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Land grants in Kansas

48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1113.

LAND GRANTS IN KANSAS.

APRIL 4, 1884.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ANDERSON, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 6416.]

The Committee on the Public Lands, to whom was referred the bills (H. R. 3616 and H. R. 5026) to provide for the adjustment of land grants made by Congress to aid in the construction of railroads within the State of Kansas, having given the subject a thorough examination and having heard by counsel the several companies interested, respectfully submit the following report and recommend the adoption of the accompanying bill providing for the adjudication by the Supreme Court of the legal questions involved, upon suit brought by the Attorney-General, which is presented as a substitute for the above bills.

Before proceeding to details it may be well to indicate the general facts in the case, and to outline the general provisions of the proposed substitute.

In the aggregate about 9,500,000 acres of land within the State of Kansas have been granted to five Kansas railroads, as appears by the following table compiled from official reports:

Company now operating.	Granting act.	No. of miles covered by grants.	No. of miles in Kansas.	No. of sections per mile.	Estimated No. of acres granted.	Estimated No. of acres in Kansas.	No. of acres patented June 30, 1883.
Kansas Pacific...	July 1, 1862 July 2, 1864	638.60	431.00	20	6,000,000	4,000,000	963,714
Atchison, Topeka and Santa Fe.....	Mar. 3, 1863	470.58	470.58	10	3,005,870	3,005,870	2,745,938
Kansas City, Lawrence and Southern (Leavenworth, Lawrence and Galveston)...	Mar. 3, 1863	143.22	143.22	10	800,000	800,000	256,281
Missouri, Kansas and Texas.....	Mar. 3, 1863 July 1, 1864 July 25, 1866 July 26, 1866	183.20	183.20	10	1,520,000	1,520,000	984,105
Saint Joseph and Denver City.....	July 23, 1866	227.00	138.00	20	1,700,000	81,196	462,373
					13,025,870	9,407,066	5,412,411

These long and broad belts embrace some of the richest farming land of the West and sweep through a State which raised last year 35,000,000 bushels of wheat and 175,000,000 bushels of corn, the value of its total farm products for that period being estimated at $200,000,000. The

title to nearly one-half of the granted sections remains in the United States, and even as to many of the patented sections doubts exist as to the validity of the title of such gravity as to affect their value and as to render legal adjudication imperative. There has never been a final settlement of account between the Government as grantor and the railroad company as grantee in either one of these cases, although the roads are claimed to have been completed for eleven years, and although about 15,000,000 of acres of the public domain have been withdrawn from settlement for their convenience for fully twenty years. In the mean time the titles to the lands supposed to have been lawfully earned by the companies, and especially the titles to such as are claimed both by the Government and the companies, are more or less clouded, while the title to many of the best farms in Kansas swings in contest between the Government, the companies, and the actual settler or purchaser, from the one or the other.

The amount of land in dispute between the grantor and grantee as to all these roads is variously estimated at from 1,500,000 to 2,000,000 of acres, having a market value of from $3,000,000 to $5,000,000. If these lands have been lawfully earned by the companies a clear and unquestioned title should be passed accordingly. But if they have not been so earned, then the title of the United States should be freed from all doubt and the lands be opened to settlement.

So that not only because of the magnitude of the Government's interest, but because of the serious disturbance of the railroad title to lands which the companies will be found to have earned, and because of the importance and nature of the legal questions involved, your committee are clear in the opinion that a final settlement of the legal issues, and by consequence of the titles, can alone be secured by such action of the proper court as shall declare the meaning and limits of the several granting acts; shall define the rights of the Government and of the companies; and such subsequent action by the Secretary of the Interior in accordance therewith as shall adjust the grants. We can see no valid objection to this course. It is quite as important to the companies as to the Government that the rights of all parties shall be speedily determined by the ultimate authority to which all must submit, and only those who know their claims to be unjust can object to a supreme rule of justice.

And, on the other hand, this course is rendered necessary for the protection of the public interest by the fact, as reported by the Commissioner of the General Land Office, that to one of these companies, the Atchison, Topeka and Santa Fé, there have been certified or patented 15,160 more acres of land than are contained in the whole area of its grant. He also states that "upon the theory most favorable to the company" 73,351 acres have been certified to it in excess of the amount to which it was lawfully entitled. This improvident certification can only be corrected by the combined action of Congress and of the courts, and renders the adoption of the proposed measure necessary.

In outline, the object of the bill is to cause the Attorney-General, when furnished by the Interior Department with the necessary facts and evidence, to bring suit in the proper circuit court, and appeal to the Supreme Court as may be necessary, for the purpose of securing an adjustment of the grants according to their several terms and conditions. It provides for the protection of the lawful and equitable rights of all parties in interest. Under such adjustment the railroad companies will receive every acre to which they are lawfully entitled, while the United States and bona fide settlers will recover or have restored

to them the lands which may have been wrongfully withheld from market or certified for the benefit of the companies.

We present a summary of the facts respecting each of the roads, as follows:

KANSAS PACIFIC.

The first grant to be adjusted under this bill was made by act of July 1, 1862, to aid in the construction of a railroad from the Missouri River, at the mouth of the Kansas River, via Fort Riley, to a certain point on the one hundredth meridian of longitude in the Territory of Nebraska.

The grant was of odd numbered sections within 10 miles of the line, to take effect upon the definite location of the same. Section 9 of said act provides as follows:

"The route in Kansas, west of the meridian of Fort Riley, to the aforesaid point on the one hundredth meridian of longitude, to be subject to the approval of the President of the United States, and to be determined by him on actual survey."

The Commissioner of the General Land Office, in a report to the Secretary of the Interior of date February 24, 1883, and transmitted to Congress by the Secretary, February 26, 1883 (Ex. Doc. No. 95), said:

"I do not find any evidence on file that the line of the road as definitely fixed, west of the meridian of Fort Riley, was determined and approved by the President of the United States."

By the act of July 2, 1864, this grant was enlarged to the extent of the odd-numbered sections of public land within the limits of twenty miles of said road, but the provision requiring the route west of Fort Riley to be approved and determined by the President of the United States on actual survey has never been changed, repealed, or modified. Hence the route of said road west of Fort Riley was not located as the law required, and it therefore becomes a question for the courts to determine as to the validity of the grant along that portion of the line.

If the line or route west of the point mentioned was located without the approval of the President, so as to conform substantially to the requirements of the granting act, then such location, upon the approval of a map thereof by the Secretary of the Interior, became binding upon the railroad company, and could not be changed without the assent of Congress.

The following official order shows the location of said road between the points mentioned:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., July 14, 1866.

GENTLEMEN: The Union Pacific Railroad Company, eastern division, having filed in this Department, under the act of Congress approved July 3, 1866, a map designating the line of route of their road from Fort Riley to the western boundary of Kansas, you are hereby directed, in accordance with instructions from the Secretary of the Interior, to withhold from sale or location, pre-emption, and homestead, all the odd sections within the 20 and 25 mile limits as delineated on the diagram herewith.

The even sections within the 20-mile limits are increased to $2.50 per acre, and will only be subject to settlement and entry under the pre-emption and homestead laws at that ratability.

The even sections between the 20 and 25 mile limits remain unaffected, and where offered and not withdrawn for any purpose will be subject to ordinary sale and pre-emption settlement and homestead entry.

The withdrawal will take effect from the date of the reception of this order by you, and you will acknowledge the precise time of its receipt at your office.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

REGISTER AND RECEIVER,
Junction City, Kans.

From the line thus established, as appears from the maps and records on file in the General Land Office, wide departures were made when the road was constructed.

Starting at Fort Hays the line of constructed road deflects from the line of definite location as shown by the above order, and the deflection beyond the permissible limits continues until Fort Wallace is reached, a distance of about 90 miles. For a space of some 30 miles the road is constructed from 20 to 26 miles from the line of definite location.

When the line of a land-grant railroad is definitely located and a map thereof accepted and filed in the Department of the Interior, it then becomes binding upon the railroad company, and cannot thereafter be changed or relocated without the assent of Congress.

Under date of May 10, 1869, Hon. J. D. Cox, Secretary of the Interior, upon the ap-

plication of the McGregor and Sioux City Railroad Company to file a new map, &c., declined to comply with the request for the following reasons, viz:

"After a road has been definitely located, the map thereof filed here and accepted and the lands withdrawn, no specific authority is given whereby this Department can accept another location, and in the absence of such authority, I must decline to give my approval to the map now presented."

On February 2, 1880, Mr. Attorney-General Devens, in an opinion addressed to the Hon. Secretary of the Interior, said:

"Taking your communications together, they apparently submit two questions:

"1. Whether assuming the road to have been definitely located according to the location of 1868 and 1869, and to have been constructed upon a different line, the State is not entitled to the benefit of the grant.

"2. Whether in adjusting the grant (if it be entitled to the benefit thereof), the line of definite location is to be regarded, or the line upon which the road was actually constructed." * * *

"The law clearly contemplated that the road was to be constructed according to the line of definite location. For this purpose lands along it were withdrawn from the market and public information given by which parties purchasing property in the vicinity were to be governed. The lands in question were separated and set apart from the public domain, and the adjustment of the grant was to proceed according to the line thus definitely located. Whatever adjustment, therefore, of the grant is made, must be made according to the line of definite location. To hold that the grant could be adjusted to a different and distinct line, upon which a road, perhaps answering in general terms the description given in the granting act, might be constructed, would be to hold that there were actually two grants of land. It cannot be possible that the grantee, having made his grant definite and having had the lands granted, separated from the public domain, can take it up and relocate it so as to appropriate other lands. The grant lost its character of a float by the definite location. It is therefore necessary in adjusting the grant that it should be adjusted according to the line of definite location." (16 A. O. G., 462–3.)

In Van Wyke *vs.* Knevals the Supreme Court say:

"The route must be considered as 'definitely fixed' when it has ceased to be the subject of change at the volition of the company. Until the map is filed with the Secretary of the Interior the company is at liberty to adopt such a route as it may deem best, after an examination of the ground has disclosed the feasibility and advantages of different lines. But when a route is adopted by the company, and a map designating it is filed with the Secretary of the Interior, and accepted by that officer, the route is established; it is, in the language of the act, definitely fixed, and cannot be the subject of future change, so as to affect the grant, except upon legislative consent. No further action is required of the company to establish the route. It then becomes the duty of the Secretary to withdraw the lands granted from market." (16 Otto, 366.)

The Kansas Pacific Railroad Company did not acquire a right to lands west of the meridian of Fort Riley under either of the acts of 1862, 1864, or 1866, as shown by decision of the Secretary of the Interior, of date July 24, 1871. (Also opinion of Assistant Attorney-General, Copp's L. L., 365, 366; also 11 Opinions Attorney-General, 462.)

Section 3 of the said granting act provides as follows:

"And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption, like other lands, at a price not exceeding $1.25 per acre, to be paid to said company." (12 Stat., 492.)

It is estimated that not more than one-third of the lands claimed by said railroad company, and withdrawn for its benefit within the State of Kansas, have been certified or patented to the company by the Secretary of the Interior.

As to the amount which had not been sold or disposed of, in contemplation of the granting act by said company, within three years from the completion of said road, and what constitutes a sale, will be for the court to determine should this bill become a law.

ATCHISON, TOPEKA AND SANTA FÉ AND LEAVENWORTH, LAWRENCE AND GALVESTON GRANTS.

The second grant, for adjustment, mentioned in said bill is that of March 3, 1863 (12 Stat., 772), to aid in the construction, first, of a railroad and telegraph from the city of Leavenworth, by way of the town of Lawrence, to the south line of the State, in the direction of Galveston, Tex., with a branch from Lawrence to the point on the Atchison, Topeka and Santa Fé Railroad where said road intersects the Neosho River, second, of a railroad from the city of Atchison, via Topeka, to the west line

of the State, in the direction of Santa Fé, N. Mex., with a branch from where said road crosses the Neosho River, down the Neosho Valley, to the point where the Leavenworth, Lawrence and Galveston road enters said valley; "every alternate section of land, designated by odd numbers, for ten sections in width, on each side of said road and each of its branches."

"But in case it shall appear that the United States have, when the lines or routes of said road and branches are definitely fixed, 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 tiers or 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 pre-emption or homestead settlement have attached *as aforesaid*."

From this it will be observed that indemnity was authorized and provided only for lands *granted as aforesaid*.

Lands not owned by the United States and lands previously reserved or otherwise disposed of were not granted, because Congress could not grant what the United States did not own, or what had been set apart for the fulfillment of treaty stipulations and other specific purposes.

But to remove all doubt and make the grant, as seems to your committee perfectly clear, Congress inserted in the said granting act the following proviso: "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 to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said roads and branches 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."

After a careful examination and investigation of the whole subject, and after hearing arguments of counsel on both sides, your committee have arrived at the conclusion that the terms, provisions, and conditions of the said act of March 3, 1863, have not been complied with by the railroad companies therein mentioned; and, further, that the Department of the Interior has exceeded its authority in certifying lands to the State for the benefit of said companies. The said act further provides "that if any part of said road and branches is not completed within ten years from the passage of this act no further sale shall be made, and the lands unsold shall revert to the United States."

It is admitted by all, as well as shown by the records of the Interior Department, that the Leavenworth, Lawrence and Galveston road and branch were not completed within the time prescribed.

That part of said road from Leavenworth to Lawrence was never either commenced or completed, and the same is true of the branch from the town of Lawrence via the Wakrusa Valley to the point on the Neosho River where the Atchison, Topeka and Santa Fé road intersects said river.

Yet, according to the records of the General Land Office, lands to the amount of several thousand acres have been certified for the benefit of said road since the expiration of said ten years.

The Neosho Valley branch of the Atchison, Topeka and Santa Fé road, from the point where said road crosses the Neosho River to the point where the Leavenworth, Lawrence and Galveston road enters the said Neosho Valley, was not constructed within the said ten years, nor has said branch ever been constructed.

A road answering in general terms, perhaps, the same purpose, was constructed along the said Neosho Valley, but this road does not run within 10 miles of the point where the said Galveston road enters said valley, as shown by the maps on file in the General Land Office.

Whether the road as constructed down the Neosho Valley answers the requirements of the said granting act will be for the court to determine in the adjustment of said grant.

That there have been certified for the benefit of the said Atchison, Topeka and Santa Fé road lands in excess of the amount to which said company was lawfully entitled, and lands as indemnity for lands which were reserved from the operations of said grant, will appear from the following official communications:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 11, 1883.

SIR: I have the honor to report that an examination, in detail, of the grant to the State of Kansas for the benefit of the Atchison, Topeka and Santa Fé Railroad Com-

pany discloses the fact that an excess of indemnity lands has been approved to the State for the company, the last approval being April 13, 1875.

Before adjusting the same I respectfully submit the following propositions for your consideration, and ask for instructions as to what lands the company shall be allowed indemnity for:

1. Within the limits of the grant are portions of the Delaware, Pottawatomie, Sac and Fox, and Kansas Indian Reservations, the disposition of which was provided for by treaties with the respective tribes, for the benefit of the Indians. Some of their lands were disposed of prior to the date of the grant, a part subsequent thereto, and a portion still remains unsold. Is the company entitled to indemnity for lands within those reservations or either class of them?

2. Is the company entitled to indemnity for lands selected by the State for school purposes, or covered by valid claims at the date of the grant?

3. Is the company entitled to indemnity for lands within its grant which had been previously granted to another company?

4. This company and the Missouri, Kansas and Texas Railway Company made joint selection of lands in the conflicting limits of the two grants and relinquished its right each to the other a moiety of the same, although the grant to the latter was of a subsequent date, to wit, July 1, 1864. Is the former now entitled to indemnity for lands so relinquished? (See Missouri, Kansas and Texas Railway Company *vs.* Kansas Pacific Railway Company, 97 U. S., p. 499.)

As bearing upon some of the questions herein submitted, I call your special attention to the decision of the Supreme Court in the case of Leavenworth, Lawrence and Galveston Railroad Company *vs.* United States (94 U. S., p. 733), and the decision of your predecessor (Secretary Schurz), dated October 16, 1880, in accordance with the opinion of Attorney-General Devens, dated June 5, 1880.

The grant to the Atchison, Topeka and Santa Fé Railroad Company is identical with that passed upon by the Supreme Court in the Leavenworth, Lawrence and Galveston Railroad case, cited above.

I am, very respectfully,

N. C. McFARLAND,
Commissioner.

Hon. H. M. TELLER,
Secretary of the Interior.

Status of the grant.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 21, 1883.

SIR: In compliance with the instructions of the honorable Secretary of the Interior, dated the 11th ultimo, you are advised that the following is the present status of the grant to the State of Kansas for the benefit of the Atchinson, Topeka and Santa Fé Railroad Company.

The company has completed within the State 469.35 miles of railroad. The area of the odd-numbered sections of land within the 10-mile limits of the grant amounts to 2,915,559.74 acres, which appear as follows upon the tract-books of this office, to wit:

	Acres.
Within the Kickapoo Indian reservation	60.03
Within the Delaware Indian reservation	199,580.78
Within the Pottawatomie Indian reservation	31,324.38
Within the Sac and Fox Indian reservation	105,040.70
Within the Kansas Indian reservation	13,086.68
Within the Osage (trust) Indian reservation	31,121.75
Within the Eort Larned military reservation	5,081.59
Within the Fort Dodge military reservation	15,491.16
Patented to the Kansas Pacific Railway Company	2,080.85
Patented to the Carbondale Branch, Union Pacific R. R. Co	199.03
Approved for Missouri, Kansas and Texas Railway Company	23,442.95
Approved for Atchison, Topeka and Santa Fé Railroad Company	1,831,709.77
Pending selections by Atchison, Topeka and Santa Fé Railroad Company	189,384.39
Vacant	40.00
Lands included in State selections, entries, &c., prior to date of grant	404,288.22
Sold, entered, &c., after date of grant	63,637.46
Total	2,915,559.74

There have been approved to the State for the company 914,267.73 acres of land, within the 20-mile limits of the grant, as indemnity for lands lost in place.

The above figures will show the following:

	Acres.
Approved to State for company in granted limits	1,831,709.77
Selected for company, to which it is entitled, granted limits	189,384.39
Still vacant in granted limits	40.00
Approved for company in indemnity limits	914,267.73
	2,935,401.89
Total area of odd sections in granted limits	2,915,559,74

Leaving an apparent excess of 19,842.15 acres of indemnity land approved to the State for the grant, on the theory most favorable to the company.

* * * * * * *

Very respectfully,

N. C. McFARLAND,
Commissioner.

Hon. S. J. CRAWFORD,
Agent of the State of Kansas, Washington, D. C.

A corrected statement shows such excess to be 15,160.40 acres.

In a letter addressed to the Secretary of the Interior, on the subject of the grant to this road, of date January 8, 1884, the Commissioner of the General Land Office says:

"The clear ascertainment of an excess of 15,160.40 acres certainly shows that there was no proper adjustment. As near as I can learn estimates were made and lands certified to what was believed to be sufficient to cover the losses. But I am not able to learn that there ever was a careful and critical examination so as to determine with precision the amount of indemnity required.

"It will be noticed that the statement of lands for which indemnity is allowed, or supposed to be allowed, includes 23,442.95 acres for lands certified to the Missouri, Kansas and Texas, on an agreement made between the two companies as to the division of lands in the common limits.

"These lands are all within the limits of the grant to the Atchison, Topeka and Santa Fé, and this is the superior right as to lands north of the road. South of the road the rights were equal. As to that portion lying north of the road there can be no question, as the grant under which the Missouri, Kansas and Texas holds is a year later. South of the road it was not the intention of the act to give a double grant or a double indemnity for lands lost. The Atchison, Topeka, and Santa Fé having, by its own agreement, permitted the Missouri, Kansas, and Texas to take indemnity to which it had the superior right, cannot ask indemnity over again. If it gets it, double indemnity will be allowed. If it be said the indemnity has been certified and therefore must stand, I say no; because this particular question, so far as known to me, was never passed on by this office or the Department, neither in relation to this grant or any other; and it cannot be presumed that it was ever intended to give indemnity for such loss. It must rather be presumed the amount not being great, that it was a mistake for want of careful calculation. * * *

"It is my judgment, therefore, that the State of Kansas should be called on to request the Atchison, Topeka and Santa Fé Railroad Company to return to the United States, by proper deed of relinquishment or conveyance, from lands last certified to the State as indemnity for its use, lands equal to the 15,160.40 acres certified in excess of the total area of odd-numbered sections in the granted limits; the 13,170.35 acres within the granted limits of the grant for the Atchison, Topeka, and Santa Fé which have passed as indemnity for the Missouri, Kansas, and Texas Company; the 40,950.84 acres, certified in excess from or on account of the lands south of the road in the granted limits common with the Missouri, Kansas, and Texas; and the 4,069.42 acres north of the road which passed to the Missouri, Kansas and Texas Company, for which the Atchison, Topeka and Santa Fé Company has received indemnity, as hereinbefore fully explained; in all, 73,351.01 acres; and I await your further instructions in the premises."

Thus it is shown that there has been certified for the benefit of this road lands in lieu of sections and parts of sections sold to another railroad company; also indemnity for lands in Indian and military reservations, and lands previously granted to other railroad companies, and land settled upon and otherwise disposed of prior to the date of the grant; besides an excess of some 15,000 acres over and above the aggregate amount contained in the odd-numbered sections within the limits of the grant throughout the entire length of said road.

The scope, purpose, and legislative intent and legal effect of the indemnity provision in Congressional grants, and the reasons therefor, have been thoroughly consid-

ered and explained by the Supreme Court in several leading cases. (See United States *vs.* Leavenworth, Lawrence and Galveston R. R. Co., 92 U. S., 746–749; Sherman *vs.* Buick, 93 U. S., 212–215; Heydenfelt *vs.* Mining Co., 93 U. S., 638–640; Missouri, Kansas and Texas R. R. Co. *vs.* Kansas Pacific R. R. Co., 97 U. S., 491; R. R. Co. *vs.* Baldwin, 103 U. S., 428, 429.

In Leavenworth, Lawrence and Galveston R. R. Co. *vs.* United States the court say:

"The indemnity clause has been insisted upon. We have before said that the grant itself was *in præsenti*, and covered all the odd sections which should appear on the location of the road to have been within the grant when it was made. The right to them did not, however, depend on such location, but attached at once on the making of the grant. It is true they could not be identified until the line of the road was marked out on the ground; but as soon as this was done it was easy to find them. If the company did not obtain all of them within the original limit by reason of the power of sale or reservation retained by the United States it was to be compensated by an equal amount of substituted lands.

"The latter could not on any contingency be selected within that limit, and the attempt to give this effect to the clause receives no support, either in the scheme of the act or in anything that has been urged by counsel. It would be strange, indeed, if the clause had been intended to perform the office of making a new grant within the ten-mile limit or enlarging the one already made.

"Instead of this, the works employed show clearly that its only purpose is to give sections beyond that limit for those lost within it by the action of the Government between the date of the grant and the location of the road."

In Burlington and Missouri R. R. Co. *vs.* United States, 98 U. S., 339, the Supreme Court says:

"That it (the land) must not have been sold, reserved, or otherwise disposed of by the United States, and a pre-emption or homestead claim must not have attached to it at the time the line of the road was definitely located."

Again, on June 5, 1880, Attorney-General Devens said:

"The case referred to involved the title to the Osage Indian lands in the State of Kansas, the question being whether said lands were reserved to the United States under the provisions of the Indian treaty, and also under the last proviso of the first section of the act of March 3, 1863, or were granted to the State of Kansas under the act of 1863, to aid in the construction of railroads. It was held that those lands never passed by the grant to the State of Kansas or the railroad companies; that they were reserved or excepted out of it; and, therefore, that the patents which had issued therefor had improvidently issued. To that extent the decision is undoubtedly authority, and it must be held, therefore, that all lands 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 whatever under the last proviso of the first section of the act of March 3, 1857, do not pass to the railroad companies, *nor are said companies entitled to indemnity therefor.*" (16 Op. A. G., 511.)

Again, the maps of definite location of this road, as stated by the Commissioner of the General Land Office, in his letter of January 8, 1884, before mentioned, show wide departures from the line of constructed road. This, as your committee have already shown, could not be done, without a forfeiture of the lands, within such deflected limits, except by consent of Congress.

MISSOURI, KANSAS AND TEXAS RAILROAD.

Under the grants for the benefit of the Leavenworth, Lawrence and Galveston road, and the Missouri River, Fort Scott and Gulf road, the odd-numbered sections within the limits of said grants were withdrawn from market, and the even-numbered sections within such limits increased to double minimum in price. Under subsequent grant, for the benefit of the Missouri, Kansas and Texas road, formerly the Union Pacific southern branch, as shown by the records of the General Land Office, there have been certified to the last-named road lands which had previously been withdrawn from market for the benefit of the said Leavenworth, Lawrence and Galveston road and the Missouri River, Fort Scott and Gulf road, as shown by the following:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 31, 1884.

Hon. JOHN A. ANDERSON,
House of Representatives:

SIR: I have the honor to acknowledge the receipt of your telegram of this date, asking "if any lands within the limits of the grants to the Leavenworth, Lawrence and Galveston Railroad, and also the Missouri River, Fort Scott and Gulf Railroad have been certified or patented to the Missouri, Kansas and Texas Railroad Compa-

ny." In reply I have to state that the records of this office show that lands within the designated limits of the grant to the Leavenworth, Lawrence, and Galveston Railroad Company have been patented and certified to the Missouri, Kansas and Texas Railway Company. The same is true of lands in the limits of the grant to the Missouri River, Fort Scott and Gulf Railroad Company.

Your inquiry does not seem to call for details. If you desire the description of the lands so certified and patented you will please so indicate.

I am, very respectfully,

N. C. McFARLAND,
Commissioner.

There have also been certified for the benefit of the said Missouri, Kansas and Texas road, the even-numbered sections, within the limits of the former grants, which had previous to such certification, been increased to double minimum, and held at that ratability in so far as the settlement rights of the people were concerned.

In the certification of such lands your committee are of the opinion the Department of the Interior exceeded its authority under the law, and by so doing, deprived settlers who had located and made valuable improvements upon such lands of their lawful and just rights.

SAINT JOSEPH AND DENVER CITY RAILROAD.

By an act approved July 23, 1866 (14 Stat., 210), Congress made a grant of lands to aid in the construction of the Saint Joseph and Denver City Railroad, with the usual indemnity clause attached.

In determining the rights of settlers under the homestead and pre-emption laws within the indemnity limits of this grant, the Department of the Interior adopted the date of the receipt of the map of definite location of the road at the local offices as the date when settlement rights ceased within such limits, instead of the date of the selection of such indemnity lands by the Secretary of the Interior, notwithstanding at that date many tracts were covered by valid claims.

By this action of the Department a large number of settlers who had selected and made substantial improvements upon lands within said indemnity limits were by such rulings precluded from perfecting their titles to the lands so settled upon and improved.

Your committee are of the opinion that the right of the railroad company attached to no specific tract within indemity limits until such tract had been selected by the Secretary of the Interior.

In Ryan *vs.* Central Pacific Railroad Company (9, Otto, 382) the Supreme Court say: "With respect to lieu lands, as they are called, the right was only a float, and attached to no specific tracts until the selection was actually made in the manner prescribed."

In Grinnell *vs.* The Railroad Company (103 U. S., 742), the court say: "As regards the lands to be selected in lieu of those lost by sale or otherwise, it may be that no valid right accrues to any particular section or part of a section until the selection is made and reported to the land office, and possibly not then, until the selection is approved by the proper officer."

In Cedar Rapids and Missouri River Railroad Company *vs.* Benjamin Herring and others (opinion delivered January 7, 1884), the court say:

"It is obvious, however, that the right to these odd sections, and the right to others in lieu of such odd sections as have been previously disposed of, depend upon very different circumstances, and it is not easy to see how rights can be vested in any particular section or sections of the latter class until it is ascertained how many of the original odd-numbered sections are thus lost, and until the grantee has exercised his right of selection.

"These latter, unlike the odd numbers within the 6-mile limit, are not ascertained and made specific by the protraction of the established line through the maps of the public lands. They are not and cannot be made specific until the grantee's right of selection has been exercised."

From this it will be seen that settlers had the right to settle upon any of the odd or even numbered sections within the so-called indemnity limits, at any time prior to the selection and certification of said lands by the Secretary of the Interior. If any of the lands so settled upon have been certified to the railroad company it will be the duty of the court, should the bill under consideration become a law, to adjust the grant, and restore such lands to their lawful owners.

Therefore, with the view of securing and protecting the rights of the people, the rights of the railroad companies, and the rights of the United States, your committee have prepared and submit the accompanying bill, which provides for the adjustment of said grants, by the courts, and recommend its passage.

FORTY-EIGHTH CONGRESS, FIRST SESSION. IN THE HOUSE OF REPRESENTATIVES.

[H. R. 6416.]

APRIL 4, 1884.—Read twice, committed to the Committee of the Whole on the state of the Union, and ordered to be printed.

A BILL to provide for the adjustment of land grants made by Congress to aid in the construction of railroads within the State of Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and is hereby, authorized and directed to immediately furnish the Attorney-General of the United States with certified copies of all maps of definite location, and maps of the general routes, and maps of the constructed lines of the Union Pacific Railroad, Kansas Division, formerly the Leavenworth, Pawnee and Western Railroad; the Leavenworth, Lawrence and Galveston Railroad and branch; the Atchison, Topeka and Santa Fé Railroad and branch; the Missouri, Kansas and Texas, formerly the Union Pacific (Southern Branch) Railroad, and the Saint Joseph and Denver City Railroad, within the State of Kansas; also certified copies of all lists of lands within both the granted and indemnity limits of the grant to or for the benefit of each of said roads and branches which have been certified by him for the benefit of said roads, respectively; also a certified statement showing the number of acres contained in the odd-numbered or granted sections within the limits of the grant to or for the benefit of each of said roads, respectively, which had previously been granted by Congress to aid in the construction of other railroads within said State; also a certified statement showing the number of acres in the odd-numbered sections within the limits of each of said grant or grants embraced within the Indian and military reservations at the date of said grants, respectively; also a certified statement showing the amount of public lands within the limits of each of said grants which had been sold, reserved, or otherwise disposed of by the United States, or to which a homestead, pre-emption, or timber-culture claim had attached at the date of said grants, respectively; also a certified statement showing the amount of public land within the limits of said grants sold, reserved, or otherwise disposed of by the United States, or to which a homestead, pre-emption, or timber-culture claim attached, between the date of grant and date of definite location of said roads, respectively; also a certified statement of all contested homestead, pre-emption, and timber-culture claims within both the ten and twenty mile limits of the grants, respectively, which have been awarded to the said railroad companies; also certified copies of all official reports, records, letters of acceptance of said grants, and other papers which tend to show the true status of each of said grants, and the action of the Department relative thereto.

SEC. 2. That the Attorney-General of the United States be, and is hereby, authorized and directed, immediately upon the receipt of the lists, maps, copies of the records, and so forth, above specified, to commence and prosecute, or cause to be commenced and prosecuted, to final decision, in the proper circuit court of the United States, and appeal to the Supreme Court as may be necessary, a suit or suits for the determination and adjudication of the respective rights of the said railroad companies and the United States arising from or growing out of the acts of Congress granting lands to aid in the construction of the railroads herein mentioned; and said suit or suits may be in the nature of suits in equity to set aside any title derived or claimed under any act of Congress or by virtue of any list of lands within the limits of said grants, respectively, which have been certified to the State of Kansas, or to either of said railroad companies, under said grants, or which may be claimed by said companies, and also to set aside any title derived or claimed under each and every list of indemnity lands certified under said grants in excess of the amount of lands to which said companies were lawfully entitled, and to decree such lists or title null and void; and the said circuit and Supreme courts shall give such suit or suits precedence.

SEC. 3. That if it shall appear, upon the determination of such suit or suits, that lands have been certified by the Secretary of the Interior for the benefit of either or all of said railroad companies in excess of the amount to which said company or companies were lawfully entitled, all such lands shall revert to the United States; and in said suit or suits the court shall determine whether the lands to which the said companies, respectively, were entitled should be taken from the public lands next nearest the constructed road, or from the lands certified for their benefit by the Secretary of the Interior, in the order of their certification; and if the judgment shall be that the latter course is proper, then as to all such excess the lists of the same, certified as aforesaid, shall be deemed and held to be null and void, and the Secretary shall revoke and cancel the same, commencing with the list last certified and continuing on such list and lists next in their order until the entire amount of lands so wrongfully certified shall have been revoked and canceled.

SEC. 4. That in case any of the lands in excess of the amount to which either of

said companies was entitled which have been certified or patented to it have been sold by the company prior to March twenty-fifth, eighteen hundred and eighty-four, the party or person so purchasing shall have the right to the lands so purchased, upon making proof of the fact of such purchase, and making payment of the unpaid purchase-money, if any, to the United States, either at the proper local land office, if there be one, or at the Department of the Interior, at Washington, within one year from the passage of this act; and patents shall issue to the party entitled thereto; and the Attorney-General shall cause suit or suits to be brought against such company as shall have disposed of any of such excess lands for the amount the said company shall have received for the same: *Provided*, That a mortgage of any of these excess lands shall not be regarded as a sale.

SEC. 5. That if, in any suit brought under the provisions of this act, it shall appear that lands have been withdrawn from market or certified by the Secretary of the Interior for the benefit of either of said companies, to which the companies respectively were not entitled by reason of prior withdrawal, appropriation, settlement, or other disposition of said lands the court shall make all proper order or decree as to such lands; and where there are actual settlers upon any of such lands, claiming the right to the same under the general laws of the United States, all such settlers shall have the right to prove their claims and make their entries under the homestead, pre-emption, or timber-culture laws, or if they have heretofore exhausted their rights under said laws, or if the land is not subject to such entry, they shall be allowed to purchase not exceeding one quarter-section, or one hundred and sixty acres, of the land so settled upon and improved, upon payment at the proper land office of the United States at the Government price of said land: *Provided*, That nothing in this act, and no previous decision, ruling, or action of the General Land Office or Department of the Interior, canceling or holding for cancellation any entry or rejecting any application to enter any such lands by reason of conflict with railroad grant or claim, shall be a bar to the reinstatement of such canceled entry or the allowance of such rejected application.

SEC. 6. That no more lands shall be certified or conveyed to the State of Kansas, or to any corporation or individual, for the benefit of either of the railroad companies herein mentioned, until the said grants, respectively, shall have been adjusted as by this act required.

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