

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

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

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

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

Very respectfully submitted.

CHARLES C. NOURSE.

## SPECIAL MESSAGE

OF

GOVERNOR WILLIAM M. STONE,

TO THE

## HOUSE OF REPRESENTATIVES

RELATIVE TO THE

RAILROAD LAND GRANTS.

DES MOINES:

P. W. PALMER, STATE PRINTER.  
1864.

## SPECIAL MESSAGE.

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EXECUTIVE OFFICE,  
DES MOINES, February 2d, 1864. }

*Gentlemen of the House of Representatives :*

The resolution of your honorable body, calling upon me to answer certain interrogatories regarding the conduct and action of the several Railroad Companies, which are beneficiaries of the land grant made to this State by Act of Congress of May 15th, 1856, was duly presented. In reply thereto I regret to say that I am unable, from the meagre data within my reach, to answer your inquiries as fully as the grave importance of the information sought for demands.

I have carefully examined all the records, papers, and correspondence, relating to the subjects embraced in your resolution, to be found in the public offices; and shall give you, as briefly as possible, the result of my investigations.

In the endeavor to furnish you the information desired, the important fact has been developed, that these immense transactions, so vital to the best interests of our State, have, for a series of years, been conducted in a manner contrary to my understanding of the law on the subject, and resulting to a great extent, in a wrongful absorption of this munificent Grant. Good faith to you, and to the people, seems to demand a plain exposition of these matters; and I know of no consideration which should deter me from a faithful and thorough performance of the duty imposed.

I have failed to find sufficient evidence to justify the conclusion, that any of the Companies designated, have fully complied with the plain conditions of the several Acts by which they became the beneficiaries of this generous donation. If the evidence of their compliance is extant, it is due, alike to them and to the people, that it be deposited here, in its appropriate place, where it will be accessible to all, and remove all grounds for doubting the legality of their transactions.

A brief reference to the Act of Congress making this Grant to the State, and the Act of the General Assembly accepting it, is necessary, in order that we may fully understand its present condition, and have sufficient light to guide us in the investigation.

Actuated by a most commendable desire to advance the interests of our State, and facilitate the rapid growth and development of the country, Congress passed an Act, approved March 15th, 1856, "making a Grant of lands to the State of Iowa, in alternate Sections, to aid in the construction of certain Railroads in said State." The following is a copy of the first section of said Act:

"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, 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 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 whatsoever: *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 objects 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."

It will be observed that this Grant was made to the *State*, for the purpose of aiding in the construction of Railroads, between the points designated on the Mississippi and Missouri rivers. And by the *third* section of this Act, it is enacted that the said lands hereby granted to the said State, shall be subject to the disposal of the Legislature thereof, for the purpose aforesaid *and no other*; thus leaving it for the Legislature to select the particular Companies which were to become the beneficiaries of the Grant, and to prescribe the conditions upon which they should have their right and title to the lands.

The lands so granted, were embraced in the alternate sections designated by odd numbers, for six sections in width on each side of said roads; with the further provision that, if it should appear that any of said odd sections had been previously disposed of by the United States, or pre-emption claims had attached thereto, lands in lieu thereof might be selected, and located within a distance of fifteen miles from the established lines of each of said roads; and the Governor of the State is authorized to appoint agents to select, subject to the approval of the Secretary of the Interior, the requisite number of sections, within these extended limits.

The alternate sections, designated by even numbers, were re-



served to the United States; and in order that no loss should result to them, in consequence of making this Grant to us, the price of these reserved sections was increased to double the minimum price of the public lands when sold; and none of said lands become subject to private entry, until they have been first offered at public sale, at the increased price. In contemplation of the great advantages to be secured in the construction of these roads through the State, in facilitating the settlement and improvement of the country adjacent to them, Congress conceived that the value of these lands would be thereby enhanced, and command a ready sale at the additional price fixed upon them. And thus while extending to Iowa this magnificent favor, no injustice would be done to the country at large.

This being the primary object of the grant, it is clear that Congress intended the lands should be selected adjacent to and in advance of the several roads, as they progressed towards completion, in order to give the reserved sections the enhanced value contemplated, and bring them into market.

The fourth section of the act provides, in substance, that the lands thereby granted to the State, shall be disposed of by the State *only*, in the following manner, to-wit: 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 thereof, 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 are completed, then another portion of the lands hereby granted, not exceeding one hundred and twenty sections, for such road having twenty continuous miles completed as aforesaid, and included in a continuous length of twenty miles thereof, may be *sold*; and so on, from time to time, until said roads are completed. And if any of said roads are not completed within ten years from the date of the grant, no further sales shall be made, and the lands unsold shall revert to the United States.

Each road is entitled to one hundred and twenty sections *before* its construction is commenced, and a like number of sections for every continuous twenty miles of road completed. No time is specified within which these twenty miles shall be constructed; but if the entire line of each is not completed, to the points designated on the Missouri River, within ten years, no further sales shall

be made to the State, and our right to the lands remaining unsold becomes forfeited.

For the purpose of accepting this grant, and executing the trust conferred upon the State by this act of Congress, a special session of the General Assembly was convened, at Iowa City, on the 2d day of July, 1856, at which an act was passed entitled as follows:

"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 land to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856."

The lands granted to the State by said act of Congress, were by this act granted to the following companies, respectively, to-wit:

Burlington & Missouri Railroad Company; Mississippi & Missouri Railroad Company; Iowa Central Air-Line Railroad Company; Dubuque & Pacific Railroad Company.

The only part of this act of the General Assembly, to which I now deem it important to direct your attention, is the eighth section thereof, which reads as follows:

"SECTION 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 day 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."

The conditions upon which the grants were made to the above named companies, are all contained in the foregoing section, and are plainly expressed. First, each of said companies shall complete seventy-five miles of its road by the first day of December, 1859. Second, and in addition thereto, thirty miles in each year thereafter, for five years—making in all 225 continuous miles of road. Third, the remainder of the whole line of each road in one year thereafter, or on the first day of December, 1865.

If any of said companies fail to perform either of these express conditions, then and in that case it shall be competent for the State to resume all rights conferred by said act upon the company so failing, and to resume all rights to the lands thereby granted, and remaining *undisposed of* by the company so failing to have the *length* of road completed, in manner and *time* as therein required.

Such being the origin, objects and conditions of the grant, let us now inquire how far these companies have, respectively, complied with the law.

#### MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

About the first day of January, 1856, this Company had their road completed from Davenport to Iowa City, a distance of 54 miles. This was four and a half months before the act of Congress granting these lands to the State, was passed. On the 25th day of August, 1859, and before any part of this road had been constructed west of Iowa City, a certificate was filed, stating that this company had completed 40 miles of their road, and that they were entitled to 360 sections of land—being the 120 sections allowed by the law, prior to the commencement of the road, and 240 sections for the 40 miles which they assumed to have constructed under the law, up to that date.

A little more than one year after this transaction took place, the affidavit of Peter A. Dey, an employee of this Company, was filed, stating that 80½ miles of their road had been completed; whereupon another certificate was made, that the Company are entitled to 240 *additional* sections of land; making in the aggregate six hundred sections claimed by the Company, when only 30½ miles of road—being the distance from Iowa City to Marengo—had been constructed since the act of Congress of May 15th, 1856.

Up to the present time, this Company have not completed seventy-five miles of their road, as contemplated by law; and they have, therefore, entirely failed to comply with any of the conditions prescribed in the eighth section of the act of the General Assembly, upon which they accepted the grant. The only ground upon which they can base their claim to these lands is, by receiving credit for the 54 miles of road completed before the act of Congress was passed. And even this would not bring them within the terms prescribed by the General Assembly, because they did not

have seventy-five miles of road constructed, including the 54 miles previously completed, until the autumn of 1860.

Was the mode of computation adopted in favor of this Company as the basis for procuring certificates for the lands, in conformity with the act of Congress making the grant? To my mind, the intent and object of the grant, are too plainly expressed to furnish any reasonable ground justifying such a construction. In defining its object, the act declares that these lands are "granted to the State of Iowa, for the purpose of *aiding* in the *construction* of certain Railroads," and not for the different purposes of aiding in the liquidation of debts incurred in the construction of roads previously completed. And to render this intention still more manifest, the second *proviso* of the first section, as above given, declares that the land so granted shall be *exclusively* applied to the *construction* of that road, for and on account of which such lands are hereby granted; and I shall be disposed of *only as the work progresses*, and the same shall be applied to no other purpose, whatever."

If these views are correct, the conclusion is unavoidable, that the certificates made in favor of this Company were obtained in direct violation of law. By whom, or upon what authority, a different construction was given to the unequivocal language of this act, I am not advised.

#### BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY.

To some extent, the action of this Company in obtaining certificates for lands, has been similar to that pursued by the company above referred to.

A portion of their road was completed and in running order to a point between Burlington and Mount Pleasant, prior to the act of Congress, but the exact number of miles I have not been able to ascertain. On the 26th day of February, 1858, Edward L. Baker, President of this Company made affidavit in Boston, that 28 miles of their road had been completed, which, of course, embraced that portion of it previously constructed. By virtue of this affidavit, 294 sections of land were certified to the Company November 9th, 1859, and on the 27th day of December following, 68 additional sections were certified to them.

In September, 1859, this road was completed to Ottumwa, a distance of 75 miles from Burlington; and no further extension of



the road has been made since then. By stopping at Ottumwa, the Company failed in two material points to comply with the conditions of the grant. *First*, by not constructing 75 miles of their road *after* the grant was made to the State; and, *Second*, in failing to construct 30 additional miles, in each year, since December, 1859.

The fact should not be concealed, that in the face of many and great embarrassments, this Company persevered in the prosecution of their work, and reached the Des Moines River within a reasonable time. Having reached that point and obtained under an improper construction of the grant, a certificate for their lands, they now appear to be satisfied. Whether they intend to push forward their work, or have any expectation of completing their road to the Missouri River by December, 1865, as they are required to do by law, I am not informed.

Another, and more material departure from the plain meaning of the grant has been committed in the location of their lands.— Instead of selecting them in advance of their road, in consecutive order, as contemplated by law, they commenced their selections on the extreme western border of the State, about 180 miles distant from the terminus of their road. So far as the Western counties are concerned, this road might as well have remained an idle scheme in the minds of those who conceived it. Neither the counties in which these lands are situated, nor the United States, have derived any of the benefits intended to be secured to them, by the diversion of these lands from the ordinary mode of entry and sale. By thus withdrawing them from market and affording no equivalent, in the form of railroad advantages, the entire transaction has been a positive detriment to the best interests of that portion of our State.

An additional quantity of 56,221 acres, has since been certified to the State for the benefit of this road, but most of it is claimed by the counties as swamp lands, and suits are now pending in which the question will be determined in due time. These lands are also claimed by the Company.

#### IOWA CENTRAL AIR-LINE RAILROAD COMPANY.

This company, having failed to comply with the provisions of the law making it one of the recipients of the grant, the General Assembly, by Act approved March 7th, 1860, resumed the lands

designed for its use; and by an Act approved March 26th, 1860, transferred the same to the

#### CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY.

The terms and conditions upon which this transfer was made have been duly accepted by the last named company, by a proper instrument, filed in the office of the Secretary of State, under date of June 19th, 1860.

On the 1st day of December, 1861, the affidavit of W. W. Walker, chief engineer of said road, was filed, stating that forty miles of the road were completed according to law; and on the 21st day of the same month another affidavit was filed, showing the completion of 29 additional miles of said road.

I am informed that this company are pushing forward their road with much vigor, and that it is now completed to State Centre, in Marshall county. But no lands have been certified to them, because of their failure to build the branches between Lyons and Clinton, and between Marion and Cedar Rapids, as required by the 6th and 7th sections of said Act. Until these conditions are performed they will not be entitled to their lands.

#### DUBUQUE AND SIOUX CITY RAILROAD COMPANY.

There is no data at my command from which I can determine how far the construction of this road had progressed, prior to May 15th, 1856. But I find a certificate on file, dated April, 1858, showing that the company had completed 40 miles of their road, and that they were then entitled to the accruing benefits and emoluments; another certificate, dated November, 1859, certifying to the completion of 20 miles additional; a third one, dated March 2d, 1860, showing the completion of the fourth 20 continuous miles; and a further certificate, dated April 25th, 1860, certifying to the completion of the fifth 20 continuous miles of said road.

It will be perceived that, after giving this company credit for all the road they claim to have constructed, they still failed to have 75 miles completed within the time fixed by law; but this defect was remedied by act of the General Assembly, approved March 7th, 1860. But the company are still in default, having failed to complete the additional 30 miles, in each year, after December, 1859.

## AGENTS.

I have been unable, after diligent search, to find any record, or evidence of any kind, showing the appointment of agents by the Governor to select lands within the limits of this grant, as authorized by the first section of the Act of Congress and of the sixth section of the Act of the General Assembly, relating thereto; and, therefore, am not able to inform you by whom, or in what manner, the lands claimed by the companies have been selected, or whether they were selected in the manner prescribed by law. I presume, however, that agents were duly appointed.

## SALES AND CERTIFICATES.

There are some other questions connected with the sale and certification of these lands, which are, in my opinion, of vital importance, not only to the railroad companies, but to all who may purchase and claim title under them.

The act of Congress gives the disposal of these lands to the Legislature, and confers upon the *State* the power to sell them. In making this grant to the State, Congress took no cognizance of the particular companies, nor was the title to these lands vested in the State. All that Congress evidently intended was to constitute the State a trustee, with the power of sale upon the performance of certain conditions precedent, for the purpose of aiding in the construction of these several roads; and a sale of the lands is necessary to a proper execution of the trust.

Was the act of the General Assembly of July 14th, 1856, transferring the rights of the State in these lands to the railroad companies, upon the conditions therein expressed, a *sale* according to the terms and meaning of the grant? Such seems to have been the interpretation given to this act by the parties, but with what propriety, it is not my province to determine. Was it competent for the State to delegate this fiduciary power to these companies?

If this interpretation be correct, it is still important to inquire, whether the proper mode has been adopted in selecting and certifying these lands to the companies; for this is the foundation of their title to the lands, and of all who may purchase from, or claim under them. The steps required to be taken in selecting and certifying these lands to the State, have already been explained, but

the act of the General Assembly prescribes no mode for certifying them to the companies. This, in my opinion, is a grave defect in the law, and should be amended.

In the various certificates above referred to I find that no regular form has been followed. The one used by Gov. Lowe in certifying lands to the Burlington and Missouri River Railroad Company is copied into the last biennial report of the State Register. (See page 67). This certificate is *attached to the list* of lands claimed to have been selected for this company, and is doubtless the correct form. I find copies of other certificates, issued by both Governors Lowe and Kirkwood, addressed to the Secretary of the Interior, certifying to the extent of road completed from time to time by the different companies, which are correct so far as the interests of the State are concerned. But is not something more needed to complete the right and title of these companies to the lands selected?

The only certificates attached to these lists, except the one above referred to, are those of the Commissioner of the general land office, approved by the Secretary of the Interior, stating, in substance, that the lands therein described were selected by agents appointed by the State of Iowa, and that said lands are "outside of the six and within the fifteen miles limit," as prescribed by the Act of Congress, and within the line of the particular railroad. But there is no certificate or statement from any one attached to these lists, showing the completion of the road in manner and time as required by law, and no evidence whatever that any particular company is entitled to the lands selected and described.

What evidence have we, then, that these Companies are entitled to the lands they claim, and will they, and their grantees, be able to maintain their titles when tested in the courts? I suggest, therefore, that it would be for the interest of all parties, to have some definite mode prescribed by law, for vesting the titles to these lands in the Companies, and thereby avoid trouble and litigation.

From the foregoing statements, which I believe to be accurate, your honorable body will perceive, that all of the four Companies, upon whom this Grant was conferred by the General Assembly have failed to comply with the provisions of the Act of July 14th, 1856, and that there is no reasonable probability that their roads will be completed, to the Missouri river, by the first of



December, 1865, as required in said Act, nor is it at all likely, from present appearances, that they will be able to do so even by May, 1866, as required by the Act of Congress granting these lands to the State. And should they fail, in this latter respect, all the lands embraced in the Grant, and remaining unsold, will revert to the United States. Without further legislation by Congress, it is obvious that we are not only in danger of losing these lands to the Railroad Companies, but also to the State.

The importance of this subject, in its present aspects, cannot be overestimated; and immediate action should be taken to avoid a calamity now so imminent.

#### RESUMPTION.

In consequence of the failures already made by these several companies, to perform the conditions of the act of the General Assembly, it is undoubtedly competent for the State to resume all rights in these lands granted to them, and which remain unsold. This being the point at which we have arrived, the immense and varied interests involved in the question, demand that we shall take our soundings calmly, and act upon them with due deliberation.

In view of all the circumstances, would absolute resumption be wise and just? Upon this subject, I am free to confess, that I am unable at this time, to make any definite recommendation, of measures which would be entirely satisfactory to my own mind, but I do advise you to take such action only, as you may consider necessary to fully protect the rights and interests of our citizens, and at the same time be just and liberal towards these delinquent Companies.

It is eminently proper that you should be reminded of the many serious embarrassments, amounting to almost insurmountable difficulties, which have beset these and all other western Companies, in the prosecution of Railroad enterprises. The monetary crisis of 1857, entirely unforeseen when these Grants were made, fell with peculiar force upon the whole country, and rendered the procuring of means, for the construction of public improvements, a matter of exceeding difficulty. Private and public enterprises alike bowed to the storm. Corporations and individuals, all over the land, became the victims of an expanded and over-burdened credit system, and were buried in its ruins. And before we had fairly recovered

from these disasters the present war burst upon the country, again deranging its financial concerns and diverting trade and commerce from their legitimate channels. The laboring population were called into the public service, and all the materials needed in the construction of railways went up to almost fabulous prices.

Time need not be consumed in endeavoring to impress upon your minds the importance and utility of railroads, in promoting the welfare of our State. Sound policy requires that we should keep this steadily in view, and resist all demands for such measures as are calculated, in their results, to seriously impede the progress of our railroad enterprises. Yet, imperative as these considerations are, we should not overlook the importance of imposing suitable restrictions upon these monopolies, and require of them strict accountability, and a faithful performance of their legal obligations.

The insatiate thirst for railroad supremacy, which has so effectually impressed its iron will upon some of the older States, has not yet been developed in Iowa, but, warned by their example, let us throw around these corporations, while in comparative infancy, such restraints as will enable us to control their actions after they shall have reached the fullness of their strength.

Entertaining these views, I shall co-operate with you in adopting such measures as may be deemed expedient and necessary to relieve these companies from the consequences of their failures, and upon such conditions as will secure to all our citizens, having just claims upon these lands, full and complete justice.

W. M. STONE.