

stormy political warrior did not know him in those closing years and find how under a coat of mail of battle there was the tenderness and gentleness of a child and the utmost kindness, sensibility and forbearance. In the later years of his life his health had become so frail that he was in relation with only a few people. We have never seen any one of our friends ripen into death with more gentleness and beauty and Socratic wisdom than he. He was a just man, too. Looking back over the years of his strenuous political fight in Iowa, he said, in a conversation with us near the end of his life: "One thing I can say of those territorial and early state Democratic leaders, hard as I fought them, is, that as men nearly all of them were nobly honest and they would have scorned to steal or plunder."

THE DES MOINES RIVER LAND GRANT.

BY COLONEL C. H. GATCH.

FIRST PAPER.

The history of the grant so long and familiarly known as the "Des Moines River Land Grant" may fittingly have a place in the Annals of Iowa. Covering, from the date of the grant—August 8, 1846,—to the termination of the last possible legal controversy with respect to the title to the lands embraced in it, by the decision of the Supreme Court of the United States in January, 1892, in the case of the United States vs. the Des Moines Navigation & Railroad Company and others, a period of over forty-seven years, very few citizens of Iowa have not heard and read of the grant and the many interesting questions and bitter controversies that grew out of it, and not a few have suffered losses, hardships and grievous wrongs in consequence of them. Depending upon the facts themselves, rather than their treatment, to interest the readers of the following sketch, little more than their statement in narrative

form, and in the main chronologically, will be attempted. As the writer has for many years acted as counsel for some of the parties to the litigation of which the grant has almost from the beginning been a most fruitful source, special care will be taken to avoid any just suspicion of partiality on that account, and any statements that cannot be amply verified if questioned.

The grant gave rise to two notable and long protracted controversies: The first between the State and the United States as to its location and extent, or more definitely stated, as to the location of its northern boundary line. The second between, at first, the settlers, but finally, the United States, on one side, and the corporation known as the Des Moines Navigation & Railroad Company and its Grantees, on the other side, which grew out of conflicting claims of title to the lands involved in the previous contention.

Whether or not the grant was really of any value for the purpose for which it was intended depended, it will be seen, upon which of two conflicting claims or theories as to its extent, should finally prevail; for while according to one view or claim the grant contained only about 300,000 acres, according to the other it contained about 1,300,000 acres.

By act of Congress of August 8, 1846, there was "granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork in said Territory, one equal moiety, in alternate sections, of the public lands remaining unsold and not otherwise disposed of, encumbered, or appropriated, in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents, to be appointed by the Governor thereof," etc. It will be observed that the land was granted for the purpose of *aiding* said Territory to *improve* the navigation of the Des Moines River, and that there is nothing in the act requiring the state to make the river *navigable*, or making the grant dependent upon its being made navigable.

The Territory of Iowa was admitted into the Union as a State by act of Congress, approved December 28, 1846.

The grant was accepted by the State by a joint resolution of the Legislature, approved January 9, 1847.

The first communication from the General Land Office to the State authorities, dated October 17, 1846, and written by acting-Commissioner James H. Piper, indicated that, in the opinion of the Commissioner, the grant extended "from Sullivan's line, the northern boundary of Missouri, to the *Raccoon Fork* of the Des Moines River;" and in another of the same date, relating to the selection and location of the lands, addressed to the Register and Receiver of the local land office at Iowa City, the same officer said: "No action can be had by you in this matter, however, till you are advised by the Governor whether he will select the sections with the odd, or those with the even numbers." December 17, 1846, Jesse Williams and Josiah H. Bonney, the Commissioners previously appointed by the Governor of Iowa to make the selections, reported to him that they had "selected the odd sections."

This was the only act to be performed by the State so far as the location of the grant was concerned, and the title to the odd-numbered sections within the five mile limit fixed by the grant thereupon immediately vested in the State.

The title having thus become vested, the Legislature of the State on the 24th of February, 1847, made provision for entering upon the work of improving the navigation of the river by creating "a Board of Public Works", consisting of a President, Secretary and Treasurer, whose duty it was to dispose of the granted lands and apply the proceeds as required by the granting act.

The first meeting of the Board was held September 22, 1847, and provision was then made for raising funds, with which to defray the expense of visiting other States for the inspection of works of the character contemplated, for the employment of a chief engineer, and for the purchase of the necessary instruments and material to begin the prosecution of the work.

February 23, 1848, the Commissioner of the General Land Office in a letter to the Secretary of the Board of Public Works, among other things said: "A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point;" and after referring to the terms of the grant, concluded his letter as follows: "Hence the State is entitled to the alternate sections within five miles of the Des Moines River, *throughout the whole extent of that river within the limits of Iowa.*"

September 18, 1848, the Secretary of the Board of Public Works in a letter to the Commissioner of the General Land Office, referring to a proclamation of the President for a sale of public lands, including as such some of the lands above the Raccoon Fork of the Des Moines River and therefore within the limits of the grant as claimed by the State, said: "Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be embarrassed by any impediment to her prospects in this regard." In December, 1848, the Legislature of Iowa met in regular session and on the 16th day of that month addressed a memorial to Congress relative to the extent of the grant, in which it was said:

"By your act passed in August, 1846, every alternate section of land not otherwise appropriated within five miles of the Des Moines river was donated to the State (then Territory) of Iowa, for the improvement of said river from its mouth to the forks. * * * After the organization of the Board of Public Works there arose some doubts as to the limit of the grant, to-wit: whether it extended to the boundary of the Territory of Iowa as it existed at the time of the act of appropriation, or was confined within the limits of the State, the line of which crosses said river many miles *below* the point where the territorial line crossed." The Legislature thus, it will be seen, pushing the claim of the State "many miles" *above* its northern boundary.

The memorial proceeded to recite the construction of the

grant contained in the letter of the Commissioner of the General Land Office, of February 23, 1848, already referred to, and the fact that the Board of Public Works, influenced by that construction, had put under contract nearly a hundred miles of the improvement. Reference was also made to the proclamation by the President for the sale of a portion of the lands above the Raccoon Fork, which, it was urged, would be contrary to the spirit and language of the grant, defeat its design by leaving insufficient available means to complete the portion of the improvement then under contract, and render useless the large expenditure already made, and it was asked that sales under the proclamation should cease, and that the State should have indemnity for those already made.

January 8, 1849, the Iowa Senators and Representatives in Congress addressed to Robert J. Walker, Secretary of the Treasury, who then had jurisdiction over the public lands, a protest in substantially the same terms contained in the memorial just referred to; and March 2, 1849, the Secretary in reply, construing the grant, said: "I concur with you in the view contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river from its *source* to its mouth, but not to lands on the river in the State of Missouri." Thus, it will be noticed, indicating still another and more northern limit to the grant, the "source" of the Des Moines river. In harmony with this opinion and construction of the grant by the Secretary, the Commissioner of the General Land Office, on June 1, 1849, directed the local land officers to "reserve" from sale all the lands included in the grant, according to that construction, and that *reservation* has continued ever since, and has been the decisive fact in the determination of nearly every controversy to which the grant has from time to time given rise.

The Commissioner of the General Land Office, R. M. Young, at the same time directed the Register and Receiver of the Land Office at Iowa City to make out and forward a list of the odd sections within the limits of the grant north of the Raccoon Fork, which had been sold by the United States prior to

the order of reservation, which he did June 21, 1849, showing the quantity of land thus sold to have been 25,487.87 acres.

December 19, 1849, the Commissioner of the General Land Office wrote Jesse Williams, then Secretary of the Board of Public Works, who had requested that the State might be furnished with a list of the Des Moines river grant lands *above* Raccoon Fork, that the list was in course of preparation and would be transmitted at an early day. On the 14th of January, 1850, the Commissioner made a report to the Secretary of the Interior, which officer had then become the head of the land department, of the amount of land that had been granted to the several States for the purposes of internal improvement, in which, after giving the quantity charged to the State of Iowa, he said that quantity would "be increased by the unadjusted portion of the grant for the improvement of the Des Moines river, situated between the Raccoon Fork and the source of said river, estimated to contain *about nine hundred thousand acres.*"

March 13, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three lists of lands falling within the limits of the Des Moines river grant, as then understood, and lying north of the Raccoon Fork, the purpose being to certify such lands to the State under the grant, but on the 6th of April, 1850, the then Secretary of the Interior, Thomas Ewing, expressed the opinion that the grant *did not extend north of the Raccoon Fork*, and returned the lists without his approval. Thereupon the Senators and Representatives from Iowa appealed from this decision of the Secretary to the President, in a communication setting forth the understanding of the State authorities and the obligations that had been incurred by the State acting upon the construction placed upon the act by Secretary Walker in his opinion of March 2, 1849.

The President referred the question to the then Attorney-General, Reverdy Johnson, who, on July 19, 1850, gave it as his opinion that the grant ran "*the entire length of the river within the then Territory of Iowa.*" He also gave it as his

opinion that the decision of Secretary Waker, of March 2, 1849, could not legally be revoked, that it was a final adjudication and was beyond the control of the Secretary of the Interior, the successor in this respect of Mr. Walker. Notwithstanding this opinion of the Attorney-General, the Secretary of the Interior took no immediate action in the matter, and on December 30, 1850, the Iowa delegation in Congress addressed to the then Secretary of the Interior, A. H. H. Stuart, a communication setting out very fully the claim of the State under the grant. They said: "Relying upon the decision of Mr. Walker, the State has made arrangements very different from those which would otherwise have been adopted. The improvements have been commenced and contracts made for their prosecution, on a scale much greater than would have been the case had a different construction been given to the law in the first instance. The State is, by her constitution, prohibited from incurring a debt, and the state of our finances will not permit appropriations from the annual revenues; much that has been done will therefore be valueless if we are now deprived of the means of completing the work." In this condition of uncertainty as to the lands lying north of the Raccoon Fork, which it was understood constituted about three-fourths of all the lands donated for the improvement of the river, the General Assembly of the State on February 5, 1851, passed an act containing among other the following provisions:

That the Commissioner and Register might contract with any individual or company for the completion of that part of the improvement of the river at and below Keosauqua, by allowing the contractors in payment for such work any portion of the lands granted for the improvement of the river which lie below Raccoon Fork, at a price not less than \$1.25 per acre; and that dams and locks above Keosauqua might be constructed, the work to be paid for from the lands granted *above* the Raccoon Fork.

In the early part of 1851, President Taylor died and a new cabinet, with Mr. Crittenden as Attorney General, was formed;

and the question as to the true construction of the grant having been submitted to the new Attorney General, he, on the 30th of June, 1851, gave it as his opinion that the grant *did not extend north of the Raccoon Fork*; but in view of what had previously been done and the different opinions that had been expressed, the Secretary of the Interior, Mr. Stuart, directed the Commissioner of the General Land Office on July 26, 1851, to withhold the lands in dispute from market until the close of the then session of Congress that the State might have an opportunity of petitioning for an extension of the grant. The whole matter was again brought before the President and his Cabinet, and finally settled as far as they could settle it, in the manner indicated in a letter from the Secretary of the Interior to the Commissioner of the General Land Office, dated October 29, 1851, in which the Secretary said, in substance, that the question of the true construction of the act and the extent of the grant would have to be determined by the judicial tribunals, but that he was "willing to recognize the claim of the State, and to approve the selections *without prejudice to the rights, if any there be*, of other parties;" and the Commissioner was directed to submit for his approval such lists as had been prepared of the alternate sections claimed by the State above the Raccoon Fork, as far as the surveys had progressed.

October 30, 1851, the Secretary of the Interior approved a list of 81,707.29 acres as falling within the limits of the grant *above* the Raccoon Fork, and on March 10, 1852, an additional list of 143,908.37 acres, which approval, however, was with the following qualification: "Subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, March 2, 1849—to the effect that the grant extended above the Raccoon Fork." These lists were delivered to the Commissioner of the

general land office, and properly certified copies by him transmitted on November 1, 1851, to V. P. Van Antwerp, the then President of the Des Moines River improvement.

November 30, 1852, the Commissioner and Register of the improvement made a report to the Governor of Iowa, as required by statute, which together with many other statements, contained the following: "In the report of the undersigned, of the first of December last, we were enabled to communicate the gratifying fact of the final settlement of the question as to the extension of the Des Moines River congressional grant, from the Raccoon Fork to the source of the river, whereby *a million of acres* more of land were secured for the use of its improvement. . . . The congressional grant, limited to the 321,800 acres lying below the Raccoon Fork, when the undersigned took charge of the work as Commissioner and Register, in March, 1851, has been made to embrace more than quadruple that amount. . . . The undersigned are now in possession of certified lists (with plats or maps corresponding thereto), approved by the Secretary of the Interior, over his signature, of 225,616.31 acres of these lands above the Raccoon Fork, some few of which have already been sold by them and others offered. . . . The present ascertained indebtedness of the work in charge of the undersigned, exclusive of interest, will not vary far from \$108,000 embracing the following items:" following which is an itemized statement of the then indebtedness of the board of public works on account of the improvement.

As to the practicability of carrying on the work by the State, they say: "It only remains to inquire whether means can, and should be raised, for the continued prosecution of the work, beyond a reliance upon the proceeds of sales of lands embraced in the grant, for it is now a clearly ascertained fact, about which a doubt can no longer exist, that with the large debt hanging over the work, which should and must be paid, and the slow sales of lands, it is folly to expect to carry on the Des Moines River improvement to a completion in many a long year, if ever. The most that can be done under the present

state of things is to let contracts entirely on credit at a great additional cost, as well as loss of the vigor and efficiency which a system of cash payments brings with it. It is hardly too much to say that the work can never be completed unless some step is taken, by legislative enactment, to infuse new life into it." Speaking of the resources of the State to carry on the work they say: "She (the State) has now, beyond dispute, a million of acres of land applicable to the great object mentioned, which, if held in reserve, and sold at their actual value, would probably, in the end, pay for the improvement twice over; besides work is already done upon it to the amount of three hundred thousand dollars; to suffer it now in this condition of things, with a solid and perfectly reliable foundation on which to rest, and so much progress made in its construction, to go down to ruin and decay would be impolitic and unwise in the last degree; nay, a permanent discredit to the State."

December 7, 1852, Governor Hempstead, in his message to the General Assembly, referred to the improvement as follows: "In pursuance of the law of the last General Assembly relative to the Des Moines River Improvement, I proceeded at an early day to fill the offices of the Commissioner and Register, as therein provided, by the appointment of General V. P. Van Antwerp as Commissioner, and George Gillaspay, Esq., as Register, who after being duly qualified entered upon the discharge of the duties required of them. . . . The result of their labors during the first year will be found in their first annual report made to me in pursuance of law, and which is herewith submitted for your consideration. By this report it will be found that all work, or nearly so, when these officers entered upon the discharge of their duties, was suspended. There were no funds on hand, and no part of the work was completed. Of the lands below the Raccoon Fork 188,466 acres had been sold, realizing the sum of \$235,708.81, all of which had been expended, and there remained only 133,401 acres, worth at \$1.25 per acre, \$166,752.36. Over and above the money already expended, there was an outstanding debt due

the contractors of not less than \$65,000, and unliquidated claims for damages of over \$80,000 on suspended contracts. The estimated cost of completing the works between St. Francisville and Keosauqua, excluding the canal, was \$210,000. Thus showing an absolute deficiency in means to be hoped for from the lands lying below the Raccoon Forks, to meet the actual indebtedness and the estimated cost, of \$108,250, aside from all claims for unliquidated damages."

January 19, 1853, the General Assembly passed another act "to secure the more vigorous prosecution of the Des Moines River Improvement," amendatory of previous acts. By the first section it was provided that the Commissioner and Register should have power and they were fully authorized to sell and dispose of "all and any lands which have been, *or hereafter may be granted* by Congress for the improvement of the Des Moines River, in such manner as they may deem most expedient for the early completion and vigorous prosecution of said improvement," with the proviso that the lands should not be sold for less than \$1.25 per acre, or a less amount than \$1,300,000 in the aggregate, and that the proceeds should be devoted to the payment of debts and the completion *as far as practicable* of the improvement. By the second section it was provided that "said Commissioner and Register are hereby authorized and empowered, if deemed by them necessary for the best interests of the improvement, to transfer, or convey in *fee simple*," to any individual or company, any portion of the lands to procure a fund to carry on the improvement.

January 22, 1853, the General Assembly by joint resolution appointed Joseph C. Knapp, Wareham G. Clark and Alfred Hebard a committee to examine the books of the Commissioner and Register of the improvement and make report; and January 24, 1853, passed still another act in regard to the improvement, amendatory of all previous acts. By the first section of this act provision was made for the election of a Commissioner and Register of the improvement, to serve for a term of two years. By the second, for two assistant Commissioners, George G. Wright and Uriah Biggs, who were to

have equal power with the elected Commissioner in making contracts for the improvement of the river. By the sixth section it was provided that the Commissioners should make no agreement, "unless such contract or agreement stipulates for at least \$1,300,000 to be faithfully expended in the payment of the debts and liabilities of said improvement, and to the completion thereof *to the greatest extent practicable.*" And by section nine it was provided that, "In no event shall the State be liable for any contract made or to be made; but the person or company contracting shall look alone to the funds belonging to and arising from said improvement." June 14, 1853, the legislative committee before mentioned—Knapp, Clark and Hebard—made a report to the Governor as to the operations and financial condition of the improvement; in which in regard to the quantity of land claimed by the State they say: "With regard to the number of acres granted for said improvement, we submit: That the act of Congress, approved March (August) 8, 1846, . . . conveyed to the Territory for the purpose above mentioned the alternate sections of land in a strip five miles wide on each side of said Des Moines River *from its mouth to its source.* The amount of land embraced in this grant has never yet been ascertained. Much of it is yet unsurveyed, and only a portion as yet of that which has been surveyed has been reported to the Register's office. We are therefore unable to report the number of acres granted for said improvement. The amount has been variously estimated at from one million to one and one-half million acres. From the best information we have been able to obtain, we think it may safely be estimated at 1,300,000 acres. We find there have been sold of these lands in all 253,472.43 acres. Of the above number of acres, 252,472.43 acres have been sold at \$1.25 per acre, making the sum of \$315,590.55; 880 acres at \$2.00 per acre, or \$1,760; 80 acres at \$3.00 per acre, or \$240; making the whole amount received for lands sold, \$317,642.55." They also found the actual indebtedness of the improvement to be \$104,625.44. December 17, 1853, the Secretary of the Interior certified to the State a list of 33,142.43 acres more

above the Raccoon Fork; and on December 30, 1853, still another list of 12,813.51 acres. This last list was certified as: "A list of lands falling within the Des Moines River grant, under act of 8th of August, 1846, selected by the State under the act of September, 1841, on the 20th day of July, 1850, and erroneously approved 20th of February, 1851, previous to the adjustment of the grant and before it was known that they belonged to the State under the Des Moines River grant." All of the foregoing lists were approved to the State without prejudice to the rights, if any, of other parties.

X From the report of Thomas H. Benton, Jr., Superintendent of Public Instruction, to the General Assembly, under date of June 6, 1854, it appears that before the erroneous certification of the last mentioned list had been countermanded, acting under his instruction, John Tolman, School Fund Commissioner, had sold 3,194.28 acres of the 12,813.51 acres as school lands. By an act of the Eighth General Assembly, approved April 2, 1860, it was provided that the purchasers of the lands so sold should, on making proper proofs of the amounts of purchase money paid by them respectively, be reimbursed the amounts so paid with ten per cent interest out of the State treasury on warrants to be issued by the State Auditor. Under the authority of this act, it appears from the report of the Secretary of State for 1889, pages 183-4, that as to 2,639.43 acres the purchase money with interest had been refunded; and that as to 120 acres, the purchaser being an alien and having since died, there was consequently no one entitled to the refund. There would seem to be no reason why any further provision should be made by the State for the relief or indemnity of any of the purchasers of these lands. Under the circumstances the refunding of the purchase money actually paid with ten per cent interest from date of payment, ought to relieve the State from any further obligation.

But notwithstanding this just and ample provision on the part of the State, the Twenty-second General Assembly passed an act for the payment to one John Haidien of \$389.40, as a refund or indemnity on account of his purchase from the State

of eighty acres of these lands, \$160 of which is recited in the act as having been the principal sum paid; while from the report of the Secretary of State just referred to, it appears that the sale of this eighty by the Commissioner was to one Leander Boher for \$100, \$25 of which only was paid and had been refunded; and immediately following the decision of the Supreme Court of the United States finally determining the question of title against the claim of the "settlers," a bill was introduced into the Twenty-fourth General Assembly and passed the House, providing for the payment to all of the purchasers of said lands so sold, or their assigns, of their then full value, to be ascertained by appraisal, subject only to a credit of any amounts theretofore refunded under the act of the Eighth General Assembly above referred to.

December 17, 1853, Henry O'Reilly, Esq., of New York, entered into a contract with the Commissioner of the Improvement, in which, for the consideration of the "unsold lands belonging to the improvement and the tolls, water rents and other profits arising from the work, for the term of forty years," he agreed to complete the entire work within the period of four years from the first day of July, 1854, according to the original survey and specifications made by the engineer of the improvement, then on file in the office of the Register. Immediately thereafter O'Reilly returned to the east and organized under the laws of Iowa the Des Moines Navigation & Railroad Company, composed of eastern capitalists, and on the 9th day of June, 1854, at his request, his contract with the State was canceled and a similar one entered into between the State and the company so organized by him. The following are the material provisions of this contract:

The Company agreed for considerations named to make and finish the improvement from the Mississippi River to the Raccoon Fork, the work to be completed on or before July 1, 1858, one-fourth part of it each year, commencing July 1, 1854; to pay all debts outstanding against the Improvement December 23, 1853, provided the amount did not exceed \$60,000, to meet which liabilities it paid over to the Commissioner the sum

of \$55,000; and on the other hand should be entitled to receive all moneys due to the improvement from the General Government and *all claims and demands against the General Government*, together with various other sums specified; and was required to pay from time to time the salaries of the Commissioner, Register, Engineer and other officers and employes of the improvement. The State and the Commissioners were to sell and convey to the Company in the manner and upon the terms therein provided, all of the lands donated to the State for the improvement by the act of Congress, remaining unsold by the State, December 23, 1853, for which the Company agreed to pay \$1,300,000 in the manner also therein provided. Whenever the Company should do work to the amount of \$30,000 *according to estimates made by the acting engineer*, the proper agent of the State was to convey to the Company lands belonging to the improvement to the amount of \$30,000, at the rate of \$1.25 per acre, deducting 15 per cent to be adjusted on final settlement, and so, as to each successive estimate of \$30,000, until work should be done to the amount of \$1,300,000, if so much land should remain unsold from and after December 23, 1853, and until the work should be completed. Upon the expenditure of the \$1,300,000 and the completion of the work, all of the lands remaining unconveyed, if any, were to be conveyed to the Company. All money paid by the Company to the Register or Commissioner of the improvement in the payment of liabilities on account of the former prosecution of the work by the State, was to be deemed expended on the improvement by the Company, for which the Register should convey lands to it at \$1.25 per acre, equal to the amount so paid, which amount should be included as part of the \$1,300,000. For all moneys advanced by the Company for salaries and pay of officers and agents or servants, for rights of way, damages to mill owners, and other matters not covered by actual work done on the improvement, lands were also to be conveyed to it at the stipulated price of \$1.25 per acre. The prices for the different kinds of work, according to which the engineer was to make his estimates, and by which the parties were to be

governed in the conveyance of lands were specified as far as practicable, and when not specified were to be fixed by the engineer, who was to be appointed *by the joint assent of both parties*. The work was to be done under the joint supervision of the Board of Public Works and engineers, except as otherwise provided in the contract. The Company was to look alone to the funds belonging to and arising from the improvement for compensation, the State in no event to be liable therefor. There were many other minor and collateral provisions reference to which is unnecessary. It will be seen that the contract contemplated that the Company would receive for the work lands of the value, at \$1.25 per acre, of \$1,300,000, to be conveyed as the work progressed, on estimates made by an engineer to be appointed by the joint assent of the parties, in limited specified quantities at the stipulated price.

By reason of a misapprehension when the original agreement was executed, as to the amount of unsold lands belonging to the improvement below Fort Dodge, by supplemental agreements, one of the same date with the original, the other dated June 29, 1854, it was stipulated that the right of the Company to rents and tolls should be extended from forty years to seventy-five years; referring to which, on December 1, 1854, the Commissioner and Register of the improvement in a report to the General Assembly giving their official doings from April, 1853, until the date of the report, say: "Subsequent to the execution of the supplemental contract of the 9th of June, 1854, on a view of the upper Des Moines river country and on an examination of the plats in the office of the Register, it was found that the lands below Fort Dodge had been disposed of and the money applied to said improvement, to a much greater extent than had been previously understood by either the Commissioners or the Des Moines Navigation & Railroad Company, although the amount of land *originally estimated* was found *not to be too large*, yet the location being much higher up the river, and consequently at present not so valuable."

It is further said in the report. "It has long been a source of complaint by the citizens of the State that the grant of

lands by the General Government for the improvement of Iowa's favorite stream had been so injudiciously applied, that from the mode of carrying on the work in the manner it had previously been conducted, the grant was fast being expended with but little if any practicable beneficial results to the State. Hence the enactment of the law at the last session of the General Assembly of Iowa which confined the officers to the making of contracts which were to secure the improvement of said river *to the greatest extent practicable.*" It is also said in the report: "Could the desired end have been obtained, so that the State could have retained possession of the improvement after completed, it would have been a source of great satisfaction to the Board, as well as a source of profit to the State. But the Board are of the confident opinion that the lands have been so far expended in what has already been done that the time would never come when the proceeds of the lands alone would have completed the work. It has not been without some considerable difficulty, during the past few years, that the attention of capitalists could be attracted to the subject and the importance of slack-water improvements. Railroads seemed to be the all absorbing topic of interest which has occupied the public mind."

May 14, 1855, the Register of the improvement, George Gillaspay, certified a list of 88,853.10 acres, lying in the counties of Lee, Van Buren, Davis, Jefferson, Wapello, Mahaska, Marion, Warren, Jasper, Dallas and Polk, to the Company, as sold to it "in pursuance of the contracts and agreements with said Company for the construction of said Des Moines River Improvement," and May 6, 1856, another list of 116,636.4 acres lying in the counties of Polk, Wapello, Marion, Boone, and Webster, certified as being "in consideration of \$144,657.70 expended in pursuance of the contracts and agreements between the State of Iowa and the Des Moines Navigation & Railroad Company, upon the improvement of the said river and in payment of the liabilities resulting from the former prosecution of the work by the State of Iowa."

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