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CONGRESSIONAL GRANTS OF LAND IN AID OF RAILWAYS

BY

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PREFACE.

The investigation which has resulted in this monograph was begun in the seminary in American History of 1896-97 at the University of Wisconsin, and continued independently since that time. In its present form it was submitted as a thesis for the degree of Doctor of Philosophy at that university in 1899. A portion of the results obtained have already been published in volume XII of the *Transactions* of the Wisconsin Academy of Sciences, Arts and Letters.

The subject of land grants in aid of railways, as well as of many other features of our public land policy, has been practically neglected by historians. I found, therefore, that my work had to be done from the ground up and that an investigation had to be made of many collateral aspects of land legislation. Some aid has been rendered by various railroad histories and articles on the public lands, but in general only the original sources have been used.

I have endeavored to trace the history of railroad land grants from their inception to the present time. In this my object has been to give an account of the various land grant bills, the arguments for and against them and the forces which caused their success or failure; while I have also tried to connect this bare legislative history with the other features of our public land policy. In addition to this economic side of the subject, on the political side the influence of the legislation on the other issues of the time has been considered, and an attempt has been made to point out what seems to me the deeper and more general importance of my subject.

An effort was made to determine what became of the lands after they left the possession of the government—how the states

and corporations to which they were granted disposed of them. But the materials on this question were too scanty to allow of any certainty in the conclusions reached, although I have thought it advisable to embody such tentative results in the form of an appendix. I hope that further treatment of this subject may be given in general railroad histories of the different states and that my work may be of assistance to those investigating this subject.

In the library of the State Historical Society of Wisconsin have been found most of the materials from which this monograph has been prepared, and I wish to express my appreciation of the unfailing courtesy of the officers of that society and of the members of the library staff. Some additional materials were found in the Chicago Public Library, The Newbury Library and the library of the Chicago Historical Society.

During my work on this monograph I have been under constant obligation to Professor F. J. Turner, who has given not only advice but actual assistance at every point in my investigation and in the preparation of my work for the press. Professor C. H. Haskins has read the proofs and made many valuable suggestions, while Professor W. H. Hobbs has also given assistance in the proof-reading.

Madison, Wisconsin, August, 1899.

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CONGRESSIONAL GRANTS OF LAND IN AID OF RAILWAYS.

INTRODUCTION.[1]

Questions relating to land tenure, and particularly to the management and disposal of lands held by the state, have always occupied a large place in the history of nations. In the case of the United States the public domain has been a most important factor in the national development. Aside from the diplomatic and military struggles involved in the acquisition of the soil, and the relation of the slavery struggle to the public domain, the position of the government as landed proprietor has been profoundly important. Even in colonial days the management of the vacant lands by the crown, the proprietors or the corporations who governed the colonies, had important effects in political, economic, and social development. There, as later, land grants were used for political purposes as well as to promote immigration and industrial development. Colonial history affords precedents for the use of land as bounties for soldiers, for education, and for internal improvements. The question of the devolution of the crown lands after the declaration of independence, became one of the most influential factors in the history of the Revolution and the Confederation, and was only settled by the cessions of the claimant states and by the passage of the Ordinance of 1787. The vast political influence of the land question upon the politics of the Confederation has frequently been pointed out, but it cannot be too strongly urged.[2] The acquisition of the public domain

[1] See Sato, *History of the Land Question in the United States, Johns Hopkins University Studies*, IV, nos. 7, 8, 9.

[2] "And just here lies the immense significance of this acquisition of the Public Lands. It led to the exercise of National Sovereignty in the sense of eminent domain, a power totally foreign to the Articles of Confederation." Adams, *Maryland's Influence upon Land Cessions to the United States, Johns Hopkins University Studies*, III, no. 1, p. 44.

was the first great step toward national unity—the disposal of this domain was to be one of the most important factors in the new national life.

When the Constitutional Convention met it found the public land question settled for the time. Little attention was paid to the power which Congress should have over the lands which the government then owned or which it might afterward acquire. The subject was touched in two provisions of the Constitution, the first that "New States may be admitted by the Congress into this Union," and the second that "The Congress shall have the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States."[3] The latter of these was not discussed in the convention and the discussion on the former was not such as to throw any light on what property rights the government had in the territory from which these new states were to be formed or on the question whether the acquisition of new territories was contemplated. Madison's discussion in Number 43 of the *Federalist* is not more satisfactory, the only point touched being the prohibition against the division of states without their consent.

It is unfortunate that as regards both the acquisition and the disposal of territory the Constitution is not more specific, and that a contemporaneous explanation of the powers of Congress does not seem to have been made. But, wherever in the Constitution the right to acquire territory is found, the public domain has grown rapidly. Originally amounting to 258,504,129 acres, by the various purchases and cessions it has been increased to over 1,800,000,000 acres.[4] Of course the actual amount of land

[3] Art. IV, Sec. 3.

[4]

	Acres.
State cessions	258,504,129
Louisiana purchase, 1803	750,686,855
Florida purchase, 1819	35,264,500
Mexican cession, 1848	329,623,255
Texas purchase, 1850	62,266,953
Gadsden purchase, 1853	29,142,400
Alaska purchase, 1867	369,529,600
Total	1,835,017,692

Message and Documents, Abridgment, 1897-98, 589. The figures are only estimates, as much of the territory has not been surveyed.

in the possession of the government at no time amounted to this. Exclusive of Alaska there have been 741,702,365 acres of land appropriated and 132,441,774 acres reserved, leaving 591,343,953 acres vacant at the present time.[5]

The influence, from the earliest times, of the comparatively small public domain was fundamentally important; the influence of these new and vaster areas which came into the possession of the government, and particularly their influence upon the development of the West, was quite as marked.

Some consideration of the methods by which this land passed out of the hands of the government must first be given. Of these various methods, that of cash sales has disposed of over two hundred million acres. The different grants to states, except those in aid of railroads, have taken more than one hundred and sixty million while grants to railroads and homestead entries are next on the list with a little over one hundred million each. This proportion is, however, only a temporary one, as homestead entries are constantly being made and many of the railroad grants are incomplete, while sales and state grants are steadily decreasing.[6]

During the first part of the present century the object of the administration of the public lands was to obtain as large a revenue from them as possible. In 1796 an act was passed providing for public sale of the lands in the Northwest Territory at prices not less than two dollars an acre. Credit on the purchase price could be given. This system continued with some modification up to 1820, when the credit feature was abolished and the price

[5] Ibid., 591.

[6]

Cash sales	214,414,395
Homesteads	102,280,228
Timber-culture acts	16,118,228
Military bounty-land warrants	60,252,790
Script locations	3,008,516
Indian allotments	560,780
Donations	3,006,128
Railroad, wagon-road, canal and river improvement grants to states and corporations	106,584,898
State grants, general and special	165,476,402
Private land grants	70,000,000
Total	741,702,365

Ibid., 592.

reduced from $2.00 to $1.25 an acre.[7] The size of the tracts which were sold varied from time to time. Before 1800 only quarter townships and sections could be entered. In that year the minimum was reduced to a half-section, in 1804 to a quarter-section, and in 1820 to a half quarter-section. A further reduction to a quarter quarter-section has also been made.[8]

In 1841 the pre-emption act effected a considerable change in the method of sale by giving a preference to actual settlers, and allowing them to enter the land at a minimum or double minimum price.[9] This policy of pre-emption dated in effect from 1830 when an act allowing pre-emption for one year was passed. This was followed by extensions from year to year until the permanent law was enacted.[10] While these temporary acts were intended to apply only to those who settled on the lands before the act was passed, yet the practical effect was to encourage squatters who went to the lands in the expectation that similar laws would be passed for their relief.[11]

Except during limited periods the amount received from the public lands has not been great in comparison with that received from other sources of revenue. From 1816 to 1836 the receipts from customs were $454,317,403 and from the public lands $79,408,379, and in 1836 the land sales reached their highest point, amounting to $24,877,179 as against $23,409,940 from customs.[12] As a business investment the public domain has not paid the government.[13] Yet the influence of the lands on national finances was much greater than would be indicated by the amount received from their sale. It was always expected that a large increase in this amount would sooner or later appear and plans were discussed for hastening the time when their sale would cause a great reduction in national taxation.

[7] Donaldson, *Public Domain*, Washington, 1884, 200, 202.
[8] Sato, *Land Question in the United States*, 143.
[9] Ibid., 159.
[10] Ibid., 160–162.
[11] Ibid., 162.
[12] *Reports of the Secretary of the Treasury*, IV, 459.
[13] In 1883 the balance against the government on account of the public lands stood at $126,428,484. Hart, *The Disposition of our Public Lands, Quarterly Journal of Economics*, Jan. 1887, p. 174.

In addition to the lands which were held for sale, grants from the public domain were made from an early period. In 1776 the Congress provided for grants of land to soldiers in the Continental army. This principle was continued in regard to both the War of 1812 and the war with Mexico. The method by which these grants were made was that of land warrants, to be located on the vacant public lands.[14] Besides these general grants to private persons various other grants of a private nature and of a very miscellaneous character have been made.[15]

The regular method of such grants was, however, to the different states. All of the public land states, except California, received two, three, or five per cent. on the net proceeds of the sales of their public lands.[16] The states have quite generally received the swamp and overflowed lands within their limits on account of the expense which was necessary to reclaim these lands. The enhanced value of the adjoining public lands was also one of the reasons for these grants.[17] For education, the states, prior to 1848, received the sixteenth sections and after that date the sixteenth and thirty-second sections of their public lands.[18]

The grants which were the predecessors of the land grants in aid of railroads were those made to the states in aid of various internal improvements. The right of the government to make money grants in aid of internal improvements was the subject of much controversy, but portions of the public domain were often donated in aid of river improvements, wagon roads, and canals. The last kind of grants was made in the form which was characteristic of the later grants in aid of railroads. By this method of grant the alternate sections were reserved to the government and by their rise in value a reimbursement for the grant was expected. One of the grants, that for the Illinois and Michigan canal, was in 1833 transferred to a railroad, thus making the first railroad grant, which however was never utilized by the

[14] Donaldson, *Public Domain*, 232–37.
[15] Ibid., 209–13.
[16] Ibid., 238.
[17] Ibid., 219–21.
[18] Ibid., 223.

state.[19] After 1841 each new state was allowed to select 500,000 acres of public land for internal improvements.[20]

Nearly all of the states chafed under their inability to control the large tracts of public lands lying within their borders and appealed to Congress to cede to them these lands. This request was in 1832 referred to the Committee on Manufactures, of which Henry Clay was chairman. He reported against such a proposition as unjust to the old states, and against the reduction in price, but proposed a distribution of the proceeds of the land sales among the states in proportion to their federal population. The matter was then referred to the Committee on Public Lands which reported against Clay's plan as the equivalent of a distribution of money raised from general taxation, and favored a reduction in the price of the lands to $1.00 an acre.[21] In spite of this report Clay introduced a bill on the lines laid down in his report. This passed Congress in 1837 but was vetoed by Jackson. In 1836, Calhoun made almost the same proposition, although clothed in different language. This was to deposit with the states a pro rata share of the surplus revenue then in the treasury. This proposition received the approval of Jackson and became a law.[22]

The money thus distributed was used by the states, at their pleasure. In a number of the western states it was employed, directly or indirectly, for internal improvements, but, like most of the state investments of this time, it was very generally wasted. However it had a very considerable effect on the internal improvement craze of that time, and if the money had been received later it would probably have been largely employed in railroad building, as was the case in South Carolina.[23]

While not mentioned in the previous platform, Clay's plan for the distribution of the proceeds of land sales was adopted as a part of the party platform by the Whigs after the

[19] Ibid., 257–61.
[20] Ibid., 255. *Revised Statutes*, section 2378.
[21] Schurz, *Henry Clay*, I, 369–71.
[22] Von Holst, *Constitutional History of the United States*, II, 186–88.
[23] Bourne, *History of the Surplus Revenue of 1837*, New York, 1885, 122–24.

death of Harrison, and was enacted into law in 1841. Only one distribution was made under its provisions;[24] but the issue was carried over into subsequent campaigns by the platforms of both parties, the Whigs declaring for the idea and the Democrats against it.[25]

This outline of the public land policy of the United States indicates how important a place it had as an independent question in politics. But its importance in relation to the other questions then before the people was even more marked. With regard to financial questions and the tariff the connection was particularly close. The land sales formed an important source of revenue and their increase would have allowed a nearer approximation to free trade, while their diminution or diversion in the manner proposed by Clay would have made necessary an increase in the tariff. Thus views on the tariff were apt to color views on the public land question.

Besides being a source of revenue, the public lands furnished a fund by which internal improvements could be carried on. The right to make such improvements by money grants had by the beginning of Jackson's administration come to be quite generally admitted. But in 1830 the veto of the Maysville road bill checked the system of money grants. The public lands had before this time been used for internal improvements and after the denial of the right of Congress to appropriate money for the purpose they were given to the states and to corporations in large quantities for this purpose, their most extensive use being for railroads. It seems quite possible that if this substitute for appropriations had not been at hand, the pressure on Congress would have been strong enough to secure money instead of the land grants which were actually made.

The question of the power of Congress over the public domain was also affected by the doctrines of state sovereignty held by the opposing schools. The members of the states' rights party were

[24] Schurz, *Henry Clay*, II, 204, 210–212.
[25] Stanwood, *History of Presidential Elections*, 4th ed., 149, 153, 169.

inclined to restrict the power to narrow limits and to make much of the reservations in the deeds of cession from the states in regard to the purposes to which the land was to be applied. On the other hand those favoring the exercise of wide powers on the part of the United States could not but welcome the most extreme construction of the powers of the government over the public lands. The bearing of this will be seen in the debates on the railroad grants, where the Democrats were forced to find the power to grant in the position of the government as land-owner rather than as sovereign. And it must be remembered that the most famous debate on state sovereignty grew out of Foot's resolution regarding the policy of the government in the sale of its lands.

What was the connection between the Public Lands and that most vital of ante-bellum controversies, slavery? It is conceded that this was almost entirely a territorial question, and that if there had been no domain into which its extension was to be allowed or prohibited, the history of the United States would have been very different. But aside from the territorial aspects of the case the influence of the administration of the public lands upon slavery was very marked. Had the government, instead of adopting a policy which favored the northern settler who desired and could cultivate only a small tract of land, favored the creation of large estates, the preponderance of the free states in the western territory would not have been so quickly secured. It may be doubted whether any system of settlement would have spread slavery north of the old Missouri Compromise line, but the spread of free settlers could have been very easily checked by a different system of the land administration. Those Southerners who endeavored to hasten the settlement and sale of the public lands were unwittingly assisting in the downfall of their cherished institution.

The industrial development of the country between 1800 and 1850 helps us to understand the form taken by our land policy at the beginning of the second half of the century. In 1800, two hundred years after the first settlement, the

population of the United States was confined to the immediate vicinity of the Atlantic coast. In 1850 the line of settlement had crossed the Mississippi and its extension to the shores of the Pacific was not a remote possibility. Early in the century enough settlers had crossed the mountains to secure for Ohio in 1802 admission as a state. The increase of western population by 1810 was quite strongly marked, but the full force of the movement began to make itself felt during the next decade. The stream of immigration was such as to cause fears among the Eastern states that they would become depopulated. By 1830 Indiana, Illinois and Missouri had each passed the 100,000 mark. Practically all of the western population was, however, confined to the vicinity of the large rivers. By 1840 a large increase had taken place in the states which were settled earliest, while considerable numbers of settlers had entered the newer states.[26] The spaces between the rivers were filling up and considerable settlements had appeared west of the Mississippi. In 1850 only six states exceeded Indiana in the number of their inhabitants, while Illinois was eleventh among the states. The greatest proportional increase was in Wisconsin, but all of the states of the Mississippi valley were growing with great rapidity. While all portions of these states were receiving settlers, the lines of densest populations were still among the watercourses.[27]

To enable these settlers to reach the West, and to furnish trade communications with them, improved methods of transportation were demanded. At first this demand was met by turnpike roads and the improvement of the waterways. Around these centered the plans for internal improvements proposed up to 1830. In 1806 work was begun on the Cumberland road and in 1808 Gallatin proposed a great system of internal improve-

[26]Illinois had increased from 157,445 to 476,183, Michigan from 31,639 to 212,267, Indiana from 343,031 to 685,866, standing tenth among all the states; Missouri from 140,455 to 383,702, Arkansas from 30,388 to 97,574, while Wisconsin and Iowa appear with 30,945 and 43,112, respectively. *10th Census, Population*, 4.

[27]See McMaster, *History of the United States*, IV, ch. 33; and *10th Census, Population*, xl, ff.

ments, including not only canals and roads along the coast but roads toward the west. In 1817 the passage of the Bonus bill was intended to aid transportation to the interior, but its object was prevented by Madison's veto. Various other plans were proposed for the extension of roads in the western states, the construction of canals and the improvement of the rivers, but no very important results were obtained from them. In 1830 further aid was prevented by the stand taken by Jackson, although the public lands were still used in aid of canals.

When aid for improvements could not be secured from the government, the states themselves took up the work. In 1817 New York had begun the construction of the Erie Canal, which was finished eight years later. The other states undertook similar enterprises but in most cases their efforts did not attain the same success as that of New York. The failures of the western states were particularly noticeable. Not only were the results obtained insignificant, but the states were driven to a repudiation of the debts incurred on behalf of the improvements. This further led to a distrust in the ability of the states to engage in industrial enterprises and many state constitutions practically prohibited further attempts of this nature by narrow restrictions on public debts.[28]

About 1830 the railroad began to supersede the turnpike as a means of transportation where rivers could not be used and where canals were impractical. From a construction of forty miles in 1830, railroad building increased rapidly until 1,261 miles were constructed in the year 1850, making a total for the country of 8,571 miles.[29] Of course a great part of this mileage was in the old states. By 1850 New England had developed its railway system in its main outlines; in the Middle and South Atlantic states the method in which the railroad systems were to grow was evident, while the states of the Mississippi valley were making their first experiments in railroad building.[30] Nor

[28] H. C. Adams, *Public Debts*, Part III, Ch. II.
[29] *10th Census*, IV, 289–90.
[30] Hadley, *Railroad Transportation*, New York, 1886, 36–37.

until about this date was it considered that railroads would supplant canals, at least as far as the carriage of freight was concerned.[31]

The development of the railroad systems in the states along the Mississippi, of course depended on the general industrial development of that section of the country and on the movement of population. So we find that at first the railroads, as well as the population, tended to follow the rivers. Water was to be the chief means of transportation; but at certain places and for certain portions of the year the railroads would render assistance to the rivers. This soon changed, however, when land transportation came to be regarded as independent of that by water, and we find the railroads entering into the thinly populated sections between the large rivers. Finding here large tracts of unoccupied public land, which would rise in value if the settler could be brought to them, it was to be expected that the government would be asked to donate a part of this land in aid of the railroads. Particularly was this the case since the new states were eager that the federal government should exchange vacant land for settlers and that the same beneficent authority should assist in improving the transportation facilities on which the prices of their crops depended.

The change in the routes of commerce is well illustrated in the loss of the freight business which was sustained by the Mississippi just prior to 1850. Products which had before passed down this river and to New Orleans for shipment were now sent by the Great Lakes, and later by the trunk lines to New York. This change had a political as well as an economic influence as it tended to separate the West from the South and unite it to the East, a situation of the utmost importance in the conflict between the sections.[32]

The outcome of all these industrial conditions, toward the close of the first half of this century, along the rivers, the

[31] Ibid, 11–12.

[32] See Libby, *Significance of the Lead and Shot Trade in Early Wisconsin History*, *Wisconsin Historical Collections*, XIII, 293–334.

change from water to land transportation, and the prohibition of state activity, led the railroads to seek aid in the only way left open to them, grants from the public domain. In doing this, they simply demanded for a new agency of transportation, the government aid which had been afforded to its imperfect predecessors, the canal and the turnpike.

CHAPTER I.

THE BEGINNING OF LAND GRANTS.

The grant in which the later grants to railroads may be said to have originated was that in aid of a canal in Indiana.[1] In an amendment to this the alternate section principle was inaugurated,[2] while similar grants were made at the same time to Ohio and Illinois. In 1833 the grant for the Illinois and Michigan canal was transferred to a railroad,[3] but this was never utilized except in connection with the later grant in aid of the Illinois Central.

The right of way through the public lands was frequently granted to railroads from this time on, but such grants at first carried no extra donation of lands. Sometimes the right of preemption was given the railroad company. These were, however, in no sense land grants and so have not been considered here.

In 1835 a memorial from Michigan was presented to Congress asking for a grant of lands in aid of a railroad from Detroit to the mouth of the St. Joseph river. No definite amount or manner of grant was specified,[4] and no action was taken upon the petition. During the next year a favorable report was made on a bill granting alternate sections of land for a railroad from Mobile to the Tennessee river. The increased sale of the public lands which would result from the construction of the road was given as a reason for the passage of the bill.[5] Later in the year a bill granting lands for a road from Jefferson City, Missouri, to the Mississippi, via Little Rock, Arkansas, was also favorably reported,[6] but no action on either bill was taken.

[1] *Statutes at Large*, IV, 47.
[2] Ibid., 236.
[3] Ibid., 662.
[4] *Exec. Docs.*, 2d sess. 23d Cong., No. 131.
[5] *Reports of Committees*, 1st sess. 24th Cong., No. 607.
[6] Ibid., No. 651.

In 1838 the strongest attempt thus far was made to secure a land grant. This was for a road from New Albany, Indiana, to Mt. Carmel in the same state. A favorable report was made from the Senate committee on Roads and Canals,[7] and the bill was taken up in the Senate on June 6. Smith of Indiana made the principal speech in its favor. He said that the lands along the proposed road had been in the market for nearly thirty years without finding a purchaser and that the road would render them salable. He also considered the carrying of the mails free, as was provided in the bill, a full equivalent of the value of the lands. Niles, of Connecticut, who throughout his career in Congress was the consistent antagonist of land grants, opposed the bill as unconstitutional and as being a bargain with a corporation. A motion to strike out all after the enacting clause prevailed by a vote of 23 to 11.[8]

As some of the opposition to the bill arose from the fact that the grant was made directly to a corporation attempts were made later in the session to amend it so that the grant would be made to the state.[9] Nothing was done, however, nor was any other important action taken at this session.[10] The next year the New Albany and Mt. Carmel bill was introduced again but was amended in the Senate so as to give the right of pre-emption only,[11] and although in 1840 it was introduced as a land grant bill in the House, it was buried in the committee of the whole.[12] The failure to secure the passage of this bill showed that the time was not ripe for railroad land grants. It had much greater merit than many roads which later secured grants. New Albany was on the Ohio, opposite Louisville, while Mt. Carmel was on the Wabash. The road would, it was claimed, secure a passage around the low water of the lower Ohio, and thus afford an out-

[7] *Sen. Docs.*, 2d sess. 25th Cong., No. 203.

[8] The support of the bill came from the South and West, the East being almost solidly against it. *Globe*, 2d sess. 25th Cong., 434.

[9] Ibid., 450.

[10] For other reports on land-grant bills, on which no action was taken, see *Sen. Docs.*, 2d sess. 25th Cong., Nos. 454, 455.

[11] *Senate Journal*, 3d sess. 25th Cong., 270.

[12] *House Journal*, 1st sess. 26th Cong., 1128.

let for the products of Ohio, Kentucky, and Indiana to the Mississippi and thence to New Orleans.[13]

From this time the consideration of land grants disappeared from Congress until 1846, when the request came from a southern state. A bill was introduced making a grant of the alternate odd-numbered sections for five miles on each side of the line for a road from Jackson, Mississippi, through Brandon to the western boundary of Alabama. It was debated in the Senate April 30th. The opposition was voiced by Bagby, of Alabama, on the ground that the grant was the same as a money appropriation for internal improvements and because the price of the lands remaining in the hands of the government along the line would probably be raised. Speight, of Mississippi, said that the purpose of the bill was to enhance the value of the remaining public lands, while Calhoun took very similar grounds when he said that he favored the bill because it would benefit the treasury.[14] Yulee, of Florida, favored the bill because Mississippi had not had her share in the distribution of the public lands.[15] Haywood remarked that if the principle of proportionate distribution was carried out the old states should have their share. To this Yulee answered that it was on account of the exemption from taxation which the public lands had enjoyed that a share in the lands was due the new states.[16] The Mississippi bill was ordered read a third time by a vote of 28 to 8,[17] and passed the next day. It was not brought up in the House. The arguments advanced for and against the bill were, in their main features, followed in subsequent discussions of the subject. In them four

[13] See *Sen. Docs.*, 2d sess. 25th Cong., No. 203; and *Sen. Docs.*, 3d sess. 25th Cong., No. 49. A memorial from New Orleans merchants accompanied the latter report. For the Illinois internal improvement scheme of 1837, with which this road was to connect, see Moses, *Illinois, Historical and Statistical*, I, 411. As late as 1849 the Illinois legislature passed resolutions favoring a grant to the New Albany and Mt. Carmel road. *Sen. Misc.*, 2d sess. 30th Cong., No. 36. The road was not built until much later.

[14] *Globe*, 1st sess. 29th Con., 751.

[15] The truth of this position is not clear. Mississippi received the usual five per cent. of the proceeds of the sale of her public lands (*Statutes at Large*, III, 348), and one of the first grants of public lands for education (Ibid., II, 229).

[16] *Globe*, 1st sess. 29th Cong., 752.

[17] Ibid. The negative votes were from New Hampshire (2), Connecticut, North Carolina, Georgia (2), Alabama, and Tennessee.

ideas are prominent. The opponents of the bill called it an internal improvement scheme, and objected to increasing the price of the lands; those favoring it claimed that it was a positive benefit to the treasury; and others held that the states had rights to a share of the public lands. It will be interesting to note the development of these lines of argument.

The first session of the thirtieth Congress, held in 1847–48, barely escaped being a fruitful one in land grant legislation. A bill was introduced making a grant for a railroad from Hannibal, Missouri, to St. Joseph.[18] This was followed by one making a grant to Iowa for a railroad across the state,[19] and these bills were incorporated with a bill making a grant for a railroad from Mobile to the mouth of the Ohio, and with one making a grant for a road from Jackson to the Alabama state line.[20] This very extensive bill passed the Senate without difficulty[21] and almost slipped through the House. When it reached the House it was ordered read a third time without division and almost without discussion.[22] This was only two days after it had passed the Senate. That there was method in this haste seems very probable from the fact that the next day the vote was reconsidered and the bill laid on the table, 102 to 80. Of the New England states, New Hampshire, Massachusetts, and Connecticut favored the bill, as did New Jersey and Delaware in the Middle States. Aside from these none but the western land states voted in its favor.[23] In the West, Ohio and Indiana were against the bill.

[18] *Globe*, 1st sess. 30th Cong., 728.

[19] Ibid., 763.

[20] Ibid., 1051.

[21] The vote was 34 to 15, the negative votes being from Maine, Vermont, Connecticut (2), New York (2), Maryland, Virginia (2), South Carolina, Georgia, Florida, Tennessee, Kentucky, Indiana, Ibid.

[22] Ibid., 1059.

[23]

	For.	Against.
New England	9	10
Middle	31	23
South	28	9
Gulf	5	5
West (land)	17	26
West (non-land)	12	7

House Journal, 1st sess. 30th Cong., 1241. In this classification of the states, "Gulf" includes Florida and Alabama, but not Texas; the western non-land states are Texas, Tennessee and Kentucky. Thus the first three and last categories are those states without public lands, and the fourth and fifth those with lands.

The only other land grant bill of importance at this session was the Illinois Central grant, which will be considered in connection with the passage of that act.

The tendency of population to follow the watercourses during the period prior to 1850 and the prevalence of the idea that railways were only supplemental to rivers and canals has already been noted. This is well illustrated in the land grant legislation which we have just been considering. The bills which received the consideration of Congress were largely for roads which followed natural watercourses and which were to assist these water routes during seasons of low water. Yet just before 1850 a decided change may be observed. In the first session of the thirty-first Congress only four bills for roads of this character were introduced while there were fifteen bills for roads connecting separate waterways. It would appear that if the requests of those asking land grants were agreed to, these grants would materially assist in the development of the country lying between the rivers.

The prospects for railroad land grants cannot be said to have been bright at the close of the thirtieth Congress. The Senate was willing to give nearly all that was asked but the House was firm in its position against the grants. The cause of this difference in sentiment seems to have been the greater proportionate representation of the new states in the former body. A similar difference in the two houses of Congress has often been observed in connection with other questions which divided the country on sectional lines. It is to the House then, that we must look in our future consideration of the land grant question. And it is this body which is the most difficult to study. The propensity of the Senate to debate with thoroughness all questions which come before it even to the delay of important public business has of late years been the subject of much unfavorable comment. But whatever the defects of the plan from the point of view of the public interest, it enables the student of the constitutional history of the period to learn much of the opinions and motives of members of the Senate. In the House, on the other

hand, debate, even in the period now under consideration, was much restricted. The great number of members also makes a determination of the causes of individual action much more difficult than in the case of the Senate. The problem which is before us, the cause of the changed attitude of the House, and whether that change was one of permanent sentiment or due to temporary political causes, must be considered in the succeeding chapters.

CHAPTER II.

THE ILLINOIS CENTRAL GRANT.

The first bill to force its way through the opposition of the House was that granting lands to Illinois, Mississippi, and Alabama, in aid of the Illinois Central and Mobile and Ohio railroads. Aside from the amount of land granted, this bill was of special importance from its position as pioneer. The precedent once established, the path of the other bills was rendered easier, for the benefits which had been secured to the three states were with much justice demanded by the other land states. Illinois had received land, and why should not also Iowa? A separate consideration of the Illinois Central bill with a view to determining the forces which secured its passage is therefore necessary at this point in the history of railroad land grants.

As early as 1844, Senator Breese had endeavored to secure for the Great Western Railway company of Illinois the right of pre-emption of the public lands along its line. He considered that right of as much practical value as a grant to the state in aid of the road would have been, especially as there seemed no hope of securing such a grant. In this he was opposed by Stephen A. Douglas, then a representative from Illinois in the House, who believed that the chances of securing a grant to the state were good and that to ask for the pre-emption right would embarrass efforts to secure a grant at some other time.[1] But in 1846, Breese, then chairman of the Senate Committee on Public Lands, introduced a bill granting alternate sections of the public lands in aid of the Northern Cross and Central railroads.[2]

[1] Douglas to Breese, Jan. 5, 1851, *Springfield Daily Register*, Jan. 20, 1851. Reprinted in *Fergus Hist. Ser.*, No. 23, pp. 66-7.

[2] *Globe*, 1st sess. 29th Cong., 208. The Northern Cross road was from Quincy to the Indiana line.

He did not have much faith in this bill for it was never called up, and at the second session of this Congress he again introduced his pre-emption bill, which did not pass.

In the fall of 1847, Douglas, then thirty-three years of age, entered the Senate. With his appearance the situation was materially changed. His marked political ability had already won for him a high place in the Democratic party. As a practical politician, skilled in the manipulation of men for the benefit of his own or his party's measures, he has probably not been excelled by any other American. As a debater he was adroit rather than deep, and his well-known speeches on Kansas and in his debates with Lincoln show his great skill in the favorable expression of his side of the question. Yet it would be unjust to consider him as working merely for the sake of the party spoils. He had large views as to the future of his country and particularly his section of it. His faith was in the speedy development of the West, and in that he was anxious to assist. Even beyond this he believed in "manifest destiny;" at present he would have been called an "imperialist." A bill which enlisted his personal approval and which did not run counter to the position of his party was sure of his hearty support and by that support was placed very near success.[3]

Not only was he in hearty accord with the principles of the grant for the Illinois Central, but he seems to have been the chief supporter of that measure. Breese favored the securing of the right of pre-emption and considered the attempts to secure a grant only wasted energy. In accordance with this belief, he introduced a pre-emption bill, a move which received the severe criticism of Douglas, who felt the weakness of their divided position and thought that Congress could hardly be expected to donate lands to Illinois when one of her senators only asked the right of pre-emption of those same lands. Breese, however, said that he only wished to have the pre-emption bill on the calendar to call up after the anticipated failure of the land grant.[4]

[3] For a good characterization of Douglas, see Rhodes, *History of United States*, I, 244-6.

[4] Douglas to Breese, Jan. 5, 1851, l. c. pp. 69-73.

It would seem probable that the moral effect of the division of the Illinois senators on the fate of the bill was considerable.

Both introduced bills in accordance with their ideas, but Douglas made an important modification in the one which he put forward. The Central road of the previous bills had been from Galena to Cairo, following the great natural waterway of the Mississippi and the route which western commerce had up to this time taken. Douglas modified this by a "branch" from Centralia to Chicago. By so doing he believed that he would strengthen the bill by connecting with it the Eastern interests of the Great Lakes and the roads then building toward Chicago.[5] Politically the idea was an excellent one, but Douglas may also have forseen the current of commercial development, in the path of which he desired to place himself.

This bill came up as a special order May 3, 1848. A disagreement as to the carrying of the mails by the road was settled by providing that the United States District Judge was to fix the rate.[6] Niles then opened the opposition to the bill by declaring that Congress had no power to carry on internal improvements and that a grant of lands was only an evasion of the Constitution.[7] Crittenden, of Kentucky, and Bagby, of Alabama, discussed the constitutionality of the bill at some length. The former considered the right of Congress to grant lands settled by precedent, while the latter did not think that constitutional questions could be settled that way.[8] The discussion took another turn when Butler, of Carolina, claimed that the West would receive all the benefit from such a law. Crittenden replied that it was no more than was due the West as the East had received all the benefit from appropriations for forts and custom houses.[9] Cass supported the bill on the theory that the government, as a land-owner, could dispose of its lands as it saw fit

[5] Ibid., 69.
[6] *Globe*, 1st sess. 30th Cong., App., 534–5.
[7] "To say that we can get round the Constitution by granting the public lands, instead of taking the money directly out of the treasury, is certainly trifling with the judgment of this body." Ibid., App., 535.
[8] Ibid.
[9] Ibid., App., 536.

and do what it could to enhance the value of those lands.[10] Calhoun followed with almost the same argument of financial benefit which he had once before used.[11]

These arguments have been heard before but are here developed into their final form. To one who interprets the Constitution as loosely as most of us do at the present time neither of the arguments seems sound. Congress can "dispose of" the public lands. That seems ample authority for a grant in aid of railroads, but to the strict constructionist of ante-bellum days this "dispose of" was limited by his general theory of the provinces of the federal government and the states. The public lands were also a source of revenue and to give them away would to that extent decrease the amount received from that direction and correspondingly increase taxation. Granting the interpretation of the Constitution which preceded it, Niles' argument seems sound. As the advocates of the bill held the same constitutional principles, they met it the only way open to them—by providing a return for the lands granted. This return was in the increase in the price of the lands and was to correspond exactly to the value of the lands granted. This resembles more a temporary expedient for meeting a constitutional difficulty than a true principle of interpretation. If the Democratic reading of the Constitution on internal improvements was the correct one, their argument in favor of land grants was a mere evasion of that document under an ingenious and plausible juggling of words. The true basis of land grants was national benefit, but

[10] "The Federal government is a great land-owner; it possesses an extensive public domain; and we have the power under the Constitution to dispose of that domain; and a very unlimited power it is. The simple question is, what disposition we may make of the public lands? . . . We may bestow them for school purposes, or we may bestow a portion for the purpose of improving the value of the rest." Ibid., App., 536.

[11] "The question in this case is a very simple one. We are authorized by the Constitution to dispose of the public lands. Here is a public improvement . . . by which the value of the public lands would be enhanced. If then, it will add to the value, ought we not to contribute to it . . . ? I do not think that there is a principle more perfectly clear from doubt than this one is. It does not belong to the category of internal improvements at all. It is not a power claimed by the government as a government. It belongs to the government as a land proprietor. And I will add that it is not only a right but a duty and an important duty." Ibid., App., 537.

to take this ground required an extension of the "general welfare" clause which few at that time were willing to make.

The bill was ordered read a third time by a vote of 24 to 11. The states with public lands cast 14 votes for and 3 against it while from the states without lands 10 votes were cast for and 8 against. The opposition came chiefly from New England and the South, while the West voted solidly for it.[12] The measure was supported by both parties, the Democrats voting 14 for and 10 against, and the Whigs 10 for and 1 against.

In the House the bill came up August 12. Callamer, of Vermont, thought that the company ought not to be allowed to go off its line for the selection of lands, and offered an amendment to that effect which was adopted. Under the previous question a vote was then taken and a third reading refused, 74 to 78 according to the *Globe*[13] or 73 to 79 according to the *Journal*.[14] The South furnished most of the opposition; nearly all of the Middle States were divided, while in the West Ohio cast 9 votes against the bill.[15] On party lines the vote stood 30 Democrats for and 42 against the bill, and 43 Whigs for and 37 against. Here, as in the Senate, the bill was rather more of a Whig than a Democratic measure, but party lines were not closely drawn. It must also be remembered that the chief sponsor of the bill was a leading Democrat. An attempt was

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	For.	Against.
[12] New England	2	3
Middle	2	1
South	2	3
Gulf	4	3
West (land)	10	0
West (non-land)	4	1

Senate Journal, 1st sess. 30th Cong., 314.

[13] *Globe*, 1st sess. 30th Cong., 1071.

[14] *House Journal*, 1st sess. 30th Cong., 1270.

	For.	Against.
[15] New England	10	5
Middle	25	22
South	7	31
Gulf	3	4
West (land)	27	9
West (non-land)	1	8

Ibid.

made to reconsider the vote the following day but the motion was laid on the table 78 to 64.[16]

In asking why the bill failed to pass, we must remember the problem which confronted the advocates of the bill in their endeavor to secure favorable action by the House, and the difference between the conditions there and in the Senate. In the House the members from the states which contained public lands were largely in the minority while in the Senate the representation from the two sections was almost the same, the non-land states having 140 representatives as against 90 from the land states and 32 senators as against 28. A very few votes from the old states would pass such a bill in the Senate but a considerable number must be secured in order to achieve success in the House. It would be incorrect to represent the matter as entirely a sectional one, but in general the interests of the old and new parts of the country were diverse when questions of land policy were concerned. It was therefore necessary to win over a number of members from the non-land states, and the friends of the Illinois Central bill had as yet failed to do this. Influences were already at work in this direction. Some of the eastern members may have been influenced by their western interests, but the growing connections between the East and the Mississippi valley acted with the most power in securing eastern votes for western enterprises.

At the short session of the Congress Breese secured action on his pre-emption bill, which passed the Senate without opposition. Douglas stated that he withdrew his opposition to the bill on the understanding that it could not pass the House.[17] It, however, almost became a law, but the close of the session prevented decisive action.[18]

Breese was succeeded in the thirty-first Congress by General

[16] Douglas was in error when he stated in his letter to Breese of Jan. 5, 1851, that the bill was laid on the table in the House.

[17] Douglas to Breese, Jan. 5., 1851, l. c., 74. Compare Breese to Douglas, Jan. 25, 1851, *Springfield Weekly Register*, Feb. 6, 1861. Reprinted in *Fergus Hist. Ser.*, No. 23, pp. 76–89.

[18] See *House Journal*, 2d sess. 30th Cong., 537, 670; compare *Globe*, 2d sess. 30th Cong., 616, 698.

Shields, who was not apt to be of great assistance in any matter requiring delicate political management, but who would at least not hinder Douglas in the efforts which he might make towards a land grant for the Illinois Central. Felch, of Michigan, succeeded Breese as chairman of the committee on Public Lands. At the beginning of the session Douglas introduced a bill similar to the one which had previously passed the Senate. When it was called up for consideration, King, of Alabama, introduced an amendment making a similar grant to Alabama and Mississippi for a road from Mobile to the mouth of the Ohio.[19] This amendment was not simply the insertion of a separate grant but the continuation of the previous grant to the Gulf, thus increasing the national importance of the undertaking and tending to secure the support of the South as well as of the West.

The first opposition to the bill came from Walker, of Wisconsin, who considered it a tax on the settlers for the benefit of the railroads. He said that he favored granting the lands to the settlers themselves,[20] and moved to strike out that part of the bill increasing the price of the sections reserved to the government, but as this increase in price was the essential feature of the "landowner" theory of land grants the amendment was rejected.[21] Walker's position was that which was finding expression at this time in the movement for the homestead bill, and shows the antagonism between that system and the grants for railroads. A more detailed examination of the conflict between the two systems will be made later, but we may note at this point that such a division between the members from the land states argued ill for the success of either measure. But as Walker's plan did not

[19] *Globe*, 1st sess. 31st Cong., 845. The statement by Douglas that this amendment was made at his suggestion may have some truth, but the greater part of the story is manifestly improbable. The value of the book by Cutts, *Short Treatise on Constitutional and Party Questions*, is discussed in Appendix B.

[20] "It amounts, then, to a tax upon the actual settlers to that amount [$1.25 an acre, the increase in the price of the lands under the bill] in order to build the road. This is one of the greatest embarrassments to the settlement of the new states. I know of nothing that would embarrass the settlement of these states more than increasing the price of the public lands. . . . I am in favor of granting the whole of this land to the states to be given to actual settlers at the cost only of surveying it." *Globe*, 1st sess. 31st Cong., 845.

[21] Ibid., 852–3.

find favor with the rest of the Senate, it did not now endanger the land grant bills. The only other point brought out in the discussion was the objection made by Bradbury, of Maine, in regard to the location of lands at a distance from the road in lieu of those already sold by the government.[22] This was discussed at some length and an amendment restricting the grant to six miles on each side of the road was lost 15 to 23.[23] The amendment offered by King was adopted without division[24] and the bill went over to the next day.[25]

A glance at the map will show that the bill did not provide for a complete line from Chicago to Mobile. Between Illinois and Mississippi lie Kentucky and Tennessee, states without public lands and therefore not included in the bill. When the Senate considered the bill the next day, Bell, of Tennessee, called attention to the lack of a connecting link in the system and offered an amendment which provided that Kentucky and Tennessee should be given a part of the lands in the other states in proportion to the length of line in the various states, for a continuation of the Mobile and Ohio railroad.[26]

Nothing illustrates the theory of the land grants better than the reception of this amendment. King asked Bell to withdraw it as it would probably defeat the whole bill. He said that it proceeded on a different principle, as the road in Kentucky and Tennessee would not increase the value of any public lands.[27] To this objection the answer was made by Miller, of New Jersey, that if a road from Chicago to Cairo increased the value of lands

[22] "If the lands have been sold, then the selection is to be made from other lands not upon the road, but quite remote from the road, and so remote that the principle upon which the bill is advocated cannot fairly apply." Ibid., 847.

[23] Ibid., 854.

[24] Ibid., 851.

[25] For debate, see ibid., 844–54.

[26] "So to amend the bill that a proportion of the net proceeds of the lands given to the state of Illinois and the states of Alabama and Mississippi be secured to the states of Tennessee and Kentucky respectively, equal to the proportion of the entire line of the railroad proposed to be constructed from the southern terminus of the Illinois and Michigan canal to the city of Mobile, which passes through each of the two latter states, to be applied by them to the construction of the sections or divisions of the road within their respective jurisdiction." Ibid., 808.

[27] Ibid.

in Illinois, and a road from Mobile to the boundary of Mississippi increased the value of lands in Alabama and Mississippi, the complete line from Mobile to Chicago ought to still further increase the lands in all those states.[28] The amendment was, however, defeated without a division.[29] That such an amendment would only continue the idea of the original bill, even on the "land-owner" theory of the grant, seems clear. But the constitutional basis of the support of the bill was not strong enough to carry such an extension of the principle. This fact illustrates the essential weakness of the position taken by those favoring the bill. Forced to accept a strict construction of the Constitution, they had to evolve an unnatural argument and could not follow that argument to its logical conclusion but were constantly forced into inconsistencies.

Dayton, of New Jersey, attempted to bring in a new question by an amendment providing for the distribution of the proceeds of the public lands, after the land grant, in the manner provided by the Distribution Bill of 1841.[30] This was defeated 12 to 30. All those favoring the amendment were Whigs while only five Whigs voted against it.[31] The votes for it were nearly all from the East.

Jefferson Davis expressed the sentiment which had been heard in the previous debates in regard to the indemnity limits by offering an amendment restricting such lands to within fifteen miles of the road. He considered that such a distance was the limit of the road's influence as this was as far as a loaded team could go and return in a day.[32] What became of this important amendment is not clear. Davis said that he would not press it and the

[28] "Gentlemen say that we have the right to donate to the state of Illinois the public lands for building this road within that state, but the moment the great public highway crosses her line we have no right to assist in the completion of this work! In other words, we, holding this domain, have a right to assist in building the road in the state where the lands lie, but the moment we cross that line our power ceases. This is a partial administration of the public property which I cannot comprehend." Ibid., 869.

[29] Ibid., 900.

[30] Ibid., 871, 873.

[31] They were Smith (Conn.), Badger and Mangum (N. C.), Bell (Tenn.), and Morton (Fla.). Ibid., 900.

[32] Ibid., 902.

bill was reported from the committee of the whole without it.[32] The *Journal* throws no light upon it,[34] and it was not inserted in the House. Yet it appears in the bill as published and was incorporated in the subsequent acts on the subject. The effect of this change was considerable. By the original bill the company could replace lands previously disposed of within the limits of the grants by the nearest public lands, and could go to the boundaries of the state, if necessary, in making its selections. But under the amendment the lands could only be replaced by vacant lands more than six and less than fifteen miles from the road. If lands could not be secured within those limits the company had to do without them. This amendment, apparently irregularly passed, affected not only the Illinois Central act but all others, as the later bills were drawn up on the model of the first one. If the amendment slipped in by a clerical error it was probably the most far-reaching mistake of that nature ever made by Congress.

The bill passed the Senate 26 to 14. The sectional division was very similar to that of the previous Congress except that the vote of Ohio was divided and New York and Pennsylvania both favored the bill.[35] Both parties supported it, the Democrats voting 18 to 6 and the Whigs 8 to 7.[36]

The reading of the *Globe* gives one the impression that much interest was taken in the bill, yet it is scarcely mentioned in the newspapers of the year. This was the time of the Compromise of 1850 and there was little time for economic discussions. On April 30th, Pike wrote to the New York *Tribune* that "the de-

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[32] "Mr. DAVIS: Well, if no one else objects, I shall not press my amendment.
"There being no further propositions to amend, the bill was reported back to the Senate; and the amendments of the committee concurred in." Ibid., 904.

[34] *Senate Journal*, 1st sess. 31st Cong., 320–1.

[35]

	For.	Against.
New England	1	4
Middle	2	4
South	2	3
Gulf	5	1
West (land)	13	1
West (non-land)	3	1

Globe, 1st sess. 31st Cong., 904.

[36] There was one free-soil vote, cast by Chase, of Ohio, against the bill.

serted seats of the Senate were in the course of today addressed by Mr. Benton, who made some brief and beautiful remarks in favor of the bill making a donation of alternate sections of the public lands to aid road-making in Illinois."[37]

The bill came up in the House with a favorable report from the committee on Public Lands, but was laid aside several times. On September 17 it was passed, under the previous question, 101 to 75. As before, it was opposed by the South, New England was almost exactly divided, and the Middle states were slightly in favor of it.[33] There were 52 Whig votes for and 28 against the bill. Comparing this vote with that of the previous Congress we find that there has been a change of three votes in the Middle States, one in the South, ten in the Gulf States, and five in Tennessee and Kentucky.

What caused the change in the vote? The most obvious cause is the incorporation of the Mobile and Ohio road in the bill as there was a gain of fifteen votes from the states likely to be benefited by this road. If Douglas really originated this idea the passage of the bill may be said to have been due to him alone. An explanation of the change in some of the eastern votes is given by John Wentworth, then a member of the House from Illinois. He states that there had been opposition to land grants from the old states on account of fears of western emigration and among the Whigs who wished a distribution of the proceeds of the land sales. Through the holders of the old canal bonds, mostly eastern men and Whigs, and with the aid of Webster and Ashmun in return for concessions on the tariff, the passage of the

[37] *New York Weekly Tribune*, May 11, 1850.

[38]

	For.	Against.
New England	10	11
Middle	28	22
South	8	23
Gulf	13	0
West (land)	34	12
West (non-land)	8	7

House Journal, 1st sess. 31st Cong., 1490. Walker, of Wisconsin, stated that the Senators and Representatives from his state were acting under a memorial from the legislature and that he did not believe that any of them were in favor of land grants. *Globe*, 1st sess. 31st Cong., 1766.

bill was secured.[39] There was certainly an increase in the Whig vote in favor of this bill and Breese hints at some such bargain in his letter to Douglas of January 25, 1851.[40] There also appears to be a confirmation of this in the action three days later on the bill granting lands for a railroad in Florida. When this bill was received from the Senate Cabell said that it had been his intention to move the immediate passage of the bill but as his tariff friends were in such a bad humor at the defeat of their bill that morning he would not do so. He said that he did not think that the sins of the Democratic side of the House should be visited upon him. (He was a Whig.)[41]

Another element which probably influenced the East was the branch to Chicago which connected the Mississippi river traffic with the trade from the East by way of the Great Lakes and the railroads which were just being constructed. Douglas attached great importance to this feature of the bill.[42] The system was as comprehensive a one as could well be devised, connecting as it did the Northwest, South, and East. To this comprehensiveness must be attributed in great part the success of the measure. Of minor importance was the political astuteness of the friends of the bill. The fate of the other land grant bills was such as to show that a combination of exceptional circumstances was necessary at this time to enable such a bill to secure the approval of the House.[43]

The only thing of importance in connection with the other land grant bills considered at this session was an amendment offered by King, of New Jersey, to the bill making a grant for a

[39] Wentworth, *Congressional Reminiscences, Fergus Hist. Ser.*, No. 24, pp. 40–42.

[40] "It was the votes of Massachusetts and New York that passed the bill, and you and I know how they were obtained." *Springfield Daily Register*, Feb. 6, 1851; *Fergus Hist. Ser.*, No. 23, p. 89.

[41] *Globe*, 1st sess. 31st Cong., 1953.

[42] "It was the Chicago branch . . . connecting the main road with the various lines in progress of construction, from Philadelphia, New York, Boston, and Portland, as well as the great chain of lakes and the St. Lawrence, which secured the votes we obtained from Pennsylvania, New York and New England." Douglas to Breese, Feb. 22, 1851; *Fergus Hist. Ser.*, No. 23, p. 96.

[43] Other bills were acted on as follows: Hannibal and St. Joseph, laid on the table, 91 to 81, *Globe*, 1st sess. 31st Cong., 1951; Missouri Pacific, laid on the table, 102 to 65, Ibid., 1952; others not considered.

road from Hannibal to St. Joseph. This provided that none of the lands should be transferred to any corporation, company, or individual, but should be used by the state directly, the profits to be applied to the school fund.[44] This, together with the bill, was laid on the table. Young, of Illinois, submitted a similar amendment to another bill which was disposed of in the same manner.[45]

By this time the arguments for and against land grants had been well defined. They were to develop in certain directions, but little new was to be added by subsequent discussions. The chief argument for the land grant was that the government was a great landed proprietor. Subordinate to this was the claim by the various states for a share in the public lands, on the theory both of a proportional distribution and of compensation due the new states on account of the exemption of the lands from taxation. Against the grants were, first, the constitutional argument, that they were only internal improvements in a veiled form, and the objection from the standpoint of the settler that the desirable lands were raised in price. From the idea that the states were entitled to a share in the public lands, came the plea for a general grant of lands; and from the settlers' argument came the agitation for the homestead law.

[44] Ibid., 1951.
[45] Ibid., 1952.

CHAPTER III.

THE EAST AGAINST THE WEST — LAND GRANTS AND HOMESTEADS.

The effect of the Illinois Central grant on legislation was not felt at once, and little was done in regard to the matter during the second session of the thirty-first Congress. But at the beginning of the next Congress, bills were introduced granting lands to railroads in nearly all of the states which had public lands. The Commissioner of the Land Office estimated that the bills introduced in the Senate provided for 3,090 miles of road, and grants amounting to 13,901,657 acres.[1] Other estimates were much higher. Not only were many more bills introduced; the interest in the bills was much greater than at the previous Congress. Pike wrote to the *Tribune,* February 10, 1852, "This question of grants of the public lands is engrossing, and is likely to engross much of the time of the session. It is in fact the great leading topic of interest."[2]

It is not worth while considering these bills in detail. The argument for land grants has been discussed in the previous chapter. A noteworthy development was, however, made by Charles

[1]

States.	Length of road, miles.	Grant, acres.
Michigan	534	341,760
Wisconsin	156	599,040
Iowa	434	3,104,417
Missouri	232	890,880
Arkansas	488	1,873,920
Alabama	314	1,205,760
Florida	932	3,882,880
Total	3,090	13,901,657

Globe, 1st sess. 32d Cong., App., 428.

[2] *Semi-Weekly Tribune,* February 24, 1852. On June 10, Orr claimed in the House that the committee on public lands had occupied most of the morning hour for the previous three or four months. *Globe,* 1st sess. 32d Cong., 1551.

Sumner in his speech on the Iowa bill. Attention had been called before to the fact that the states had not been allowed to tax the public lands within their limits and that something was due the states on this account. Sumner worked out the proposition mathematically, claiming that the grants to the states would no more than compensate for the money which might have been obtained had the lands been subject to taxation. He attempted to estimate the amount of these taxes and found some $60,000,000 due the states from the government.[3] This argument was answered by Hunter, of Virginia, who claimed that an estimate of a tax of one cent an acre on lands which could not be sold for $1.25 was too high. He also claimed that the exemption of the public lands from taxation had been compensated for by the administration of the territories at the expense of the general government, by the sections granted for the use of schools, the 5 per cent. of the proceeds of the lands, and by the lands granted for internal improvements.[4] Felch, of Michigan, advanced the same argument as Sumner, and also objected to the government as a land owner in the states. He claimed that the new states did not have the powers of sovereignty over their own soil, and could not exercise the right of eminent domain or assess government lands for benefits due to state action.[5] In the House an opposition to corporations developed and the method by which Illinois disposed of her lands was criticised.[6] An attempt was made to meet this objection by providing that the lands should not be transferred to a corporation but should be sold to actual settlers only, the profits to be applied to the support of schools.[7] This amendment was not adopted.

At this session of Congress fifteen land grant bills passed the Senate and only one the House. On only one of the Senate bills

[3] Ibid., App., 136-36. The exemptions from taxation which the government lands enjoyed was one of the terms on which the new states had been admitted to the Union and existed only on account of this compact. *Witherspoon* v. *Duncan*, 4 Wallace, 210.

[4] *Globe*, 1st sess. 32d Cong., App., 203.

[5] Ibid., App., 149.

[6] Ibid., 75-77.

[7] Ibid., 545-46.

was a vote taken. This was the grant to Iowa which passed 30 to 10.[8] In the House the bill for the south-west branch of the Pacific passed 103 to 76 and the next day the Iowa bill was laid on the table 102 to 68. There were twenty-six persons who voted for the former bill and against the latter, the change being largely for the New England and Middle States. The Missouri bill received the support of these states and the West, but Massachusetts (8–0), Pennsylvania (14–6) and Maryland (3–1) were the only eastern states favoring it.[9] The Iowa bill was opposed by those three states, no eastern states giving a majority for the measure.[10] It appears that Iowa was not a unit in favor of the bill, as some of the river towns feared that the railroads would divert trade from the river and thus injure them.[11] But it is evident that an explanation must be sought for the passage of the Missouri bill, as that was the exception to the general rule. The Democrats cast 49 votes for the Missouri and 36 for the Iowa bill, with 62 votes against the former and 68 against the latter. Of the Whig votes 51 were for the Missouri bill and 31 for the Iowa bill, with 14 against the former and 33 against the latter.

This session of Congress was also marked by an effort of the eastern states to secure a portion of the public lands for their own use. When the Iowa land grant bill first came up in the Senate,

[8] The votes against were from Maine (2), New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, and Ohio (2). *Senate Journal*, 1st sess. 32d Cong., 284.

[9]

	For.	Against.
New England	12	8
Middle	36	23
South	6	31
Gulf	12	2
West (land)	40	1
West (non-land)	9	10

House Journal, 1st sess. 32d Cong., 749.

[10]

	For.	Against.
New England	2	16
Middle	10	34
South	6	29
Gulf	10	2
West (land)	29	14
West (non-land)	11	7

Ibid., 155.

[11] See letter of Pike, *Semi-Weekly Tribune*, March 9, 1852, and speech of Senator Bradbury, Jan. 17, 1853, *Globe*, 2d sess. 32d Cong., 318.

Underwood, of Kentucky, proposed an amendment granting to the states which had no public lands specified amounts of the lands in the other states. These lands were to be used for education and internal improvements.[12] Hunter objected to this on the ground that the holding by one state of lands in another would cause trouble between the states.[13] Underwood claimed that it was no worse for a state so to hold lands than it was for the general government. He cited the settlement of the boundary dispute between Kentucky and Tennessee where the former was given the land and the latter the political jurisdiction.[14] The amendment was defeated 15 to 26. Of those favoring it 13 were Whigs while 21 Democratic votes were cast against it.[15] In the House a similar attempt was made. Bennett, of New York, moved to re-commit the Hannibal and St. Joseph land grant bill, with instructions to amend so as to secure a grant to the various states in proportion to their representation in Congress, the amount granted to Illinois being taken as a unit. The land states were to have double the proportion of the others.[16] The motion was lost 70 to 96.[17] Bennett then reported a bill from the committee on Public Lands, making specified grants to the land states for railroads; to the non-land states, except Texas, 150,000 acres for each senator and representative, for the support of schools; and to the territories and the District of Columbia 150,000 acres each.[18] There was little discussion on this bill and it was ordered read a third time by a vote of 95 to 92. The opposition to the bill was

[12] *Globe*, 1st sess. 32d Cong., 390.

[13] "What does the amendment propose, Mr. President? It proposes to establish the old states as landholders in the bosoms of the new states—a measure that could not fail to sow the seeds of dissension and discord between the several state of the Confederacy." Ibid., App., 204.

[14] Ibid., App., 222–26.

[15] *Senate Journal*, 1st sess. 32d Cong., 281.

[16] *Globe*, 1st sess. 32d Cong., 632–3.

[17] Ibid., 670.

[18] The amounts to the land states were as follows: To Missouri, Iowa, Arkansas, and California, 3,000,000 each; to Alabama, Michigan, Wisconsin, and Louisiana, 2,500,000 each; to Mississippi and Florida, 2,000,000 each; to Illinois, 1,000,000; to Indiana, 1,000,000, and all unappropriated public lands within the state; to Ohio, 2,000,000, and all unappropriated public lands in the state. Ibid., 1536.

largely from the South and West.[19] On party lines the Whigs voted 66 to 4 for the bill while the Democrats stood 26 to 87 against it.

In the Senate the bill was reported adversely by the committee on Public Lands and a motion to take it up was lost, 22 to 23. New England was quite evenly divided on the bill, otherwise the sectional division was much the same as in the House,[20] as was also the vote by parties, the Whigs being 15 to 1 for the motion and the Democrats 20 to 6 against. The explanation of these votes may be found in the opposition of the Democrats to any general system of internal improvements and to the old plan of the Whigs for a distribution of the proceeds of the land sales.[21]

Bennett's plan was an effort to settle the railroad land grant question, and indeed many features of the general land policy, on a permanent and equitable basis. Whether the old states were entitled to share in the public lands is perhaps outside of the present discussion, but as a matter of fact they had received such a share from the beginning in the money which came into the treasury from land sales. If they were to give up this revenue on account of grants in aid of enterprises in the new states they could with plausibility claim some share in the lands them-

[19] Ibid., 1603.

	For.	Against.
New England	19	2
Middle	35	13
South	16	27
Gulf	2	10
West (land)	15	30
West (non-land)	8	10

[20] *Senate Journal*, 1st sess. 32d Cong., 660.

	For.	Against.
New England	6	5
Middle	5	1
South	3	5
Gulf	4	2
West (land)	3	7
West (non-land)	1	3

[21] It was charged that the Whigs wished a speedy disposition of the public lands, so that an increase in the tariff would be necessary. *Globe*, 1st sess. 32d Cong., App., 238. A railroad convention, held at St. Louis, November 15, 1852, protested "against giving them [the public lands] away to any one class of the people or assigning them wholesale to the old states, as provided for by the 'Homestead' and 'Bennett's' land bills." *Proceedings of Mississippi Valley Road Convention*, 12.

selves. True, the theory of the railroad grants had provided for this in the increase in the price of the reserved lands, but as we have seen, this theory was more or less of a make-shift. In Bennett's bill the broader basis of making a general grant to the states was adopted without complications of reserved and indemnity lands. How this would have worked in practice we cannot tell, but the workings of the other system were not such as to commend it, so that some slight improvement could be expected. Of course, even if the plan had been adopted the other system of specific grants might have continued, but this was not likely. So far as we can see, Bennett's plan was an improvement on the other in that it was general and permanent and aimed to put an end to lobbying in behalf of special bills; and in that it made general grants to the states, leaving the special disposition of the lands to the legislatures. But instead of accepting this solution of the question the special legislation was continued and the opportunity was lost of avoiding many of the evils which were attendant on that legislation.

The sectional divisions noted in the votes on the different bills were brought out strongly in a discussion over a report on the Iowa bill, made April 1, 1852, by Henn, of Iowa. After reporting the bill from the committee on Public Lands he said: "I think that the time has come when the members of the House from the West should stand up and vote with each other upon all these propositions." He went on to charge the eastern members with sectionalism in their votes on measures before Congress. Venable, of North Carolina, claimed that there had been no disposition on the part of eastern members unduly to favor their own schemes.[22] The next day Henn elaborated his position, showing opposition on the part of the East to the Missouri bill on motion to refer the bill to the Committee of the Whole.[23] This same bill, however, afterwards passed the House.

[22] *Globe*, 1st sess. 32d Cong., 950.

[23] Ibid., 961–62.

For a correct understanding of railroad land grants it will be necessary to trace in some detail the history of another feature of our public land system—the homestead law. The first, although very imperfect expression of this principle was found in an act of 1842, called the "Florida Donation Act."[24] This granted to each actual settler in that territory a quarter section of land on the conditions of actual settlement and the cultivation of a portion of the land. At that time the new territory was in terror of the Indians, and it was felt that some inducement was needed to promote settlement there. It was argued that this donation would in fact be to the financial profit of the government by making settlement safer and thus causing the sale of other public lands.[25] Very similar acts were passed in 1850 for the territory of Oregon, in 1853 for Washington and in 1854 for New Mexico.[26]

The high-water mark in the sales of the public lands was reached in 1836. The fact that the government possessed many acres of land which it could not dispose of led to attempts to reduce and graduate the price of the lands. At first such attempts were favored on the ground of the advantage which they would bring to the government, simply as a business proposition. But in 1846 the idea that such a reduction in price should be made on account of the settler was advanced.[27] Darragh, of Pennsylvania, introduced in the House an amendment to a graduation bill, providing that lands which had been subject to entry for ten years should be given to actual settlers after three years' occupation. This was an approach toward the later homestead law, but the House was not ready for such a step, and the amendment was rejected,[28] as was one offered by Andrew Johnson granting a quarter section to destitute heads of families after four years' occupation.[29] The claim which Johnson later made to the

[24] *Statutes at Large*, V, 502.
[25] *Globe*, 2d sess. 27th Cong., 623-24, 764-66.
[26] See Donaldson, *Public Domain*, 295-7.
[27] *Globe*, 1st sess. 29th Cong., 1058-63.
[28] Ibid., 1077.
[29] Ibid.

fatherhood of the homestead law seems to be justified by the action which he took at this time.

We hear little of homesteads or graduation bills during the next Congress, but in the thirty-first Congress two distinct propositions were brought forward looking toward the donation of the public lands to actual settlers. Douglas proposed to grant 160 acres of land to actual settlers who should take up a residence upon and cultivate the land for a period of four years.[30] Walker, of Wisconsin, wished to cede to the new states the public lands on condition that they be granted to actual settlers, in limited quantities, for the cost of administration.[31]

To both of these propositions the committee on Public Lands made the same general objections. The point of view taken was that the public lands were to be administered for the benefit of the treasury as they were pledged to the payment of the public debt. It was also argued that the large quantity of free lands suddenly placed upon the market would reduce farm values in the new states and also the value of the grants made in favor of internal improvements.[32] In this last objection may be found one of the sources of the conflict which was to arise later between land grants and homesteads. The chief discussion over the report was during the second session of this Congress.

Two resolutions were introduced at this time; one by Webster declaring the right of each male citizen to a homestead of 160 acres after three years' cultivation,[33] and the other by Houston, of Texas, declaring that each family not worth $1,500 was entitled to 160 acres of land after three years' cultivation.[34] The discussion over these resolutions developed the connection between the revenues from the public lands and the tariff, and was mixed up with the discussion of Seward's resolution for grants to Hungarian exiles.[35] In the House Andrew Johnson

[30] *Senate Journal*, 1st sess. 31st Cong., 36.
[31] Ibid., 116.
[32] *Senate Reports*, 1st sess. 31st Cong., No. 167.
[33] *Globe*, 1st sess. 31st Cong., 210.
[34] Ibid., 262.
[35] Ibid., 264–66.

introduced two homestead bills, which were not discussed at any length.

With this agitation in favor of homesteads we may connect the objections made to the increase in the price of the lands reserved to the government in the grants to railroads.[36] That the homestead doctrine was opposed to the land grant system was evident from the report of the public lands committee. The antagonism of the two systems will be observed during the later history of the homestead law.

Outside of Congress the feeling in favor of grants to actual settlers was becoming manifest. The Buffalo convention of 1848 had declared for "free soil" in an economic as well as a political sense,[37] and the Free-soil convention of 1852 reaffirmed this in stronger terms.[38] During 1850 and 1851 there were resolutions transmitted to Congress from the legislatures of New York,[39] Missouri,[40] Illinois,[41] and Indiana,[42] favoring grants of land to actual settlers. Probably the strongest expression of the anti-land grant sentiment from the settler's point of view came from Wisconsin. In his message to the legislature of that state in 1852, Governor Farwell objected to grants as restraining the development of the state by removing valuable portions of the public lands from settlement.[43] Eastman, one of Wis-

[36] Supra, p. 31.

[37] "Resolved, That the free grant to actual settlers, in consideration of the expenses they incur in making settlements in the wilderness, which are usually fully equal to their actual cost, and of the public benefits arising therefrom, of reasonable portions of the public lands, under suitable limitations, is a wise and just measure of public policy which will promote, in various ways, the interests of all the states of this Union." Stanwood, *History of Presidential Elections*, 175.

[38] "The public lands of the United States belong to the people, and should not be sold to individuals nor granted to corporations, but should be held as a sacred trust for the benefit of the people, and should be granted in limited quantities, free of cost, to landless settlers." Ibid., 188.

[39] *House Misc. Docs.*, 1st sess. 31st Cong., No. 23.

[40] Ibid., No. 29.

[41] Ibid., 2d sess. 31st Cong., No. 6.

[42] *Senate Misc. Docs.*, 1st sess. 31st Cong., No. 86.

[43] "These large grants of the public lands to the states, in trust for the benefit of specific works of internal improvement under the supervision of private incorporated companies, will retard the settlement of the state, by engrossing the most valuable portions of the public lands, and, in every instance, will probably have the effect to keep them out of immediate market, as well as to increase the cost to the settler when offered for sale." *Assembly Journal*, 5th sess., 30-31.

consin's representatives, said that this message did not represent the sentiment of the state;[44] certainly the governor was not supported by the legislature in this position.[45] The more advanced ground which Wisconsin took in this matter may be due to the large increase in its population between 1840 and 1850. During these ten years there was an increase from 30,945 to 305,391, or 886 per cent. During the same time Illinois grew from 476,183 to 851,470 or 79 per cent., Michigan from 212,267 to 397,654 or 87 per cent., and Iowa from 43,112 to 129,214 or 199 per cent.

During the thirty-second Congress the two ideas regarding the disposal of the public lands came into conflict more strongly than at any other time. On March 17, Pike wrote to the *Tribune* that the House would stop the land grant bills, but that compromises might be formed with those who were opposed to the system, but who were more opposed to grants to settlers.[46] It was stated in the House that the only formidable opposition to the homestead bill came from those who favored land grants;[47] and the opposition to the land grants by the advocates of the homestead bill was said to be caused by the fear that the grants would take up large tracts of land.[48] Thomas A. Hendricks admitted the opposition, but considered it ill-founded as the two measures were necessary to the development of a new country.[49]

The homestead bill, in the form it was introduced and passed the House, provided that any vacant public lands could be entered under its provisions. This would of course include the reserved lands of the railroad grants and thus the effect on the value of the lands granted to railroads and the theory on which those grants were made was much greater than it would have been if such lands were reserved from the action of the law.

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[44] Globe, 1st. sess. 32d Cong., App., 431.
[45] See Madison correspondence in the *Milwaukee Sentinel*, January 20, 1852.
[46] *Semi-Weekly Tribune*, March 19, 1852.
[47] *Globe*, 1st sess. 32d Cong., App., 574.
[48] Ibid., App., 737.
[49] Ibid., App., 482.

The house passed the homestead bill at this session 107 to 56,[50] while the Senate twice refused to take it up for discussion, first by a vote of 14 to 31,[51] and then by a vote of 16 to 38.[52] In the House the only section to oppose the bill was the South, the free states voting for the bill 73 to 23 and the slave states for it 34 to 33.[53]

In the Senate all sections of the country except the West were opposed to the bill. On the first vote Arkansas was the only slave state to vote for the bill while on the second vote Louisiana was alone in her support. On the other hand the free states cast 15 votes on the first motion and 14 on the second against the bill.[54]

A comparison with those representatives who voted on both the homestead act and the bill granting lands to Iowa,[55] shows 131 voting on both bills. Of these two favored the land grant and opposed the homestead bill, 51 favored both bills, 35 were for homesteads and against land grants and 43 against both systems. In the Senate a similar comparison shows 17 for the Iowa bill[56] and against the homestead bill, 9 for both measures, 2 against land grants and favoring homesteads and 7 against both bills.

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[50] *House Journal*, 1st sess. 32d Cong., 705.
[51] *Senate Journal*, 1st sess. 32d Cong., 586.
[52] Ibid., 618.

	For.	Against.
[53] New England	12	8
Middle	27	9
South	4	28
Gulf	10	1
West (land)	39	6
West (non-land)	15	4

House Journal, 1st sess. 32d Cong., 705.

	For.		Against.	
	I.	II.	I.	II.
[54] New England	2	4	8	7
Middle	2	2	4	4
South	0	0	8	10
Gulf	0	1	5	6
West (land)	10	9	4	6
West (non-land)	0	0	4	5

Senate Journal, 1st sess. 32d Cong., 586, 618.
[53] *House Journal*, 1st sess. 32d Cong., 755.
[54] *Senate Journal*, 1st sess. 32d Cong., 284.

Combining both sets of figures we find that of 166 senators and representatives 56 were in favor of one and opposed the other measure, 60 were in favor of both plans and 50 were opposed to both. The division between the three opinions is thus almost equal.

CHAPTER IV.

LATER GRANTS TO STATES.

After 1853 there was a lull in land grant legislation. By the close of that year grants had been made to Illinois, Mississippi, Alabama, Missouri, and Arkansas to an amount estimated at about 8,000 acres.[1] If there was any sectionalism in the distribution of the grants, the South had received more than her share. Not until 1856 do land grants again become prominent in Congress, but during this time the homestead movement is fast gaining ground. On account of this neglect of land grants little light is thrown on the conflict between the two systems.

In the House a homestead bill was passed in 1854, by a vote of 107 to 72. The sectional groupings were not materially different from the vote at the previous session. The conflict with the slavery question had not yet developed and from the slave states 24 votes were cast for the bill, while 34 members from the free states voted against it. Both political parties favored the bill.[2]

In the Senate the bill was amended by a substitute which provided for a graduation in the price of the public lands; a general grant to the states for railroads, and the right of a head of a family to receive 160 acres of land at 25 cents an acre after five years' occupation.[3] The substitute was adopted 34 to 13, being favored by both the friends and enemies of the homestead act.

When the bill had been introduced in the House it had provided for the entry of any vacant public lands. An amendment was introduced limiting the lands to which the law was applica-

[1] Donaldson, *Public Domain*, 273.
[2] *Globe*, 1st sess. 33d Cong., 549.
[3] Ibid., App., 1122.

ble to those held at $1.25 an acre. Cobb, who moved the amendment, said he did so because to open up the reserved lands in the railroad grants who would have been to lose to the government the compensation for those grants.[4] Bissell, of Illinois, said that he did not believe that it was the intention of any member of the House to apply the homestead law to the railroad lands,[5] and an amendment similar in effect to Cobb's was adopted.[6] This point was not discussed in the Senate.

The amendment to the homestead bill which was adopted in the Senate had provided that if a state should charter a railroad which ran through the public lands of the United States the Secretary of the Interior should set apart 7,680 acres a mile, within twelve miles of the road, these lands to be subject to pre-emption by the state at prices varying with the length of time the lands had been in the market, with a maximum of one dollar an acre.[7] This part of the amendment was not discussed in the Senate nor was it brought up in the House.

The only land grant bill passed at this session of Congress was one to the territory of Minnesota. Some doubts were expressed as to the power of a territory to dispose of the grant and charter a company but the bill passed the House 99 to 71,[8] the Senate without a division,[9] and became a law June 29, 1854.[10] About a month after the passage of the bill, Washburn, of Illinois, stated in the House that the bill as passed differed from the engrossed bill in an important particular. In a sentence which read "nor shall they [the lands] enure to the benefit of any company heretofore constituted or organized," the word *or* had been changed to *and*. It seems that there existed a company in Minnesota which by its charter was to receive any lands which Congress might grant in aid of a railroad along that route. It

[4] Ibid., 500–501.
[5] Ibid., 522.
[6] Ibid., 526.
[7] Ibid., App., 1122.
[8] Ibid., 1452.
[9] Ibid., 1552.
[10] *Statutes at Large*, X, 302.

was felt that to pass a bill granting lands to Minnesota when it was known that a certain company would receive them would be making the grant to a corporation and not to the state. This was contrary to the theory of the grants which implied perfect freedom to the state in the exercise of its sovereignty over the lands granted to it. The provision quoted above had therefore been inserted to prevent the old company from receiving the lands. By the change noted, however, the company, which had not been fully organized until after the passage of the law, although chartered before, had set up a claim to the lands. On Washburn's motion a committee was appointed to investigate the matter.[11]

Later in the day H. L. Stevens, from the committee on Public Lands, stated that he had intended to make the change before the bill was reported from the committee, but failing to do so and regarding it as merely verbal he had requested the clerk of the House to do so.[12]

The reports of the investigating committee agreed with Stevens' statement of the case and exonerated him of any wrong intention in his action. Bills were also introduced amending the act so that it would read as when originally reported from the committee.[13] But instead of so amending the law the House passed a bill repealing the entire grant.[14] This bill reached the Senate August 3. It was so late in the session that an immediate consideration was necessary. Objection being made to a second reading of the bill it appeared as if the grant might be saved to the territory. The objection was, however, overcome by offering the repeal of the law as an additional section to a private bill then under consideration.[15] An effort was made by Douglas to amend the amendment so that the act would be restored to the form which the House had originally intended but this was lost

[11] *Globe*, 1st sess. 33d Cong., 1888–89.
[12] Ibid., 1891.
[13] Ibid., 2094.
[14] Ibid., 2100.
[15] Ibid., 2172.

15 to 28. The amendment was then agreed to 36 to 10 and the bill passed.[16] The bill was then sent to the House which passed it as amended,[17] so that the grant was entirely repealed. The question of the validity of the repeal came before the Supreme Court, where its constitutionality was upheld on the ground that the territory could acquire no vested interests in the lands until the first twenty miles of the road had been constructed.[18]

The next Congress was the banner one for land grants. Florida, Alabama, Louisiana, Mississippi, Michigan, Wisconsin, Minnesota, and Iowa received lands estimated at over 19,000,000 acres.[19] There was little discussion of constitutional questions in connection with these bills. The Iowa bill received the most attention and illustrates well the ideas of the time on the subject of land grants. It had been received from the House and the question was on its reference to the committee on Public Lands. Jones, of Iowa, opposed this and asked for immediate consideration, because if the bill were delayed the land along the proposed lines would be taken up on bounty warrants. Yulee, of Florida, considered that when the senators and representatives from a state were agreed on a land grant bill it was the duty of Congress to pass that bill without further question.[20]

Foot, of Vermont, urged the reference to the committee in order that the parties interested might be heard, while Adams, of Mississippi, claimed that the only parties interested were the United States and Iowa. Crittenden, of Kentucky, thought that the committee should be given a chance to determine whether or not the roads were of national importance.[21] Reference was finally refused and the bill read a third time and passed.[22] A few days later Crittenden moved a reconsideration of the bill. He said that there was another road already begun

[16] Ibid., 2178.
[17] Ibid., 2118.
[18] *Rice* v. *Minn. & N. W. R. Co.*, 1 Black, 358.
[19] Donaldson, *Public Domain*, 269–70.
[20] *Globe*, 1st sess. 34th Cong., 1168.
[21] Ibid., 1168–69.
[22] 31 to 9, Ibid., 1173.

in Iowa on which some hundreds of thousands of dollars had been expended. He wished the bill referred to a committee so that the rights of this road could be considered.[23] There were already four roads provided for by the bill, but there was a long discussion, covering thirteen pages of the *Globe*, as to the right of this other road to a grant.[24] Reconsideration was refused, however, by a vote of 15 to 19.

There was little discussion over bills in the House as they usually went through under the previous question. Jones, of Tennessee, called attention to the fact that the original theory of the grants had been abandoned as they were being made to roads then under process of construction and which did not need the aid.[25] Letcher, of Virginia, expressed the feelings of some on the subject when he moved to amend the title of the Mississippi bill so as to read: "A bill for constructing works of internal improvements by means of the Federal Government of the United States."[26] At this time the only section which opposed the bills was the South, although Ohio was inclined to vote against them.[27]

It was evident that a great change in regard to land grants had occurred in six years. The passage of the Illinois Central bill in 1850 was exceptional and only secured by a most fortunate combination of circumstances. But in 1856 the doctrine could be advanced that where a railroad was to be built through the public lands it was a matter of course entitled to an extensive portion of those lands to aid in its construction. The

[23] Ibid., 1187.
[24] Ibid., 1207–20.
[25] Ibid., 1328–29.
[26] Ibid., 1945.
[27] The vote on the Mississippi bill shows the sectional division:

	House.		Senate	
	For.	Against.	For.	Against.
New England	13	7	5	1
Middle	30	15	1	3
South	7	13	2	5
Gulf	13	1	5	0
West (land)	24	14	6	2
West (non-land)	5	9	3	0

House Journal, 1st sess. 34th Cong., 1379; *Senate Journal*, 1st sess. 34th Cong., 545.

Senate seems almost to have accepted this idea, although the House was much more conservative. But it can be said that Congress was approaching the point where nearly every applicant had a good chance of receiving a grant of the public lands. The causes which brought about this change are not entirely clear. The fact that some states had received grants enabled the others to set up a claim to the same favor, while the passage of each bill made easier the succeeding ones by the mere force of example. Moreover, it had been found useless to expect that the public lands would continue to be any considerable source of revenue, so that the financial value of the grants to the government was becoming less. Another possible cause was the growth of the union between the East and West, due to the economic development of those sections at the expense of the South. This is illustrated in the votes on the land bills.

One reason for the increase in land grants whose extent it is impossible to determine, is political corruption. The character of the congressmen who supported the earlier bills indicates that at that time no such charge could be brought against the chief friends of those measures, commanding as they did the support of Douglas, Cass, Sumner, Davis, Calhoun, and other leading senators. But in the period just before the war the political standards were much lower than in 1850. General legislative corruption was freely charged,[28] and it is very probable that land grant bills, involving as they did great corporate interests, were helped along by improper methods. An important charge to this effect was made by the correspondent of the New York *Tribune*, in 1854, in which he alleges great bargaining in connection with the land grant bills. R. J. Walker is mentioned as mixed up in one of the largest of the schemes.[29] The interest in land grants taken by congressmen from New England and the Middle States was also doubtless not uninfluenced by capitalists of those sections interested in the railroads of the interior.

The thirty-fifth Congress practically ended railroad land

[28] Rhodes, *History of United States*, III, 60.
[29] *N. Y. Daily Tribune*, March 11, 1854.

grants for some time. The crisis of 1857 stopped the construction of roads already begun or projected and prevented the formation of plans for building new ones. In 1858 a number of bills granting lands for railroads were introduced in the Senate but were laid on the table on the recommendation of the committee on Public Lands, it being considered inexpedient to act upon them at that time.[30]

Without going into a discussion of the crisis of 1857, it may be stated that the great amount of railroad building of the previous years was one of its prominent causes. Wirth so considers it, and comments on the large increase in railroad building at this time.[31] The same view is taken by both von Holst [32] and Rhodes.[33] Up to 1857 about 5,000 miles of projected road had been aided by grants of government lands.[34] The entire railroad construction during the same period was 15,175 miles. The effect of the grants on the other roads was of course considerable, as many were begun in the hope of receivng land grants. Also the land grants stimulated railroad building in the very portion of the country least ready for it.

The crisis did not, however, prevent a vigorous debate over the homestead bill during the session of 1858–59. In the first session of the thirty-fifth Congress the bill was discussed at some length in the Senate, but little was brought out concerning its relation to land grants. The bill was finally postponed to the next session.[35] Before it came up again in the Senate, the House had passed a homestead bill by a vote of 120 to 76. The division of the voto was on the line between the free and slave states, rather than by the old sectional divisions. The only votes from the free states against the bill were from Pennsylvania, Ohio, In-

[30] *Globe*, 1st sess. 35th Cong., 2451.

[31] Wirth, *Geschichte der Handelskrisen*, Frankfurt am Main, 1890, 335.

[32] Von Holst, *Constitutional History of the United States*, VI, 104–10.

[33] "The most prominent element in bringing on the panic of 1857 was the expansion of credit, induced by the rapid building of new railroads and by the new supply of gold from California," Rhodes, *History of the United States*, III, 52.

[34] This is only an estimate of the number of miles of road provided for in the various land-grant bills. Not all of the roads so provided for were constructed.

[35] *Globe*, 1st sess. 35th Cong., 2426.

diana, and Illinois. On the other hand the only votes for the bill in the slave states came from Maryland, Tennessee, Kentucky, and Arkansas.[36] On party lines the division was also significant. The Democrats (I use the classification of the *Tribune Almanac*) stood 38 for and 60 against the bill, the Republicans 82 for and 1 against, and the Americans 15 against.

In the Senate a motion was made February 1 to take up the bill. On this the vote stood 28 to 28 and the vote of Vice-President Breckenridge, of Kentucky, decided the motion in the negative. On February 25 the bill to appropriate $30,000,000 for the purchase of Cuba was before the Senate. During the evening, Doolittle, of Wisconsin, moved to take up the homestead bill.[37] Andrew Johnson, a staunch supporter of the bill, asked Doolittle to withdraw his motion as it was needlessly antagonizing the friends of the Cuba bill. Douglas and Rice made similar requests.[38] A speech of Toombs accusing the opponents of the Cuba bill with cowardice called forth the report of Wade, "The question will be, shall we give niggers to the niggerless, or lands to the landless?"[39] What seemed at first only a struggle for precedence between the bills was in fact a contest between two opposing doctrines.[40] The motion to take up the bill failed.[41] A number of votes from the free states were found in opposition to the motion,[42] while only one vote from a slave state, that of Johnson, of Tennessee, was cast in favor of it. It was then too late in the session to make another effort for the bill. Before adjournment that evening, Brown, of Mississippi, a friend of the Cuba bill, moved to lay it on the table in order to secure a test vote upon it. The motion was lost, 18 to 30. The only difference between this vote and the one on the homestead

[36] *Globe*, 2d sess. 35th Cong., 727.
[37] Ibid., 1351.
[38] Ibid., 1352.
[39] Ibid., 1354.
[40] Seward said: "The homestead bill is a question of homes, of homes for the landless freemen of the United States. The Cuba bill is a question of slaves for the slaveholders of the United States." Ibid., 1353.
[41] The vote was 19 to 29.
[42] One vote from Rhode Island, New Jersey, Pennsylvania, Delaware, Ohio, Indiana, Oregon, and California, and two votes from Minnesota, Ibid., 1362.

bill was that Johnson voted against the motion, two senators who had voted before were now paired, and there were two new votes, one from Maryland for and one from Oregon against the motion.[43]

With its usual promptness the House passed a homestead bill at the next Congress.[44] The vote was 115 to 65. From Pennsylvania and Delaware came the only free state votes against it, while Missouri was the only slave state in which a representative favored the bill. The affirmative vote was cast by 90 Republicans and 25 Democrats while 48 Democrats and 17 Americans made up the negative.[45] The bill differed in one important particular from the previous ones. Under it the settler could enter 160 acres of land held at $1.25 an acre or 80 acres at $2.50, thus partially opening up the reserved railroad lands.[46]

Andrew Johnson had introduced a homestead bill in the Senate which was under consideration when the other bill was received from the House. The essential difference between the bills as regards railroad lands was that one hundred and sixty acres of the reserved lands could be entered under the Senate bill and only eighty acres under the House bill. There was considerable discussion, however, over which of the bills should be acted upon, but the point in regard to the railroad lands was not mentioned. During the discussion Pugh cited the Southern Pacific bill, then before Congress, as an example of a donation of public land supported by the South. Wigfall, of Texas, claimed that a grant to the Southern Pacific could be made under the power given the government to transport the mails and to provide for an army and navy. He further argued that the railroad would increase the value of the remaining public lands while under the homestead bill only the poorer lands would be left to the government.[47]

On April 17, Johnson reported from the committee on Pub-

[43] Ibid., 1363. See Rhodes, *History of the United States*, II, 352–54.
[44] On March 12.
[45] *Globe*, 1st sess. 36th Cong., 1115.
[46] Donaldson, *Public Domain*, 336.
[47] *Globe*, 1st sess. 36th Cong., 1528.

lic Lands a substitute for both the bills. This provided for the right of pre-emption by an actual settler at twenty-five cents an acre.[48] Wade moved to substitute the House bill for the committee's bill, but the motion was lost.[49] Again we find the free and slave states arrayed against each other. The two far western states, California and Oregon, voted against the motion, however, as did Delaware, while Pennsylvania was divided.[50] The bill was then passed by a decisive majority.[51]

The House insisted on its original bill for some time, but as the Senate remained firm the House yielded for this Congress, in hope of obtaining something more at the next. In reporting the result of the conference to the House, Colfax stated that it was the best that could be secured. He said he wished that the bill opened up the railroad lands to settlement, but it was impossible to obtain this concession.[52]

President Buchanan returned the bill to the Senate without approval.[53] He considered the price charged by the bill as merely nominal. Regarding the bill as conferring a gift of the lands, he claimed that Congress had no such power over the public domain. Congress as the trustee of the lands could "dispose of" the lands only in the limited sense required by the act of those creating the trust—the States. Nor did he consider it just to the former settlers because they would have paid the higher price for their lands. It was also unjust to the holders of land warrants, by reducing the value of the lands to which they could be applied. He considered the law wrong also in its discrimination in favor of the agricultural class and in its offer of inducements to emigration from the old states. The message closed with a plea for the continuance of the system of holding the lands for revenue, which in his opinion, ought to amount to

[48] Ibid., 1751.
[49] 26 to 31.
[50] Ibid., 1999.
[51] The vote stood 44 to 8. Those voting against the bill were Bragg (N. C.), Clingman (N. C.), Hamlin (Me.), Hunter (Va.), Mason (Va.), Pearce (Md.), Powell (Ky.), and Thomas (Ga.). Ibid., 2043.
[52] Ibid., 3179.
[53] June 22.

$10,000,000 annually.[54] After some discussion the vote on the passage of the bill over the veto stood 27 to 18, not the necessary two-thirds.[55]

In the thirty-seventh Congress matters were very radically changed. The chief opponents of the homestead policy were no longer sitting in that body, and when the homestead bill came up for passage in the House only 16 votes were cast against it.[56] The bill was very similar to the one which had passed the House at the previous Congress, providing for the entry of 160 acres of land at $1.25 an acre, or 80 acres at $2.50 an acre. Soon after the bill passed the Senate, the vote being 33 to 7,[57] and became a law, May 20, 1862.

At this time railroad land grants again came to the front, the first bill for a Pacific railroad being passed in this year, when the mass of the southern representatives had disappeared from Congress, under the pressure of the military importance of the road to the Pacific coast. Grants were also made to Michigan, Iowa, and Colorado. The next year in the grant to Kansas an important change was made. This was the extension of the grant from six to ten miles on each side of the road and of the indemnity limits from fifteen to twenty miles. This was done because the lands along the line had been so largely taken up that the increased grant was in fact no larger than previous ones.[58] But having been done once in a particular case it was continued as a matter of practice in others.

New grants continued to be made to the states with little consideration, but the most important bills were those renewing previous state grants and those making grants to corporations. The crisis of 1857 and the war had prevented the construction

[54] Richardson, *Messages and Papers*, V, 608-14.

[55] *Globe*, 1st sess. 36th Cong., 3272.

[56] These votes were from Rhode Island (1), Pennsylvania (1), New York (2), Virginia (2), Tennessee (1), Kentucky (7), Missouri (1), and Oregon (1). *Globe*, 2d sess. 37th Cong., 1035.

[57] The negative votes were from Delaware (2), Virginia (2), Kentucky (2), and Oregon (1). Ibid., 1951. The fact that Oregon had had a special homestead act may explain the opposition of that state to a more general law.

[58] *Globe*, 3d sess. 37th Cong., 1158.

of many of the land grant roads and these grounds were urged for a renewal.[59] The same extension of the grants to ten and twenty miles was made as in the other acts, on the same plea of the taking up of the lands.[60] The interest taken in the bills may be seen in a remark of Senator Morrill, who said that he did "not know that anybody takes any interest in them except as a matter of locality."[61]

[59] "The financial trouble of 1857, and then the war coming on, prevented the construction of many roads." Speech of Hendricks in House, May 25, 1866. *Globe*, 1st sess. 39th Cong., 2820.

[60] *Globe*, 1st sess. 38th Cong., 1034.

[61] Ibid., 1744.

CHAPTER V.

THE PACIFIC RAILROADS.

Projects for a railway from the valley of the Mississippi to the Pacific coast followed not long after the exploration of the vast tract of land purchased from France in 1803. The western and northern limits of that purchase were long in dispute, but this seems to have furnished a stronger motive for hastening its settlement.

The first public advocate of such a road seems to have been one Hartwell Carter, who, in 1832, presented his plan in the *New York Courier and Inquirer*. He proposed to build a road from Lake Michigan to the mouth of the Columbia and to San Francisco, on condition that he should receive a strip of land for the whole distance and the privilege of buying 8,000,000 acres of public lands at $1.25 an acre, to be paid for in the stock of the company.[1] During the early forties, John Plumbe presented a plan to Congress for the building of a transcontinental road. This included a grant of alternate sections of land on each side of the road, a plan similar to the other grants which were being urged at this time.[2]

The most prominent of all the advocates of a Pacific railroad was Asa Whitney. His first plan, as set forth in a memorial to Congress in 1845, involved a grant to him of a strip of land 60 miles wide, extending from Lake Michigan to the Pacific. On this he would build a railroad, selling the land as needed, and retaining for his own use that which might remain after the completion of the railroad.[3] The next year he repeated his request,

[1] Bancroft, *California*, VII, 498-9.
[2] Ibid., 500.
[3] *Reports of Committees*, 1st sess. 31st Cong., No. 140, p. 23.

accompanied by an account of his exploration of the proposed route during the previous summer.[4] In 1848 he presented a modified plan by which he was to be allowed the lands along the line at 16 cents an acre, which he was to receive in alternate five mile sections as each ten miles of the road were finished.[5] In 1850 Whitney secured a favorable report from the House Committee on Roads and Canals. This advocated his plan as the most practicable one that had been advanced, gave preference to the northern route, and based the constitutionality of the land grant on the ground that it was not an appropriation of the public lands or their proceeds, but an acceptance of an offer to buy lands otherwise unsalable.[6] The bill accompanying the report authorized Whitney to construct a road from Lake Michigan to the Pacific. The lands for thirty miles on each side of the road were to be sold to Whitney for ten cents an acre. Deficiencies in lands along the road were to be made up from such lands as he might select.[7]

The opposition to Whitney's plan came largely from the advocates of a "National" road, that is, one built by the general government. In 1849 Benton advocated a bill setting aside seventy-five per cent. of the money received from the public lands in California and Oregon, and fifty per cent. in the other states and territories, for the construction of a road from St. Louis to San Francisco, and a branch to the Columbia. A strip of land one mile in width was to be set aside for the road.[8] The advocates of a "National" road opposed Whitney's plan on the grounds that it was too great for private management, that individuals could not treat with the Indian tribes, and that the government should not assist in a "stockjobbing" enterprise.[9] On the other hand Whitney also cited the magnitude of the work as an objection to gov-

[4] Ibid., p. 27.
[5] Ibid., p. 36.
[6] Ibid., pp. 1–19.
[7] Ibid., p. 43.
[8] *Globe*, 2d sess. 30th Cong., 473–4.
[9] See speech of Benton, Ibid., 472.

ernment control and claimed that there was danger of party domination and clash of sectional interests in the "National" plan.[10]

Neither Whitney's nor the "National" plan received much attention from Congress. The matter of a Pacific road was not so simple in 1850 as it had been in 1845. When Whitney first brought forward his plan, our Pacific coast did not extend south of latitude 42°. Only Puget Sound and the mouth of the Columbia, both necessitating a northern route, were available as western termini of a Pacific railroad. But in 1848 California was added to our territory, San Francisco and Monterey entered the field as candidates for the terminus of the road, and a southern route became a possibility. The natural economic rivalry between the two sections was increased by the question of slavery and the repeal of the Missouri Compromise. It is small wonder, to one familiar with the history of the country from 1850 to 1860, that a project which meant so much for or against the prosperity of one section or another failed to receive the assent of Congress.

From 1850 on, the question of a Pacific railroad was one of route, not of constitutionality. The northern route, from the Great Lakes to the Columbia, received also the support of the East. The central route, from Memphis or St. Louis via the South Pass to San Francisco, had many supporters among the central and southern states. The southern route ran from Texas via the valley of the Gila.[11]

In 1853 the projects came most prominently before Congress. Rusk, of Texas, had introduced a bill for a road on the southern route with branches northeast and northwest. Alternate sections for forty miles on each side of the road were granted to aid in its construction. As the road was only within the territories, grants were made to Iowa, Missouri, Louisiana, Arkansas, and California for extensions through those states.[12] Gwin, of California, in-

[10] Bancroft, *California*, VII, 507–8; citing Whitney, *A Project for a Railroad to the Pacific*.

[11] See Davis, *Union Pacific Railway*, Chicago, 1894, 38–42.

[12] *Globe*, 2d sess. 32d Cong., 280.

troduced a bill for a line from San Francisco to Memphis, via Fulton, with branches to Dubuque, St. Louis, Matagorda, New Orleans, and Fort Nisqually. The odd numbered sections for forty miles on each side of the road in the territories and California, and for twenty miles in the other states, were to be granted.[13]

The latter bill was an attempt to satisfy and harmonize all the conflicting and sectional interests. Rusk's bill had been referred to a select committee which reported a bill which attempted to solve the matter by leaving the selection of the route to the president, and providing for a grant of alternate sections for six miles on each side of the road in the states, and for twelve miles in the territories, together with $20,000,000 in bonds.[14] The bill reported by the committee was discussed at some length but no action was taken. The land grant feature of the bill attracted little attention, being overshadowed by the question of location and by the question of the power of Congress to create a corporation. In 1855 a bill providing for roads on all three routes and making a grant of lands of alternate sections for twelve miles on each side of the lines passed the Senate by a vote of 24 to 21.[15] There was little discussion of the land grant. Indeed, the power to grant lands in aid of the Pacific roads seems to have been assumed even by the opponents of grants to the states. Niles, the persistent enemy of the state grants, was an advocate of Whitney's plan.[16] In the House a bill providing for a Pacific railroad was passed but the vote was immediately reconsidered. Nothing was done with the Senate bill.[17]

Sectional differences increased as the war drew near, yet there

[13] Ibid., 281.

[14] Ibid., 469-70.

[15] *Globe*, 2d sess. 33d Cong., 814.

[16] June 27, 1848, he introduced a bill granting lands to Whitney for a railroad to the Pacific (*Globe*, 1st sess. 30th Cong., 875). July 29 he endeavored to secure the consideration of his bill (Ibid., 1011), and on August 8 he moved it as an amendment to a land-grant bill (Ibid., 1051). On January 29, 1849, he again moved to take up his bill (*Globe*, 2d sess. 30th Cong., 381). Davis, p. 32, says that the article in *Hunt's Merchants' Magazine* for July, 1849, on Whitney's plan was by Niles. I have found nothing to confirm this statement.

[17] Davis, *Union Pacific Railway*, 64-65.

is a possibility that even if there had been no secession of the southern states a Pacific railroad bill might have been passed. In 1861 a bill for roads on the central and southern routes, passed the House. The Senate added a road on the northern route, together with various other amendments, and there was not time for the House to act on the amended bill.[18]

At the next session of Congress the law for the Union Pacific railroad was enacted. The only contest was between the St. Louis and Chicago interests.[19] The act granted the company created by it five alternate sections on each side of the road, with indemnity limits of ten miles.[20]

The inducements of this act were not, however, sufficient to persuade capitalists to invest in the enterprise.[21] The next Congress received appeals for further aid, and a bill was passed increasing the bonds and raising the grant of land from five to ten sections a mile.[22] The increase in the grant was made without discussion, the only argument being over the other features of the bill.

Opposition to land grants had by this time almost vanished, and at this session of Congress grants were made to the Northern Pacific and to various connecting lines of the Union Pacific. In 1866 grants were made to the Southern Pacific and to the Atlantic and Pacific. The year 1871 saw the last of the land grants, that provided by the Texas and Pacific bill.

The Pacific railroad proposition was thus advanced as early as the plans to aid the railroad in the states by means of the public lands. That it was so long in securing the assent of Congress was due to the sectional differences which arose as soon as the road on

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[18] Ibid., 94-95. Gwin (*Memoirs, MS.*) says that action was deferred so that the new administration might have the credit for the measure. Bancroft, *California*, VII, 527.

[19] Davis, *Union Pacific Railway*, 98-103.

[20] "That there be, and is hereby, granted . . . every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said road, on the line thereof, and within the limits of ten miles on each side of said road." *Statutes at Large*, XII, 492.

[21] Davis, *Union Pacific Railway*, 110-115.

[22] *Statutes at Large*, XIII, 356.

one or the other of the possible routes was proposed. The constitutionality of the measure was not questioned to any great extent, and the political necessity of a road on some route was generally admitted. Then, too, the enterprise could be carried out within the territories, and no question of interference with the rights of a sovereign state could arise. In consequence of the restriction of the road to the territories the grant had either to be made to a corporation or the work done directly by the government. The latter plan was never seriously considered, so the essential difference between the Pacific and the other grants was the person to whom they were made. Where the Pacific road was to be extended beyond the territories the states were to receive the grants. This distinction did not, however, hold in the case of later grants as the relaxation of the states' rights doctrine caused Congress to make grants to the corporations even where the roads ran through the states.

Numerically, the Pacific grants were the most important, as they covered a greater area than the grants made by the states. Yet their political importance has not been as great. At the time the grants were made Congress did not bestow the attention upon them it did upon the state grants, nor did they have as great an effect upon the land policy of the government. Since the roads were provided for they have been of importance in the politics of the country, but in connection with the bonds issued in favor of the companies rather than in regard to the lands granted them. The effect of the grants and the methods by which the roads administered them were, of course, very marked in the states and territories where the lands were located. This part of the question has been reserved for a later discussion.

CHAPTER VI.

THE REPEAL OF THE LAND GRANTS.

Even before the grants to railroads ceased, a movement wa started to revoke some of the grants already made. At first thi movement was not based on objections to the system but on th cases of individual roads where it was alleged that the condition of the granting acts had not been fulfilled.

Many grants had been made during 1856. The crisis of the following year and the war were effectual checks to railroad building even in the northern states. In the South it was at a standstill. This involved non-compliance with the conditions of the grants, and an effort was made to secure their forfeiture. A bill forfeiting the grants to the southern states was introduced during the second session of the fortieth Congress. Not only was it urged that the roads had not been constructed but that the states had been disloyal, and so merited the forfeiture as a punishment. The argument was an effective one in the House and the bill passed 83 to 75,[1] but was not acted on in the Senate. At the previous session of Congress a committee had been appointed to investigate the southern railroads and report on their use during the war and on the forfeiture of the grants. A report was made December 11, 1867, but the forfeiture of the grants was not considered in it.[2] A report on this matter had been called for by a resolution of July 12, 1867,[3] and on February 7, 1868, the committee reported itself unable to arrive at any conclusion on the subject. This seems to have ended the matter.[4] A constitutional amendment prohibiting the disposal of the public

[1] *Globe*, 2d sess. 40th Cong., 310, 985.
[2] *Reports of Committees*, 2d sess. 40th Cong., No. 3.
[3] *House Journal*, 1st sess. 40th Cong., 192.
[4] *Reports of Committees*, 2nd. sess. 40th. Cong., No. 15.

lands to any but actual settlers was introduced, but a resolution to suspend the rules on its passage failed. Similar resolutions were introduced the next year but were not considered.[5]

On the other hand requests were still received from the states for grants in aid of railroads.[6] The weight of opinion, however, seemed to be in favor of a discontinuance of the grants.[7]

The opposition of land grants was of a two-fold nature. Many who did not believe that any new grants should be made admitted that the former ones were justified but that the changed conditions of the country had removed the necessity for a continuance of the system. The population of the western states had increased until any aid which ought to be furnished new railroads could come from the country through which they passed. And, in fact, the new states were well provided with railroads and further building needed to be discouraged rather than aided. The result of these conditions was that practically no effort was made to secure new grants of lands. But not only had a change occurred in the conditions of the country, rendering land grants out of place, but the theory of the use of the public lands had also completely changed. The dominant idea was now that of the homestead law. As a source of revenue the public lands had failed, nor was it felt that such was their mission. The lands were to be used for the benefit of the settlers and nothing should be allowed to interfere with that use. Such was the general feeling in the country after the war. Out of this grew the demand

[5] Ames, *Proposed Amendments of the Constitution, Report of the American Historical Association*, 1896, II, 182.

[6] Alabama (*House Misc. Docs.*, 2d sess. 42d Cong., Nos. 54, 89, 90, 91); Wisconsin (Ibid., No. 125); Oregon, (*House Misc. Docs.*, 3d sess. 42d Cong., No. 27); Idaho (Ibid., No. 28).

[7] G. W. Julian, in the *International Review* for February–March, 1883, speaking of the opposition to land grants, says: "This found expression in the press, in numerous gatherings of the people throughout the Northern and Western states, in the platforms of both the great political parties, in the resolves of state legislatures, and in the second annual message of President Grant, in which he condemned the policy of any further grants of lands to railroads, and recommended the dedication of the public domain to actual settlement under the Homestead and Pre-emption laws." I have given the main indications of public sentiment of this period which I have found, and beyond these can find no further justification for the statements of Mr. Julian. I am inclined to think that, writing at a later date, he exaggerated the state of popular feeling on the subject.

for the repeal of the land grants where the conditions of the act had not been fully complied with.

As early as 1870, the grant to Louisiana in aid of the New Orleans, Opelousas, and Great Western was declared forfeited.[8] It was, however, considered that the grants lapsed of their own accord on the non-fulfillment of the conditions. But in 1876 the supreme court decided that the lands granted reverted to the government only after action had been taken to assert the forfeiture.[9] The same year a bill was passed forfeiting the unearned lands of the Leavenworth, Lawrence, and Galveston road. The only difference of opinion was on the disposition of the forfeited lands, which were finally made subject to entry under the homestead law only. In 1877 a bill was passed repealing the grant in aid of the Kansas and Neosho Valley company. It was stated that this was done at the request of the company on account of the hostility of settlers along the line.[10]

During the next six years various attempts were made to secure the forfeiture of other grants, but it was not until the session of 1883–84 that the movement was strong enough to secure much attention from Congress. At this session twenty-four bills were introduced in the House and five in the Senate forfeiting lands granted to railroads.

In the House the bills were sent to the committee on Public Lands which reported a bill forfeiting a number of the grants, all of them being in the southern states.[11] An attempt was made to except the Gulf and Ship Island but the bill was passed as reported.[12] In the Senate the bill was not taken up. The House also passed a bill forfeiting the unearned lands of the Atlantic and Pacific.[13] There was little discussion on this and no division.

[8] *Statutes at Large*, XVI, 277.

[9] *Schulenberg* v. *Harriman*, 21 Wallace, 44. See pp. 80–81.

[10] *Record*, 2d sess. 44th Cong., 1510.

[11] Gulf and Ship Island; Mobile and New Orleans; Tuscaloosa to the Mobile road; Elyton and Beard's Bluff; Memphis and Charleston; Iron Mountain and Southern in Arkansas; and New Orleans to the state line. *House Reports*, 1st sess 48th Cong., No. 8.

[12] *Record*, 1st sess. 48th Cong., 787.

[13] Ibid., 4888.

In the Senate the bill was discussed at some length by Morgan, of Alabama. He said that the committee on Public Lands had received very contradictory opinions in regard to the power of the government in the matter. To settle the question of the right to declare a forfeiture he proposed an amendment conferring jurisdiction on the circuit court for the western district of Missouri to try the title to the lands, with the right of appeal to the supreme court. This amendment was adopted, 31 to 11.[14] He further claimed that by the passage of the act of 1871, which allowed a mortgage of lands held by the company, the government had waived its right of forfeiture.[15]

The bill, as amended, passed the Senate without division,[16] and went over to the next session of the House. At that time the House refused to agree to the Senate amendment. Two committees of conference were appointed but both failed to agree.

The Senate did not, however, hold consistently to its position in favor of a judicial determination of the right and power of the government in the forfeiture of railroad lands, for an amendment offered by Morgan to the bill repealing the grant to the Oregon Central, proposing to settle the question in the same manner as by his previous amendment, was defeated, 15 to 28.[17] The same amendment when offered to the Texas Pacific bill was rejected, 24 to 31.[18]

At the next session the bill forfeiting the unearned lands of the Atlantic and Pacific became a law, but the Senate and the House were unable to agree as to the extent of the forfeiture of the Northern Pacific lands. The bill as it passed the Senate provided for the forfeiture of the lands along portions of the road not then completed. The House amended the bill by providing for a forfeiture of all lands opposite to portions of the road not finished by July 4, 1879, the date fixed in the granting act for

[14] Ibid., 5941, 5964.
[15] Ibid., 5686.
[16] Ibid., 5966.
[17] *Record*, 2nd sess. 48th Cong., 482.
[18] Ibid., 1895.

the completion of the whole road.[19] The Senate refused to agree to this and conferences held during this and the next session were unavailing.

By 1888 the attempts to secure the forfeiture of separate grants were succeeded by attempts to forfeit all unearned grants. A bill introduced that year in the Senate provided for the forfeiture of all lands "opposite to and coterminous with the portions of any such railroad, not now completed and in operation."[20]

This passed the Senate after considerable discussion as to the rights of individual roads. The ayes and nays were not taken on its passage.[21] This bill would have forfeited lands along 1,049 miles of road.[22] The House committee on Public Lands, to which the bill was referred, made three reports. The majority favored the forfeiture of the lands opposite all portions of the roads not completed within the time required.[23] A minority of three favored the Senate bill, and another minority of two wished to forfeit the entire grants in all cases where the conditions had not been strictly complied with. These three, which were probably all the possible plans of forfeiture, were thus presented to Congress. The most radical one was defeated in the House by a vote of 60 to 106. Those favoring this proposition came from all sections of the country and it is impossible to determine any particular reason for the vote standing as it did. The party division was, however, quite strongly marked, as only 9 Republicans favored the amendment.[24] The Senate proposition was then voted down 71 to 92. The chief opposition to this measure seemed to come from the western states. Only 13 Democrats favored it while only 23 Republicans voted against it.[25] The amendment bill passed the House, 179 to 8.[26] The Senate

[19] *Record*, 1st sess. 49th Cong., 7613.
[20] *Record*, 1st sess. 50th Cong., 3033.
[21] Ibid., 3878.
[22] *House Reports*, 1st sess. 50th Cong., No. 2476.
[23] This would have forfeited lands opposite 4,598 miles. Ibid.
[24] *Record*, 1st sess. 50th Cong., 5933.
[25] Ibid., 5935.
[26] Ibid., 5939.

refused to accept the House amendment and the matter went over to the next Congress.

These three plans of forfeiture may be considered both from the standpoint of equity and legality. On neither ground could exception be taken to the Senate proposition forfeiting lands opposite to the then uncompleted portions of the roads. The time for their completion had expired and Congress was in no wise bound to extend that time. But the forfeiture of all lands earned since the expiration of the time specified in the laws has a different aspect. It had been well understood, both by Congress and the roads, that the forfeiture did not work without Congressional action. The repeated failures of Congress to so act were therefore in effect an extension of the grants and Congress was estopped from going back and annulling its previous action. In ordinary cases negative action would not have the strength of positive, but where, as in the case of grants on condition subsequent, one party was regarded as agreeing to the acts of the other unless an express statement to the contrary was made, its negative action was equivalent to a sanction of the act. It is also improbable that such a law would have been upheld by the supreme court as they had stated in regard to the St. Joseph and Denver railroad that "so far as that portion of the road which was completed and accepted, is concerned, the contract of the Company was executed, and as to the lands patented, the transaction on the part of the government was closed, and the title of the Company perfected."[27] In the face of such language the legality of the act proposed by the House was very doubtful. As to the most extreme plan, that of complete forfeiture, its injustice was apparent. It was prompted probably more by a general feeling against the railroads than by abuses of the land grant system.

At the next Congress, the bill in almost the same form as before passed the Senate,[28] and was again referred to the House committee on Public Lands. This time the committee reported

[27] *Van Wyck* v. *Knevals*, 106 U. S., 360.
[28] *Record*, 1st sess. 51st Cong., 3971.

in favor of the Senate plan.[29] Stone, of Missouri, introduced an amendment directing the attorney general to bring suit to forfeit all lands not earned within the time required by law. This was rejected, 72 to 93.[30] Holman introduced an amendment forfeiting lands along all portions of roads not completed within the time prescribed.[31] He claimed that the lands forfeited by the Senate bill were insignificant, and while he did not believe that the Senate would accept his amendment, he wished to place the responsibility upon that body.[32] His amendment was defeated by a vote of 60 to 79,[33] and another attempt to secure the same amendment was lost, 84 to 107.[34]

The Senate disagreed to some of the minor amendments of the House but an agreement was reached and the bill became a law September 29, 1890.[35]

As has already been indicated, the action taken by Congress was practically the only one open to it. Whatever may have been the feelings of the members of the House on the subject, they were wise in yielding to the Senate and securing the forfeiture of those lands concerning which no doubt existed. But if the proposition for a judicial determination of the matter could have been adopted, a much more satisfactory solution would have been reached. The extent to which the forfeiture ought to work would have been in the hands of the supreme court and the rights of the government and the railroads given an authoritative determination.

The House, having secured something from the Senate, attempted to go further and during the next Congress passed a bill forfeiting lands along all portions of roads not completed in time. This bill was passed, under suspension of the rules, by a two-thirds vote,[36] but was not considered in the Senate. At the

[29] *House Reports*, 1st sess. 51st Cong., No. 2215.
[30] *Record*, 1st sess. 51st Cong., 7013, 7387.
[31] Ibid., 7012.
[32] Ibid., App., 581.
[33] Ibid., 7382.
[34] Ibid., 7388.
[35] *Statutes at Large*, XXVI, 496.
[36] *Record*, 1st sess. 52nd Cong., 5121.

next Congress a similar bill was passed by the House.[37] The Senate committee reported it adversely, declaring that Congress had no right to make such a forfeiture.[38] Here the matter may be said to have ended.

Probably the only statement of the change in the attitude of Congress on land grants which can be made is that it was due to the opinion that land grants had had their place and that the time when such aid to western railroads was necessary had passed. Under the changed conditions of the country it was felt that the government should demand back the lands previously granted from the companies which had failed to take advantage of the opportunity offered them. Probably considerable feeling against the railroads existed in the far west but I have obtained no definite evidence of this.

The Democrats wished to go much further than the Republicans in the matter of forfeiture and emphasized this fact, and the large grants to the Pacific railroads made under Republican administrations, in their campaign text books. But at no time was the issue of importance in a national election.

[37] *Record*, 2d sess. 53d Cong., 7355.
[38] *Record*, 3d sess. 53d Cong., 386.

CHAPTER VII.

THE DISPOSAL OF THE GRANTS.

The history of a land grant requires more than an account of the passage of the bill making the grant. It involves also the process by which the lands passed into the possession of the states and the companies and were by them disposed of to the settlers. The question is thus an administrative one, and the machinery of the general land office for the adjustment of railroad grants must first be examined. Some attempt will then be made to show in a general way the process by which the state grants were bestowed upon the companies, what restrictions were placed on these companies, how they fulfilled the conditions of the grants and how they disposed of their lands.

The grant to Illinois of September 20, 1850, was taken as a model for nearly all the other grants to states. This gave the right of way through the public lands for 100 feet on each side of the road with the right to take necessary materials from the lands. In addition every alternate even-numbered section for six miles on each side of the road was granted the state. If any of the lands so granted had been disposed of, the deficiency should be made good from the next adjacent public lands not more than fifteen miles from the road. The line was to be commenced at its termini simultaneously and the lands were to become available as the road progressed. The lands remaining to the United states within six miles of the road were not to be sold for less than the double minimum ($2.50). The line was to remain a public highway for the use of the government, and mail was to be transported for such price as Congress might direct. If the road was not completed within ten years the lands should revert to the gov-

ernment, and the state should pay the United States the amount received from the land already sold.[1] The same general features were retained in the grants to the other states. During the later period the grants were increased from six to ten miles and the indemnity limits from fifteen to twenty. The grants to the Pacific roads were also made on the same general basis, but directly to corporations. More stringent exceptions concerning the lands to which the grants applied, were also made, so that the lands within the ten mile limits were somewhat reduced.

After a grant had been made, a procedure was adopted which was probably the only just one to the railroads, under the circumstances, but which proved in the end to be probably the worst feature of the system. After a map showing the definite location of the road had been filed in the land office, the lands falling within the limits of the grant were withdrawn from sale or entry until the grant should be adjusted. The titles to the lands within the six mile limits were first ascertained, and when these had been adjusted the road made its indemnity selections, and the remaining lands were restored to market.[2] Thus it was necessary to withhold the lands within the indemnity limits until a complete adjustment had been made. If the adjustment had been prompt the plan would not have worked a hardship, but, as it was, the indemnity lands of nearly all the roads were kept out of the market for over thirty years.

The effect of this delay in the adjustment of the grants and the restoration of the remaining lands to market was a most unjust one on the settler. He was in theory prohibited from going on a strip of land thirty or forty miles wide and the length of the road to which the grant had been made. As a matter of fact, many did go on these lands, expecting to secure a perfect title later, and then the railroads would select these lands as due them for indemnity. There was, of course, a temptation for the railroads to make a selection of such lands inasmuch as the squatters would

[1] *Statutes at Large*, IX, 466.

[2] Commissioner of the General Land Office, *Report*, 1857; *Sen. Docs.*, 1st sess. 35th Cong., II, 88–89.

be forced to come to some agreement with the companies. The case of Guilford Miller attracted some considerable attention in connection with this feature of the land grant system. He had settled on lands afterwards claimed by the Northern Pacific as indemnity lands. The case came before the Attorney General, who decided that the withdrawal of the lands was legal and that Miller could acquire no title. President Cleveland thereupon took an interest in the case and directed the Interior Department to make the railroad selections in such manner as to protect the rights of settlers wherever possible.[3]

Soon after this case was decided, an effort was made to secure a final adjustment of the grants. In 1887 Congress passed a law directing the Interior Department to adjust the grants, and Secretary Lamar ordered the railroads to show cause why the withdrawals of their indemnity lands should not be revoked. In the case of most of the roads it was found that either they had selected all the lands to which they were entitled, or had selected all liable to such selection within the indemnity limits. The purpose of the withdrawal had therefore been served and the lands should have before been restored to entry.[4] In a number of cases the department had not been informed to what extent the roads were entitled to lands within the indemnity limits. These roads were chiefly in the southwest and west, including the Northern Pacific west of Dakota and the Atlantic and Pacific west of Missouri.[5]

The answer of the Atlantic and Pacific to this order, and the decision of the secretary in regard to the land of this road (the decision was applied, *mutatis mutandis*, to the other roads), showed that the companies were not in many cases responsible for the delay in the selection; surveys of the public lands in the western states have been slow, and until they had been made in the land through which the railroad passed, it was impossible to tell to what land the company was entitled. Secretary Lamar, how-

[3] Secretary of the Interior, *Report*, 1887, 9–10.
[4] *Decisions of the Dept. of the Interior relating to the Public Lands*, VI, 80–81.
[5] Ibid., 82–83.

ever, held that the original withdrawal had not been contemplated by Congress but had been on executive authority only. He thought that the time had come when the best interests of all concerned required that the withdrawal for the benefit of the company should cease, claiming that the matter of survey was in the discretion of Congress. He therefore directed that all lands withdrawn for indemnity purposes be restored to the public domain, except in the case of a few companies when the withdrawal had been expressly authorized by Congress.[6] The amount of land restored by this order was 21,323,600 acres.[7]

Many questions have arisen regarding the interpretation of the various land grant laws, the conflicts over lands claimed under them, and also their relation to the pre-emption, homestead, and other laws relating to the disposal of the public domain. The decisions of the courts on this subject are very numerous and a complete examination of them belongs to the legal field.[8] Some of the more general principles may, however, be noted here.

While the relation between the government and the states or corporations receiving the land grants is a contractual one, yet as the contracts are a part of public rather than private law, the intent of Congress will govern in regulating their construction.[9] In order that this intent may be correctly ascertained the condition of the country at the time the grants were made as well as the language of the law will be taken into consideration,[10] but in general the grants will be strictly construed against the grantee.[11]

The question of the exact time that the companies acquired title to lands was of great importance in relation to entries which might be made along the line under pre-emption and homestead laws. While, as has been noted, it was the practice to suspend the right to enter lands along the probable route of the road

[6] Ibid., 85–93.

[7] Secretary of the Interior, *Report*, 1887, 12.

[8] See Elliott, *Treatise on the Law of Railroads*, ch. 33; Rapalje and Mack, *Digest of Railway Decisions*, under "Land Grants."

[9] *Mo., K. & T. R. Co.* v. *Kas. Pac. R. Co.*, 97 U. S., 491.

[10] *Winona & St. P. R. Co.* v. *Barney*, 113 U. S., 618.

[11] *Dubuque & P. R. Co.* v. *Litchfield*, 23 Howard, 66; 37 Am. and Eng. Railroad Cases, 338.

until the definite location was made, yet no title passed until the road was so located.[12] But in case conflicting grants for two companies were made, the priority of the grant, rather than priority of location, gave the title to the lands.[13] When grants of the same date conflicted, priority of location or construction gave no right to the lands within the conflicting primary limits of both roads, as these were divided, but in case of the conflicting indemnity limits priority of selection gave the title.[14] Lands which had been entered under other laws were excepted from the grant, but such entries had to be made before the company located its road. Where lands within the grant had been previously entered under the homestead law and the conditions of that law were not complied with, the company did not obtain these lands but on their reversion to the public domain priority of selection gave title to the lands.[15]

By far the most important judicial decision concerning land grants was that of *Schulenberg* v. *Harriman*, rendered in 1876. In this case the court held that the words of the grant "there be, and is hereby granted," etc., signified an immediate transfer of title, although subsequent proceedings were required to give precision to that title and attach it to specific tracts of land. The grants were therefore made on condition subsequent and the provision that lands should revert to the United States in case the road was not completed within ten years, was only a provision that the grant would be void if a condition subsequent was not performed. In regard to the enforcement of this right the court say: "It is a settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee, but the grantor or his heirs, or the successor of the grantor, if the grant proceeds from an artificial person; and if they do not see fit to assert their right to enforce a forfeiture on that ground, the title remains unimpaired in the grantee."[16]

[12] *Hannibal & St. Jo. R. Co.* v. *Smith*, 9 Wallace, 95; 14 Am. & Eng. Railroad Cases, 503.

[13] *St. P. & S. C. R. Co.* v. *W. & St. P. R. Co.*, 112 U. S., 720.

[14] 16 Am and Eng. Railroad Cases, 430.

[15] Ibid.

[16] 21 Wallace, 44.

The effect of this decision was to make it necessary for Congress to take action, either in the form of a repeal of the grant or an authorization of the Attorney General to bring suit for a forfeiture of the lands. Until some action was taken, the companies could go on and complete their roads, receiving from the government the patents for the lands as fast as they earned them. Nor was it probable that the supreme court would have sustained laws forfeiting the lands thus earned after the expiration of the time for the building of the road. A decision which has already been noted,[17] implies that the contract between the government and the companies was complete when the road was built and the lands patented, so that it would be impossible for the government to recede from its side of the contract at a later date.

One of the ideas in making the grants to states rather than to corporations was that the state would be able to exercise control over the grants, thus placing a check on the evil effects of corporations. But there is nothing to show that the states did any better in this than Congress would have done if the companies had received the grants direct, or than Congress did do when the grants were made to the Pacific roads. The contest in the Wisconsin legislature over the disposal of the land grant was, proportionately, more discreditable than the Credit Mobilier. Boards were in some states created to supervise the roads and the granting of lands to them, but these do not seem to have contributed to the improvement of the system. Another step which some of the states took was the requirement that a certain percentage of the earnings of the road be paid into the treasury as a condition of the grant. But as this was in lieu of other taxes the gain was questionable, especially as the earnings of the roads have become the usual basis of taxation. So the interposition of the states between the government and the roads cannot be regarded as having placed any additional safeguards around the grants.[18]

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[17] *Van Wyck* v. *Knevals*, 106 U. S., 306. Supra, p. 73.

[18] In Appendix A an attempt has been made to trace the history of the grants after they passed into the hands of the states and corporations. All such questions will be considered at greater length there.

As far as the roads themselves were concerned the system w in many cases not carried out in the manner intended by Co gress. A quick construction of the roads had been expecte since the purpose of the grants was to enhance the value of th other public lands. A long delay in the building of the roa might entirely change the situation and remove the necessity fo that particular road. But that Congress failed to act, after th need of such action to prevent the further earning of the gran had been pointed out, was not the fault of the roads, and the fail ure so to act was, in effect, a re-grant from year to year.

It is impossible to give an exact estimate of the amount o railroad mileage completed on time. In many cases the time fo the building of the road was extended greatly over the original grant. In 1890 the House committee on Public Lands reported that of railroads aggregating 7,445 miles in length there had been built on time 2,847 miles and after the time required 3,541 miles, leaving in 1890, 1,056 miles unbuilt.[19] This did not include the Atlantic and Pacific and various smaller roads, the grants to which had been repealed previously. Nor, on the other hand, did it include those roads which had been entirely built on time. The best estimate I can make is that about one-half of the railroad mileage to which the grants applied was built within the time required by the acts.

Donaldson[20] estimated that the total amount of land granted under various acts was 155,504,994 acres. Previous claims and forfeitures have taken up a large part of this, so that in 1897 there had been patented on behalf of these grants 87,915,326 acres, and it was estimated that 11,436,809 acres were necessary to complete them.[21] Figures relating to the disposal of those lands by the companies are very incomplete. In general, the roads seem to have made no effort to build up a land monopoly, but to have disposed of their lands to settlers as rapidly as possible, and at reasonable prices. The attempt to bring settlers to

[19] *House Reports*, 1st sess. 51st Cong., No. 1179.
[20] *Public Domain*, p. 273.
[21] Commissioner of the General Land Office, *Report*, 1897, 234, 224.

these lands is a part of the general effort which the railroads have made, by advertisements, immigration agents, home-seekers excursions, etc., to increase the population along their lines.

In 1880 a report from the Auditor of Railroad Accounts concerning most of the roads to which lands have been granted showed that of 32,131,731 acres then patented to the roads, 14,310,204 acres had been sold.[22] The time since the grants had been made was from twenty-eight to fourteen years. Considering the newness of the country, the sales seem to have been as rapid as could be expected. No evidence has been found of a disposition to retain the lands until high prices could be obtained for them. Every effort seems to have been to attract settlers and to sell the lands as soon as possible. The total amount received for the lands included in the above report was $68,905,479. The highest average price per acre was in the case of the Chicago, Burlington, and Quincy which had received $12.12. The lowest price was that of the lands of the Oregon and California, $2.14 an acre. After 1880, higher prices were sometimes obtained, but the average price to date has been under rather than over $10 an acre.

Few of the roads still hold large tracts of valuable lands, and the lands have not been the source of wealth to the roads that is commonly supposed. Even in the case of the largest grants the balance for the whole period is quite small and in many cases the land departments are now a source of expense rather than of revenue. The question, like all features of railway finance, is a complicated one. The lands may not have been well managed, sales may have been made to those interested in the road, or profits may have been concealed in an expense account. Any definite conclusion on this subject would require a complete examination of the finances of the companies, an examination impracticable in this connection and probably impossible in any case.

Comparing the building of the roads which received land

[22] Donaldson, *Public Domain*, 779.

grants with those that did not, it seems that there was no particular need for most of the grants. Unaided roads were built along similar routes even faster than aided ones. The great transcontinental roads, however, probably needed the assistance of aid in the shape of land or bonds to secure their construction at the time they were built.

CHAPTER VIII.

CONCLUSION.

The development of the Mississippi valley in the period preceding 1850 has already been considered. It was the fact of this development, together with the existence of large tracts of public lands in this new country and the peculiar political conditions of the time, which led to the system of railroad land grants. As we have seen, it was useless to expect direct aid from the states or federal government. The attempts of the states to carry on works of internal improvement directly had been so disastrous that aid to private enterprises of that kind was virtually prohibited. On the other hand the prevalent political theory was that it was not within the province of the national government to extend such aid. With both of these sources of assistance cut off, the idea of indirect aid by means of the public lands was evolved.

It was not proposed that there should be a direct gift of the lands. That the public lands were to be held for profit was another doctrine of the time. If the proposition could be so presented that both the government and the railways would derive a direct financial gain, it would be taken out of the category of internal improvements—the spectre of every Democratic politician since Jackson's administration—and would become simply an advantageous means of raising revenue. By the use of the states as an intermediary, moreover, the respect for the state autonomy was preserved.

Having in mind the conditions of the time when the land grants were first discussed in Congress, we may review the history of the grants and the principles on which they were made.

We may distinguish four periods in the history of land grant legislation:

1. The first of these extended from about 1837 to 1850. This was the formative period, when the theories on which the grants were made, and the grounds of opposition to them, were becoming evident.
2. The second period extended from 1850 to 1857, and may be called the period of grants to states, together with the beginnings of the homestead law. During this period the movement for the Pacific railroad was also taking shape; it occupies much the same relation to that movement which the earlier period occupies toward the state grants.
3. In the third period from 1857 to 1872, the Pacific roads had their turn, and the grant to a corporation was the distinctive form of the time. Extensions were also made of earlier grants to states and a few new grants to the states were made.
4. The reaction set in, and from 1876 to 1890 efforts were made to secure the forfeiture of the unearned grants.

During the first period, the main argument for the land grants was that which represented the government as a private land owner wishing to secure the largest returns from his domains. Much of the government land was far from the settled portions of the country and would not sell unless the country was developed. If a portion of this land was donated to a railroad which would make the remaining land salable, was not the government acting as any wise individual would? To give greater force to this idea, it was proposed that the grant should be in alternate sections, with the price of the remaining lands doubled, so that the gain would be direct and in exact proportion to the amount granted. Extended to its logical conclusion, the argument amounted to this: lands can only be granted in an unsettled country, for if the country was settled the government would not need to create a market for its lands. That this was a good thing

to build railroads beyond the outposts of civilization, was one of the popular ideas of the time.[1] The framers of the above argument held that the lands should be used for the direct benefit of the treasury.

There were also those who considered that the better plan was to distribute the proceeds of the lands, or even the lands themselves, among the states. The distribution of the proceeds had been a Whig doctrine at the time of that party's greatest power. But there was now hardly enough money from the sale of lands to pay to distribute, so it was proposed to distribute the lands themselves. This was the idea of the bill which passed the House in 1852, which, as we have seen,[2] received its chief support from the Whigs. The fundamental doctrine of this bill was the same as that of the regular land grants: the land was the joint property of all the states, but the profits from the lands were to be realized in a different manner.

It has seemed to me that some such division as that proposed by Bennett,[3] if it could have been final, would have solved the problem of land grants better than was done by the separate grants. The selection which Congress made of one road or another to receive the aid from the lands was not on any principle of national or state interest, but on political or personal grounds. The other plan would have placed the matter in the hands of the states who would probably have dealt as wisely with the matter as Congress did. At any rate as between the states some proportion would have been observed in the distribution of the grants.

Still another class of persons considered the new states entitled to the lands within their boundaries. At least it was urged that the state should be allowed to exercise a high attribute of sov-

[1] Von Holst says, speaking of the crisis of 1857: "Railroads had not only to precede artificial roads, but to wide circles of people it did not, by any means, seem an absurd idea to build them into the wilderness." *Constitutional History of the United States*, VI, 105. It may be noted, however, that Professor von Holst entirely neglects land grants and their effect on the period which he covers in his work.

[2] Supra, p. 42.

[3] Supra, pp. 41-42.

ereignty over these lands, the right of taxation. As such a right was not enjoyed by any of the states over the public lands within their limits, it was argued that the donation of a certain amount of land in lieu of the money which might otherwise have been secured, was only just and equitable.

During the first period those opposed to land grants held that the exercise of such a power was unconstitutional. This idea was connected with the opposition to internal improvements, for there were some who saw that the difference between grants of alternate sections of land and grants of money was not so great as many professed to believe. No particular constitutional provision was cited in behalf of their position, but the general unconstitutionality of national support for internal improvements was relied upon in support of their case. And if federal internal improvements were unconstitutional, then land grants should probably be considered so. On the other hand, the provision of the Constitution that "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States,"[4] was cited as clearly giving the power to grant lands.

Such were the arguments pro and con during the first period of land grants. The second period may be called that of the homestead law. At this time the chief objection to the grants was made on behalf of the settlers: that the grants would raise the price of the best lands in the new states, not only the lands granted to the railroads which it was supposed would be sold at high prices, but also the lands reserved to the government, which were held at double the regular price. As it would, to a large extent, have destroyed the principle on which the grants were made to have left the price of the reserved lands at $1.25 an acre, objections to the grants on that score were unavailing. The somewhat narrow ideas of the time on the question of transportation caused the belief that the fifteen mile limits of the grant formed the limits of the influence of the road so that the benefit to gov-

[4]Art. IV, sec. 3, paragraph 2.

ernment lands beyond those limits was considered as *nil*. It was believed that the only way to reimburse the government was to raise the price of the reserved lands, and the settler must pay the difference if he wished to be near a road.

The objection to the increase in price of the lands was part of a general feeling that the best way to dispose of the public lands was to grant them to actual settlers in consideration for improvements and cultivation. Beginning with a reduction in price to actual settlers the theory was soon enlarged to an actual donation. Many believed that the work of the settler on his land would be a full equivalent to the government for the price at which it was held. But a much broader view was that which considered the best basis of the nation its agricultural population, and that the best use which could be made of the public lands was to encourage the development of a rural class. The correctness of this view has, I think, been attested by the working of the law, and by the fact that the good results have never been seriously questioned.

That the homestead law was a party question is clearly shown by the analysis of the votes given in the previous pages. It was first brought forward prominently by the Free-Soil party and passed with the other doctrines of that party to the Republican party on its organization. The Democrats largely opposed the measure because of their ideas on the construction of the Constitution, as they did not believe that it was one of the functions of government to assist the needy or landless by donations of the public lands.

The economic principle of *laissez faire*, which had been since the time of Adam Smith the dominant doctrine in economics and political science, was frequently invoked by the Democrats both on the tariff and homestead questions. It was said: You proposed the tariff because there was too much agriculture and too little manufacturing in the United States, and now you propose the homestead law because there are too many people engaged in manufacturing in the cities and too few in agriculture on the western lands—you should have left matters alone at first. But

the thing which most of all made the homestead law a political question was its connection with slavery. For it was very true that the North alone would receive the benefit of the law. The struggle for Kansas had shown that the South did not have the men to settle even one territory,[5] and if the additional inducement of free land was added, the struggle would have been even more hopeless. In the intensity of the struggle over slavery just preceding the war, the least weight which would influence the balance was fought with intense energy by the slaveholders. A measure of such importance to the North as the homestead law stood no chance of receiving the votes of the South.

The opposition between homesteads and land grants has already been indicated. How far this extended is not clear. Only at one time, during the thirty-second Congress, did the two measures appear before the national legislature at the same time. At that time we noted an equal three-fold division of the members of Congress, those favoring both systems, those opposed to both plans, and those in favor of one and opposed to the other. Some members argued that the systems conflicted and others that they did not. The nearest approach to a solution seems to be that there was opposition between the plans, but that this opposition was not entire and did not extend to all features of the questions or to all members of Congress.

The third period, that of the Pacific grants, has not the interest which the previous ones had, although the grants to the Pacific roads form a quite distinct part of the land grant system. The principle on which they were made was frankly that of aid to a certain work of internal improvements, but it was justified by the extent and national importance of the undertaking and by the constitutional power of the government to establish post-offices and post roads and to carry on war. The great obstacle to

[5] "The lesson of the vain struggle for Kansas showed that they lacked the human material—slaves as well as freemen—successfully to stand the struggle of competition with the north in the making of settlements. A homestead law would necessarily accelerate the growth of the preponderance of the free states much more than a railway running north of Mason and Dixon's line to the Pacific ocean." Von Holst, *Constitutional History of the United States*, VI, 302.

the building of the Pacific road was not constitutional but sectional. That portion of the territory through which the road was built was expected to show a great increase in wealth and population. Whether the territory so benefited was to be slave or free was a vital point in the opinion of every person. The first Pacific grant, although passed after secession, was on the middle rather than the northern route; but it also tended to strengthen the power of the North as it ran through free states.

The last period was distinctly anti-land grant; the failure of many of the companies to build the roads within the time required by the granting acts and the various abuses which had entered into the system soon caused a demand to be made for the forfeiture of a number of grants. At first this was confined to individual roads, but later the more comprehensive plan of forfeiting all unearned grants was presented. This forfeiture could be made in three different ways. First, the entire grant could be forfeited where the provisions of the granting act had not been fully complied with. Second, the lands opposite the parts of the road which had not been built on time could be forfeited. Third, the lands opposite the part uncompleted at the time of the passage of the forfeiture act could be restored to the public domain.

The first proposition secured the favor of a considerable number of representatives, but failed to pass the House. In the Senate it was never offered. The second plan was that demanded by the House, at first by the passage of a bill to that effect, and then in a reluctant assent to the more moderate plan of the Senate followed by another bill embodying their ideas on the subject. The last plan was that which the Senate always advocated and which was expressed in the legislation of 1890.

It is doubtful whether any but the last plan would have been held valid by the supreme court. The matter never came directly before that body for its determination, but the language used in land grant opinions would indicate that the legality of any more complete forfeiture was doubtful. This seems to be as true in equity as in law. The time for Congressional action was

when the grants expired. Then the lands could have been forfeited without particular hardship. But as Congress not only neglected but refused to act in the matter, the roads could assume, especially in view of the decision in *Schulenberg* v. *Harriman*, that construction gave them an equitable title to the lands thus earned. Action should have been taken much earlier in regard to many of the roads, but having failed to take such action Congress could not undo its work at some future date without regard to what had happened in the meantime. On the question of forfeiture, the Democrats took a much more advanced position than the Republicans, but there is no evidence that the question was ever a live one in national politics.

The land policy of the government in regard to its arable public lands was practically settled by 1863. It was that of grants for railroads, education, and settlement. After the war the correctness of this policy was not seriously questioned, and the public land question ceased to occupy an important place in national politics. There was, indeed, considerable discussion over the forfeiture of certain railroad grants, but this question occupied a very minor position in the politics of the time and was unconnected with other political issues. On the other hand, the homestead policy was considered as the only possible manner in which the lands should be given to settlers. The lands thus ceased to be a source of revenue and so had no effect on finance and the tariff, while slavery and state sovereignty had ceased to be questions of the day. The problems arising in connection with the adjustment of the old principles of land legislation to the conditions of the forest areas and arid tracts of the west of to-day, constitute a new chapter in the agrarian history of the country. Irrigation areas now attract attention in place of railroad routes. But disposition of the public domain is still a living question.

APPENDIX A.

THE USE OF RAILROAD LANDS BY STATES AND CORPORATIONS.

The following summary of the disposition of the land grants to railroads must be regarded as provisional. The material is too scattered, insufficient, and sometimes unreliable, to permit exhaustive treatment or very positive detailed conclusions. But the following data have been laboriously collected and, although incomplete, are presented partly in the hope of stimulating students in the respective states to give fuller investigation to the subject.

ILLINOIS.

The act of September 20, 1850, granted lands to Illinois for a road from Chicago to Cairo, with a branch to Dubuque via Galena.[1] The western part of this line had been part of the internal improvement scheme of 1837,[2] but like the rest of the plan had never been carried out.

Even before the internal improvement plan had been adopted a company had been chartered to build the road. When the state undertook the work, this company was compelled to surrender its charter; but in 1843 the charter was returned, only to be repealed in 1845 and again revived in 1849.[3] By this last act the governor was to hold in trust for the company any lands which might be granted to the state for the benefit of the road.[4] There seems to have been considerable opposition to this company and to the "Holbrook charters," as the laws relating to it were called. Douglas was particularly persistent in his work against the company and finally secured from the company a release from all its rights to the lands which might be granted to the state. Douglas regarded this release as necessary in order to secure

[1] "From the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers with a branch of the same to Chicago, on Lake Michigan, and another via the town of Galena in said state to Dubuque in the state of Iowa." *Statutes at Large*, IX, 466.

[2] Moses, *Illinois, Historical and Statistical*, Chicago, 1889, I, 409–413.

[3] Davidson and Stuvé, *History of Illinois*, Springfield, 1874, 573–74.

[4] *Private Laws of Illinois*, 1st sess. 16th Assembly, 90.

the passage of the bill,[6] but it is not clear how widespread the feeling against the company was or what were the grounds for it. At any rate the old company was not inclined to give up its claim to the lands and a struggle in the legislature ensued. The grant was at last conferred upon a company organized by eastern capitalists.[6]

The act incorporating the new company provided for trustees to supervise the disposal of the lands, which were to be sold as fifty-mile sections of the road were completed. The main line was to be built within six years. The lands of the road were to be exempt from taxation and in lieu of this five per cent. of the gross income of the road each year was to be paid into the state treasury. The other assets of the company were to be exempt from taxation for six years, and after that any excess over three-quarters of one per cent. on the taxation of these assets was to be deducted from the five per cent. income tax.[7] The company seems to have been willing to agree to as high as ten per cent. tax,[8] but this was not necessary. In 1870 an amendment to the Illinois Constitution was adopted by a vote of 147,032 to 21,310, prohibiting any modification of this law.[9]

The new company was organized in March, 1851, and the construction of the road begun during the summer of 1852. In September, 1855, the whole road was opened for traffic.[10] The entire length of the road was 705.5 miles, which would have given the company, if all the lands had been unoccupied, 2,709,100 acres. Of this amount the company has received 2,595,053 acres.[11]

It was decided by the directors to divide the lands into the following classes: For construction, 2,000,000 acres; for interest on bonds, 250,000 acres; free lands, 345,000 acres. The price was fixed in 1856 at from $5 to $25 an acre, to be sold on six-year credit, with interest at three per cent. The deed was not given until the entire price was paid, and so the exemption from taxation was secured to the purchaser for six years. It was required that the lands should be put under cultivation.[12] The actual average price received for the lands up to 1872 was $10.09 an acre.[13] After that the price decreased, until in 1883 it had reached $4.30. Since then it has increased and was $7.59 in 1895.[14]

[6] Douglas to Breese, Feb. 22, 1851, *Springfield Daily Register*, March 13, 1851; *Fergus Historical Series*, No. 23, 96–7.
[6] Davidson and Stuvé, *History of Illinois*, 576–81.
[7] *Private Laws of Illinois*, 1st sess. 16th assembly, 61.
[8] Bonham, *Fifty Years' Recollections*, Peoria, 1883, 460.
[9] Donaldson, *Public Domain*, 265.
[10] Poor, *Railway Manual*, 1879, 739–40.
[11] Commissioner of the General Land Office, *Report*, 1897, 225.
[12] *Circular Concerning the Illinois Central Lands*, New York, 1856.
[13] Poor, *Railway Manual*, 1872–73, 540.
[14] Poor, *Railway Manuals*.

It was stated in Congress that the plan of the company was to hold its lands until the increase of population had raised their value, and during the interim the money for the road was to be secured by means of bonds.[15] No such intention is evident in the action of the company, for the lands were freely offered at the price above mentioned and their sale was quite rapid. Up to and including 1855, lands to the amount of 528,863 acres had been sold.[16] This was for only seventeen months, as the lands were not put on the market until August, 1854. By 1861 the sales had amounted to 1,200,000 acres;[17] by 1872 the company had disposed of 2,215,789 acres,[18] and in 1895 only 87,373 acres remained.[19]

The largest sales up to 1865 had been in the central portion of the state, from Centralia north to La Salle and Kankakee. In the south the sales were very light, while in the northern portion of the state the company received few lands.[20] In 1873 the lands remaining in the hands of the company were nearly all south of Centralia.[21] There had been received from the lands sold up to 1872 something over twenty-three million dollars.[22] From 1872 to 1880 complete figures are not obtainable; from 1880 to 1890, $936,923 were received.[23]

The building of the road accomplished the avowed purpose for which the grant was made: the sale of the public lands. As early as 1852 the land commissioner considered that the sale of lands had demonstrated the success of the bill,[24] and by 1855 it was reported that all of the government lands were sold.[25]

MICHIGAN.

The first grant to Michigan was that of June 3, 1856, by which several railroads were provided for.[26] The legislature of Michigan accepted the

[15] *Globe*, 1st sess. 32d Cong., App., 808.
[16] Gerhard, *Illinois as It Is*, 407.
[17] *Circular in regard to the Illinois Central lands*, Chicago, 1861.
[18] Poor, *Railway Manual*, 1872–73, 540.
[19] Ibid., 1896, 565.
[20] *Map of Illinois Central Lands*, Chicago, 1865.
[21] Vernon, *American Railroad Manual*, 1874, 530.
[22] Poor, *Railway Manual*, 1872–73, 540.
[23] Poor, *Railway Manuals*.
[24] "The grant to the Mobile and Chicago railroad, made by the act of 20th September, 1850, so far as the state of Illinois is concerned, where the selections have been completed and the lands retained by the government brought into market, is strongly in point in support of this view. Here the greatest anxiety was manifested to obtain lands along the road, even at the enhanced minimum, and thousands of acres were disposed of that would probably have remained unsold for many years." Commissioner of the General Land Office, *Report*, 1852, 78.
[25] *Bankers' Magazine*, ix, 815.
[26] "From Little Bay de Noquet to Marquette and thence to Ontonagon, and from the two last named places to the Wisconsin State line; and also from Am-

grant and disposed of it to various companies. The lands were to be given the companies in sixty-section lots as each twenty miles of the road were completed, and were to be free from taxation for seven years. A board of control was provided which was to supervise the sale of the lands and to declare the grants forfeited in case the conditions were not fulfilled. A special tax of one per cent. on the cost of the road was levied and the legislature had power to increase this to two per cent. after ten years. The tax, however, was not to apply to the roads on the Upper Peninsula until after ten years, and the Detroit and Milwaukee and the Port Huron and Milwaukee were to be liable to an increase only in proportion to the lands received.[27]

The road from Little Bay de Noquet to Marquette was opened in 1864, and the same year it passed into the hands of the Chicago and Northwestern railroad company.[28] A joint resolution of July 5, 1862,[29] authorized the re-location of the road from Marquette to the state line, and an act of March 3, 1865,[30] recognized the route as via Bay de Noquet. Under these acts the Chicago and Northwestern built from the Wisconsin line to Escanaba (Bay de Noquet) in 1872.[31] From 1878 the highest annual average which the Northwestern has obtained for its Michigan lands has been $4.79, and the lowest $1.65. In 1882 the highest point in annual sales was reached, 56,937 acres having been disposed of at that time. Of late years there has been a decrease in the lands sold, during 1897 the amount being 5,147 acres.[32]

The time for the completion of the road from Marquette to Ontonagon was extended to December 31, 1872.[33] Within the time required the road was built from a point twenty miles west of Marquette to L'Anse, fifty-two miles.[34] The portion from L'Anse to Ontonagon has never been constructed, and an act of March 2, 1889, forfeited the lands opposite to the uncompleted portion of the road.[35]

No portion of the Ontonagon and state line road was constructed within the time required, and in 1868 the governor released to the government the lands certified for the benefit of the road. In 1880 the board of control, ignoring the release of the governor, conferred the

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boy, by Hillsdale and Lansing and from Grand Rapids to some point on or near Traverse Bay; also from Grand Haven and Pere Marquette to Flint and thence to Port Huron." *Statutes at Large*, xi, 21.

[27] *Laws of Michigan*, 1857, 346–53.

[28] Poor, *Railway Manual*, 1882, 672.

[29] *Statutes at Large*, xii, 620.

[30] Ibid., xiii, 520.

[31] Poor, *Railway Manual*, 1882, 672.

[32] *Annual Reports C. & N. W. Railroad.*

[33] *Statutes at Large*, xv, 252.

[34] Donaldson, *Public Domain*, 799.

[35] *Statutes at Large*, xxv, 1008.

grant on the Ontonagon and Brule River company.[36] In 1889 the grant was forfeited, with the exception of twenty miles from Ontonagon to Rockland.[37]

The grant for a road from Amboy to a point on Traverse Bay was first conferred on the Amboy, Lansing, and Traverse Bay company. Later that portion of the grant north of Lansing was given to the Jackson, Lansing, and Saginaw company, and the portion south of Lansing to the Northern Central Michigan railroad company. The time for the completion of the road was in 1866 extended to June 3, 1873. The road was built from Lansing to Owasso, twenty-eight miles, by the Amboy, Lansing, and Traverse Bay company. By June 3, 1873, the Jackson, Lansing, and Saginaw company had built one hundred and sixty miles north from Owasso. By an act of March 3, 1873, the northern terminus of the road was changed from Traverse Bay to Mackinaw City, which point was reached by 1882. South of Lansing the building of sixty miles from Lansing to Jonesville was certified by the governor in 1873. The portion from Jonesville was never built.[38] No additional lands were granted by the change of the northern terminus, and there have been certified on account of this road 743,787 acres.[39]

The grant for a road from Grand Rapids to Traverse Bay was assigned to the Grand Rapids and Indiana company. In 1865 the time for the building of the road was extended eight years, or until June 3, 1874. The road was opened to Traverse Bay in December, 1872.[40]

The legislature had conferred the grant for a road from Grand Haven to Port Huron on two companies, the portion from Port Huron to Owasso on the Port Huron and Milwaukee, and the portion between Owasso and Grand Haven on the Detroit and Milwaukee. The later company accepted the grant, except as to the conditions of sections eleven and twenty of the act, which related to a control over the lands by the state, and the tax on the road. The board of control held that this was not a sufficient acceptance of the grant. The company built the road in 1859, but made no effort to claim the lands.[41] Of the portion east of Owasso, thirty and five-tenths miles were built on time and the remaining sixty miles before 1890.[42]

The grant from Pere Marquette to Flint was given to the Flint and Pere Marquette company. The time for the completion of the road

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[36] Donaldson, *Public Domain*, 800.
[37] *Statutes at Large*, xxv, 1008.
[38] Donaldson, *Public Domain*, 798–9.
[39] Commissioner of the General Land Office, *Report*, 1897, 227.
[40] Poor, *Railway Manual*, 1882, 595, 597.
[41] *Rogers* v. *Port Huron & Lake Michigan R. R.*, 45 Mich., 460.
[42] *House Reports*, 1st sess. 51st Cong., No. 1179.

was fixed at March 3, 1876, and the road was opened in December, 1874.[42] There have been certified to the state on account of this grant 512,877 acres.[44]

June 7, 1864, a further grant was made for a road from Fort Wayne, Indiana, to Grand Rapids.[45] This road was to form an extension of the road from Grand Rapids to Traverse Bay. The portion from Grand Rapids to Fort Wayne was built in 1870.[46]

For most of the Michigan roads the information regarding the use of the lands has been too scanty to be of any importance in a general study of the subject.

WISCONSIN.

In 1856, under an act approved June 3, two grants were made to Wisconsin.[47] These were known as the Northwest and the Northeast grants, respectively, and were given by the legislature to different companies after a struggle which showed the worst possibilities of land-grant legislation. A bill was passed disposing of the two grants, the one to the La Crosse and Milwaukee, and the other to the Wisconsin and Lake Superior company. This was vetoed by Governor Bashford on account of numerous objections which he expressed regarding the bill.[48] These objections were only partially met by two new bills, disposing of the two grants on nearly the same terms, but these received his approval.

Charges of bribery and corruption in connection with these bills were soon heard, and in his message for 1858 Governor Randall called the attention of the legislature to these charges.[49] An investigating committee was appointed and their report revealed an astonishing state of affairs. They found that thirteen senators and fifty-nine assemblymen had received stock or bonds in the La Crosse and Milwaukee company, varying in value from $5,000 to $25,000. Governor Bashford's share in the plunder had been $50,000 worth of bonds.[50] The committee were very positive in their statement of the case,[51] and the testimony of Byron Kilburn that he "caused it to be understood, through

[42] Poor, *Railway Manual*, 1880, 661.
[44] Commissioner of the General Land Office, *Report*, 1897, 227.
[45] *Statutes at Large*, xiii, 119.
[46] Poor, *Railway Manual*, 1882, 595.
[47] "From Madison, or Columbus, by the way of Portage City to the St. Croix River or Lake between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior; and to Bayfield, and also from Fond du Lac on Lake Winnebago, northerly to the State line." *Statutes at Large*, xi, 20.
[48] *Senate Journal*, 1856, 1143.
[49] *Governor's Message*, 1858, 23.
[50] *Report of Investigating Committee*, 5–7, 10.
[51] "The evidence taken establishes the fact that the managers of the La Crosse and Milwaukee Railroad company have been guilty of numerous and unparalleled

the medium of persons not connected with the legislature, that in the event of the La Crosse company obtaining the grant, that company would acknowledge the favor by a liberal *douceur* or gratuity to such members as should favor its passage,"[52] may be taken as very good proof of something so like bribery that perhaps only a railway president would have thought to have drawn the distinction.

The committee accused only the La Crosse and Milwaukee company of bribery in obtaining its grant; but Byron Kilburn claimed that the Wisconsin and Superior was equally guilty, and that the committee had "whitewashed" the officers of this company.[53] As this statement was made in a private communication and never published, Mr. Kilburn was undoubtedly sincere in making it; but I have found no evidence which would confirm the accusation.

The grant to the La Crosse company repeated the provisions of the act of Congress and also provided for the construction of the roads from Madison and Columbus to Portage by December 31, 1858. The company was to pay four per cent. on its gross earnings in lieu of all taxes. Lands remaining unsold after five years were to be publicly offered for sale in limited quantities, preference being given to actual settlers.[54] The grant to the Wisconsin and Superior company was very similar, except that three per cent. of the gross earnings was to be paid in lieu of taxes.

The La Crosse and Milwaukee, or the companies with which it had consolidated, had already built a road from Milwaukee to Portage, but which passed through Horicon instead of Columbus. This road was continued from Portage on the line of the land grant as far as Tomah, but there it turned west to La Crosse, which was reached in 1858. The line from Columbus to Portage was built in 1864, and the line from Madison to Portage in 1870.[56] Thus only the portion of the road from Portage to Tomah, sixty miles, was constructed according to the provisions of the original act.

On account of the failure to build the road from Madison and Columbus, Governors Randall and Salomon refused to certify the lands to the company.[57] But in 1868 the legislature provided that the lands patented to the state on account of the line between Portage and Tomah should

acts of mismanagement, gross violations of duty, fraud and plunder. In fact corruption and wholesale plundering are common features." Ibid., 47.

[52] Ibid., App., 7.

[53] Kilburn to Downer, MS. in library of Wisconsin State Historical Society, pp. 9–11.

[54] *General Laws of Wisconsin*, 1856, 217.

[55] Ibid., 239.

[56] Wisconsin Railroad Commissioner, *Report*, 1888, 387.

[57] Cary, *Organization and History C., M. & St. P. Railroad*, 22–3.

be granted to the Wisconsin Farm Mortgage Land company. This consisted of commissioners named in the act, who were to manage the lands in the interest of the farmers along the line who had subscribed for stock in the La Crosse and Milwaukee company and mortgaged their lands as security. Annual reports were to be made to the secretary of state.[58] The commissioners reported in 1874 that they had received 68,820 acres, of which 44,350 acres had been sold for $45,628. Claims aggregating $951,356 had been filed with them.[59] Subsequent reports of the commissioners were not published, and a search in the state archives has failed to reveal them.

In 1861 the grant from Madison and Columbus to Portage was taken from the La Crosse and Milwaukee company and given to the Sugar River Valley railroad company. The road was to be constructed by December 31, 1863.[60] In 1866 the time for building the road was extended to December 31, 1869, and the company relieved from the obligation of building from Columbus to Portage.[61] In 1870 the Madison and Portage company, which had purchased the property of the Sugar River Valley company was given the same rights to the grant.[62]

There were no government lands between Madison and Portage by the time the road was built, and the company claimed indemnity lands from the grant north of Tomah. This claim was disallowed and no lands have been received for this portion of the road. The government endeavored to treat the line as a land-grant road in regard to the compensation for carrying mail, but this point was decided in favor of the company.[63]

That portion of the land grant from Tomah to Lake St. Croix was in 1863 resumed by the state and given to a company which afterward became the St. Paul, Minneapolis and Omaha. The grant from St. Croix to Bayfield was conferred on another company, which failed to consolidated with the Omaha company and built the road.[64] Con- company, which had applied for it, but which afterward refused to accept it. It was then given to the North Wisconsin company, which consolidated with the Omaha company and built the road.[64] Congress had meanwhile, by act of May 5, 1864, renewed the grant with limits increased to ten and twenty miles. The time for the completion of the road was extended five years from the passage of the

[58] *Private and Local Laws of Wisconsin*, 1868, 1149.
[59] Wisconsin Railroad Commissioner, *Report*, 1874, 237.
[60] *Private and Local Laws of Wisconsin*, 1861, 333.
[61] Ibid., 1866, 1345.
[62] Ibid., 1870, 284.
[63] Cary, *Organization and History C., M. & St. P. Railroad*, 200.
[64] Ibid.

act, or three years beyond the original time.[65] The road as built by the Omaha company did not begin at Tomah, but at Elroy, near Tomah, but on the Chicago and Northwestern line. As thus located the road was built to Lake St. Croix in 1872, to Bayfield in 1883, and to Superior in 1884.[66]

On account of the continuity of the grant of 1856 it was claimed that deficiencies along one section of the road could be made up from the indemnity limits of another section. But it was decided by the United States Circuit court that the effect of the act of 1864 was to make distinct grants and to break up the continuity of the former grant, so that each company was confined to its own portion of the road.[67]

For the grant from Tomah to St. Croix, the state has received 813,706 acres; for the St. Croix and Superior grant, 854,221 acres, and for the Bayfield branch, 503,018 acres.[68] By 1880 there had been sold of the grant from Tomah to St. Croix, 330,127 acres. Of these 77,374 acres had been sold for $307,654. The price of the remainder, which had been sold by the West Wisconsin company, is not obtainable.[69] The company has since acquired the land grants to Minnesota and Iowa for the St. Paul and Sioux City and the Sioux City and St. Paul roads. Under all the grants the company has received 2,183,867 acres, of which it has disposed of 1,774,060 acres. The cash receipts have amounted to $8,000,856, and there are due on time sales $91,011.[70]

The northeast grant, as before stated, was given to the Wisconsin and Superior railroad company. A resolution of Congress of April 25, 1862, made some slight changes in the route, but provided that the lands granted should not be affected.[71] This company soon became the Chicago and Northwestern and built the road to Fort Howard in 1862, and to the state line in 1871.[72] Under the grant 546,446 acres have been received by the state.[73] Of these there remained unsold on May 31, 1897, 281,974 acres.[74] The sale of lands has never been very rapid, the highest mark being reached in 1882, when 14,656 acres were disposed of. Of late years it has not risen much above 1,000 acres a year. The average price obtained for the lands has varied from $11.27, in 1885, to $1.65 in 1888. In 1897 it was $5.55. From the lands the company has

[65] *Statutes at Large*, xiii, 66.
[66] Wisconsin Railroad Commissioner, *Report*, 1888, 389.
[67] *Madison & P. R. Co. v. Wisconsin, et al. Federal Cases*, xvi, 366.
[68] Commissioner of the General Land Office, *Report*, 1897, 228.
[69] Donaldson, *Public Domain*, 779.
[70] Railroad Commissioner, *Report*, 1897, 119.
[71] *Statutes at Large*, xii, 618.
[72] Wisconsin Railroad Commissioner, *Report*, 1888, 388.
[73] Commissioner General Land Office, *Report*, 1897, 228.
[74] Chicago and Northwestern Co., *Report*, 1897, 20.

obtained since 1878, when the first separate reports are given, $658,424. This includes the amount received from trespass and stumpage, which in Wisconsin frequently exceeded the receipts from land sales.[75] For its entire system, including grants in Wisconsin, Minnesota, and Michigan, the company has received 3,091,669 acres, of which it has sold 2,422,796 acres, for $8,715,350, with $849,311 due on contracts.[76] In its report for 1898 the company credited its land department with a balance of $2,374,516.[77]

The act of May 25, 1864, in addition to the renewal of the previous grants, contained a provision for another road from the central portion of the state to Lake Superior.[78] The legislature gave this grant to two companies. The Portage and Superior railroad company, incorporated April 9, 1866, received the lands for a road from Portage to Stevens Point, and one-half of the lands from Stevens Point to Superior. The road was to be exempt from taxation and to pay three per cent. of its gross earnings to the state.[79] An act of April 6 gave one-half of the grant from Stevens Point to Superior to the Winnebago and Lake Superior railroad company under the same conditions. Consolidation with the Chicago and Northwestern was forbidden.[80]

As might have been expected, the two companies soon united as the Portage, Winnebago, and Superior railroad company.[81] In 1871 it became the Wisconsin Central Railroad company, which built the road. By an act of Congress of April 9, 1874, the time within which the road was to be built was extended to December 31, 1876.[82] By that time the division between Portage and Stevens Point was constructed and all but the ten miles between Butternut Creek and Chippewa Crossing, on the Stevens Point and Ashland division, which were built in 1877.[83]

The company has received 834,999 acres under the grant, with 49,834 acres estimated as still due.[84] Up to 1880 it had sold 88,977 acres for $229,325, while the sale of stumpage from the lands had amounted to $222,343.[85] In 1890 the sales had been 268,194 acres for $765,041, while the receipts from stumpage had been $962,960.[86]

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[75] See Chicago and Northwestern Co., *Reports*, 1875–97.
[76] Railroad Commissioner, *Report*, 1897, 108.
[77] Chicago and Northwestern Co., *Report*, 1898, 39.
[78] "From Portage City, Berlin, Doty's Island or Fon [sic] du Lac, as said state may determine, in a northwestern direction to Bayfield, and thence to Superior, on Lake Superior." *Statutes at Large*, xiii, 66.
[79] *Private and Local Laws of Wisconsin*, 1866, 869.
[80] Ibid., 730.
[81] Ibid., 1869, 578.
[82] *Statutes at Large*, xviii, 28.
[83] Wisconsin Railroad Commissioner, *Report*, 1888, 391.
[84] Commissioner General Land Office, *Report*, 1897, 228, 224.
[85] *Report to Trustees Wisconsin Central Co.*, 1880, 36.
[86] Wisconsin Central Co., *Second Report*, 1890, 39.

MINNESOTA.

A grant was made to Minnesota in 1853, but this was immediately repealed,[87] so that it was not until 1857 that a permanent grant was secured. On March 3d of that year a grant of lands was made to the state for various roads.[88] In 1865 these grants were changed to ten and twenty miles, and the time for the completion of the road extended to eight years from the passage of that act.[89] An act of the Minnesota legislature of May 22, 1857, accepted the grant, assigning to the Minnesota and Pacific company that portion of the grant for a road from Stillwater, via St. Paul and St. Anthony, fixing the terminus at Breckinridge, and the branch via St. Cloud to St. Vincent; to the Root River Valley and Southern Minnesota company the grant from St. Paul, via Shakopee Junction to the southern boundary of the state, and the grant from La Crescent to the junction with the road from Winona (fixed at Rochester); to the Transit railroad company the grant from Winona to the Big Sioux river, and to the Minneapolis and Cedar Valley company the grant from Minneapolis to the southern boundary of the state. The roads were to pay three per cent. on their gross earnings in lieu of all taxes.[90]

The Constitution of the state prohibited the loan of its credit in aid of the railroads, but in 1858 an amendment was adopted by a vote of 25,023 to 6,733 allowing an issue of bonds in aid of the land-grant roads. In 1860 the further issue of bonds was prohibited.[91] Under this law bonds to the amount of $200,000 for each road were issued by the state.

The Minnesota and Pacific was surveyed and located, but no work was done on the road. In 1859 the company defaulted on the interest on its bonds and the mortgage on the lands was foreclosed. In 1861 the legislature relieved the road from all claims of the state against it on

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[87] Supra, pp. 51–53.

[88] "From Stillwater, by way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch via Saint Cloud and Crow Wing, to the navigable waters of the Red River of the north, at such point as the Legislature of said Territory may determine; from St. Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the Territory in the direction of the mouth of the Big Sioux River, with a branch, via Faribault, to the north line of the State of Iowa, west of range sixteen; from Winona, via St. Peters, to a point on the Big Sioux river, south of the forty-fifth parallel of north latitude; also from La Crescent, via Target Lake, up the valley of Root River, to a point of junction with the last mentioned road, east of range seventeen." *Statutes at Large*, xi, 195.

[89] Ibid., xiii, 526.

[90] *Session Laws of the Territory of Minnesota*, Extra Session, 1857, 3–26.

[91] Neill, *History of Minnesota*, 630–31.

consideration of the completion of the road. No work having been done in 1862, the rights enjoyed by the Minnesota and Pacific were granted to the St. Paul and Pacific company.[92] The portion of the line from St. Anthony to Breckenridge, known as the first division of the St. Paul and Pacific, was built in 1871,[93] within the time required. This line became later a part of the St. Paul, Minneapolis, and Manitoba, now Great Northern, system. Under the grant there have been patented for the company 1,253,468 acres, with 195,366 acres still due.[94] Up to 1877 there had been sold of this grant and the one for the line to St. Vincent 458,865 acres for $3,651,641,[95] and by 1897 there had been 2,052,282 acres sold, for $8,242,583, with $1,295,244 outstanding. The company still owned 794,364 acres.[96] When the state boundaries of Minnesota were adjusted, it was found that part of this grant was in the territory of Dakota, but this has always been treated as if it were in Minnesota.[97]

In 1871 the route of the branch of the St. Paul and Pacific was changed so that a more direct line could be secured.[98] Two hundred and eight miles were completed by 1876, the time required, and the remainder was finished in 1881.[99] This also became a part of the St. Paul, Minneapolis and Manitoba, and its lands have been treated in connection with that road.

Under the act of 1871, re-locating the branch of the St. Paul and Pacific, the Western Railroad of Minnesota had built from Brainard to Crow Wing in 1878. The distance was fifty-four and two-tenths miles, but for sixteen and one-tenth miles in the Fort Ripley reservation no lands were received.[100] There have been patented for the company 666,865 acres,[101] but information as to their disposal is not obtainable.

The Root River Valley and Southern Minnesota company failed to build the line from St. Paul to the Iowa line and in 1864 the grant was given to the Minnesota Valley company, afterward the St. Paul and Sioux City company. This built to the line between Minnesota and Iowa in 1870, forming a connection with the Sioux City and St. Paul.[102] The state has received 1,123,578 acres on account of the grant.[103] Up

[92] *Farnsworth* v. *Minn. & Pac. R. Co.*, 92 U. S., 49.
[93] Poor, *Railway Manual*, 1884, 747.
[94] Commissioner of the General Land Office, *Report*, 1897, 228, 223.
[95] Donaldson, *Public Domain*, 779.
[96] Railroad Commissioner, *Report*, 1897, 150.
[97] *St. Paul, M. & M. Co.* v. *Phelps*, 137 U. S., 528.
[98] *Statutes at Large*, xvii, 631.
[99] Neill, *History of Minnesota*, 787.
[100] Donaldson, *Public Domain*, 803–4.
[101] Commissioner of the General Land Office, *Report*, 1897, 229.
[102] Poor, *Railway Manual*, 1880, 830.
[103] Commissioner of the General Land Office, *Report*, 1897, 229.

to 1880 there had been sold 324,543 acres for $2,099,387.[1] Since then the line has been owned by the Chicago, St. Paul, Minneapolis and Omaha.

The other portion of the grant to the Root River Valley company, providing for a road from La Crescent to the junction with the Winona and St. Peter road, was in 1864 conferred on the Southern Minnesota railroad company. In 1866 Congress made a grant for a road from Houston to the western boundary of the state. The grant amounted to five sections a mile on each side of the road and the road was to be finished within ten years.[2] The Southern Minnesota had built to Winnebago, one hundred and sixty-seven miles, in 1870.[3] In 1878 the legislature conferred the grant of 1866 upon the Southern Minnesota Railway Extension company, requiring the completion of the road by the last of 1880.[4] The road was built to Flandrau, Dakota, by January 1, 1880.[5] The road as constructed was not on the line of the original grant, but the interior department decided that the divergence was not enough to forfeit the grant.[6] The state has received 546,284 acres on account of the grant,[7] information as to which is lacking. The road is now owned by the Chicago, Milwaukee, and St. Paul company.

The Transit railway was sold under foreclosure by the state in 1860, and the Winona and St. Peter was chartered to build the road in 1862. By this company the road was constructed to New Ulm in 1872, and to the Dakota line in 1874.[8] The road has received 1,678,618 acres under its grant.[9] Up to 1880 it had sold 557,574 acres, for $1,045,801.[10] From 1880 to 1890 there had been sold 861,303 acres, for $3,409,981, and from 1890 to 1897 the sales amounted to 272,508 acres for $2,077,435.[11] An interesting feature of the sale of these lands was the fact that Archbishop Ireland acted as an agent for their sale, in order to establish a colony of immigrants in Minnesota.[12]

The Minneapolis and Cedar Valley railroad company became the Minneapolis, Faribault, and Cedar Valley company, and later the Minnesota Central Railway company. In 1866 it had built seventy-one miles of road, to Owatonna, and in that year the road was sold to the Mc-

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[1] Donaldson, *Public Domain*, 779.
[2] *Statutes at Large*, xiv, 87.
[3] Cary, *C., M. & St. Paul Road*, 164.
[4] *Special Laws of Minnesota*, 1878, 537.
[5] Cary, *C., M. & St. Paul Road*, 167.
[6] Commissioner of the General Land Office, *Report*, 1880, 520.
[7] Ibid., 1897, 229.
[8] Poor, *Railway Manual*, 1880, 837.
[9] Commissioner of the General Land Office, *Report*, 1897, 229.
[10] Donaldson, *Public Domain*, 779.
[11] Chicago & Northwestern Railroad, *Reports*, 1880–1897.
[12] Ibid., 1880, 26.

Gregor Western company, the Minnesota Central retaining the lands.[13] The former company built to Owatonna, via Austin in 1867.[14] This, however, brought the road east of range sixteen at the state line. In 1870 the Minnesota Central company built from Austin to the state line, thus earning the grant.[15] 179,734 acres have been patented on account of this grant, no information concerning which is given in the report of the company.[16]

May 5, 1864, an act was signed granting lands for a railroad from St. Paul to the head of Lake Superior.[17] The road should have been built May 5, 1872, but was not finished until February 28, 1873.[18] Up to June 30, 1880, of the 860,564 acres patented only 28,964 had been sold for $106,462.[19] By 1886, 308,955 acres had been sold for $1,157,054,[20] and by 1897, 526,687 acres for $2,558,589.[21]

The act of July 6, 1866, also made a grant for a road from Hastings to the western boundary of the state.[22] This grant was in 1867 conferred upon the Hastings, Minnesota, and Red River of the North railroad company, the name of the company being the same year changed to the Hastings and Dakota. The road was built to the state line in 1879.[23] There have been patented to the state on account of this grant 364,628 acres.[24] Information as to their disposal is lacking.

IOWA.

In 1856 Iowa received a grant for four railroads across the state from east to west.[25] The discussion over this act in Congress has already been noted, as has also the opposition of the river towns to the east and west grants.[26] The Iowa legislature, by an act of July 14, 1856,

[13] Cary, *C., M. & St. Paul Road*, 151–159.
[14] Ibid., 96.
[15] Ibid., 160.
[16] Railroad Commissioner, *Report*, 1897, 114.
[17] *Statutes at Large*, xiii, 64.
[18] Donaldson, *Public Domain*, 805.
[19] Ibid., 779.
[20] Railroad Commissioner, *Report*, 1886, 598.
[21] Ibid., 1897, 147.
[22] *Statutes at Large*, xiv, 87.
[23] Cary, *C., M. & St. Paul Road*, 175–181.
[24] Commissioner of the General Land Office, *Report*, 1897, 229.
[25] "From Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri River, from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road." *Statutes at Large*, xi, 9.
[26] Supra, pp. 53–54, 40.

accepted the grant and gave the lands for the road from Burlington to the Missouri to the Burlington and Missouri River railroad company; from Davenport to Council Bluffs, to the Mississippi and Missouri railroad company; from Lyons to the Missouri river, to the Iowa Central Air Line railroad company; and from Dubuque to Sioux City, to the Dubuque and Pacific railroad company. Each company was to construct seventy-five miles within three years, from December 1, 1856, thirty miles a year for five years thereafter, and the remainder in one year, that is by December 1, 1865. In case of failure to carry out the conditions, the state could resume the grant.[27]

The first road, the Burlington and Missouri River, was constructed on time. It has received under the grant 389,989 acres,[28] of which in 1880 it had sold 283,014 acres for $3,430,572.[29] Since that time the sales were slow, but the lands were practically all disposed of by 1888. The average price received for the lands was $11.79 an acre, and the total amount realized was $5,829,165, of which $4,870,890 was above taxes and expenses.[30]

In 1866, one hundred and thirty miles of the Mississippi and Missouri river road had been constructed and in June, 1869, it was finished to the Missouri river.[31] The legislature had meanwhile, in 1868, granted the lands to the Chicago and Rock Island Railroad company which had purchased the Mississippi and Missouri road. The company was required to build the road to the Missouri within two years.[32] Up to 1880 the sales of land by this road had amounted to 371,854 acres for $2,944,374.[33] By 1891, lands to the amount of 547,173 acres were reported as sold,[34] which amount seems to have been in excess of the lands actually due the company.[35] These lands were sold at an average of $8.81 an acre and the total amount received from land sales to 1891 was $5,796,639, or an excess of $4,887,260 above taxes and expenses of management.[36]

By an act of March 17, 1860, the grant to the Iowa Central Air Line company was resumed by the legislature, as no part of the line had been constructed.[37] The grant was then given to the Cedar Rapids and

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[27] *Laws of Iowa*, 1856, 1. See Dey, *Railroad Legislation in Iowa;* in *Iowa Historical Record*, ix, 547–8.
[28] Commissioner of the General Land Office, *Report*, 1897, 226.
[29] Donaldson, *Public Domain*, 779.
[30] Iowa Railroad Commissioners, *Report*, 1888, 174.
[31] Poor, *Railway Manual*, 1885, 664.
[32] *Laws of Iowa*, 1868, 13.
[33] Donaldson, *Public Domain*, 779.
[34] Iowa Railroad Commissioners, *Report*, 1891, 212.
[35] Commissioner of the General Land Office, *Report*, 1897, 226–7.
[36] Iowa Railroad Commissioners, *Report*, 1891, 212.
[37] *Laws of Iowa*, 1860, 29.

Missouri River Railroad company which was to build the road by December 1, 1865.[38] By 1864 the company had built from Cedar Rapids about one hundred miles west, while the Chicago, Iowa, and Nebraska company had built from a point on the Mississippi, three miles from Lyons, to Cedar Rapids. In 1864 an act was passed by Congress which relieved the company of the obligation to build from Lyons to the line of the Chicago, Iowa, and Nebraska road; allowed a change of the route west of Cedar Rapids, and, if the new route should not pass through Onawa, required a branch to be built to that city; and also required the construction of a branch to the line of the Mississippi and Missouri.[39]

The provisions of this act were not fully carried out, as the connection with the Mississippi and Missouri was not built, nor was the branch to Onawa, although the line passed fifteen miles from that city. The difference between the road as actually constructed and as first located was seventy-four miles. The company claimed lands for the length of the original location but this was not allowed.[40] Of the lands patented for this road the first one hundred sections were given to the Iowa Central Air Line company by a decision of the supreme court.[41] Up to 1869 the Cedar Rapids company had sold 46,049 acres for $220,559. In that year all the remaining lands of the company and those which should thereafter be certified to it, were sold to the Iowa Railroad Land company for $800,000.[42] I have been unable to find anything as to the disposal of the lands by this company.

In 1868 the lands which had been granted to the Dubuque and Pacific were resumed by the state on the ground of the non-fulfillment by the company of the conditions of the granting act. This act, however, reserved to the company the right to all lands actually earned.[43] The company had built the road as far as Iowa Falls and an agreement had been made with the Iowa Falls and Sioux City company by which the latter was to build the remainder of the road.[44] This agreement was ratified by the legislature,[45] and the road built to Fort Dodge the next year, when it was leased to the Illinois Central, which completed it to Sioux City.[46] In 1878 the treasurer of the Dubuque and Sioux City company stated that he was unable to furnish information as to the land grant and said that it had been a constant

[38] Ibid., 40.
[39] *Cedar Rapids & Mo. R. Co.* v. *Herring*, 110 U. S., 27.
[40] Ibid.
[41] *Cedar Rapids & Mo. River R. Co.* v. *Courtright*, 21 Wallace, 310.
[42] Iowa Railroad Commissioners, *Report*, 1878, 197.
[43] *Laws of Iowa*, 1868, 29.
[44] Iowa Railroad Commissioners, *Report*, 1879, 109.
[45] *Laws of Iowa*, 1868, 164.
[46] Iowa Railroad Commissioners, *Report*, 1879, 109.

source of annoyance and loss to the company.[47] In 1880 it was reported that the two companies had sold 314,275 acres for $2,098,994.[48] By 1886 all but 26,448 acres had been disposed of. The average price received was $6.85, while the net income from the lands was $3,676,902.[49]

In 1864 a further grant was made to Iowa for two roads, one from Sioux City to the northern boundary of the state and the other from McGregor west to the Sioux City road.[50]

The lands in aid of a road from Sioux City to the Minnesota line were granted by the state to the Sioux City and St. Paul Railway company,[51] and the grant for the McGregor Western accepted and held in trust for that company.[52]

The Sioux City and St. Paul company built its line from the state line to Le Mars, a distance of 56 miles. Meanwhile the Dubuque and Sioux City company had built its road to Sioux City, via Le Mars, so that there was a line from that city to Sioux City when the Sioux City and St. Paul company reached it. An agreement was made whereby the line was to be used by the Sioux City and St. Paul company for its through traffic, while doing no local business between Le Mars and Sioux City.[53] The company received certificates from the governor for the construction of 50 miles of road, but, as the line was to be built in 10-mile sections, the remaining 6 miles were not certified and no lands were received by the company.[54] Suit was brought for the lands adjacent to the last 6 miles but the supreme court of Iowa decided that the company was only entitled to land for completed sections of 10 miles.[55]

This road crossed the line of the Chicago, Milwaukee, and St. Paul, formerly the McGregor Western, at Sheldon, thus causing a conflict between the lands granted the road. By a decision of the supreme court, lands within the ten mile limits of one road and the twenty mile

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[47] Ibid., 1878, 275.

[48] Donaldson, *Public Domain*, 779.

[49] Iowa Railroad Commissioners, *Report*, 1886, 336.

[50] "From Sioux City in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river; also . . . for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said state, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien in said state." *Statutes at Large*, xiii, 72.

[51] *Laws of Iowa*, 1866, 143.

[52] Ibid., 189.

[53] *Senate Reports*, 1st sess. 49 Cong., No. 45.

[54] Ibid.

[55] *Sioux City and St. Paul R. Co.* v. *Countryman*, 83 Iowa, 172.

limits of the other were given to the former; lands within the ten mile limits of both roads were evenly divided, as were lands within both twenty mile limits;[55] the general rule in regard to conflicting limits, however, was that priority of selection gave the right to such lands.[57] Little further information can be obtained concerning the lands. This road has become a part of the Chicago, St. Paul, Minneapolis and Omaha system.

In 1868 the grant to the McGregor Western was resumed by the state and the lands granted to the McGregor and Sioux City company.[58] At that time it had been constructed as far as Calmar, while in 1870 it was built to Algona and conveyed to the Chicago, Milwaukee and St. Paul company. No further work was done on the road until 1878, after the time for its completion had elapsed. In 1876 the grant had, however, been renewed, but on terms which the McGregor Western refused to accept. In 1879 the lands were given to the St. Paul company, which in 1879 built to the state line.[59] By 1891 this company had disposed of practically all of the lands received under the grant, some 372,000 acres, and had received for them $1,601,766.[60]

We have still to consider the Des Moines River grant. This was originally a grant, made in 1846, of the alternate sections for ten miles on each side of the Des Moines River from its mouth to the Raccoon Fork, to aid in the improvement of the river.[61] In 1862 the grant was extended to include the alternate sections for five miles on each side of the river from the Raccoon Fork to the north boundary of the state, and permission was given to apply a portion of the lands to the aid of the Keokuk, Fort Des Moines and Minnesota railroad.[62] Under the first grant it was claimed that lands north of Des Moines[63] were included but this was disallowed.[64] It was later decided, however, that the odd-numbered sections within five miles of the river were so far reserved that they did not pass with the grant of 1856.[65]

In 1858 the legislature of Iowa granted the Des Moines river lands to the Keokuk, Fort Des Moines and Minnesota Railroad company, reserving those lands which had been previously conveyed to the Des Moines Navigation and Railroad company. Seventy-five miles of the road were

[55] *Sioux City & St. Paul R. Co.* v. *C., M. & St. P. R. Co.*, 117 U. S., 406.
[57] *St. Paul & Sioux City R. Co.* v. *Winona & St. Peter R. Co.*, 112 U. S., 720.
[58] *Laws of Iowa*, 1868, 20.
[59] Cary, *Organization and History of the C., M. & St. P. Railroad*, 114–15.
[60] Iowa Railroad Commissioners, *Report*, 1891, 28–9. The report of the land office shows only 325,000 acres patented for this company. *Report*, 1897, 227.
[61] *Statutes at Large*, ix, 77.
[62] Ibid., xii, 543.
[63] The Racoon Fork was at Des Moines.
[64] *Dubuque & P. R. Co.* v. *Litchfield*, 23 Howard, 66.
[65] *Wolcott* v. *Des Moines Co.*, 5 Wallace, 681.

to be completed within three years and the whole road by 1868.[66] The road was built from Keokuk to Bentonsport in 1857, to Ottumwa in 1859 and to Des Moines in 1866. In 1878 it was leased to the Chicago, Rock Island and Pacific.[67] Any information as to the disposition of the lands received by this company cannot be obtained.[68] The road was continued to Fort Dodge under the name of the Des Moines and Fort Dodge railroad. Information as to the lands of this road is also lacking.

ALABAMA AND MISSISSIPPI.

An amendment to the Illinois Central act of 1850 granted lands to Alabama and Mississippi for a railroad from Mobile to the mouth of the Ohio river.[69] This grant was conferred by the legislatures of Alabama and Mississippi on the Mobile and Ohio company, which built the road by September, 1859.[70] There have been patented for the company 1,156,659 acres.[71] These lands sold very slowly and in 1880 the company held 1,162,401 acres, valued at $567,125.[72] From the sales of its lands up to 1865 the company had received $252,237.[73] The exact amount received since then I have been unable to determine. The yearly receipts have been quite small.

By an act of June 3, 1856, further grants were made to Alabama for a number of roads within that state and extending into the neighboring states.[74] The grant from Gunter's Landing to Gadsden was conferred

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[66] *Laws of Iowa*, 1858, 195.

[67] Iowa Railroad Commissioners, *Report*, 1879, 110.

[68] Ibid., 1878, 46.

[69] "*And be it further enacted*, That in order to aid in the continuation of said Central Railroad from the mouth of the Ohio river to the city of Mobile, all the rights, privileges, and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river, and that public lands of the United States, to the same extent in proportion to the length of the road, on the same terms, limitations and restrictions in every respect shall be, and is hereby, granted to said States of Alabama and Mississippi respectively." *Statutes at Large*, ix, 467.

[70] Poor, *Railway Manual*, 1877–78, 215. In 1859 the time for the completion of the road was extended to Sept. 20, 1865. *Statutes at Large*, xi, 384.

[71] Commissioner of the General Land Office, *Report*, 1897, 225.

[72] Poor, *Railway Manual*, 1881, 425.

[73] *Reports of Committees*, 2nd sess. 39th Cong., no. 34, p. 848.

[74] "From the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River; from Gadsden to connect with the Georgia and Tennessee line of railroads, through Chattooga, Wills, and Lookout Valleys; and from Elyton to the Tennessee River at or near Beard's Bluff, Alabama . . .

"SECTION 6. *And be it further enacted*, That a grant of lands shall be made to said state to aid in the construction of the following railroads, to-wit: The Memphis and Charleston Railroad, extending from Memphis on the Mississippi

on the Coosa and Tennessee Railroad company. This had not been built in 1890 and was included in the general forfeiture act of that year.[75]

Under the grant for a road from Gadsden to the Georgia line two companies were organized, one to construct the road through the Chatooga valley and the other through the Wills and Lookout valleys. The latter company received the grant from the state.[76] In 1868 it consolidated with the Northeast and Southwest Alabama, which had received the grant from Gadsden to the Mississippi line. In 1869 the time for the construction of these lines was extended to April 10, 1872, and they were completed during 1871.[77]

The grant for a road from Elyton to the Tennessee river was given to the Elyton and Beard's Bluff Railway company. No map of the road was ever filed and no work has been done on it.[78]

The state refused to accept the grant in aid of the Memphis and Charleston road and the lands were restored to market February 19, 1858.[79]

The Mobile and Girard company built fifty-four miles from Girard toward Mobile within the time required by the law, and to Troy, thirty miles further, before the forfeiture of 1890.[80] There had been certified to the company 504,167 acres, of which 201,985 were restored to the public domain.[81]

Of the Coosa and Alabama road (later the Selma, Rome, and Dalton) one hundred and forty-three miles were constructed on the line of definite location filed with the secretary of the interior. Of these one hundred miles were built within the time required by law.[82] No attempt was made by the company to build the remainder of the line as located, so that the portion to Gadsden was forfeited in 1890.[83]

The grant to the North and South Alabama was renewed in 1871 and

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River in Tennessee, to Stevenson on the Nashville and Chattanooga Railroad in Alabama; the Girard and Mobile railroad, from Girard to Mobile, Alabama; the Northeast and Southwestern Railroad, from near Gadsden to some point on the Alabama and Mississippi State line, in the direction of the Mobile and Ohio Railroad; the Coosa and Alabama Railroad, from Selma to Gadsden; the Central Railroad from Montgomery to some point on the Alabama and Tennessee State line in the direction to Nashville, Tennesse." *Statutes at Large*, xi, 17–18.

[75] Commissioner of the General Land Office, *Report*, 1891, 39.

[76] Donaldson, *Public Domain*, 792.

[77] *House Reports*, 1st sess. 48th Cong., no. 2016.

[78] Donaldson, *Public Domain*, 792.

[79] Ibid., 792.

[80] *House Reports*, 1st sess. 51st Cong., no. 1179, p. 3.

[81] Commissioner of the General Land Office, *Report*, 1893, 54.

[82] Donaldson, *Public Domain*, 793.

[83] Commissioner of the General Land Office, *Report*, 1891, 39.

[84] *Statutes at Large*, xvi, 580.

the road required to be constructed within three years,[84] which was done.

In 1857 a grant was made for a road "from the line of Georgia on the Chattahoochee river to the city of Mobile, Alabama," with a branch from Eufaula to Montgomery.[85] No map of location for the road was filed and no portion of it has been constructed.[86]

I have been able to obtain practically no information as to the disposal of the lands received by the various companies in Alabama.

By an act of August 11, 1856, Mississippi received a grant of lands for railroads "from Jackson to the line between Mississippi and Alabama; from Tuscaloosa to the Mobile railroad within Mississippi, and from Brandon to the Gulf of Mexico," and from Mobile to New Orleans.[87]

The first road (now the Vicksburg and Meridian) was completed on time. Information as to its land transactions is lacking. There have been patented for the use of the road 198,028 acres.[88]

For the roads from Tuscaloosa to the Mobile road and from Mobile to New Orleans no maps of location were filed nor were any lands certified to the states on account of the grants.[89]

The land grant road from Brandon to the gulf (known as the Gulf and Ship Island) was built as far south as Hattiesburg before the forfeiture of 1890. In that act there was a proviso giving the company one year to build the remainder of its road. This was not done and the lands have been forfeited. There have been patented on account of this grant 138,478 acres.[90]

FLORIDA.

An act of May 17, 1856, made grants for various roads in Florida and for a road from Pensacola to Montgomery.[91] The first grant was given to two companies, the Florida, Atlantic, and Gulf Central to build from Jackson to Lake City and the Pensacola and Georgia from Lake City to Pensacola. These companies afterward consolidated as the Florida Central and Western Company. The line from Jacksonville, fifty-nine

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[84] *Statutes at Large*, xi, 197.
[85] Donaldson, *Public Domain*, 794.
[87] *Statutes at Large*, xi, 30.
[88] Commissioner of the General Land Office, *Report*, 1897, 225.
[89] Donaldson, *Public Domain*, 791.
[90] Commissioner of the General Land Office, *Report*, 1897, 225.
[91] "From St. Johns River, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola; and from Amelia Island, on the Atlantic, to the waters of Tampa Bay, with a branch to Cedar Key, on the Gulf of Mexico; and also a railroad from Pensacola to the State line of Alabama, in the direction of Montgomery" [line continued to Montgomery by section six]. *Statutes at Large*, xi, 15.

miles, and from Lake City to Quincy, one hundred and thirty miles, was completed on time. The remaining one hundred and eighty-one miles were completed much later by the Pensacola and Atlantic company.[92] There have been certified to the state under this grant 1,308,541 acres.[93]

Of the line from Amelia Island (Fernandina) to Tampa, the line from Fernandina to Waldo, the junction (one hundred and eighty-four miles), and the branch from Waldo to Cedar Keys, seventy-one miles, were constructed on time.[94] The remainder of the road was built to Waldo in 1884.[95] The company has received 430,504 acres and it is estimated that 1,000,000 acres remain unpatented.[96]

The road from Pensacola to the Alabama line was built in 1859 and destroyed during the war. It was rebuilt in 1870.[97] There have been certified to Florida on account of this road 166,691 acres.[98]

LOUISIANA.

Louisiana received a grant of land for two roads by an act of June 3, 1856.[99] The road from the Texas line to Shreveport, twenty miles, and from the Mississippi to Monroe, seventy-four miles, was constructed within the time required.[100] The section from Shreveport to Monroe was built in 1884.[101] The state has received from the road 462,465 acres.[1]

Some eighty miles of the road from New Orleans to the Texas line were built before the war. During the war the road was in the possession of the Federal Government.[2] In 1870 the grant was declared forfeited,[3] and in 1888, 719,189 acres which had been patented for the road were reconveyed to the government.[4]

The other grant, from New Orleans to the Mississippi line, was not accepted by the state and the lands were restored to market July 27, 1857.[5]

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[92] *House Reports*, 1st sess. 49th Cong., no. 2437.
[93] Commissioner of the General Land Office, *Report*, 1897, 225.
[94] *House Reports*, 1st sess. 49th Cong., no. 2437.
[95] Poor, *Railway Manual*, 1888, 654.
[96] Commissioner of the General Land Office, *Report*, 1897, 223, 225.
[97] Poor, *Railway Manual*, 1884, 510.
[98] Commissioner of the General Land Office, *Report*, 1897, 225.
[99] "From the Texas line, in the State of Louisiana, west of the town of Greenwood; via Greenwood, Shreveport, and Monroe to a point on the Mississippi river, opposite Vicksburg; and from New Orleans by Opelousas to the State line of Texas; and from New Orleans to the State line, in the direction to [sic] Jackson, Mississippi." *Statutes at Large*, xi, 18.
[100] Donaldson, *Public Domain*, 796.
[101] Poor, *Railway Manual*, 1885, 476.
[1] Commissioner of the General Land Office, *Report*, 1897, 226.
[2] Poor, Railway Manual, 1885, 474.
[3] *Statutes at Large*, xvi, 277.
[4] Commissioner of the General Land Office, *Report*, 1897, 226–7.
[5] Donaldson, *Public Domain*, 796.

MISSOURI.

The second land grant act which passed Congress was one which granted lands to Missouri for roads from Hannibal to St. Joseph and from St. Louis to the western boundary of the state.[6] This passed the 32nd Congress and was signed June 10, 1852. The lands were granted by the Missouri legislature to the Hannibal and St. Joseph and the Pacific Railroad companies respectively. It was provided that lands remaining unsold ten years after the completion of the roads should be offered at public sale annually until disposed of.[7]

The road from Hannibal to St. Joseph was opened February 29, 1859,[8] well within the time required. There have been patented to the state under this grant 611,323 acres.[9] Of these the company had sold in 1880, 512,998 acres for $4,802,448, an average of $9,55 an acre.[10] In 1888 the receipts had amounted to $2,337,317.[11] Detailed reports of land sales since 1880 are not obtainable.

In addition to the land grant the state had given the Pacific company $4,500,000 in bonds. In 1860 the road had been constructed to Rolla, one hundred and thirteen miles. Then the company failed to pay the interest on the bonds which it had received, and in 1866 the road was sold under foreclosure for $1,300,000. The new company failed to build the road and in 1868 it was again sold, this time for $300,000. The new company had built the line almost to the state line by 1870 when the Atlantic and Pacific company purchased the road,[12] and built to Vinita, Indian Territory, during the next year.[13] Congress had meanwhile, by an act of June 5, 1862, extended the time for the completion of the road to June 10, 1872.[14] In 1866 the Atlantic and Pacific company had been incorporated and given a grant of lands for a road from Springfield, Missouri, to the western boundary of the state.[15] The company was allowed to purchase the Pacific road and thus prevent a duplication of the grant, while the amount of the previous grant was deducted from the new grant. The grant as adjusted for the Pacific road thus extended from St. Louis to Springfield, two hundred and forty miles.

Under the grant the government has certified to the state 1,161,284

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[6] *Statutes at Large*, x, 8.
[7] *Laws of Missouri*, 1852, 10, 15.
[8] Poor, *Railway Manual*, 1879, 830.
[9] Commissioner of the General Land Office, *Report*, 1897, 226.
[10] Donaldson, *Public Domain*, 779.
[11] Railroad Commissioner, *Report*, 1888, 264.
[12] See infra, p. 124.
[13] Poor, *Railway Manual*, 1884, 821.
[14] *Statutes at Large*, xii, 422.
[15] Ibid., xiv, 292.

acres.[16] In 1880 the company had sold 553,873 acres, while its receipts had amounted to $1,461,855, making an average of $2.53 an acre.[17] In 1897 the company then owning the land grant (the St. Louis and San Francisco) reported that there had been sold 1,072,803 acres. The amount received for the lands was not given but the net profit during the previous year had been $25,310.[18]

In 1853 a grant was made to Missouri and Arkansas for a railroad from a point opposite the mouth of the Ohio, via Little Rock, to Fulton, with branches to the Mississippi and Fort Smith.[19] By an act of July 28, 1866, the grant was revived and increased, the time for the completion of the road being fixed at July 28, 1876.[21] The main line was constructed as the Cairo and Fulton (now the St. Louis, Iron Mountain, and Southern) by 1874.[21] On account of this grant the states of Missouri and Arkansas have received 1,388,444 acres.[22] of which there had been sold by 1880, 264,802 acres for $1,129,873, an average of $4.27 per acre.[23] By 1890, 882,578 acres had been sold for $2,349,521, with $542,420 due on contracts,[24] and in 1897 the company reported that it had sold or lost by contest, 779,639 acres, for which $3,075,145 had been received, with $163,742 due on time sales. During 1896 the receipts from the land department were $65,906 and the expenses $53,005. The Missouri lands are now held at an average of $3 an acre and those in Arkansas at an average of $2.65.[25]

The branch from Little Rock to Fort Smith was completed in 1876.[26] To this company 1,052,082 acres have been patented.[27] The report of this company in 1890 showed that 517,591 acres of these lands had been sold for $1,544,642, with $395,900 due on contracts.[28] But in 1897 the company reported the sale and loss by contest of only 517,642 acres, but receipts amounting to $2,247,907, with $180,907 outstanding on contracts. It is evident that both of these reports cannot be right. During the past year the receipts were reported as being $23,148, with the expenses, $24,367.[29]

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[16] Commissioner of the General Land Office, *Report*, 1897, 226.
[17] Donaldson, *Public Domain*, 779.
[18] Railroad Commissioner, *Report*, 1897, 142.
[19] *Statutes at Large*, x, 155.
[20] Ibid., xiv, 338.
[21] Poor, *Railway Manual*, 1875–6, 613.
[22] Commissinoer of the General Land Office, *Report*, 1897, 226.
[23] Donaldson, *Public Domain*, 783.
[24] Railroad Commissioner, *Report*, 1891, 193.
[25] Ibid., 1897, 145.
[26] Donaldson, *Public Domain*, 796–7.
[27] Commissioner of the General Land Office, *Report*, 1897, 226.
[28] Railroad Commissioner, *Report*, 1890, 180.
[29] Ibid., 1897, 145.

The branch to the Mississippi was located to a point opposite Memphis and was finished in 1871.[30] Under this grant there have been patented 184,657 acres,[31] but as the records of the company have nearly all been destroyed, little can be learned concerning the disposal of these lands.[32]

July 4, 1856, a grant was made to Arkansas and Missouri for a road from Pilot Knob to Helena.[33] The St. Louis, Iron Mountain, and Southern company built the road from Pilot Knob to Poplar Bluff, Missouri, where it joined the line of the Cairo and Fulton. No further work was done on the line and the road as constructed was not according to the map filed by the company. No particular effort was made to claim the grant and in 1884 it was repealed.[34]

KANSAS.

The first grant to Kansas was that of March 3, 1863, for various railroads in that state.[35] The first of these grants was given to the Leavenworth, Lawrence, and Galveston company and the second to the Atchison, Topeka, and Santa Fé. Of the former only the portion from Lawrence to the southern boundary of the state was built,[36] and in 1876 the unearned lands were forfeited.[37] There have been patented for the earned portion of the grant 249,446 acres but from this must be deducted 186,936 acres lying within the Osage reservation, leaving only 63,510 acres for the company.[38] Yet in 1880 the company was reported as having sold 199,759 acres for $597,166.[39] How this excess has been accounted for I am as yet unable to ascertain.

For the construction of the main line of the other road the Santa Fé company has received 2,944,788 acres.[40] In 1876 it offered its lands at

[30] Poor, *Railway Manual*, 1877-8, 795.
[31] Commissioner of the General Land Office, *Report*, 1897, 226.
[32] Railroad Commissioner, *Report*, 1895, 142.
[33] *Statutes at Large*, xiv, 83.
[34] Ibid., xxiii, 61.
[35] "First, of a railroad and telegraph from the city of Leavenworth by way of the town of Lawrence, and via the Ohio City crossing of the Osage River, to the Southern line of the State, in the direction of Galveston bay in Texas, with a branch from Lawrence by the valley of the Wakarusa River, 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, the capital of said State, to the Western line of the State, in the direction of Fort Union and and Santa Fé, New Mexico, with a branch from where this last-named road crosses the Neosho, down said Neosho valley to the point where the said first-named road enters the said Neosho valley." *Statutes at Large*, xii, 772.
[36] *House Reports*, 1st sess. 48th Cong., no. 1113, p. 5.
[37] *Statutes at Large*, xix, 101.
[38] Commissioner of the General Land Office, *Report*, 1897, 229.
[39] Donaldson, *Public Domain*, 779.
[40] Commissioner of the General Land Office, *Report*, 1897, 230.

prices ranging from $1.75 to $9 an acre.[41] Up to 1880 it had sold 993,675 acres and had received for them $5,802,985.[42] In 1888 the company reported 1,513,724 acres sold and practically all the rest contracted for. The receipts from the lands had been $11,601,636, the expenses $1,644,603, and the taxes $1,175,724, leaving a net profit of $7,781,309.[43]

An act of July 1, 1864, extended the branch road from Emporia north to a point near Fort Riley.[44] By an act of July 26, 1866, a grant was made for a line from Fort Riley down the valley of the Neosho to the southern line of the state,[45] thus duplicating the previous grants. On March 9, 1866, the Atchison, Topeka, and Santa Fé company made an agreement with the southern branch of the Union Pacific (afterward the Missouri, Kansas, and Texas) by which the latter assumed all the obligations in regard to the building of the Neosho valley branch. In view of this agreement it was considered that the act of 1866 was an extension of the previous grants and the Missouri, Kansas, and Texas received the grant.[46] The state has received 974,017 acres on behalf of the company, but of these 270,970 acres must be deducted as part of the Osage Indian reservation.[47] In 1880 the sales had amounted to 435,554 acres and the receipts to $1,604,014.[48] In 1886 there had been received from sales of lands $2,847,803.[49]

By an act of July 23, 1866, a grant was made to Kansas in aid of the St. Joseph and Denver City Railroad company, which was to build from a point opposite St. Joseph, Missouri, via Maryville to the Union Pacific railroad.[50] The road as constructed connected with the Burlington and Missouri River railroad but not with the Union Pacific. It was, however, decided that the company had complied with the law in so building, and it received the grant.[51] Under the act 462,733 acres have been patented to the company[52] but no information can be obtained as to the disposition of the lands.

The Kansas and Neosho Valley company received a grant by an act of July 25, 1866, for a road from Kansas City through the eastern part of the state.[53] The road was to be completed within ten years and

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[41] *How and Where to Get a Living*, Boston, 1876, 26–7.
[42] Donaldson, *Public Domain*, 779.
[43] Kansas Railroad Commissioners, *6th Annual Report*, 222.
[44] *Statutes at Large*, xiii, 339.
[45] Ibid., xiv, 289.
[46] *Kansas City, etc., Co.* v. *Attorney General*, 118 U. S., 982.
[47] Commissioner of the General Land Office, *Report*, 1897, 230–31.
[48] Donaldson, *Public Domain*, 779.
[49] Railroad Commisssioner, *Report*, 1886, 611.
[50] *Statutes at Large*, xiv, 210.
[51] *Van Wyck* v. *Knevals*, 106 U. S., 360.
[52] Commissioner of the General Land Office, *Report*, 1897, 230.
[53] *Statutes at Large*, xiv, 236.

was built to the state line in 1870.[54] But in 1877 the grant was repealed,[55] at the request of the company on account of the hostility of the settlers along the road.[56] The lands were surrendered and restored to entry under the homestead law.[57]

CORPORATIONS.

The act incorporating the Union Pacific Railroad company, approved July 1, 1862, provided for a line from a point on the 100th meridian to San Francisco.[58] From the eastern terminus four branches were provided, to the eastern boundary of the state of Iowa, to Sioux City, to the mouth of the Kansas river, and to St. Joseph. A grant of five sections of land a mile was made. In 1864 the grant was increased to ten sections per mile. The Central Pacific was to meet the Union Pacific at any point east of California but was to receive lands for only one hundred and fifty miles of that distance. The Kansas City branch could connect with the main line at any point west of the eastern terminus but would receive no more lands than if the road had been built as originally provided for. The Union Pacific company was released from the obligation to construct the Sioux City branch and an extension of the Burlington and Missouri river was provided for.[59] In 1866 the eastern terminus was changed to Omaha.[60]

The point of meeting of the Union and Central Pacific roads was indefinite and so a race ensued to prolong each road as far as possible. The two roads met at Promontory Point and their completion was celebrated May 10, 1869.[61] A joint resolution of the same year fixed the

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[54] Poor, *Railway Manual*, 1875–6, 732.

[55] *Statutes at Large*, xix, 404.

[56] *Record*, 2nd sess. 44th Cong., 1510.

[57] Commissioner of the General Land Office, *Report*, 1878, 458.

[58] "The line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route, through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad company of California . . .

" . . . The Central Pacific Railroad company of California, a corporation existing under the laws of the State of California, are [sic] hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento River, to the eastern boundary of California." *Statutes at Large*, xii, 493–4.

[59] Ibid., xiii, 356.

[60] Ibid., xiv, 79.

[61] Davis, *Union Pacific Railway*, 152.

junction at or near Ogden.[62] The Union Pacific has received 6,806,497 acres under the act of 1864 and it is estimated that 517,286 acres are still due it.[63] In 1875 it offered its lands for from $2 to $10 an acre.[64] Up to 1880 the company had sold 1,568,438 acres for $6,916,811, an average of $4.41 an acre. These sales had been made in tracts averaging about 100 acres to each purchaser.[65]

After 1880 the report of the Union Pacific lands sales includes the Kansas Pacific and Denver Pacific grants. In 1886 the company had received 3,856,835 acres and sold 12,260,163 acres for $21,667,734, with $13,986,939 outstanding. The sales had been at an average of $2.54 for the Union Pacific, $3.61 for the Kansas Pacific and $4.37 for the Denver Pacific.[66] Up to 1897, 10,380,066 acres had been patented to the company, while it had sold 14,287,517 acres for $38,602,141, with $5,917,843 still due. These sales were at an average of $2.49 for the Union Pacific, $4.21 for the Kansas Pacific and $4.21 for the Denver Pacific. The land grant department of the company is now operated at a loss, the expenses for the year 1897 exceeding the receipts by $65,241. On the Union Pacific proper there was a surplus of $21,553, but this was more than overcome by the deficits of the other divisions. The company now asks an average of 65 cents for its Union Pacific lands and $2.61 for its Kansas and Denver lands.[67]

In 1897 the secretary of the interior directed the commissioner of the land office to suspend the issuance of patents to the bond-aided railroads for lands not actually sold to bona fide purchasers before these companies defaulted on their indebtedness to the government. The secretary fixed the date of such default at November 1, 1895, for the Kansas Pacific and January 1, 1897, for the Union Pacific.[68]

The Central Pacific, as related, met the Union Pacific at Promontory Point in 1869. On account of the road, as patented, the company has received 2,648,433 acres, with 2,580,723 unpatented.[69] In 1880 it had sold 295,886 acres for $1,114,999, an average of $3.77 an acre.[70] The company consolidated with the Western Pacific, and California and Oregon, both land-grant roads. Up to 1886 of the lands of these roads 1,891,571 acres had been sold for $7,117,886,[71] and to 1897, 3,144,336 acres for $10,189,635.

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[62] *Statutes at Large*, xvi, 56.
[63] Commissioner of the General Land Office, *Report*, 1897, 230, 224.
[64] *Guide to the Union Pacific Railroad Lands*, Omaha, 1875, p. 26.
[65] Donaldson, *Public Domain*, 916–17.
[66] Railroad Commissioner, *Report*, 1886, 562.
[67] Ibid., 1897, 75.
[68] Ibid., 74.
[69] Commissioner of the General Land Office, *Report*, 1897, 230, 224.
[70] Donaldson, *Public Domain*, 920.
[71] Railroad Commissioner, *Report*, 1886, 581.

with $825,876 outstanding. The average price now asked is $3 an acre.[72] As in the case of the Union Pacific, in accordance with the order of the secretary of the interior in 1897, the issuance of patents for this road has been suspended. The date of default on the indebtedness has been fixed at January 1, 1896, for the Central Pacific and January 1, 1897, for the Western Pacific.[73]

The Western Pacific built that portion of the road west from Sacramento. Before consolidating with the Central Pacific it received 424,727 acres, all of which it sold before consolidation.[74]

The California and Oregon Railroad company was to build from the Central Pacific to the Oregon line. By an extension of time it had until July 1, 1880, to complete the road. The portion from the Central railroad to Redding was built on time,[75] and the road finished to the state line during 1886.[76] Up to 1880 the company had received 1,338,039 acres and sold 366,622 acres for $2,970,365, an average of $8.95 an acre.[77] There have been patented on account of the road 2,968,698 acres.[78]

The Kansas Pacific, having the right to join the Union Pacific at any point it wished, west of the one-hundredth meridian, built to Denver and then north, joining the Union Pacific at Cheyenne.[79] In 1880 the company had received 828,830 acres and sold 1,291,454 acres for $4,419,960, an average of $3.42 an acre.[80] The total number of acres patented on account of the grant is 3,170,184 acres and 4,120,901 acres have been disposed of for $13,487,437, with $2,851,567 outstanding on time sales. No more lands will be patented to the company except those sold to actual purchasers before November 1, 1895.[81]

The Denver Pacific received the grant for that portion of the road between Denver and Cheyenne. By 1880, 49,811 acres had been patented to the company and 160,731 acres sold for $731,881, an average of $4.44 an acre.[82] In 1897 there had been 403,256 acres patented and 582,722 sold, the receipts amounting to $2,219,799, with $439,114 outstanding.[83]

The extension of the Hannibal and St. Joseph was known as the Central Branch of the Union Pacific. This received a grant for 100 miles of road of which there had been patented up to 1880, 187,608 acres.

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[72] Ibid., 1897, 86.
[73] Ibid.
[74] Donaldson, *Public Domain*, 920.
[75] Donaldson, *Public Domain*, 806.
[76] Poor, *Railway Manual*, 1888, 937.
[77] Donaldson, *Public Domain*, 920.
[78] Railroad Commissioner, *Report*, 1897, 86.
[79] Davis, *Union Pacific Railway*, 108*n*.
[80] Donaldson, *Public Domain*, 918.
[81] Railroad Commissioner, *Report*, 1897, 75, 74.
[82] Donaldson, *Public Domain*, 919.
[83] Railroad Commissioner, *Report*, 1897, 75.

The company had sold about 170,000 acres on an average of $5 an acre.[84] In 1897 there had been patented to the company 219,531 acres. No report was made on the amount sold or the price obtained for its lands. During the previous year the receipts were $676 and the expenses $51. The secretary of the interior has suspended the issuance of patents except for lands sold to bona fide purchasers before the default of the company on its indebtedness to the government, January 1, 1896.[85]

The branch from Sioux City was built by the Sioux City and Pacific company in 1869. The company received 41,318 acres which it sold April 15, 1875, to the Missouri Valley Land company for $200,000.[86]

Under the act of July 25, 1866,[87] that portion of the line from the Central Pacific to Portland was to be disposed of by the legislature of that state. This conferred the grant upon the Oregon Central company which built from Portland to Roseburg, one hundred and ninety-seven miles, on time.[88] The remainder of the road was completed in December, 1887.[89] An act of January 31, 1885, forfeited the lands opposite to all portions of the road not then completed, i. e., from Roseburg to the state line.[90] The road has received 2,287,131 acres and it is estimated that 227,992 acres remain unpatented.[91] Up to 1880 it had sold 82,072 acres for $175,650.[92] By 1886 237,773 acres had been sold for $384,389, with $385,647 due on time sales.[93] In 1897 the sales had amounted to $382,443 acres for $1,020,329, with $775,881 outstanding. During the previous year the receipts had amounted to $33,724, and the expenses $60,012. The average price now asked for the lands is $3.00.[94]

The amendatory act of 1864 had also provided for an extension of the Burlington and Missouri River road through Nebraska to connect with the Union Pacific not further west than the 100th meridian. In 1870 the point of connection with the Union Pacific was changed to at or near Fort Kearney.[95] The road was opened for traffic September 2, 1872.[96] There have been received on account of the grant 2,374,090 acres. By December 31, 1879, there had been sold 1,574,392 acres for

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[84] Donaldson, *Public Domain*, 921.
[85] Railroad Commissioner, *Report*, 1897, 97.
[86] Donaldson, *Public Domain*, 922, 778.
[87] *Statutes at Large*, xiv, 239.
[88] Donaldson, *Public Domain*, 807.
[89] Poor, *Railway Manual*, 1888, 914.
[90] *Statutes at Large*, xxiii, 296.
[91] Commissioner of the General Land Office, *Report*, 1897, 232, 223.
[92] Donaldson, *Public Domain*, 779.
[93] Railroad Commissioner, *Report*, 1886, 596.
[94] Ibid., 1897, 137.
[95] *Statutes at Large*, xvi, 118.
[96] Donaldson, *Public Domain*, 922.
[97] Commissioner of the General Land Office, *Report*, 1897, 231.

$8,556,782.[98] In 1880 the road consolidated with the Burlington and Missouri River company as the Chicago, Burlington, and Quincy. In 1886 the new company had disposed of 2,673,345 acres under both grants for $15,725,314.[99] In 1897 there had been sold 2,374,501 acres, the receipts amounting to $11,201,463, with $305,674 outstanding on time sales. During the previous year the receipts were $75,035, and the expenses $29,136. The remaining lands are held at an average of $4.00 an acre.[100]

July 13, 1866, a grant was made to the Placerville and Sacramento Valley railroad company for a road from Folsom to Placerville, California.[101] This grant was forfeited in 1874,[1] and no lands have been patented on account of it.

A grant for a road from Stockton to Copperopolis, California, which was made by an act of March 2, 1867,[2] was also forfeited in 1874.[3] No lands have been patented to this road.

The grant for a road to the Pacific by the northern route was made July 2, 1864, to the Northern Pacific Railroad company, which was to build from a point on Lake Superior to a point on Puget's Sound, with a branch to Portland, via the valley of the Columbia. The grant amounted to ten sections per mile in the states and twenty sections in the territories, and the road was to be completed by July 4, 1876.[4] In 1866 the time for building the road was extended two years,[5] and in 1868 the original act was amended so as to fix the time at July 4, 1877.[6] It was, however, held that the effect of these provisions was to make the final limit July 4, 1879, the act of 1866 being considered as amendatory of the act of 1868.[7] Within the time required there were constructed 531 miles of road, leaving 1,739 miles to be built.[8] In 1883 the through line from Ashland to Portland was opened,[9] but as the branch between Wallula and Portland had been built by another company it was forfeited by the act of 1890.[10]

Up to 1880 there had been patented to the company 746,509 acres, while it had sold 2,593,983 acres for $9,089,453.[11] By 1886 11,459,836 acres

[98] Poor, *Railway Manual*, 1880, 924.
[99] Railroad Commissioner, *Report*, 1886, 603.
[100] Ibid., 1897, 111.
[101] *Statutes at Large*, xiv, 94.
[1] Ibid., xviii, 29.
[2] *Statutes at Large*, xiv, 548.
[3] Ibid., xviii, 72.
[4] Ibid., xiii, 365.
[5] Ibid., xiv, 355.
[6] Ibid., xv, 255.
[7] Commissioner of the General Land Office, *Report*, 1879, 109–111.
[8] *House Reports*, 1st sess. 48th Cong., no. 1256, p. 3.
[9] Railroad Commissioner, *Report*, 1897, 131.
[10] Commissioner of the General Land Office, *Report*; 1891, 39.
[11] Donaldson, *Public Domain*, 779.

had been patented and 5,830,871 sold for $20,856,000, with $3,676,204 due on time sales.[12] In 1895 8,466,250 acres had been sold by the company for $34,273,375, with $4,280,438 still due. The average price had been $3.92 an acre.[13] In the balance sheet of the company for 1898 the net proceeds of the land department were given as $3,624,712.[14]

An act of July 27, 1866, chartered the Atlantic and Pacific Railroad company, which was to build from Springfield, Missouri, to the Pacific coast by the southern route.[15] As allowed by the charter the company purchased the South Pacific road, which had received a grant over the same route as far as the southern boundary of Missouri.[16] The road was to be constructed by July 4, 1878. By that date the line had been built from Springfield to Vinita, Indian Territory.[17] In 1886 the lands opposite the uncompleted portions of the road were declared forfeited.[18] By that time the road had been extended to Sapulpa (76 miles) by the St. Louis and San Francisco company, and from near Albuquerque, N. M., to the Colorado river (559 miles) by the Atchison, Topeka, and Santa Fé company.[19] According to the report of the land office there have been patented to the company 1,222,012 acres, and it was estimated that 3,476,041 acres were still due.[20] But according to the report of the railroad commissioner 708,723 acres only have been patented.[21] Of these 220,259 acres had been sold in 1880 for $623,369,[22] while by 1897 all of the lands which the company reported as having received, 708,523 acres, were reported as sold. The total receipts from land sales had been $3,940,483, but during the previous year the receipts had only been $92.03, while the expenses were $13,462.12.[23]

Section 18 of the Atlantic and Pacific act authorized a connection with the Southern Pacific road of California and made a similar grant to that road.[24] Within the time required by the granting act there were built the sections of the road between San Jose and Tres Pinos, 50 miles, and between Huron and Mojave, 182 miles.[25] The line was afterward built from Mojave to the state line, and from Huron to

[12] Railroad Commissioner, *Report*, 1886, 595.
[13] Ibid., 1895, 151.
[14] Northern Pacific Railway Company, *Report*, 1898, 31.
[15] *Statutes at Large*, xiv, 292.
[16] Supra, p. 115.
[17] Donaldson, *Public Domain*, 807.
[18] *Statutes at Large*, xxiv, 123.
[19] Poor, *Railway Manual*, 1888, 744–5.
[20] Commissioner of the General Land Office, *Report*, 1897, 232, 228.
[21] Railroad Commissioner, *Report*, 1897, 105.
[22] Donaldson, *Public Domain*, 779.
[23] Railroad Commissioner, *Report*, 1897, 105.
[24] *Statutes at Large*, xiv, 299.
[25] Donaldson, *Public Domain*, 808.

Aclade. In 1890 the lands along the portion between Tres Pinos and Aclade were forfeited.[26] The grant to the Texas Pacific also authorized the Southern Pacific company to connect with the Texas Pacific at the Colorado river.[27] This road was completed January 23, 1878.[28] On account of this grant the company has received 2,672,753 acres.[29] In 1880 it had sold 279,623 acres for $1,999,396.[30] By 1886 there had been sold 961,950 acres for $3,467,681, with $2,472,541 due on time sales.[31] In 1897 the company reported that it had received 3,186,301 acres, of which 3,544,970 acres had been disposed of. The total receipts from the lands had been $9,167,290, while $3,234,006 were due on time sales. The receipts of the land department during the year were $73,773 and the expenses $30,326.[32]

The Texas and Pacific grant was made March 3, 1871, and provided for a road from Marshall, Texas, to San Diego, California, via El Paso and the Colorado river, which was to be crossed near the southern boundary of California. The road was to be built within ten years,[33] which time was extended to May 2, 1882. As there were no United States lands in Texas the grant only began at El Paso, and the company had not built to that point when the time for the completion of the road expired. This was due, however, to the fact that the Southern Pacific company had built east from Yuma to El Paso, without the authorization of Congress. The Texas Pacific released its rights under the land grant to the Southern Pacific, but in 1885 the entire grant was forfeited.[34]

Section 23 of the act granting lands to the Texas Pacific provided for a grant to the New Orleans, Baton Rouge, and Vicksburg company for a road from New Orleans, via Baton Rouge and Alexandria, to connect with the Texas Pacific. The road was to be constructed by March 3, 1876. The company located its line from New Orleans to Baton Rouge on the east side of the Mississippi, and thence via Alexandria and Shreveport to the Texas line. No portion of the road was constructed by the company, and in 1880 it assigned to the New Orleans Pacific, a company which was building a line from Texas to Baton Rouge over the same route as the other company, but which had built

[26] Commissioner of the General Land Office, *Report*, 1891, 39.
[27] Donaldson, *Public Domain*, 929.
[28] Ibid., 1897, 232.
[29] *Statutes at Large*, xvi, 579.
[30] Donaldson, *Public Domain*, 779.
[31] Railroad Commissioner, *Report*, 1886, 621.
[32] Ibid., 1897, 152.
[33] *Statutes at Large*, xvi, 573.
[34] Ibid., xxiii, 337.

from Baton Rouge to Vicksburg along the west bank of the Mississippi.[35]

An act of February 8, 1887, forfeited the grant on the east side of the river and the lands opposite to portions of the road then unconstructed by the New Orleans Pacific prior to January 5, 1881, the date of the conveyance from the New Orleans, Baton Rouge, and Vicksburg.[36]

The company has received 980,587 acres under the grant, while 109,137 acres remain unpatented.[37] In 1886 the company stated that no sales had been made. Since then the company has failed to make reports on its land grant.

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[35] Donaldson, *Public Domain*, 857–8.
[36] *Statutes at Large*, xxiv, 391.
[37] Commissioner of the General Land Office, *Report*, 1897, 232, 223.

APPENDIX B.

BIBLIOGRAPHY.

Sources.

The chief source for the history of land-grant legislation, is the report of debates in Congress, published as the *Congressional Globe* from 1833 to 1873, and as the *Congressional Record* from 1873 to the present time. For an outline of the proceedings without the discussion, the *House Journal* and *Senate Journal* are usually more accurate and have been used in case of differences in the reports. In connection with the debates in Congress, I have consulted many documents, such as committee reports, etc., which appear as *Reports of Committees* (House), *House Reports*, *Senate Reports*, *House Executive Documents*, *House Miscellaneous Documents*, *House Documents*, *Senate Executive Documents*, *Senate Miscellaneous Documents*, and *Senate Documents*. The most important public documents relating to the public domain are collected in a publication edited by Thomas Donaldson, *The Public Domain*, Washington, 1884. Reference has been made to the documents reprinted there rather than to the original reports themselves, as they seem to be substantially accurate. Messages and proclamations of the presidents often relate to land grants and can be found in the collection edited by James D. Richardson, *Compilation of the Messages of the Presidents*, 1789–1897, 10 vols., Washington, 1896–99.

All the laws are published in the *Statutes at Large*, to which reference has been made. The land laws have been collected in two sets, one containing those of a general and permanent character in one volume, and the other those of a local and temporary character in two volumes. (*H. R. Mis.*, *Doc.* 45, parts 1, 2, and 3, 47th Cong., 2d session). Land grant acts are in the latter collection, arranged chronologically under the different states.

For Appendix A, a wide range of sources has been used. Poor's *Manual of the Railroads of the United States* has been of great service. Decisions of the Supreme Court of the United States and of the various state courts often give the history of roads receiving grants. When the matter came before Congress the reports of the Senate and House committees are of great value. Various local and railroad histories have

been used, care being taken in each case to test their accuracy. The reports of the Auditor of Railway Accounts, later the Railroad Commissioner, contain reports of the operations of the land departments of many of the land-grant roads. Of course the only sources for the statistics of land sales are the accounts kept by the companies, and all estimates are based on the reports concerning their land to boards and commissioners. The danger of inaccuracy is increased the further the report used is from these original sources.

Secondary Works.

No study of the history of railroad land grants had as yet appeared.[1] General histories have neglected the subject and little is given in the general accounts of the public domain. Of these general accounts the best is that of Sato, *History of the Land Question in the United States*, in the *Johns Hopkins University Studies in Historical and Political Science* for 1886. The article by Worthington C. Ford, *Public Lands of the United States*, in Lalor, *Cyclopaedia*, volume III, is good and brief. The historical part of Donaldson's *Public Domain* must be used with caution, but, on some points, is the only available account.

Very few histories of railroads in the various states have been published. Mention may be made of Cary, *Organization and History of the Chicago, Milwaukee, and St. Paul Railroad Company* [Milwaukee, 1893]; and B. H. Meyer, *History of Early Railroad Legislation in Wisconsin*, Wisconsin Historical Collections, Vol. XIV, 206–300, and *Early General Railway Legislation in Wisconsin, 1853–1874*, *Transactions Wisconsin Academy of Sciences, Arts and Letters*, Vol. VII, Part I, 337–338.

Histories of the Pacific roads have appeared, of which the best are Davis, *The Union Pacific Railway*, and White, *History of the Union Pacific Railway, Economic Studies of the University of Chicago*, No. 2. H. H. Bancroft, in his *History of California*, volume VII, has an excellent chapter on the various projects advanced for the road.

The administrative and legal side of the grants have been treated in books on railway law. The best of these, as far as this feature is concerned, is that of B. K. and W. F. Elliott, *Treatise on the Law of Railroads*. 4 vols., Indianapolis and Kansas City, 1897. Rorer, *Treatise on the Law of Railways*, 2 vols., Chicago, 1884, give a less complete account.

It has not seemed advisable to repeat here the references to general secondary authorities cited in the notes. Outside of the public records

[1] A summary of the present monograph was given in a paper read before the Wisconsin Academy of Sciences, Arts, and Letters and published in its *Transactions*, Vol. XII, Part I, 306–16.

and periodical literature there is little relating to grants of lands for railroads. On the passage of the Illinois Central bill there is an account coming indirectly from Douglas, published in Cutts, *Brief Treatise on Constitutional and Party Questions*,[2] which is so inaccurate that I have rejected it altogether. As this has commonly been received as authoritative, a few of its mistakes will be pointed out. The statement is made by Douglas that between the sessions of the thirtieth and thirty-first Congresses he made an agreement with the directors of the Mobile and Ohio road by which he was to incorporate a grant to that road in the Illinois Central bill, and in return the legislatures of Alabama and Mississippi would instruct their Senators and Representatives, who had before opposed the Illinois Central grant, to support the bill. Douglas said: "The bill, when first introduced, had been opposed by the Senators from Mississippi, Davis and Foote, on the ground of its unconstitutionality, and also by the Senators from Alabama, King and Clement, and by the members of the House from those states." As a matter of fact, on the question of the third reading of the bill, Davis and Foote voted in favor of it, and the Senators from Alabama, Bagby and Lewis (not King and Clement), voted against it.[3] On a similar question in the House three of the Alabama delegation voted against the bill and four did not vote, while of the Representatives from Mississippi two voted for and one against the bill and one did not vote.[4] Nor do the laws of Mississippi and Alabama contain any resolution instructing a vote in favor of the grant.

The account given by Douglas of the final consideration of the bill in the House is as follows: "When the bill stood at the head of the calendar in the House, Mr. Harris, of Illinois, moved to clear the Speaker's table, and the motion was carried. We had counted up and had fifteen majority for the bill pledged to support it. * * * The House proceeded to clear the Speaker's table, and the clerk announced 'A bill granting lands to the state of Illinois,' etc. A motion was immediately made by the opposition, which brought on a vote, and we found ourselves in a minority of one. * * * Harris, quick as thought, pale and white as a sheet, jumped to his feet and moved that the House go into committee of the whole on the slavery question. There were fifty members ready with speeches on this subject, and the motion was carried." What really happened on July 31 was as follows: Inge, of Alabama, (not Harris), moved to proceed to the business on the Speaker's table. The Illinois bill came up and Richardson, of Illinois, moved the

[2] For a reprint of this see Donaldson, *Public Domain*, 262–4.
[3] *Globe*, 1st sess. 30th Cong., 723.
[4] *House Journal*, 1st sess. 30th Cong., 1270.

previous question, and Jones, of Tennessee, moved to lay the bill on the table. Duer, of Connecticut, (not Harris), moved to go into committee of the whole, which was carried by a vote of 102 to 71.[1] No other vote had been taken.

Douglas then explains how the bill was reached again after it had gone to the foot of the calendar by the vote to go into committee of the whole. "It occurred to me that the same course pursued with other bills would place them, each in turn, at the foot of the calendar, and thus bring the Illinois bill at the head. * * * The motion to clear the table, and go into committee of the whole on the slavery question, would each have to be made ninety-seven times, and while the first motion might be made by some of our friends, or the friends of other bills, it would not do for *us*, or any one known to be a warm friend or connected with *us* to make the second motion, as it would defeat the other bills and alienate from us the support of their friends. I thought a long while and finally fixed on Mr. ———, who, though bitterly opposed to me (politically), yet I knew to be my personal friend. Living up in———, he supported the bill, but did not care much one way or the other whether it passed or not, voted for it but was lukewarm." So an arrangement was made with Mr. ——— by which he made the necessary motion to go into committee of the whole, and thus forced the bill to the head of the calendar. But between July 31 and September 17, when the bill was passed, the only person who could correspond to Douglas' statement made such a motion seventeen times. This was Bagly, of Virginia, who was not opposed to Douglas politically and did not vote in favor of the bill. No one else made the motion with any frequency.

The fact that these accounts are based on conversations with Douglas, some nine years after the occurrences, and not written out in their final form by Cutts until much later would also tend to discredit their accuracy. Douglas probably gave the facts as well as he would recollect them, but the lapse of time was too great for anything approaching exactness.

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[1] *House Journal*, 1st sess. 31st Cong., 1490.