

OPINION

OF THE

ATTORNEY-GENERAL

RELATIVE TO THE

CEDAR RAPIDS & MISSOURI RIVER R. R. COMPANY

DES MOINES :
F. W. PALMER, STATE PRINTER.
1868.

OPINION.

To the Senate:

I have the honor to acknowledge the receipt of the following resolution from your Honorable Body:

"*Resolved*, that the Attorney-General be requested to communicate to the Senate whether, in his opinion, the lands granted to the Cedar Rapids & Missouri River Railroad Company, by Chap. 37, of Laws of the Eighth General Assembly, have vested in said company by reason of compliance with and as provided by the requirements and conditions of that act.

2d. Whether the act of Congress, approved June 2d, 1864, modifies or changes the conditions and requirements of said Chapter 37, and if so, in what respect?

3d. What, if any, right, power and control the State still retains in, and may legally exercise over, said road?"

For the convenience of the Senate, and in order to induce a fair understanding of what is said in reply, I cite here the 4th section of the act of Congress of June 2d, 1864:

Sec. 4. *And be it further enacted*, That the Cedar Rapids & 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 of 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 & Missouri [River] Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi & Missouri Railroad Company; and the Cedar Rapids & 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 & 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 connecting 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 Denison, 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 original 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.²²

In connection therewith I call the attention of the Senate to chapter 37 of the laws of the Eighth General Assembly.

The accompanying railroad map shows, I believe, the location of the road as it is now constructed. The act of Congress which is said to confer authority to change the original, provides that in case the main line shall fail to reach the Missouri river at or near the forty-second parallel then the company are within a reasonable time to construct a branch to some point in Monona county, "in or at" Onawa City, and they are to receive for the construction of this branch the same amount of lands per mile as for the main line.

Are these lands ceded for the construction of the branch additional to the lands provided for in the original grant? I think such is the intention of the act.

The act of Congress above quoted provides that when twenty miles of the main line west from Nevada shall be constructed and so certified by the Governor of Iowa, the company shall be entitled to receive one-third of the lands granted for the connecting branch, and for the next twenty miles another third, and when the west twenty miles is constructed and so certified, the remaining one-third. This proviso evidently has reference only to the additional lands granted for the construction of the connecting branch between the Mississippi and Missouri road and the Northwestern, but does not include or have reference to the branch to Onawa City. This construction, I think, is the only one that will make the proviso of any meaning.

Section 6 of the act of the General Assembly of Iowa, 1860, provides that no lands shall be certified to the company until the road from Lyons to Clinton is constructed. There is no pretense that this branch is constructed, neither can it be construed that the branch to Onawa City is constructed.

Has the General Assembly, then, such control over the lands, viz.: those granted for the construction of the main line, as to compel the construction of these branches, or enforce the forfeiture by resumption, provided for in the act of the Eighth General Assembly? I think it has that power clearly over all the lands embraced in the original grant of 1856, and to which the company have not perfected their title.

And I do not consider that any certificate of the Governor of

Iowa as to any of these lands would give any additional rights to the company under the act of the General Assembly above cited. The Governor had no authority to certify to any lands until the Lyons branch was constructed, and of course while that condition remained uncompleted with, any such certificate would be a mere nullity, and as it seems to me, without any binding force whatever.

But the question recurs, how far does the act of Congress of June 2, 1864, operate to release the company from the obligations to construct the main line on or near the forty-second parallel, as imposed by the act of the Eighth General Assembly in accordance with the original grant made by Congress in 1856?

There seems to be a studied vagueness of expression about the provisos in the fourth section of this act; so much so that if it were not an act of Congress, surrounded by such solemn sanctions, one might be led to suspect it of evil intent. Indeed, the whole wording of it seems to indicate a purpose on the part of its framer, "not so much to get wrong by design as to avoid hitting upon the right thorough mistake."

I do not think the act of 1864 had the effect in any way to release the company from these obligations. Congress had, by the grant of 1856, parted with all the title of the United States to the lands embraced in that grant, subject to the ten year's limitation, which is not a question here, as there is no *laches* on the part of the State. The original main line would have taken the road through Onawa City, which is on the forty-second parallel.

Two courses are open to the State, either legislation, or to go into court, where the company, like any other corporation, can be dealt with for any abuse of its franchises, and in a proper case made may be ousted of them.

Very respectfully,

HENRY O'CONNOR,
Attorney General.