SUPPLEMENTAL REPORT

OF THE

REGISTER OF STATE LAND OFFICE

TO HIS EXCELLENCY THE GOVERNOR OF IOWA.

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

SUPPLEMENTAL REPORT.

STATE LAND OFFICE,
DES MOINES, IOWA, January 21, 1868.

To His Excellency, SAMUEL MERRILL, *Governor of Iowa:*

I have the honor to submit to you the following supplemental report:

In my biennial report I gave in full the adjustment made by Mr. Harvey with the General Government — settling certain disputed land-grant claims — which will be found in that report, commencing on page 22. In order to make my report as brief as possible, I simply gave the settlement, leaving out the processes and legal decisions, by which these results were attained, supposing such results, all in that connection particularly interesting to the General Assembly or the people. But as there appears to be such a want of information upon these important land matters, and as the settlement of Mr. Harvey, as ratified by the State, is thought by some not to be a finality, I have thought it proper to submit the accompanying papers containing a report of Mr. Kilbourne, and also a decision of Mr. Secretary Usher, covering many of the questions in which a large number of the people of the State are deeply interested. I also submit in connection herewith, a matter of considerable interest to a large number of the counties in the State, in reference to the Swamp Land Grant, upon which I did not have the official data to make a report on the 12th of November last.

The proceedings and decisions of the Secretary of the Interior, which led to the adjustment before referred to, are hereto attached, marked "B."

Since the publication of my report in November last the Report of the Commissioner of the General Land Office, which I was unable to obtain before, has been placed in my hands; from this report I take the following extract:

LANDS — SWAMP AND INUNDATED.

"Legislation, in this respect, had its origin in the purpose of providing a land fund wherewith to enable the beneficiaries, as grantees of the United States, to construct levees for checking devastating floods like those which break over the banks of the Mississippi, submerging the regions of the St. Francis and Arkansas. The grant further contemplated the making of drains in swampy places, so that all such lands might not only be reclaimed and laid open to cultivation, but relieved from pestitential malaria.

"The original Act of 1849 was restricted to Louisiana. The Act of 1850 extended to all the States having lands of this character, and the Act of 1860 added to the number of grantees.

"The interests claimed under these grants have grown to immense proportions, the aggregate selected to 30th June 1866, amounting to fifty eight million six hundred and forty nine thousand, two hundred and seventeen acres, of which forty-three million two hundred and four thousand seven hundred and seventy-four acres, have been actually patented and titles vested.

"In the disposal, under general laws, of the public lands, numerous individual sales and locations were made falling upon tracts claimed as swamp, thereby creating conflicts and controversies. Congress thereupon intervened the Act of March 2, 1855, confirming individual titles, and allowing to the States indemnity in cash where cash was paid to the United States, and in other lands where the premises disposed of were taken by bounty land or other locations. This law was extended by Act of March 3, 1857.

"The original decision and practice of the General Land Office rejected all selections as the basis of indemnity unless such selections were made and reported prior to the passage of said act of 1857.

"The late Attorney General's opinion of April 20, 1866, overruled that decision, and held that in cases of sales or locations prior

to the Act of March 3, 1857, the right to swamp indemnity exists, even though the selections were made and reported subsequent to that statute."

As indicated by this extract, the opinion of the Attorney General of the United States, April 20, 1866, has been adopted, and is now the policy of the Department of the Interior.

This modification of the rulings in the land department at Washington obviates one of the difficulties principally complained of by my predecessor as adverse to the rights of the State and calculated to delay the equitable adjustment of our swamp-land interests. Although this decision was obtained on an appeal taken by the American Emigrant Company in the cases of Carroll and Wright counties; yet all the counties where selections were made subsequent to March 3, 1857, are equally benefitted by its results.

The following is believed to be a correct list of counties making selections after the date given above:

Buena Vista, Calhoun, Carroll, Cerro Gordo, Cherokee, Clarke, Crawford, Clay, Dickinson, Emmett, Franklin, Grundy, Greene, Hancock, Hardin, Humboldt, Ida, Kossuth, Madison, Mitchell, O'Brien, Osceola, Palo Alto, Pocahontas, Plymouth, Ringgold, Sioux, Sac, Taylor, Union, Warren, Winnebago, Worth, Wright.

From the importance of this opinion and the general interest felt in several of the points discussed and decided therein, a full and complete copy is hereto appended, marked "A."

Respectfully submitted,

C. C. CARPENTER,
Register.

A.

[COPY.]

ATTORNEY GENERAL'S OFFICE,
April 20th, 1866.

To HON. JAMES HARLAN, *Secretary of the Interior:*

SIR: I have given to the legislation referred to in your letter of the 30th January last, relative to the "Swamp Grant" to the State of Iowa, careful consideration.

I am of opinion that the State has a good legal claim; *first*, to the purchase money of the public lands therein, claimed as swamp lands which were entered with cash prior to the passage of the Act of March 3d, 1857, and which she may be able to prove to the satisfaction of the Commissioner of the General Land Office, and the Secretary of the Interior, were swamp lands, within the true intent and meaning of the Act of September 28th, 1850; and *second*, to indemnity in land for the public lands therein thus claimed, which were located with warrants, or with scrip, prior to the passage of the Act of March 3, 1857, and which she may, in like manner show were swamp lands, within the true intent and meaning of the statute of 1850.

In reviewing the legislation adduced by the State in support of her claim, I have diligently sought for the intention of Congress in the words of the statutes.

This I have done not only because to look elsewhere for the intent of the Legislature, is to violate a fundamental canon of statutory construction, but also because I have keenly felt that in a case of this character, speculation in regard to the meaning of Congress, based upon considerations extraneous to the statutes would not advance, but only retard, the discovery of that meaning.

The Act of September 28, 1850, "to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," I dismiss with the remark that, in my view of the present question, it is not important to determine the character and effect of the grant made by that statute. The present question arises upon the construction and effect of the two subsequent statutes of March 2, 1855, and March 3, 1857.

If the claim of the State of Iowa is not maintainable upon these laws it must fall. If they support it, I know no subsequent legislation which invalidates it.

It is needed, therefore, to look critically into the Acts of 1855 and 1857; and I propose now to state, very briefly, what, according to my legal view, is found in those laws.

The Act of March 2, 1855. "An Act for the relief of purchasers and locators of Swamp and Overflowed Lands," (10 Stat. 634) contains two sections. The first section authorizes all persons who had made entries of public lands, claimed as of that character with cash or warrants, before the issuing of patents for the same lands to the States, to demand their patents.

The second section required to be paid over to the States respectively, the purchase money of such of these lands as had been sold and purchased, and provided indemnity in like amount of the public lands, for such as had been located by warrant or scrip, upon due proof that any of the lands thus purchased or located were swamp lands within the meaning of the Act of 1850. I think that the provisions of this Act applied only to past cases of sales and locations.

The phraseology employed does not embrace any other. There may be good grounds on which to contend that Congress ought, in justice to the States for whose benefit the Act of 1850 was passed, to have provided a permanent measure of indemnity, embracing not only past, but also future cases of sales. However that may be, the inquiry here and now is, what Congress did — not what it ought to have done. And, looking at the words, and the words only, of the statute, for our answer to that question. I can not discover in them the expression of an intention to give the States the money realized by the government on sales of swamp lands within their limits, occurring subsequently to the date of the enactment.

I now come to the statute which presents the only difficulty in the case — the Act of March 3d, 1857. (11 Stat. 251.) Without that law, the claim of the State could not be sustained. It is to say the least of it, a most ambiguous Act. This, together with the fact that your department seems always to have regarded it as adverse to the right of the State, in respect to her present claim has caused me no little anxiety, in giving construction to it.

The opinion of the Land Office, affirmed by eminent gentlemen at the head of the Interior Department, on a question touching the interpretation of a law of this character, especially when that opinion has become a rule of action in the administration of the Department, is undoubtedly entitled to the greatest respect. I should be inclined to give it controlling effect in a case where a doubt arose which could only be resolved by the view which had received the

sanction of the Department. This, however, I am always to consider — that my duty, in every case submitted to me, is to give my own opinion on the question it presents. I have no right to adopt that of any one else, unless it is agreeable to my views of the law. The fact that my opinion on the question of statutory interpretation is opposed by the authority of contemporaneous construction in the Department whose duty it is to execute the statute, ought, in every case, to induce me to review the grounds of my own judgment with more than ordinary care and caution — to take time for reflection — to consider well the opposing views, and finally, in a proper case to give the Department the benefit of any reasonable, well-founded doubt as to the proper view of the case. *Contemporanea exposilio est fortissima in lege.* But if, after this has been done, I am not able to concur in the view of the Department, my duty is, as I have suggested, to give what I am requested and required to give — my own opinion on the question.

That opinion, however, may or may not be adopted. It is always a question of administrative discretion whether it should be. The Department has the right to reject it, or refuse to act on it, in a proper case, without submitting the subject to the consideration of Congress.

With these general observations, I proceed to state the views which I entertain in regard to the construction and effect of the Act of March 3, 1857. I can not concur with the Land Office in the opinion that the right of the State to the indemnity provided by the 2d Section of the Act of 1855, in connection with the proviso to the Act of 1857, depends upon whether the selections of the lands, as swamp and overflowed lands, were made and reported to the Commissioner of the General Land Office, prior to the passage of the Act of 1857. In the exposition of a statute, it is an established rule that the intention of the Legislature is to be deduced from a view of the whole, and of every part of the statute, taken and compared together. No part of it should be made void; full sense and meaning must be given to every clause and provision. As Lord Kenyon said, in regard to a Will, "One spells, as it were, every word to get at the intention." If the statute contain an enacting

clause, a saving clause and a proviso, they must all be taken into view, and construed together.

The saving clause is not to be rejected unless it is directly repugnant to the body of the Act, and could not stand without rendering the Act inconsistent and destructive of itself. If the statute contain a proviso, it must be held not to repeal the purview, unless flatly repugnant to and manifestly inconsistent with the purview. The real intention must govern in every case, and prevail over the literal sense of the terms. But the intention must be such as the Legislature has used fit words to express. The spirit must prevail, but the spirit is to be collected from the letter. "The longer I sit here" said Sir John Coleridge, "the more I feel the importance of seeking only the meaning of a statute according to the fair interpretation of the words," and acting on that (6 A. & E. 7) I have endeavored to obey these canons in giving construction to the Act of 1857. We have, in that Act, an enacting clause and a proviso, so called, to be considered.

The office of a proviso is to take special cases out of the general enactment, and providing specially for them. Of it, says Dwarris, "It contains all unconnected matters; and disposes of whatever is incapable of combination with the rest of any clause." The meaning of this proviso, however is equally clear, on the face of it, whether we regard it as containing what that part of an act regularly ought, or ought not, to contain. It would have been more regular perhaps if the proviso had in this case constituted a separate section of the statute. But that is unimportant. No different effect can be given it, from that which it would receive if it stood apart from the purview.

Now what are the provisions of the body and proviso of the statute? The first declares that "the selection of swamp and overflowed land granted to the several States, *heretofore* made and reported *so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing laws 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 (1850) as soon as may be practicable after the passage of this law."

There is not a word in all this provision, which has any reference or relation to swamp lands which may have been purchased by private individuals or located by warrant on scrip, prior to the date of the Act or to any right, claim, or demand of the States, to, upon, or in respect to such lands, or the proceeds thereof, or other equivalent land. It provides only for the issuing of patents to the States; and the land for which patents are directed to be issued, are swamp lands which are vacant, unappropriated, and unsettled, and which were selected and reported to the Government as of the character of lands granted by the Act of 1850, prior to the 3d of March, 1857. Under this provision, the State would maintain no claim to the moneys realized on sales of swamp lands, made before or after that date, whether the lands sold were selected, and reported as being of that description, prior thereto, or not.

We come now to the proviso. It declares that the Act of March 2, 1855, is hereby *continued in force* and extended to all entries and locations of lands claimed as swamp lands made since its passage." I think that no greater effect should be given to the words *hereby continued* in force, than if the provision had been, that the Act of 1855 is "*hereby re-enacted;*" but that the same effect must be given to them as if that had been the language of the proviso.

What then would have been the construction of this proviso, if it had declared the Act of 1855 to be re-enacted? It is a general rule of construction that the clauses of reference, incorporating the provisions of former statutes, take effect as fully as if they had been repeated and re-enacted in the body of the latter Act, with relation thereto. (Dwarris on Statutes, 602.)

If we give, then, the same effect to the Act of March 2, 1855, as if it had been in terms repeated and re-enacted on the 3d of March, 1857 we find that the cases of sales and locations of lands, claimed as swamp lands, which had occurred prior to March 3, 1857, and subsequent to March 2, 1855, are fully comprehended, and that we have a substantive provision made on the 3d of March, 1857, that the purchase money of any of the lands sold, which the States may

prove to be swamp lands within the meaning of the Act of 1850, shall be paid over to the State and that indemnity, in other equivalent land, shall be given for those lands, of the character mentioned, which were located by warrant or scrip. The grant was not exclusively of the purchase moneys of these swamp lands which had been selected and reported before March 3, 1857. Patents were directed to be issued for these, if they were unappropriated and unsettled. But the grant, by effect of the proviso, was of the purchase money of all lands claimed as swamp lands, which had been sold by the Government prior to March 3, 1857, and which the States could prove were of the character of lands granted by the original Act of 1850.

We have no more right to import into the proviso from the purview of the Act, the words of limitation that are found there, than we would have to incorporate into the Act of 1855, a provision that the lands purchased or located for which the States, under that Act, were entitled to indemnity, shall have been selected and reported as swamp lands to the Government before March 2, 1855.

It is fully implied in what I have said, that the provisions of the Act of 1855 thus in effect re-enacted on March 3, 1857, must be held to be strictly retrospective as of that date, according to the view which I have expressed in regard to the statute of 1855.

While I affirm, therefore, the validity of the claim of the State of Iowa, under this legislation, to the purchase moneys of public lands within her limits sold between March 2, 1855, and March 3, 1857, and which you may determine were swamp lands within the meaning of the Act of 1850, and to indemnity in land for the lands located with warrants or scrip, during that period, which you may likewise determine — were swamp lands according to the true intent of that statute I dismiss as without legal merit, under the legislation referred to, any claim for indemnity for lands within that designation, which were, sold or located subsequently to March 3, 1857.

Very respectfully, your obedient servant,

[Signed.] JAMES SPEED,
Attorney General.

B.

STATEMENT

Showing the whole area of the grant to the State of Iowa under the Act of the 12th of July, 1862, and the amount sold and otherwise disposed of by the United States prior to the passage of said Act; and showing, also, the area contained in the old "River Lists," and the vacant lands within the limits of said grant above the mouth of the Raccoon Fork of the Des Moines River:

Whole area of the River Grant, from the Raccoon Fork to the northern boundary line of the State.....		558,004.06
Lands sold and patented and in process of patenting.....	44,348.60	
Pre-emption claims prior to the Act of 12th of July, 1862,.....	13,993.77	
Selected for railroads — 6 mile limits.....	115,443.84	
Selected for railroads — 15 mile limits.....	118,009.16	
Selected under the Swamp Act of 1850.....	34,942.79	
Selected for University under Act of 1840..	2,332.25	
	329,070.41	
Selected and embraced in the old river lists,.	58,817.30	
Vacant sections and parts of sections in place, within the limits of the river grant.....	170,116.95	
		558,004.06

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., Feb. 28, 1865.

SIR: The authorized agents of the State of Iowa have taken exceptions to certain items charged by you to the State, in setting apart the indemnity to be selected pursuant to the Act of Congress approved July 12, 1862, (Stat., vol. 12, p. 543), for aid in improving the navigation of the Des Moines river.

From your report of the 14th March last, it appears that the entire quantity of lands inuring to the State, as determined under the opinion of my immediate predecessor, dated November 3, 1862, is 558,001.16 acres. You have decided that against said amount, the State is chargeable —

1st, with lands found in place as heretofore listed.....	224,961.17	acres.
2nd, with lands confirmed to the State by Joint Resolution of March 2, 1861, though not within five miles of the river.	11,661.80	acres.
3rd, with an excess of land that has been listed to the State of Iowa under the grant by Act of Sept. 4, 1841.....	19,308.17	acres.
4th, with the amount of a special certificate issued.....	300,000.00	acres.
Total acres.....	555,931.04	acres.
Leaving a balance due of.....	2,070.12	acres.

The agents of the State, having taken an appeal from your action, claim that there is improperly included in the 1st item, 12,813.51 acres of land that has heretofore been certified to the State under the grant of 500,000 acres, by the Act of Congress approved Sept. 4, 1841, and that the second and third items, as above, have been erroneously charged, and should not enter into the account.

They also claim that you erred in refusing to sanction the selection of even numbered sections along the Des Moines river, which are alternate to the odd numbered sections granted.

Having examined the subject, I am of the opinion that the 12,813.51 acres should not be charged in this account. These lands were approved to the State on the 17th February, 1851, under the grant of 500,000 acres, by the Act of Sept. 4, 1841, and it is to be inferred from other facts stated, that they have been sold by the State during the time intervening since the approval. They lie above the Raccoon Fork of the Des Moines river, and hence were not a part of the original grant by the Act of August 8, 1846; nor

did the confirmatory Act of 1861 create a title superior to that which was confirmed and recognized by this Department on the 17th of February, 1851.

Indemnity for the tracts set apart for railroads within the five miles limits of the Des Moines river grant, has been allowed by the decisions of the Department, dated November 3, 1862, and April 7, 1863, and I am of the opinion that these 12,813.51 acres stand in the same category as the railroad tracts, and that indemnity for them should likewise be allowed.

In regard to the item of 11,661.80, I am of opinion that it is a proper charge against the State in this account, although the lands do not lie within five miles of the Des Moines river as now determined and delineated by geographers, and the public surveys.

These lands, lying adjacent to the stream now known as the East Fork of the Des Moines river, but then known as the Des Moines river itself, were included in approved lists prepared under the Act of Congress of August 8, 1846, and have been regarded as confirmed to the State by the Joint Resolution of March 2, 1861.

Though the words of that resolution and of the law of 1862 admit of a strong argument in favor of the claim that these lands are granted to the State, as well as those which can be brought within the description given in the last mentioned law, it is the opinion of this Department that under the Act of 1861, they are to be charged to the State in adjusting the quantity of indemnity. They have been obtained for the object of the grants, and though entertaining some doubt upon the subject, I deem it to be the safer conclusion, that it was not the intention of Congress that the quantity of the grant and selections should exceed the aggregate quantity of the odd numbered sections, lying within five miles of the Des Moines river, from its mouth to the Northern boundary of the State of Iowa.

The proposal to offset a part of the lands inuring to Iowa under the Des Moines grant, against a quantity she had received in excess of the grant of 500,000 acres by Act of September 4, 1841, will be sanctioned, if it can be done with the assent and under the proper authority of the State; and Messrs. Kilbourne and Mason in behalf of this State, now, by letters of 17th of February, undertake to complete an arrangement for a settlement.

The excess selections under the Act of 1841, as you report, amount to 35,473.54 acres.

Measures have, heretofore, been proposed by the State for reducing this excess, but they have not been carried into effect.

According to the principles above stated, the State has received on account of the grant of 1862 for the improvement of the Des Moines river:

1st.	Lands in place.....	212,147.66
2d.	On the East Fork of the river, and under Joint Resolution of 1861.....	11,661.80
3d.	Special certificate issued.....	300,000.00
	Making a total of.....	523,809.46

Leaving a balance of land due of 34,191.70 acres.

This balance is nearly equal to the excess certified under the Act of 1841, and I am assured that an effort will now be made, on the part of the gentleman representing the State, for the satisfactory adjustment of this balance.

No further selections will therefore, be allowed for the present.

I do not think however, that this Department has power, under any of the Acts of Congress upon the subject, to enforce against the wishes of the State, an arbitrary offset of the excess of the 5000,000 acre grant, against this balance due for the Des Moines improvement.

I approve your refusal to sanction the selection of the even numbered sections within the limits of the grant as indemnity.

Should such selections be allowed the alternation of the granted and reserved sections would be destroyed.

This alternation is expressly established by the Acts of Congress making the grants, and for maintaining the same many good reasons might be assigned.

The papers in the case are now herewith returned.

I am, sir, very respectfully,

Your obedient servant,

[Signed.] J. P. USHER,

Secretary.

The Commissioner of the General Land Office.

STATEMENT

Showing the extent of the Railroad interference with the Des Moines River Grant.

Total amount of the certified Railroad lists		233,453.00
Dubuque and Sioux City Railroad.		
Fort Dodge District —		
Six mile limits	56,473.32	
Fifteen mile limits	31,537.34	
		88,010.66
Iowa Central Air Line Railroad.		
Fort Des Moines District —		
Six mile limits	46,898.73	
Fifteen mile limits	49,387.16	
Fort Dodge District —		
Fifteen mile limits	13,470.96	
		109,756.85
Mississippi and Missouri Railroad.		
Fort Des Moines District —		
Six mile limits	12,071.78	
Fifteen mile limits	23,613.71	
		35,685.49
Total interference		233,453.00

To His Excellency, W. M. STONE, *Governor of the State of Iowa:*

I herewith have the honor to submit to you a report of my labors as Agent and Commissioner of the State, to attend to any business necessary to be done in the city of Washington, D. C., relative to a grant of lands to the State of Iowa, by Act of Congress approved July 12th, 1862, which lands inure to the Des Moines Valley Railroad Company.

I was first appointed agent by Governor Kirkwood, February 18th, 1863. I visited Washington immediately thereafter, and made every possible effort to obtain a certificate to enter the Indemnity Lands. Great delay in obtaining a certificate was caused by the Department not being furnished with a list of the lands sold and conveyed by the State for which indemnity was to be given.

On the 25th day of April, 1863, the Commissioner of the General Land Office issued a *Special Certificate* to enter three hundred thousand (300,000) acres, authorizing the selection of any public lands in the State, subject to entry at one dollar and twenty-five cents per acre.

The following is a *copy* of the

SPECIAL CERTIFICATE.

"WHEREAS, the Act of Congress approved the 12th July, 1862, entitled "An Act confirming a Land Grant to the State of Iowa the alternate odd numbered Sections in place, and undisposed of lying within five miles of the Des Moines River, between the Raccoon Fork and the northern boundary of said State," and whereas, said Act provides that if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of said Act, excepting those released to the grantees of the State of Iowa under the Joint Resolution of March 2, 1861, the Secretary of the Interior shall set apart an amount of lands within said State to be certified in lieu thereof, and *whereas*, it appears in the preliminary adjustment of said grant that the United States had sold and otherwise disposed of a certain quantity of land prior to the passage of said Act for which the said State is entitled to indemnity under the Act aforesaid; Therefore this is to certify that upon the presentation of this paper to any of the Land Offices in the State of Iowa accompanied by written authority from the Governor, authorizing the party presenting the same, as State Agent, to make indemnity selections under said Act it shall and may be lawful for the Register and Receiver to receive lists of such indemnity selections from such Agent, which lists must be verified

by the signature of the said Agent attested by the Register and Receiver, and be accompained by the certificate that the lands so selected are vacant public lands subject to entry at private sale at $1,25 per acre; the aggregate of such selections to be restricted to *Three hundred thousand* acres approximate to the actual quantity, to be reduced or increased according to the result of a final adjustment; and no selections to be made unless of tracts in compact form, not less than a quarter section, unless where a fraction of less quantity is selected and taken as aquivalent to 160 acres. Upon such selections being filed and verified as indicated and attached to this special certificate the Register and Receiver are required to make entries accordingly on the plats and records of their office, and make monthly abstract returns to this office of such selections separate from the ordinary monthly returns.

When the aggregate authorized by this certificate shall have been selected, this certificate with the verified lists must be returned to this office.

Given under my hand and the seal of this office at the city of
[SEAL.] Washington, this 25th day of April, A. D. 1863.

(Signed,) J. M. EDMUNDS,
Commissioner of the General Land Office.

In the months of July, August and September of the same year I caused the 300,000 acres to be entered in the Fort Dodge and Sioux City Land Districts. I furnished a copy of the lists to the Register of the State Land Office at Des Moines.

On the 23d day of January, 1864, my commission was renewed by your Excellency.

While I was in Des Moines in the spring of 1864, I reported to the Commissioner of the General Land Office, as follows:

DES MOINES, March 9, 1864.

HON. J. M. EDMUNDS, *Commissioner of General Land Office*, Washington, D. C.:

SIR: I have the pleasure to inclose you herewith the list of "*indemnity lands*" entered by me as agent of the State of Iowa

with a certificate of Governor Stone attached, accepting and confirming the selections.

The original "special certificate" for 300,000 acres, and my commission as Agent from the Governor of Iowa, you will also find attached to the list, agreeably to your instructions.

I am, respectfully, your obedient servant,

D. W. KILBOURNE.

The following is a copy of Governor Stone's certificate:

STATE OF IOWA, *ss:*

I, W. M. Stone, Governor of the State of Iowa, do hereby acknowledge the validity of the foregoing selections which are binding upon the State under the Act of Congress of the 12th July, 1862, and hereby apply to the Commissioner of the General Land Office to certify the title to the State accordingly.

In witness whereof I have hereunto set my hand and caused to be
[SEAL.] affixed the Great Seal of the State of Iowa. Done at Des Moines, the 21st day of January, 1864.

[Signed.] W. M. STONE.

By the Governor,

[Signed.] JAMES WRIGHT,
Secretary of State.

The following acknowledgment of the receipt of the list was duly received:

GENERAL LAND OFFICE,
March 17th, 1864.

D. W. KILBOURNE, Keokuk, Iowa:

SIR: Your letter of the 9th inst. is received with lists of indemnity selections at the land office at Fort Dodge and Sioux City, Iowa, under the Act of 12th July, 1862.

Very respectfully, your obedient servant.

J. M. EDMUNDS,
Commissioner.

On the 19th of December, 1863, I addressed the following communication to the Commissioner of the General Land Office:

WASHINGTON, Dec. 19th, 1863.

HON. J. M. EDMUNDS, *Commissioner of General Land Office:*

SIR: On behalf of the State of Iowa we hereby request that a complete adjustment of the grant of July 12th, 1862, in extension of the grant of August 8th, 1846, giving lands for the improvement of the Des Moines river be made at your earliest convenience and that a certificate be made for the remainder of the lands to be selected as indemnity lands under said grant.

We understand that among the "clear lands" which have been set apart to the State under the said grant of 1862 are some Twelve thousands acres which had been selected by the State as school lands under the law of 1841 as amended by a subsequent Act of Congress. This land had been selected as school lands, as aforesaid, after the passage of the Des Moines river grant of August 8th, 1846. And as that grant was for several years supposed to extend to the source of the river, the State authorities were notified that they could select other lands in their stead.

This however was not done so far as we have been able to ascertain; and when the decision of the Supreme Court of April 1860 limited the Des Moines River grant of 1846 to the Raccoon Fork the selection of the twelve thousand acres became good and valid.

We therefore request that the said amount of lands be awarded to the State, and that indemnity lands to the same amount be granted us in their stead. We also understand that some eleven or twelve thousand acres of land lying more than five miles from the Des Moines river proper, and which had been improperly certified to the State as part of the lands embraced in the Des Moines river grant of 1866 aforesaid, and were therefore included in the relinquishment made to the State of Iowa by the Joint Resolution of March 2, 1861, have been or are proposed to be deducted from the grant made by the Act of July 12th, 1862, aforesaid.

Against this we respectfully protest, and ask from you a re-examination of the matter, and a direction to the proper officer that said deduction be not made, but that the whole amount of lands granted to the State of Iowa by virtue of the said Act of July 12, 1862, be set apart to the State accordingly.

In order that the adjustment of the grant may be made final and complete, we hereby relinquish on the part of the State all claim to any lands embraced among the odd numbered sections along the Des Moines River and within five miles thereof, which now appear to be claimed by pre-emptors, or which for any other reason, are not included in the lists of "clear lands" set apart to the State under said grant of July 12th, 1862.

We also request to be informed whether there is any thing to prevent us from selecting the even numbered sections of land along the Des Moines River, as part of the indemnity lands to which we are entitled under the grant of July 12, 1862.

Your certificate previously given, authorizes us to select any lands now subject to sale at $1.25 per acre. These even numbered sections are of this class, and we hope to be permitted to select a portion of these lands accordingly.

Very respectfully, your obedient servant,

[Signed.] D. W. KILBOURNE.

On the first of March, 1864, the Commissioner denied the requests made in the foregoing communication, and confirmed his former decision. From his decision we appealed to the Secretary of the Interior.

From March, 1864, to February, 1865, we persistently urged Mr. sher, in person and by letter, to consider and decide the case.

Failing in my efforts thus far, (as it seemed to me) to convince r. Usher that the State of Iowa, or her railroad interests were orthy of any consideration at his hands, we decided to make further ersonal efforts. Accordingly on the 1st of February, 1865, I went Washington, and for four weeks I did not fail to call on that gnitary daily excepting Sundays, and a few instances when he med a day to see me, leaving one to three days intervening.

Finally, on the 28th day of February, 1865, — eleven months after e papers in the case were placed before him — we were handed his cision in Washington, dated as above.

The questions in the case were simple, and could have been decided by an efficient and competent officer as well by two or three days' consideration, as by a whole year, which was taken. I can not therefore divest myself of the conviction, that by causing such unnecessary delay, and loss of time and expense, Mr. Secretary Usher imposed upon your agent, and trifled with the interests of the State.

I refer to a copy of the decision of Secretary Usher accompanying this report, marked "A."

From this decision we appealed to the President on one point only, to-wit: in regard to the 11,661 $\frac{3}{160}$ acres of land.

In the absence of any law for such appeal, we obtained the written request of our senator and representatives in Congress to the President, to receive the papers in the case, and refer them to the Attorney General.

The present worthy Secretary of the Interior, Mr. Harlan — then Senator, favored us by presenting the papers to the President.

Very soon after this, and before the papers were handed to the Attorney General, Mr. Lincoln was assasinated, which caused delay of several weeks in referring the papers.

I was in Washington in September last, when I learned that the Assistant Attorney General had the case in charge, and that a decision might be expected within a reasonable time. I have not yet been advised that the Attorney General has made his decision.

The Secretary of the Interior claims (as appears by his decision) that from the State of Iowa is due the United States for excess selections of school land under the Act of 1841, 35,473 $\frac{4}{160}$ acres and that there remains to be selected as indemnity lands 34,191 $\frac{7}{160}$ acres but the Secretary forbids any further selections until there is a satisfactory adjustment of the claim for the above excess.

I proposed as Agent of the State, and consent of the Des Moines Valley Railroad Company, and with the approval of your Excellency, to adjust this matter between the United States and the State of Iowa, by an offset of the same number of acres of indemnity lands as are claimed to be due by the State, to wit: 35,473 $\frac{4}{160}$ acres.

The balance of the indemnity lands due, as appears by the decision of Secretary Usher, is 34,191 $\frac{7}{160}$ acres, which with 1,281 $\frac{4}{160}$

deducted from the 300,000 acres heretofore entered, but not yet certified to the State, and added to the 34,191 $\frac{7}{160}$ acres above, will make the 35,473 $\frac{4}{160}$ acres, and would settle the claim of the United States in full.

The State can then settle with the Des Moines Valley Railroad Company at $1.25 per acre, for the 35,473 $\frac{4}{160}$ acres of land so retained by the United States, out of the indemnity lands inuring to said company in settlement of the claim of the United States against the State of Iowa. This would fully adjust this long standing, troublesome, and I suppose just claim of the United States against the State of Iowa. Under this arrangement the State will retain many of the lands of the excess sections which are now very valuable, instead of re-conveying them to the United States, as the Legislature has heretofore authorized the Governor to do.

The Secretary of the Interior decides that the offset will be *sanctioned*, "if it can be done with the assent and under the proper authority of the State."

I have conferred with the railroad company, and they will fully sanction the offset; hence I see no obstacle now in the way of a speedy settlement of the whole matter.

The railroad company express the opinion that for the sum of $35,346.46 paid to Brown & Allender February 5th, 1861, the State should not require interest, inasmuch as the State realized the money for a large portion of these excess selections of 1841 many years ago, and now have an opportunity to settle with the said railroad company for these lands at one dollar and twenty-five cents per acre without interest.

A statement showing the whole area of the grant to the State of Iowa under the 12th July, 1862, and the disposition of the same, marked "B."

Also a statement showing the extent of the railroad interference with the Des Moines River Grant under Act of Congress of 1856, marked "C," will accompany this report.

Many vexed questions in regard to this grant seemed to arise, growing out of the construction given to the several Acts of Congress,

and there has seemed to be a reluctance on the part of the officers of the proper Departments to take up and consider the matter.

I have used my best efforts to secure an adjustment of the said land grant, and to get the lands certified to the State.

I am now encouraged to believe that as soon as the proposed settlement by offset can be consummated I can make a full and satisfactory adjustment with the Commissioner of the General Land Office, so that he will certify the lands to the State without any further delay.

Respectfully submitted,

D. W. KILBOURNE,
Agent.

KEOKUK, January 4th, 1866.

EIGHTH BIENNIAL REPORT

OF THE

IOWA INSTITUTION

FOR THE

EDUCATION OF THE BLIND,

LOCATED AT VINTON,

TO THE

TWELFTH GENERAL ASSEMBLY.

DECEMBER, 1867.

DES MOINES:
F. W. PALMER, STATE PRINTER.
1867.