known as the Presidio del Norte. All of our Texas was then Spanish country; he was escorted through this, by way of San Antonio, along the old Spanish trail, to the town of Natchitoches, then our frontier post in that quarter, where he was once more a free American citizen, under the protection of the flag he loved so well.

Pike had been given up for lost by his friends, and was received back with acclamations only less resounding than those which had greeted Lewis and Clark the year before. The political aspect of affairs rendered everything relating to New Spain a matter of the utmost interest. Public curiosity was excited by the rumors of this El Dorado which the jealous temper of Spain sedulously strove to conceal. The history of his tour in that region was eagerly awaited. A friend had already (in 1807) published for Pike a short account of his Mississippi exploration, which had been well received, and Pike immediately set about the work which immortalized his name. This appeared as a short octavo volume in 1810, was soon reprinted as a quarto in London, and also republished in a French translation.

Pike was rapidly promoted to be colonel and brigadier-general, and with the latter rank he led the forces which made the assault on York (old Fort Toronto), April 27, 1813. Here he fell mortally wounded by the explosion of a magazine, and closed his gallant career a few hours afterward.

THE DES MOINES RIVER LAND GRANT.

BY COL. C. H. GATCH.

[THIRD PAPER.]

As to who were the intended beneficiaries of the joint resolution, and whether or not it was intended to exclude the Navigation Company and its grantees so far as such intention can

be gathered from the language of the resolution itself and the debates at the time of its passage, the Supreme Court of the United States in the last decision, United States vs. Des Moines Navigation & Railway Company, 142 U. S., 510, which is conceded to have finally closed the long protracted legal controversy, uses the following language in the opinion, page 530:

"If Congress had intended to distinguish between settlers and other purchasers, it would not have used language whose well-understood meaning included both. If anything can be drawn from the debates in Congress at the time of the passage of this resolution, it sustains this construction. As appears from the Senate proceedings, when the resolution was pending, the fact that a large portion of these lands had been conveyed to the Navigation Company for work done on the improvement, was stated, and an attempt was made to limit the relinquishment to lands 'by the said State sold to actual settlers.' Instead of that, the words now used were inserted, to-wit: '*bona fide* purchasers under the State of Iowa.'"

It having been a question from the beginning whether or not the grant extended above the Raccoon Fork, it was quite generally assumed by those holding that it did not, ignorant either of the fact or of the effect of the "reservation" to which reference has several times been made, that all of the lands above that point within the five-mile limit were public and open to pre-emption and homestead settlement. According to a report made to the Governor of Iowa July 25, 1875, by Norman H. Hart, Charles Aldrich and John A. Hull, commissioners—

"To report, showing the name of the claimant, a description of the lands claimed, the improvements thereon, their value, the value of each tract of land, the date of the homestead pre-emption or purchase, as the case may be, the loss sustained by each claimant, and such other facts as they shall deem important, of all persons who have made improvements upon what is known as Des Moines River Lands, and have sustained or will sustain loss by reason of the decisions of the courts in favor of the title of the Des Moines Navigation & Railroad Co. or their grantees"—

There were from 1846 to and including 1872, settlements made on something more than 109,000 acres, the first of which is shown by their report to have been made by William Holeston on the southwest of the southeast of 11–82–26, in May, 1847, and the last by John Archibald on the southwest of the northwest and lot 4 in 35–84–27, in April, 1872.

Under an act of Congress approved March 3, 1873, providing for the appointment of commissioners to—

"Ascertain the value thereof, exclusive of improvements, of all such lands lying north of Raccoon Fork on the Des Moines River, in the State of Iowa, as may now be held by the Des Moines Navigation & Railroad Company or persons claiming title under it adversely to persons holding said lands either by entry or under the pre-emption or homestead laws of the United States, and on what terms the adverse holders thereof will relinquish the same to the United States"—

O. P. Chubb of Minnesota, Chas. Aldrich of Iowa and Jas. S. Robinson of Ohio, were appointed such commissioners, and November 20, 1873, made their report to the Secretary of the Interior, showing 39,549 as the number of acres; $10.22 per acre as the average value, making a total value of $404,228; and $14.25 as the average price asked by the owners, making the total price asked by owners, $563,416.

These lands it will be noticed were only such as were *then* claimed by the Navigation Company and its grantees adversely to the claims of the "settlers," the greater portion of all originally "settled" or "squatted" upon, having either been previously abandoned or a title to them having been acquired by purchase from the Navigation Company or its grantees.

Robt. L. Berner, special agent of the Secretary of the Interior, under the act of congress of March 3, 1893—

"To enable the Secretary of the Interior, to ascertain what persons made entry of lands within the limits of the so-called Des Moines River land grant for the improvement of the navigation of the Des Moines River in Iowa, the date of such entry and the respective amounts paid to the United States and the date of such payments; also, the names of persons who received certificates of entry or patents from the United States and the date of such certificates or patents; also the sum or sums paid by the holders of such certificates or patents, their heirs or assigns, to purchase the paramount title as settled by the decisions of the courts, and also the value of such paramount title in cases where such purchase has not been made by any of the holders of such certificates or patents, and to ascertain such other facts as in his judgment are necessary to enable the United States to properly and equitably adjust the claims of persons who entered upon such lands, receiving from the proper officers written evidence of entry or settlement upon any of said lands"—

In his report to the Secretary, made May 7, 1894, gives the quantity of "contested entries," covering "all the cases where the parties appeared and presented their claims," including the

claims "both of those who have and those who have not been heretofore settled with by the Government," to be 35, 904 acres. The discrepancy between the quantity shown by the first of these three lists and the greatly less quantity shown by each of the other two, is probably to be accounted for by the fact of that list having included "claims" of "squatters" in addition to those of homestead and pre-emption "settlers."

That the homestead and pre-emption "settlements" made prior to Secretary Browning's order of December, 1868, directing the cancellation of all such entries, were in the main *bona fide*, may be fairly assumed in view of the frequent rulings by different officers of the Land Department of the Government that they were public and subject to such settlement. In the case of Litchfield vs. Johnson, 4 Dillon, 551, U. S. Circuit Judge Dillon in sustaining a claim for improvements under the occupying claimant law of this State, used this language:

"There is nothing in the history of this grant, whether legislative, executive or judicial, which makes it impossible or even improbable that settlers upon these lands (river lands) prior at least to the final decree in Welles vs. Riley (1869) might not be such in good faith."

Willis Drummond, Commissioner of the General Land Office, in a communication addressed to the committee on public lands of the House of Representatives, March 16, 1874, favoring the passage of House Bill 1142, commonly known in Iowa as the Orr indemnity bill for the relief of the settlers, used this language:

"Thus the settlers are without remedy to save their homes which they have been *practically invited by the officers of the Government*, and acting in their official capacity, to rear upon these lands. . . . Considering the fact that these settlers have acted in good faith, relying upon the decisions of the government officers who were supposed to know the law, I think they are entitled to relief. . . . . As the settlers in going upon the lands had a right to believe that their titles would be perfected in the ordinary manner, and have invested their labor and means in improvements which they cannot abandon without ruinous loss, an exception to the general rules and practice should be made in their favor."

That any *bona fide* settlements were made after the decision in the Riley case is very improbable, as it and the Crilley case, decided at the same term of court and in the same way, were

understood to be test cases as to the rights of homestead and pre-emption settlers on the lands in question, and the fact and effect of the decisions were well known, not only to the settlers but quite generally if not universally throughout the river land district.

The principal legal questions that from time to time arose out of the general controversy and that have not already been sufficiently referred to, were finally determined by the Supreme Court of the United States in numerous other cases, part only of which will or need be mentioned; and before referring to any of these some preliminary matters of interest, and leading up to them, may properly be first stated.

The act of July 12, 1862, extending the original grant, contained this provision:

"And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa under the joint resolution of March 2, 1861, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: Provided, that if the State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act shall enure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

On the assumption that a portion of the original river land grant had "been sold or otherwise disposed of by the United States" as contemplated by this provision, under a special certificate of the Commissioner of the General Land Office authorizing the entry of 300,000 acres of any public lands in the State as *indemnity* for the lands so disposed of, the State by its agent, D. W. Kilbourne, made selection of 297,603 acres. Some months prior to the decision in the Wolcott case there was an "adjustment," commonly known as the "Harvey settlement," between the State of Iowa and the United States of their land account "under the act of July 12, 1862, and the joint resolution of March 2, 1861," in which the State was charged and the United States credited with 297,603 acres of land, being the lands selected as indemnity under the special

certificate just mentioned. On the assumption that the title to these indemnity lands had by virtue of their selection as stated, and their having been so treated in the adjustment, enured to the Navigation Company and its grantees in lieu of the lands assumed to have been lost by them from the original grant, it was claimed on behalf of homestead and pre-emption claimants that however the claim under the railroad grant to the lands in place might finally be disposed of, the acceptance of the indemnity lands by the Navigation Company and its grantees was an extinguishment of all claim thereto so far as they were concerned under the river grant. This was the view taken by Secretary of the Interior Browning in a communication to the Commissioner of the General Land Office dated May 9, 1868. Referring to the decision in the Wolcott case adverse to the claim under the railroad grant, he used this language:

"At the date of that decision the Des Moines River Land grant had been fully adjusted.

The State had, as before remarked, received all the land to which she was entitled on account thereof, and she is thus estopped from setting up a claim. Although this fact does not appear in the record of the case, I have shown that it is incontrovertibly established by the records of your office. It is the duty of the Department in administering the acts of Congress to give full effect to the settlement, otherwise the State would first obtain, in lieu of lands which she alleged had been 'otherwise disposed of' an indemnity amounting to an equal quantity of such lands, and then, when her right to land selected by way of indemnity had been recognized and confirmed to her, she could assert her title to the lands she alleged had been disposed of. The effect of this would give her more than she originally claimed. The effect of that decision is, therefore, only to exclude from the railroad grant, lands lying north of the fork, and to restore them to the public domain, at least so far as to subject them to the operation of the pre-emption and homestead laws."

May 9, 1868, Secretary Browning, as has been stated in a previous paper, allowed the pre-emption claim of Herbert Battin on part of a section of the lands in question, and June 10, 1868, the Commissioner of the General Land Office, on the authority of that ruling, allowed the claim of Jeremiah Elliott, pre-empting part of the same section. On the 7th day of July, 1868, in the United States Circuit Court, at Des Moines, in the suit of E. C. Litchfield vs. The Register and Receiver of

the Land Office, at Fort Dodge, a temporary injunction was granted by Justice Samuel F. Miller, of the Supreme Court, enjoining said officers from allowing further entries on any of the lands in question in Webster, Humboldt or Hamilton counties.

The following is the material part of the order granting the same:

"The clerk of the said court at Des Moines, will issue a writ as prayed for in said petition, restraining and enjoining the defendants from receiving, filing, hearing or in any way considering any applications for homesteads or pre-emptions on lands certified to the State of Iowa for the use of the Des Moines River Improvement grant in the counties of Webster, Humboldt and Hamilton."

On final hearing the bill was dismissed and on appeal to the Supreme Court of the United States—December Term, 1869—the decree of dismissal was affirmed. August 28, 1868, under instructions from Secretary Browning, the Commissioner of the General Land Office wrote the Register and Receiver, instructing them "to proceed in the duties required by the decision in the Battin case, regardless of the injunction, and to receive and file declaratory statements from actual settlers in all cases strictly falling within the ruling made in the Battin case, ... simply filing in the Circuit Court an answer denying its power to control their official action and a motion to dissolve the injunction for the want of such power." It was upon the theory thus indicated that the Supreme Court of the United States affirmed the decision of the Circuit Court dismissing the bill. At the December term, 1869, in the Hannah Riley and George Crilley cases, as has been already stated, it was finally determined that the lands were not subject to homestead or pre-emption entries. The material portion of the opinion in the Riley case, is contained in the paper preceding this.

February 27, 1869, Secretary Browning, in the case of the pre-emption claim of one Levi Hull to a quarter section of the lands in question, reversed the decision of the Commissioner of the General Land Office, holding the lands subject to pre-emption; and August 25, 1870, the then Secretary of

the Interior, Cox, in a communication to the Commissioner of the General Land Office, referring to that decision in connection with the decision of the Supreme Court in the Riley case, said:

"As the decision of my predecessor has thus been sanctioned by the Supreme Court, it is the duty of the department and of your office to execute it in all cases where it is applicable."

September 13, 1869, Felix G. Clark, Register of the Land Office, at Des Moines, in a communication to the Commissioner of the General Land Office, said:

"Hundreds of persons who have settled upon and claim lands situated within the Des Moines River grant, above the Raccoon Fork, are continually, daily, making inquiry at this office in relation to their claims, the probable result or final decision of your department, and they are growing very impatient and give me much trouble. There are quite a number of cases on my desk not disposed of, awaiting some action in your department. I write to inquire if anything has been done or is likely to be, soon, that will settle this long-pending controversy about the Des Moines River lands. It is a great curse to our State."

In 1873, the cases of Williams vs. Baker, and Cedar Rapids R. R. Co. vs. The Des Moines Navigation Co., 17 Wall., 144, and Homestead Co. vs. Valley Railroad, 17 Wall., 153, were decided. In the opinion in United States vs. Des Moines, etc., Co., 142 U. S., before referred to, the court says of these cases:

"The first two cases were disposed of by one opinion. Both were suits to quiet title. One side claimed under the river grant and the other under the railroad grant of 1856. Decrees in favor of the river grant were sustained." . . .

"In the third case (Homestead Co. vs. Valley Railroad), which was also a contest between a claimant under the railroad grant and parties claiming under the river grant, the validity of the latter was affirmed and in this opinion the court said: 'It is therefore no longer an open question that neither the State of Iowa nor the railroad companies for whose benefit the grant of 1856 was made, took any title by that act to the lands then claimed to belong to the Des Moines River grant of 1846; and that the joint resolution of 2d of March, 1861, and the act of 12th of July, 1862, transferred the title from the United States and vested it in the State of Iowa for the use of its grantees under the river grant.'"

In 1879 another phase of the legal controversy came before the same court in Woolsey vs. Chapman, 101 U. S., 755. The claim there adverse to the river grant originated as follows: July 20, 1850, the agent of the State having charge of the school lands, selected the particular tract in controversy as a

part of the 500,000-acre school land grant, and in 1853 a patent was issued thereon by the State to Woolsey. Under the school land grant no rights accrued to the State until the lands were selected by the agent of the State, and this particular tract was not selected until July 20, 1850, several months, as it will be observed, after the date of the reservation under the river land grant. The deed from the State to the Navigation Company under which Chapman claimed was subsequent to the patent from the State to Woolsey, and it was contended that Chapman could not question the title thus previously conveyed; but the court say in the opinion:

"Of this we entertain no doubt. If the State had no title when the patent issued to Woolsey, he took nothing by the grant. No question of estoppel by warranty arises, neither does the after acquired title enure to the benefit of Woolsey, because when the United States made the grant in 1861 (by the joint resolution) it was for the benefit of *bona fide* purchasers from the State, under the grant of 1846. . . The original grant contemplated sales by the State in execution of the trust created, and the *bona fide* purchasers referred to (in the joint resolution) must have been purchasers at such sales. This being so, the grant when finally made enured to the benefit of Chapman rather than Woolsey."

At the same term the case of Litchfield vs. The County of Webster, 101 U. S., 773, was decided, in which the question was at what time the title to these river lands passed from the United States and the lands therefore became subject to taxation. The question is disposed of in the opinion as follows:

"We think, however, that for the year 1862 and thereafter they were taxable. By the joint resolution Congress relinquished all the title the United States then retained to the lands which had before that time been certified by the Department of the Interior as part of the river grant and which were held by *bona fide* purchasers under the State. . . . This relinquishment enured at once to the benefit of the purchasers for whose use the relinquishment was made. All the lands involved in this suit had been certified, and Litchfield, claiming under the river grant, or those under whom he claims, were *bona fide* purchasers from the State."

In 1883 the case of Dubuque & Sioux City R. R. Co. vs. Des Moines Valley R. R. Co., 109 U. S., 329, on error to the Supreme Court of Iowa, which was an action to recover lands and quiet title, and in which the parties respectively claimed under the railroad grant of 1856 and the river grant, it was said in the opinion: "The following are no longer open ques-

tions in this court. . . . 3. That the act of July 12, 1862, c. 161, Stat., 543, 'transferred the title from the United States and vested it in the State of Iowa, for the use of its grantees under the river grant.'" Citing Wolcott vs. Des Moines Co., Williams vs. Baker, Homestead Co. vs. Valley Railroad and Woolsey vs. Chapman.

In 1886 in the case of Bullard vs. Des Moines & Ft. Dodge R. R. Co., 122 U. S., 167, on error to the Supreme Court of Iowa, the contention on behalf of the plaintiff in error was that the resolution of 1861 which relinquished to the State the title to the lands held by *bona fide* purchasers under it, operated to terminate the *reservation* from sale made by the land department for the benefit of the river grant, and thus to leave all lands above the Raccoon Fork, not held by *bona fide* purchasers, open to settlement up to the act of 1862, which in terms extended the grant to the northern limits of the State. The title of the plaintiff in error rested upon three settlements, two of which were made in May, 1862, a few days before the passage of the act of July in the same year, and one made after the passage of that act; but the court held that the reservation was not terminated by the joint resolution and that the lands were therefore subject to the reservation at the time the first two settlements were made, and that after the act of 1862 extending the grant, "no title could be initiated or established because the land department had no right to grant it."

In the reference previously made to the Goodnow tax cases, the conflict between the State and United States Supreme Court decisions, and how the former were made to prevail over, or rather evade the latter, not having been referred to, will be noticed here.

In the case of Homestead Company vs. Valley Railroad, the title having been held to have passed under the river grant, upon the alternative prayer of the Homested Company to be re-imbursed in that event the amount of taxes paid by it, the court holding adversely to the claim said:

"It is true in accordance with our decision that the taxes on these lands were the debt of the defendants which they should have paid, but their refusal or neg-

lect to do this did not authorize a contestant of the title to make them its debtor by stepping in and paying the taxes for them without being requested so to do. Nor can a request be implied in the relation which the parties sustain to each other. There is nothing to take the case out of the well established rule as to voluntary payment. If the appellants, owing to their too great confidence in their title, have risked too much, it is their misfortune, but they are not on that account entitled to have a tax voluntarily paid refunded by the successful party in this suit."

In the case of Goodnow vs. Moulton, 67 Iowa, 555, prosecuted by Goodnow as assignee of the Homestead Company for the recovery of part of these same taxes, the defense of voluntary payment having been relied upon and the case of Homestead Company vs. Valley Railroad cited as authority, the Supreme Court of Iowa, overlooking the above quoted paragraph of the opinion in that case, say in their opinion:

"We have looked in vain for anything in the statement of the questions involved or the opinion of the court which tends to show with any degree of certainty that the right of the plaintiff to recover the taxes paid was in the case." And held the taxes paid by his assignor recoverable by Goodnow.

In the subsequent case of Goodnow vs. Stryker, the same court, though having in the mean time discovered its oversight in the Moulton case, refused to follow the decision in Homestead Co. vs. Valley Railroad saying:

"Since the decision in Goodnow vs. Moulton we cannot follow the decision in Iowa Homestead Co. vs. Des Moines Navigation & Railroad Co."

This and a number of other cases decided by the Supreme Court of Iowa in the same way, were taken on error to the Supreme Court of the United States where, following the decisions of the State Supreme Court rather than its own previous decision in Homestead Co. vs. Valley Railroad, for the reason that the decision of the State Court did not depend upon a "Federal question," they were affirmed, except one or two of them in which the parties were the same as in the Homestead Company case, and the plea of former adjudication had been interposed, which were reversed.

While so entitled in the official report and nearly always referred to by that title, Homestead Co. vs. *Valley Railroad*, is misleading, the Des Moines Navigation & Railroad Co. and a

number of its grantees, including E. C. Litchfield, John Stryker and Wm. B. Welles, being the defendants, and not as the title imports, the Des Moines Valley *Railroad Company*, and it only.

After these repeated decisions affirming or collaterally recognizing the legal title of the Navigation Company and its grantees, the settlers abandoning any further contest in their own right, instead of joining forces and influence with the opposing claimants and making a more determined fight for indemnity, were unfortunately misled into the belief that the United States might, in a suit for that purpose, have the certification under the river grant, the settlement between the State and Navigation Company, and the conveyances to the Company pursuant to the settlement, cancelled and set aside and the title to the lands quieted and confirmed in itself; and that when the title should thus be again at its disposal, it would quiet and confirm title in them to their homes. The absurdity of the Government being able to thus rehabilitate itself with the title which, as held by its own court of last resort in the numerous cases to which reference has been made, it had by the joint resolution of 1861, expressly "relinquished" to the State of Iowa," for the use of its grantees, including the Navigation Company and its grantees, seemed not to occur to them, or, what is more surprising, to their better informed advisers. So determined, however, were they to further contend for the land by means of a Government suit, rather than for indemnity, that notwithstanding they were allowing hundreds of judgments for possession to be rendered against them without resistance, they refused to be dispossessed, and in one way or another were generally successful in either outwitting or intimidating the officers in their efforts to eject them. By means of a secret organization known as the "Settlers' Union" they were always able on very short notice to concentrate a sufficient force for that purpose wherever writs were to be executed. The plan usually adopted was to allow the officer, who generally came provided with teams and help for the purpose, to execute his writ by removing the oc-

cupant and his goods from the premises, and as soon as he was out of sight, with the help that had been summoned, to resume possession. Evidently such a condition of things could not long continue. Either the judgments and process of the courts must on the one hand be respected and obeyed, or, on the other, openly and forcibly set at defiance. The latter was the result.

In July, 1888, a writ of possession was issued on a judgment for possession obtained by Mr. Litchfield against one Grosenbacher and placed in the hands of Deputy United States Marshal Holbrook of Fort Dodge for execution. Grosenbacher submitted without resistance to removal, but as soon as Holbrook had gone, with the aid of some of his neighbors, moved back again. On returning a short time afterward to again evict him, Holbrook was several times shot at from ambush, one shot only taking effect, and though not seriously hurt, he deemed it wise to desist from further attempt to execute the writ. As the event created unusual excitement throughout the river land district, and but for an interference hereafter to be mentioned would almost certainly have led to serious and fatal collisions in more determined efforts to effect other numerous contemplated evictions, some particulars concerning it may be of interest. According to one report:

"Before Holbrook was hit he heard caps snap on a gun and saw the smoke from it. The report was loud enough to attract his attention and he said to Grosenbacher, 'What was that?' Grosenbacher, keeping away from him, said, 'You will find out.' Holbrook then thinking some one might be shooting at him said they had better not waste any ammunition and walked away from Grosenbacher toward his team that was standing near, when a loud report, as if from a shot gun, was heard and he was struck by two large shots, one in the hip and one in the arm. One of the horses was also hit by one shot and several struck the harness. The smoke came from north of the house in the edge of the corn field close to the willows. Holbrook is sure there was only one shot fired at the time he was hit. This is quite different from Grosenbacher's statement, as he says three shots were fired at this time."

The following is an account of the effect produced by the occurrence, given by a gentleman of intelligence and reliability, and who was specially interested in investigating the matter:

"After the shooting the settlers and the whole country were wild with excitement. All kinds of ridiculous stories were circulated, one of which was that the river land company was going to send soldiers here, and after dispossessing the settlers by force would destroy and devastate all their improvements. Another story was that all members of the Settlers' Union were to be arrested. The settlers evidently made up their minds that this was to be done, and that troops were to be brought to arrest the whole Settlers' Union. Acting under this belief, there is no doubt they have been making systematic preparations for war. I am told, although I do not know how reliable the information is, but it seems to be reliable, that they have purchased dynamite and fuse wire, and have been purchasing arms on a large scale. This was done with the belief, as above stated, that there were to be wholesale arrests."

Subsequently another writ was issued and placed in the hands of another Deputy for execution. Forewarned by the experience of Holbrook, he went with sufficient help and *equipment* for any emergency. The following is his report of the result. After stating the fact of his arrival at the farm he proceeds:

"I took a position between the house and the field where Grosenbacher was working, so as to keep him from getting to his house and getting any fire arms, as he is an excitable man and his ignorant son is foolish enough to shoot. Grosenbacher came on a run towards us, saying he would shoot the first man who would enter his house. I took out my revolver and told him to stay where he was, and if a shot was fired he would abide by the consequences. His son was behind him and motioned to the hired man to go to the hay stack. I told the hired man to fall in line, then told the men to clean out the house. I made the son take a seat and kept him until everything was moved off the place, and then talked with him about the shooting of Marshal Holbrook. He told me five shots were fired for the purpose of notifying the Marshal, and the sixth one was fired to hurt him, and then he went off lively. He said, 'You people may get it before long.' He then wanted to go to the house to get his coat, saying he was cold. I told him to remain where he was; a little freezing out would do him good."

The situation now became very critical. Numerous writs were in the hands of U. S. Marshal Desmond for execution and he was preparing to execute them at whatever hazard. On the other hand the settlers, as was generally believed, were well organized and prepared for armed resistance. At this threatening juncture U. S. District Judge Shiras of the Northern District of Iowa, where the writs were to be executed, knowing that a suit was about to be commenced by the Government of the character and with the object already indicated,

took the responsibility of directing the Marshal to return the writs without attempting their execution, thus averting what might have proved very serious and fatal collisions and the possible necessity of the calling out of troops in aid of the Marshal. The suit that was soon thereafter commenced and forever put an end to the long and vexatious legal controversy will be referred to at some length in a concluding paper.

Going back in time to the first suggestion of the proposed government suit: Deeming it best, if not necessary, that such a suit should be first authorized by act of Congress, the Forty-ninth Congress passed such an act, but it was vetoed by President Cleveland March 11, 1886. After giving his reasons for refusing his approval, he said in his message:

"Should there be meritorious cases of hardship and loss caused by an invitation on the part of the Government to settle upon lands apparently public, but to which no right nor lawful possession can be secured, it would be better, rather than to attempt a disturbance of titles already settled, to ascertain such losses and do equity by compensating the proper parties through an appropriation for that purpose."

The General Assembly of Iowa, being in session at the time of the passage and veto of this act, two days after the veto message was delivered, adopted a preamble and concurrent resolutions introduced by Senator, now U. S. District Judge, Woolson, reciting in the preamble, among other things, that citizens of the State "in good faith and under the invitation of the Government" had settled upon the lands in question and that the General Assembly had "at different sessions by memorials and joint resolutions expressed the urgent desire of the State that Congress should promptly pass a bill looking to proceedings quieting the title to such settlers and permitting them to own and continue to occupy the homes they had made on such lands," and resolving as follows:

"*Be it resolved by the Senate of the Twenty-first General Assembly of Iowa, the House of Representatives concurring*, That the Iowa delegation in Congress merit the thanks of this General Assembly, which are hereby tendered, for their efficient efforts in obtaining the passage of said bill.

Resolved further, That it is with deepest regret that this General Assembly has learned of the veto of said measure by the President, and that by this veto the President has disappointed the just expectations of the people of Iowa."

At the next session of the General Assembly, the writer of this sketch, then a member of the Senate, convinced that the only remedy possible was indemnity, introduced a concurrent resolution memorializing Congress to grant that form of relief, in the preamble to which it was recited, among other things, that the settlers located on the Des Moines River Lands had "entered upon the same in good faith with the intent to make pre-emption and homestead entries in accordance with decisions of the Department of the Interior that the same were public lands and subject to pre-emption and homestead entry," and that "by repeated decisions of the Supreme Court of the United States the lands so entered upon by such settlers" had been held not to have been subject to such entry, but to have passed to the State of Iowa under the joint resolution of March 2, 1861, for the benefit of *bona fide* purchasers thereof from the State. The resolution itself was as follows:

"*Be it resolved by the Senate of the State of Iowa, the House of Representatives concurring*, That our Senators and Representatives in Congress be, and they are hereby requested, to use their best endeavors to secure the prompt enactment of a law whereby full and complete indemnity shall be provided for all persons who in good faith and with intent to obtain title thereto under the pre-emption or homestead laws of the United States, have entered upon any of said lands not subject to such entry for the reason that the same were reserved from entry and sale, as belonging to the Des Moines River Land Grant of August 8, 1846."

A direct vote on the resolution was prevented by the adoption of the following substitute, offered by Senator Woolson:

"*Be it resolved by the Senate of Iowa, the House of Representatives concurring*, That our Senators and Representatives in Congress are hereby requested to favor the immediate passage of the bill lately introduced in the Senate of the United States by Hon. James F. Wilson, and now pending in Congress, in so far as it has for its object to provide that the Attorney General of the United States do immediately commence proceedings, or cause such proceedings to be instituted by suit, either in law or in equity, or both, as may be necessary, and appear in the name of the United States so as to remove all clouds from the title to said lands in which suit any person or persons in possession of, or claiming title to any tract or tracts of lands under the United States involved in such suits may, at his or their expense, unite with the United States in the prosecution of such suits to the end that the title or titles of any person or persons claiming said lands may be forever settled."

This was in February, 1888. At the succeeding session of

Congress a House bill substantially the same as that of Senator Wilson, referred to in Senator Woolson's substitute, and as that passed by the Forty-ninth Congress and vetoed by the President, passed both houses, but it also was vetoed by President Cleveland. When it was before the Senate Senator Evarts of New York offered as a substitute a bill for indemnity, and in the course of his remarks in favor of the substitute used this language:

"My own judgment, Mr. President, is that the settlers who are sought to be benefited by this act are ill advised or misconceive their resort. Perhaps indemnity would answer their wishes or their purposes as well as the maintenance of their footing on the land. Nor do I wish to disparage that sentiment and that adherence to what they may suppose their rights; but, in my judgment, this act will only introduce a new series of litigation, which must terminate in an utter disappointment of the plans and hopes of these settlers, and must finally bring us back, after a much protracted litigation and after their hopes are still longer deferred and still more bitterly disappointed, to the only proper remedy which, I submit with great respect to the Senate, is the remedy which is included in the bill I have proposed and have had read for information."

President Cleveland in his message vetoing this bill said:

"I am not unmindful of the fact that there may be persons who have suffered, or who are threatened with loss, through a reliance upon the erroneous decisions of Government officials as to the extent of the original grant from the United States to the Territory of Iowa. I believe cases of this kind should be treated in accordance with the broadest sentiments of equity, and that where loss is apparent arising from a real or fairly supposed invitation of the Government to settle upon the lands mentioned in the bill under consideration, such loss should be made good. But I do not believe the condition of these settlers will be aided by encouraging them in such further litigation as the terms of this bill invite, nor do I believe that in attempting to right the wrongs of which they complain legislation should be sanctioned mischievous in principle, and in its practical operation doing injustice to others as innocent as they and as much entitled to consideration."