....	609.18	s hf sw, w hf of sw.....	92.37	116.96	
n hf.....	21 87 26	320.00	ne nw.....	40.00	n hf.....	320.00	.....	.....	.....	
w hf.....	23 87 26	320.00	.....	.....	w hf.....	320.00	.....	.....	.....	
nw qr.....	27 87 26	160.00	.....	.....	nw qr.....	160.00	.....	.....	.....	
w hf ne, e hf nw.....	29 87 26	160.00	.....	.....	w hf ne, e hf nw.....	160.00	.....	.....	.....	
w hf se, e hf sw.....	29 87 26	160.00	se sw.....	40.00	w hf se, e hf sw.....	160.00	.....	.....	.....	
all.....	31 87 26	605.92	all.....	605.92	all.....	605.92	ne qr, e hf nw.....	240.00	302.93	
n hf nw, lots 1, 2, 3, 4.....	1 86 27	241.56	ne nw, lots 1, 2, 3, 4.....	204.92	n hf nw, lots 1, 2, 3, 4.....	241.56	.....	.....	.....	
s hf.....	11 86 27	320.00	w hf sw.....	80.00	s hf.....	320.00	.....	.....	.....	
sw qr, w hf se.....	7 87 27	240.00	n hf sw, w hf se.....	160.00	sw qr, w hf se.....	240.00	.....	.....	.....	
ne qr.....	7 87 27	320.00	w hf ne.....	80.00	ne qr.....	320.00	.....	.....	.....	
n hf.....	9 87 27	320.00	e hf ne.....	80.00	n hf.....	320.00	.....	.....	.....	
e hf.....	11 87 27	320.00	se ne.....	40.00	e hf.....	320.00	.....	.....	.....	
all.....	13 87 27	640.00	lot 4.....	63.50	all.....	640.00	.....	.....	.....	
lots 3, 4.....	15 87 27	113.90	all 27.....	618.40	lots 3, 4.....	113.90	.....	.....	.....	
all.....	19 87 27	618.40	se se, lot 8.....	76.75	all 27.....	618.40	.....	.....	.....	
ne qr, ne nw, e hf se, lots 4, 5, 6, 7, 8.....	23 87 27	475.50	.....	.....	ne qr, ne nw, e hf se, lots 4, 5, 6, 7, 8.....	475.50	.....	.....	.....	

ne qr, e hf nw, nw, n hf se, se se, lots 1, 2, 3, 4, 5.....	25 87 27	604.25	n hf ne, e hf nw, nw, lots 1, 2, 4, 5.....	382.05	ne qr, e hf nw, nw, n hf se, se se, lots 1, 2, 3, 4, 5.....	604.25	.....	.....	.....
w hf.....	27 87 27	320.00	.....	.....	w hf.....	320.00	.....	.....	.....
all.....	29 87 27	640.00	.....	.....	all.....	640.00	.....	.....	.....
e hf.....	31 87 27	626.44	.....	.....	e hf.....	626.44	.....	.....	.....
w hf se, e hf nw, se q.....	33 87 27	320.00	w hf se.....	80.00	w hf se, e hf nw, se q.....	320.00	w hf se.....	80.00	\$100.56
se qr.....	31 88 27	160.00	.....	.....	se qr.....	160.00	.....	.....	.....
ne qr.....	11 87 28	160.00	e hf se, nw se.....	120.00	ne qr.....	160.00	.....	.....	.....
e hf se, nw se, lots 1, 2, 3.....	5 88 28	252.44	.....	.....	e hf se, nw se, lots 1, 2, 3.....	252.44	.....	.....	.....
w hf ne qr.....	7 88 28	468.00	.....	.....	w hf ne qr.....	468.00	.....	.....	.....
e hf, n hf nw.....	11 88 28	400.00	sw qr.....	160.00	e hf, n hf nw.....	400.00	.....	.....	.....
sw qr.....	13 88 28	160.00	nw sw.....	40.00	sw qr.....	160.00	.....	.....	.....
w hf sw.....	17 88 28	80.00	.....	.....	w hf sw.....	80.00	.....	.....	.....
e hf ne.....	19 88 28	80.00	.....	.....	e hf ne.....	80.00	.....	.....	.....
s hf.....	21 88 28	320.00	n hf se, se se.....	120.00	s hf.....	320.00	.....	.....	.....
e hf.....	25 88 28	320.00	.....	.....	e hf.....	320.00	.....	.....	.....
n hf se qr.....	29 88 28	480.00	.....	.....	n hf se qr.....	480.00	.....	.....	.....
Total.....	.....	12813.51	.....	8,194.28	.....	12813.51	.....	630.01	\$949.50

## NUMBER 6.

*Opinion of Attorney-General—River School Lands.*

OFFICE OF ATTORNEY-GENERAL, {  
DES MOINES, IOWA, August 3, 1864. }

HON. J. A. HARVEY, *Register of the State Land Office:*

DEAR SIR.—I have the honor to acknowledge the receipt of your communication, calling my attention to the provisions of An Act of the General Assembly of the State of Iowa, approved April 7, 1862, in relation to certain lands contracted to be sold by John Tolman as School Fund Commissioner of Webster County, and also, the release of the Dubuque and Sioux City R. R. Company, executed in pursuance of said act. I am further advised by your communication that the purchasers of said lands from Tolman are paying up their contracts and claiming deeds from the State under the provisions of said Law, and my opinion is requested as to what is your duty in the premises.

I have delayed answering your communication until the present time, in order to investigate as fully as possible all the facts and the varied and contradictory legislation relating to this subject. From the official report of Hon. Thomas H. Benton, Superintendent of Public Instruction, to the 5th General Assembly, made in 1854, and found in the Appendix to the House Journal of that session, page 99, I gather the following facts connected with the history of these lands:

Under the Act of Congress of Sept. 4, 1841, commonly known as the 500,000 acre grant, the commissioners for the State, selected 28,378.46 acres of land in Webster County, which selections were approved by the Commissioner of the General Land Office, Feb. 20, 1851. Of the lands thus selected, it appears that 12,813.15 acres were in the odd sections within five miles of the Des Moines River, and under the construction afterwards given to the Grant of 1846, for the improvement of the Des Moines River, the latter were supposed to belong to said grant, and under date of January 6, 1854, the Commissioner of the General Land Office notified the Superintendent of Public Instruction, that the locations under the Act of September 4, 1841, in certain odd sections, in Townships 87, 26, W, 86, 27, W, 87, 27, W, 88, 27, W, 87, 28, W, 88, 28, W, amounting to 12,813.51 acres had been revoked, and the same con-

firmed to the State under the Grant of August 8, 1846, for the improvement of the Des Moines River.

This revocation and approval however, was to a certain extent qualified or conditional, and is in these words:

“DEPARTMENT OF THE INTERIOR, }  
DECEMBER 30, 1853. }

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

(Signed) R. M. McCLELLAND, Secretary.”

Prior to this revocation, to-wit: On the 6th of June, 1853, the Superintendent of Public Instruction of the State had ordered these lands into market and authorized the School Fund Commissioner of Webster County, Mr. Tolman, to sell the same in accordance with the laws of the State then in force for the disposition of the lands of the 500,000 acre Grant. It appears from the report of Mr. Tolman, now on file in your office, that under his instructions he sold and contracted from the 27th of August, 1853, to the 10th of January, 1854, inclusive, 3,194.28 acres of these lands, the approval of which as a part of the 500,000 acre grant had thus been conditionally revoked.

After notice of the action of the Department at Washington, the sales of these lands were stopped, and no bad faith can be attributed to this officer or any of the purchasers.

By reference to the records in your office, I find that Governor Lowe, under date of May 3, 1858, executed deeds under the seal and in the name of the State of Iowa, to the Des Moines Navigation and R. R. Company for nearly, if not all of these lands. These conveyances were executed as was supposed, in pursuance of the provisions of a settlement made between the State and that Company contained in a joint resolution of the 7th General Assembly, approved March 22, 1858.

It would be a safe and commendable practice for the State never to make a second conveyance to a different party to the same land until a former deed had been duly canceled or declared null and void by the proper judicial tribunals of the State.

The General Assembly has, however, in this case, assumed the responsibility in its subsequent legislation of treating these conveyances to a certain extent, as having been made without authority

of law, and the question arises how far the Executive Department of the State should be controlled in these matters by the last expressed will of the legislature. I have concluded on this subject, that if the Act of the Governor, in making these conveyances was not, as to any portion of these lands, authorized by the joint resolution of 1858, or the contracts existing before that time between the State and the Des Moines Navigation Company, that it was competent for the Legislature to so far disregard them, and direct a further or different conveyance.

The original contract between the State and the Des Moines Navigation and R. R. Company, bears date June 9, 1854. The parties to the agreement as described therein are the Des Moines Navigation and R. R. Company of the first part, and *the State of Iowa* of the second part.

The 8th section of the contract which relates to the lands contracted, provides that "the party of the second part covenants and agrees to sell and convey to the party of the first part in manner and upon the terms hereinafter provided, all the lands donated to the State for the improvement of the Des Moines River, by Act of Congress of August 8, 1846, which the said party of the *second part had not sold up to the 23d of Dec. 1853.*"

The 12th section of the same contract refers to the fact that under a prior agreement with Henry O'Reilly, that the River Land Office for the sale of river lands, had been closed on the 23d of December, 1853, and it is undoubtedly true that to this fact is to be attributed the selection and insertion of this particular date. But I do not think that this fact is to control and limit the meaning of the words "disposed of by the State," so as to include only those lands of the grant that had been sold by the "Commissioner and Register."

Other lands had been sold by the State through its authorized agent as a part of the 500,000 acre grant. The sales had been made in good faith, for a valuable consideration, and the fact of these sales had been a matter of record and public notoriety, of which the parties to the contract must be presumed to have had notice. The State had never in any manner disaffirmed these sales or sought to do so, and the Commissioner of the General Land Office had expressly reserved the right of these purchases in the conditional approval of the selections as a part of the Des

Moines River Grant. The Joint Resolution approved March 23d, 1858, which contains the terms of final settlement between the State and the Des Moines Navigation and Railroad Company, provides for a release by the company of all claims of all kinds against the State of Iowa and the lands connected with the improvement, excepting such as are thereby secured to the Company. It then provides for a conveyance to the Company by the proper officer of State, of "all lands granted by the Act of Congress of 1846, which had at that date been approved and certified to the State by the General Government, *saving and excepting* all lands sold or conveyed by the State of Iowa by its officers and agents, prior to the 23d of December, 1853, under said grant."

By an Act of the General Assembly, approved January 25, 1855, the Legislature had recited the facts in relation to the sale of these lands by the School Fund Commissioner of Webster county, and had, so far as the State was able to do so, made provision for securing and confirming these titles. Nothing, however, was ever done under said act, and no releases were ever executed by the Des Moines Navigation and Railroad Company as contemplated by its provisions. The act recognized the right of the Company to the proceeds of the sales, in case the Company would quiet the titles by a release. There is, perhaps, nothing important in this Act of the General Assembly throwing any light on the settlement.

The General Assembly of the State, again, by Act approved April 2d, 1860, undertook to effect a settlement of this difficulty. The preamble of the Act recites that, Whereas, certain contracts have been entered into between School Fund Commissioners acting under the direction of the Superintendent of Public Instruction, and citizens of the State, for the purchase of a part of the 500,000 acre grant; and whereas, the State of Iowa has by a settlement with the Des Moines Navigation and Railroad Company, conveyed said land in whole or in part to said Company; therefore, &c. The Act then provides for refunding from the State Treasury to the purchasers the purchase money at any time paid under the contract with Tolman, upon condition of the surrender and cancellation of the contracts or evidences of title.

It is also expressly provided in this Act that its provisions shall not prejudice the rights of those who do not elect to claim under it. Under the provisions of this Act six contracts have been sur-

rendered and canceled, and the moneys paid by the purchasers refunded to them. As to these, I apprehend there can be no question that all their rights to claim conveyances from the State have been extinguished.

The next and last act of the General Assembly relating to these lands is the act approved April 7, 1862, and referred to in your communication. The deed transmitted to me was executed by the Dubuque and Sioux City Railroad Company, and is in conformity with the provisions and requirements of the law. It also contains a protest on the part of the Dubuque and Sioux City Railroad Company, stating "That they have not now and never have had, or never have claimed, any right to the lands in question."

And I think this protest contains the truth. Why this act should have been passed, requiring from this Railroad Company a release of these lands and providing for a re-conveyance of them after the year 1864, in certain contingencies, it is hard for me to tell.

The only hypothesis upon which the Dubuque and Sioux City Railroad Company could be presumed to claim any interest in these lands is, that the act of 1846 did not embrace any lands above the Raccoon Fork of the Des Moines River, and that the action of the Commissioner of the General Land Office, in certifying the same as a part of the Des Moines River Grant, was null and void; and if this hypothesis be true, it is evident that the act of the Commissioner in revoking the former approval and selections of these lands as a part of the 500,000 acre grant, which was a part of the same act, was equally null and void; and if null and void, the sale by Tolman could not thereby be impaired or affected. How then, in any event, these lands could have passed to the State under the grant of 1856, as undisposed of lands, I cannot conceive.

I think I may safely advise you that the State should not execute any re-conveyance of these lands in any event to the Railroad Company, except perhaps a release of what they claim to convey by this deed that is of no right whatever in the lands. The State ought not to execute any conveyance of lands to a party protesting that they have no right or claim thereto, especially when the title has already been complicated by two other conflicting contracts. The act of April 7, 1862, expressly names these lands as sold by John Tolman, as School Fund Commissioner of Webster County,

and requires this conveyance from the Railroad Company in order to "enable the Register of the State Land Office to carry out and perform said contracts in all cases where he is called upon to do so by the parties in interest prior to January, 1864."

In my opinion, a conveyance to these settlers of the interest released to the State by this deed, which protests that the grantor has no interest, would be acting in bad faith with those who may now complete their contracts and pay out the purchase money as originally contracted with Tolman. To presume that such was the design of those who passed this law, would be doing violence to the charity due even to a General Assembly. I have therefore examined this question with a view of establishing the right of those purchasers upon some substantial basis.

I find by reference to the report of Mr. Tolman, before referred to, that all of these sales except eight were made prior to the 23d of December, 1853. Of these, eighty-two have been cancelled under the act of 1860, leaving less than seven hundred acres of land sold subsequent to that date. I have, therefore, concluded to advise the issuing of patents upon these original contracts upon the payment of the purchase-money and interest as originally contracted in all cases where the lands were contracted prior to the 23d of December, 1853, and have not been rescinded under the act of 1860; and to refuse the same in all contracts subsequent to that date until the parties, by proper judicial proceedings, cancel the outstanding conveyance to the Des Moines Navigation Company. I advise this not upon any question as to the extent of the grant of 1846, but upon the ground that under the act of settlement of 1858, and the prior contract with the Company, the conveyances of the lands sold prior to December, 1853, were not authorized by the law of the State, and that the General Assembly might so far properly order another or different conveyance of them.

I am aware that many doubts may exist in regard to the correctness of this conclusion, and they have occurred to my own mind. If other parties interested are not satisfied with the solution of the difficulty, they may perhaps control your action in the matter by proper judicial proceedings. Some course, however, must in the first place be determined upon, and this appears to my

mind the most satisfactory solution of the difficulties surrounding the subject.

Very respectfully yours,  
C. C. NOURSE.

NUMBER 7.

*Commissioner's Letter.*

GENERAL LAND OFFICE, }  
June 23, 1860. }

WARNER LEWIS, Esq., *Surveyor General, Dubuque, Iowa*.—SIR: Referring to your letter of the 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 lands 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 testi-

mony must be made by parties having no interest, present or prospective, direct or indirect, and must state *the name of the river or water course* whereby the lands are submerged and rendered useless for arable purposes in their natural condition.

4th. I inclose 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," wherewith 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 serv't,  
J. S. WILSON, Commissioner.

NUMBER 8.

*Form of Proof now Required.*

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 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.

## NUMBER 9.

### *Attorney General Black's Opinion.*

#### 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 posterior 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.,

HON. JACOB THOMPSON,

Sec'y of the Interior, Washington, D. C.

J. S. BLACK.

NUMBER 10.

*Commissioner's Letter Rejecting Proof taken Under the first Instructions.*

GENERAL LAND OFFICE, }  
JUNE 30, 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, 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 sub-division, as it existed at the date of the swamp grant of Sept. 28, 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.



## NUMBER 11.

*Indemnity Proof—New Form—Warrant Location.*

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

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 cer-  
 tificate 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 ma-  
 terially injure or destroy a crop,—and as such rightfully enured to  
 the State of Iowa under the provisions of an Act of Congress, ap-  
 proved 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 employ-  
 ing 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 herein-  
 after contained, to-wit:

QUESTION 1. What is your age and occupation?

QUESTION 2. State fully your means of knowledge of the char-  
 acter 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 reasons, and the 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 of..... State of Iowa, on this..... day of..... 186..

{ L. S. }

In testimony whereof, witness my hand and seal of office.

.....Notary Public.

### NUMBER 12.

*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 7, 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 are situated; and the American Emigrant 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 2, 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-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," 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, 1854, 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.\*

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

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

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 indemnity; 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.

—  
NUMBER 13.

*Commissioner's Letter holding the Act of Sept. 28, 1850, a Present Grant.*

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 September 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 re-

garded 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 selling 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, was 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 15, 1860, holding as follows: “The principal point is this: Your instructions seem to have been framed upon that construction of the Act of September 28, 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 principles.

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 2, 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.

NUMBER 14.

*Decision of the Secretary of the Interior, in regard to the conflict 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 September, 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 grant is based on selections made and reported to the General Land Office on or subsequent to the 3d March, 1857, I would remark:

1. 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.

2. 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.

3. 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 lands 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.

NUMBER 15.

*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 se-

lected 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 relates 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 7, 1857, and Nov. 10, 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 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 15, 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. 9, 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 14, 1856, I find that the Mississippi and Missouri Railroad Company did not file a plat of the location of their road until March 19, 1857, and the Burlington and Missouri Railroad Company definitely located their road upon a plat filed March 27, 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 3, 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, 13, 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 3, 1857, and the location of their road having also been made since that date, I cannot 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 3, 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 3, 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. 30, 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.

NUMBER 16.

*Commissioner's Letter requiring Definite Location.*

GENERAL LAND OFFICE, }  
AUGUST, 20, 1860. }

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 15, 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 con-

flict 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 obedient servant,

JOSEPH S. WILSON,  
Acting Commissioner.

#### ERRATUM.

On page 84, in line 21 from top, and also on page 85, in lines 1, 5, 11, and 27, beginning at the top, read "Chickasaw" instead of "Dickinson."

## BIENNIAL REPORT

OF THE

## SUPERINTENDENT

OF

## PUBLIC INSTRUCTION,

TO THE

## GENERAL ASSEMBLY

AT ITS

ELEVENTH REGULAR SESSION,

HELD AT DES MOINES, JANUARY 8, 1866.

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