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Land grants in Kansas

48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 1113, Part 2.

LAND GRANTS IN KANSAS.

APRIL 12, 1884.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BELFORD, from the Committee on the Public Lands, submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bill H. R. 6416.]

The undersigned cannot agree with the majority report, nor in the wisdom of the legislation proposed. In result the bill puts in litigation the title to more than 5,000,000 acres of land, conveyed in large part more than a decade since, and on which are situate the homes and holdings of thousands individuals, purchasers in good faith and for value.

Nor does the majority report correctly state the facts and figures whereon this bill rests.

The roads affected by the bill are: (1) Kansas Pacific, (2) Atchison, Topeka and Santa Fé, (3) Leavenworth, Lawrence and Galveston, (4) Missouri, Kansas and Texas, (5) Saint Joseph and Denver City, (in Kansas).

The estimated quantity of these several grants and of lands conveyed thereunder is shown by the following table:

Roads.	Estimated quantity of grant.	Amount received.
Kansas Pacific	6,000,000	$963,714 00
Atchinson, Topeka and Santa Fé	2,920,574.23	2,935,734 63
Leavenworth, Lawrence and Galveston	800,000	69,244 95
Missouri, Kansas and Texas	1,520,000	713,135 18
Saint Joseph and Denver City	82,240.26	82,340 26

The Atchison, Topeka and Santa Fé admit an excess in certification beyond quantity granted of 15,160 acres, and has notified the Land Department of its readiness to make return of such excess.

In the majority report it is stated that the Commissioner finds an excess of 73,351 acres certified to this company "upon the theory most favorable to the company." This is a gross error. On page 7 of the majority report will be found the Commissioner's letter, which recites an excess of 15,160 acres only "upon the theory most favorable to the company." Such excess is admitted and the company stands ready to reconvey same.

The Leavenworth, Lawrence and Galveston Company received 256,281 acres, but lost 186,936.72 of this amount by the decision in the Osage cases (United States *vs.* Leavenworth, Lawrence and Galveston Company, 2 Otto, 733), leaving the company but 69,244.95 acres as the ac-

tual result of a grant estimated to contain 800,000 acres. (See General Land Office Report) 1883, pp. 70, 71, notes *b* and *c*.) The majority report credits the company with this gross certification and does not allow for this enormous loss.

The Missouri, Kansas and Texas Company received 984,105.96 acres, but lost 270,970.78 acres in the stated Osage case, *supra*, leaving but 713,135.18 acres realized from a grant estimated to contain 1,520,000 acres, and on which estimate the road was built. (See General Land Office Report 1883, pp. 70–71, foot-note *d*.) The majority report fails to notice this great loss.

Suit against the Leavenworth, Lawrence and Galveston Railroad to recover any portion of the meager amount received by that Company may justly be regarded as persecution.

Suit against the Missouri, Kansas and Texas Company, when it has received less than one-half the estimated quantity of its grant, would seem equally unjust; and the more so when it appears that the Department of Justice, after recent and careful investigation, declares that the Government cannot prevail in any suit brought against that company for such purpose.

Suit against the Atchison, Topeka and Santa Fé Company to recover an excess of 15,160 acres, which the company admit and stand ready to reconvey, is worse than useless and but an extravagant expenditure of public moneys.

Suit against the Saint Joseph and Denver City Company, confined to the small portion of its grant in Kansas, would seem absurd, inasmuch as that grant, extending through Nebraska as well, must be treated as an entirety, and any construction of law whereby that company may have received an excess in Kansas applying with equal force to the far greater portion of its grant elsewhere.

There is no claim of excessive certification to any of these companies set up by the Land Department, except in case of the Atchison, Topeka and Santa Fé Company. The Commissioner therein claims an excess beyond the amount admitted by the company. The case is now before the Secretary of the Interior for review and decision. If his views confirm the Commissioner, it will then become his duty to bring a suit, through the Attorney-General, against that company to recover any claimed excess. To accomplish that result, however, it is not necessary to put in litigation the titles of four other companies, nor involve the entire grant of 3,000,000 acres made to the Atchison company.

It cannot be denied that these Kansas grants are in all essential respects identical with all other railroad land-grants made throughout the United States. They were adjusted in the same way as all others, and upon the same principles which have prevailed since the system was inaugurated. Upon the Secretary of the Interior was imposed the duty of making such adjustment of *all* these grants. Heretofore in all such cases, whenever doubt has arisen concerning the titles conveyed under any of these grants, suits have been brought by the Attorney-General, at the request of that officer, to recover. The many decisions of the Supreme Court in these cases amply demonstrate the truth of this assertion. Legislation has never been deemed necessary to enforce performance of executive official duty. After one hundred years of national life no reason occurs to the undersigned why this system should be changed and legislative interference required. Especially is this true where, as in present case, a few corporations in one State are selected from the large number similarly circumstanced and suits brought against them alone. Legislation such as this savors only of oppression and unjust discrimination. It is certainly not becoming a great government

to oppress the few, leaving the large majority, who stand upon precisely the same footing, undisturbed.

The assumptions of law in the majority report are equally faulty. The *dicta* of the Supreme Court in the Osage cases that indemnity is only due for lands lost between the dates of the grants and the definite location of the road stands in conflict not only with the settled executive practice of a generation past, but with the decisions of eminent judges of that court rendered upon the circuit, including Judge Miller. The latter jurist decided the Osage case upon the circuit, yet when this dicta of the Supreme Court in that case was argued before him in a recent case, he promptly overruled it, and declared that the court did *not* intend in that case to establish the doctrine on which almost the whole of this proposed legislation rests. (Barney *et al. vs.* Winona and Saint Peter R. R., 2 McCrary, p. 421.)

I therefore affirm these propositions:

1. That where titles have been passed for many years and become the bases of community property rights, Congress should not seek to disturb them. It is far better in such cases to stop with ascertaining what the law has been construed to be, rather than undertake to decide what the construction should have been even by judicial proceedings as here contemplated.

Whilst the bill *promises* to all purchasers from the railroads whose titles may fail in these proposed suits that the United States will make them good title, this is a mere bounty, and can be rescinded by subsequent legislation. During pendency of the suits *all* titles are clouded, and the ordinary transactions of the community with respect thereto—sales, mortgages, loans, and credits of all kinds—seriously disturbed, if not entirely prevented. This litigation will consume years, and yet this must be the embarrassing and even disastrous result pending its final determination. That any such procedure is wise or just I emphatically deny.

2. That the executive charged with the administration of the law should be permitted to exercise their official duty without such legislative interference. In present instance, the Secretary of the Interior is now considering the Atchison, Topeka and Santa Fé case—the only one wherein any doubt has been raised. The present incumbent of that office is an able lawyer, an honest man and conscientious officer. If he finds this company has wrongfully received an excess of lands under its grant, which it now refuses to return, it is certain that he will use every lawful means to recover. To anticipate his official action by legislation such as this is a direct imputation upon his official honesty and duty, as well as in direct violation of the salutary rule of law that every public officer is presumed to have done his proper duty.

3. That litigation of this character should be left for proper prosecution by the Attorney-General untrammeled by legislative requirements. As the highest law officer of the Government he should have absolute control of the suits, and be permitted to represent the United States in the most effective way. This bill *requires* him to bring suit against all these companies, whatever may be his judgment as to the propriety of the action, and to prosecute same to final decision in the Supreme Court. Yet that court has said that in suits of this nature the Attorney General "should also have control of it in every stage, so that if at any time during its progress he should become convinced that the proceeding is not well founded, or is oppressive, he may dismiss the bill." (98 U. S., 70.) Under this bill he has no discretion whatsoever.

4. The bill undertakes, in section 3, to control the court in its application of the remedy, and directs that the Secretary of the Interior shall in effect render the court's judgment.

That such legislation is unconstitutional, and therefore ineffectual, will be apparent to every legal mind. I do not need to cite authorities. That the legislature cannot thus control the judicial remedy is absolutely certain. Why, then, should Congress seek to do a vain thing?

Therefore I conclude that disturbance of such vast interests, affecting directly thousands of citizens and providing enormous litigation for years to come, is unwise and fraught only with evil.

JAS. B. BELFORD.