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Minnesota State University. (To accompany bill H.R. no. 253.).

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MINNESOTA STATE UNIVERSITY.

[To accompany bill H. R. No. 253.]

JANUARY 19, 1870.—Ordered to be printed.

Mr. E. M. WILSON, from the Committee on the Public Lands, made the following

REPORT.

The Committee on the Public Lands, to whom was referred, on the 26th day of March, 1869, House bill No. 253, giving construction to existing laws granting lands to the State of Minnesota for a State university, respectfully report:

That a bill precisely similar to the one under consideration was introduced in the Senate of the United States at the second session of the fortieth Congress, referred to the Committee on Public Lands of said body, and reported by said committee with recommendation "that it pass." That it did pass the Senate, and was referred by the House to the Committee on the Public Lands thereof, and reported by said committee with recommendation of passage. That owing to the pressure of business at the close of the fortieth Congress, the bill was not acted on in the House, but was again introduced by Mr. Wilson, of Minnesota, at the first session of the forty-first Congress, and referred to this committee.

That we have examined carefully the statutes bearing upon this bill, and as the result of such examination would present the following facts and conclusions:

That Congress, by an act approved February 19, 1851, (9 Stat., p. 568,) section two, enacted "that the Secretary of the Interior be, and he is hereby, authorized and directed to set apart and reserve from sale, out of any of the public lands within the Territory of Minnesota to which the Indian title has been or may be extinguished, and not otherwise appropriated, a quantity of land not exceeding two entire townships, for the use and support of a university in said Territory, and for no other use or purpose whatsoever, to be located by legal subdivisions of not less than one entire section."

Under this law the Secretary of the Interior caused to be selected and reserved from sale 37,077 acres of public land in the Territory of Minnesota, lists of which lands he approved in the years 1854, 1855, and 1856, while the territorial condition continued.

On the 26th February, 1857, an act was passed by Congress, and approved, "to authorize the people of Minnesota to form a constitution and State government, preparatory to their admission into the Union, upon an equal footing with the original States," (11 Stat., 166,) section five of which, so far as relating to this subject, is as follows:

SEC. 5. *Be it further enacted*, That the following propositions be, and the same are hereby, offered to the said convention of the people of Minnesota, for their free accept-

ance or rejection, which, if accepted by the convention, shall be obligatory on the United States, and upon the said State of Minnesota, viz: 1st. That, &c. * * * * * 2d. That seventy-two sections of land shall be set apart and reserved for the use and support of a university, to be selected by the governor of said State, subject to the approval of the Commissioner of the General Land Office, and to be appropriated and applied in such manner as the legislature of said State may prescribe, for the purpose aforesaid, but for no other purpose.

The admission of Minnesota into the Union, under this law of 26th February, 1857, was duly declared by the act approved May 11, 1858, (11 Stat., 285.)

On the 2d March, 1861, an additional act, in relation to university lands, was approved, (12 Stat., p. 208,) which is quoted in full, as follows:

AN ACT donating to the States of Minnesota and Oregon certain lands reserved by Congress for the Territories of Minnesota and Oregon for university purposes.

Be it enacted, &c., That the lands reserved for the use of a university in the Territories of Minnesota and Oregon, under section second of an act of Congress passed February 19, 1851, entitled "An act to authorize the legislative assemblies of the Territories of Oregon and Minnesota to take charge of the school lands in said Territories, and for other purposes," be hereby donated to the States of Minnesota and Oregon for the use of said university.

The governor of the State, in the memorial now under review, claims that Congress, by this act of 1861, donated the reservations of lands in the Territory that had been made by direction and under authority of the Secretary of the Interior, acting under the law of 1851, but did not thereby impair, or intend to impair, the right of the State to have the seventy-two sections promised her upon her admission into the Union under the law of 1857, above quoted.

The committee is of the opinion that this is the correct interpretation of these several acts of Congress, which embrace all the legislation that exists relative to the subject.

With the exception of Ohio, which obtained three townships for universities, and Florida, which obtained four townships, it has been the general policy of Congress to grant to new States, upon entering the Union, two townships, or seventy-two sections of land, each for the use of a State university; and in those cases in which lands had been reserved for university purposes during the territorial condition, the propositions of Congress have been so worded as to make grants of such reserved lands so as to give to each of the States the reservations and other tracts, which together made the quantity of seventy-two sections.

By reference to the following cases: Illinois, act April 18, 1818, (3 Stat., 430, section 6;) Michigan, act June 23, 1836, (5 Stat., 59;) Iowa, act March 3, 1845, (5 Stat., 789, section 6,) and Wisconsin, act August 6, 1846, (9 Stat., 38, section 7,) it will be found that lands had been reserved for university purposes during the territorial condition, which, upon the admission of the States, respectively, into the Union, were granted to the said States with other lands to make up the quantity of seventy-two sections.

In the cases of Oregon and Kansas, the enabling acts provided (11 Stat., 384, and 12 Stat., 127,) "that in case any of the lands herein granted the State of Oregon (Kansas) have heretofore been confirmed to the Territory of Oregon, (Kansas,) for the purposes specified therein, and the amount so confirmed shall be deducted from the quantity specified."

It thus appears that if it had been the intention of Congress to charge the State of Minnesota with the lands reserved during the territorial condition for a university in the Territory, such intention ought to have

been expressed, as in the cases of these other States, either in the act of February 26, 1857, or the act of March 2, 1861; but no such intention is expressed in these or any other acts of Congress, as far as the committee is able to ascertain. On the contrary, the stipulation for seventy-two sections, contained in the act of February 26, 1857, appears to be entirely independent of the previous legislation upon the subject, and to have been free from any proviso or condition that would reduce the quantity mentioned.

In fact, this law of February 26, 1857, is in the nature of a compact, and it is not to be supposed that it was the intention of Congress by subsequent legislation to modify it in the slightest degree, without the expressed consent of the State to such modification. But nothing seems to have been done by either party, looking to mutual assent and agreement to a modification of the compact, as it is recorded in the act of February 26, 1857, and for this reason the law of 1861 must be construed as a separate and independent statute.

Again, the act of 1857, in the passage hereinafore quoted, is a law to be executed after its passage by the governor of the State, acting under State authority, and when fully executed, by its own force and virtue alone, vests the title to the granted lands in the State.

It is in itself sufficient to carry the whole quantity of seventy-two sections. Under it the State would have received that quantity, without the act of March 2, 1861. This latter act was passed during a discussion between the governor of the State and the Commissioner of the General Land Office in respect to the effect to be given by the latter to the law of 19th February, 1851, and the action under it; and whatever else may be obscure, it is very plain that the representatives of the State were at that time seeking the enlargement of the grant to her for university purposes; and it is also true that they believed, after the act of 1861 had passed, that their object had been accomplished, and that the controversy had thereby been terminated favorably to the State in the relinquishment by the United States of all title to the tracts that had been reserved by the Secretary of the Interior during the territorial condition, leaving the provisions of the act of 26th February, 1857, to be executed independently and to the full extent.

Your committee concur in this conclusion. Unless such is the legal effect and consequence of said act of 2d March, 1861, we can assign to it no use or significance as a statute, for the previous legislation on the subject was (and was recognized by the General Land Office to have been) amply sufficient to grant the quantity of seventy-two sections. To deny to it any force and effect whatever, would be contrary to all sound principle and precedent in construing statutes, and if the least possible effect be given to it, it must be recognized as relinquishing all right and title of the United States to the lands mentioned in it; and giving it that much force and effect, it operates as an enlargement of the grant to Minnesota for university purposes to the extent of the reservations that had been duly made by the Secretary of the Interior under the act of 19th February, 1851, prior to the admission of the State into the Union.

The Commissioner of the General Land Office and Secretary of the Interior, though they hesitated to give this construction and effect to the act of March 2, 1861, in consideration of the laudable object to which the land is devoted, now recommend the claim to the favorable consideration of the legislative branch of the government.

Wherefore your committee respectfully recommend the passage of the bill.