

HOUSE FILE NO. 147.

[BY PARSONS.

A BILL

FOR AN ACT RESUMING CERTAIN LANDS HERETOFORE GRANTED TO THE DES MOINES VALLEY RAILROAD COMPANY, AND TO PROVIDE FOR THE SALE OF THE SAME.

Whereas, By an act of the 12th General Assembly of the State of Iowa, approved March 31st, 1868, entitled "An Act prescribing the terms and conditions on which the State will relinquish and convey to the Des Moines Valley Railroad Company certain rights and privileges in respect to the resumption of land heretofore granted to the said company," there was by the fourth paragraph of the first section of said act reserved and set apart 100,000 acres of the land embraced in the grant of lands to the State by act of Congress approved July 12th, 1862, to be held and applied exclusively for the construction of a railroad above Des Moines river to the northern boundary of the State in the direction of the southern bend of the Minnesota or St. Peter's river, and—

Whereas, Said railroad company has failed to accept of the act of March 31st, 1868, and has failed to grade the number of miles of road up and along the valley of the Des Moines river they were required to have graded at this time, and—

Whereas, The good faith of the State in carrying into execution the trust conferred upon it by the act of Congress granting said lands, requires that the lands not now conveyed to said company, and all title to the same should be reserved to the end that a road up and along the valley of said river, to aid which the same were granted may be constructed. Now therefore—

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That all of the lands described in said act, approved March 31st, 1868, not actually conveyed by the State to said company by deed or patent, and all right and title to the same, and the proceeds of any portion thereof now sold to other parties are hereby absolutely and entirely resumed by the State.

SEC. 2. That it shall be the duty of the Register of the State land office, under the direction of the Census Board, as soon as practicable and before the first day of July next, to advertise said lands for sale, for not less than sixty days, in four different newspapers published, one in Des Moines, one in Fort Dodge, one in Dakota, and one in Estherville, Iowa, stating in said advertisement the time and place of sale and terms on which such lands can be sold.

SEC 3. That at the time mentioned in such advertisement the said Register, under the direction of

2 the Census Board, shall, at his office in Des Moines, proceed to sell the said lands for cash to the highest
3 bidder for not less than five dollars per acre. *Provided*, such lands shall be sold by him in quantities
4 not less than forty acres or the smallest government subdivision thereof, nor more than one hundred and
5 sixty acres to any one bidder.

6 *Provided*, further that all persons now holding any of said lands by actual occupancy and improve-
7 ment shall have the prior right to purchase the land so held by them at two and one half dollars per
8 acre, not exceeding however one hundred and sixty acres to any one person, and, *Provided* further that
9 in case all such lands are not sold at the time mentioned in such advertisement said Register by direction
10 of the Census Board may adjourn such sale from time to time.

SEC. 4. That upon such sale and payment of the purchase money the Register shall issue a certifi-
2 cate to the purchaser showing the land purchased by him and the amount paid therefor, and upon the
3 presentation thereof to the Governor he shall execute to the purchaser a deed in the name of the state
4 of Iowa without warranty, conveying the land so purchased, which deed shall be effectual to
5 pass all the right and title thereto now or heretofore held by the State, or
6 which may hereafter be acquired by the State from the United States, and all moneys the proceeds of
7 the sales of land as aforesaid shall be by the Register paid into the State Treasury, and shall by the
8 Treasurer be invested in government securities, and kept by him for the exclusive and only purpose
9 of building a railroad from the city of Des Moines to the northern line of the State, up and along the
10 valley of the Des Moines river, in the direction of the southern bend of the Minnesota or St. Peter's
11 river, as the General Assembly of the State of Iowa may by subsequent act prescribe.

12 This act being deemed of immediate importance shall take effect from and after its publication in
13 The Iowa Northwest and the Montana Standard.

HOUSE FILE NO. 147.

[BY JUDICIARY COMMITTEE.]

MAJORITY REPORT OF COMMITTEE.

MR. SPEAKER:—Your Committee on Judiciary, to whom was referred House File number 147. “A bill
 2 for an act resuming certain lands heretofore granted to the Des Moines Valley Railroad Company and to
 3 provide for the sale of the same,” beg leave to report that they have had the same under consideration and
 4 having heard the same fully discussed by the friends and opponents of the bill both as to questions of law
 5 and facts, and a majority of the committee have instructed me to report the same back to the House with
 6 the recommendation that it do not pass.

7 We of the majority believe it is due to the House and to themselves that they give some reasons for
 8 the report they have thus made. A majority of your committee are of the opinion that the Des Moines
 9 Valley Railroad Company, have in no way failed to comply with and perform the conditions contained
 0 in the law of March 31st 1868 referred to in this bill.

1 1st. We find that the said R. R. Co., in accordance with the provisions of said act of March 31st 1868
 2 did pay to the State of Iowa on the 27th day of September 1868 the sum of \$130,000, being all the claims
 3 referred to in said act of March 31st 1868, and being all of the debt chargeable to the 462,000 acres of
 4 land then unpatented by the State to said company. That the Governor executed to the said R. R. Co.,
 5 a conveyance for all the lands referred to in said act except the one hundred thousand acres reserved for
 6 the construction of the Des Moines Valley R. R. above the city of Des Moines. That said R. R. Co.,
 7 have graded more than the number of miles of road up and along the valley of the Des Moines River
 8 than they were required to grade up to this time, and not only graded but completed seventy-five miles
 9 of road above the City of Des Moines.

0 2nd. The act of March 1869, gave the said railroad company until January 1st, 1870, to build their
 1 road to the city of Fort Dodge, and as ten months yet intervene between this and the time given, we can-
 2 not presume anything against the company, nor can we presume that the railroad company will not com-
 3 ply with that “condition precedent.”

4 3d. As to a construction of the words “up and along the valley of the Des Moines river,” we have
 5 been unable to find a case where the word *valley* has been judicially defined or determined. But would

26 represent that the words "the valley of the Des Moines" has had two legislative, and one executive
27 construction.

28 *First.*—Then keep in mind that all the laws, both congressional and legislative, have and use the words
29 "valley of the Des Moines" The act of the legislature of 1864, required this company to construct this
30 road from Eddyville, which is situated on the bank of the Des Moines, up the Muchakinock Creek to a
31 point near the city of Oskaloosa, and from thence to the city of Des Moines; and in the same act de-
32 clares it to be "up and along the valley of the Des Moines." When, in fact, they are compelled to
33 build away from the banks of the river and outside of the bluffs that border the river, and do not strike
34 the river again until the road reaches the city of Des Moines.

35 *Second.*—While the act of March 31, 1868, was pending in the Senate, an amendment was proposed to
36 the bill requiring the railroad company to construct their road, within the land grant, which is five miles on
37 either side of the river. Said proposed amendment was voted down, thereby construing that the valley
38 of the Des Moines was not confined within the five miles on either side of the river. Again it was shown
39 that at the time of the passage of the act of March 31, 1868, said company were in the act of building
40 their road westward from the city of Des Moines along the bank of Coon river.

41 The executive construction was in executing the conveyance to the company, for the lands for the
42 building of the railroad below the city of Des Moines at a distance of more than ten miles away from the
43 bank of the river, when the law says "up and along the valley."

44 4. That the non-acceptance in writing by said railroad company of the act of March 31, 1868, did
45 in law and was not intended to affect in any manner its acquirement of title to the lands by the building
46 of said road. But on the contrary, said act expressly provides "that the non-acceptance by said De
47 Moines Valley Railroad company, of this act, shall not prevent all the foregoing provisions thereo
48 from having the same operation and effect as if they had been accepted by said company.

49 5. Said act of March 31, 1868, further expressly provides that, "in case of non-compliance by said
50 Railroad Company with the conditions to be by it performed, then without further legislation said act
51 shall have the force and effect of an act of resumption, and all rights of said company to said lands not
52 actually conveyed by the State to the company, shall be forfeited, and revert in the State as fully as if
53 the grant thereof had never been made by the State. Therefore, even if it were true that the railroad
54 Company had failed to comply with the provision referred to and contained in said act. No act of
55 resumption would be now required or necessary to revert the title to said lands in the State.

56 6. We find further, that at the time of the passage of the act of March, 1868, there was lands unpat-
57 ented to the Railroad Company, to the amount of 462,000 acres; that there was due the State from
58 said Railroad Company, and chargeable as a lien on said lands, the sum of \$160,000.00, being a sum equal
59 to 33½ cents per acre. That of this \$160,000.00 there would be and was chargeable to the 100,000 acres
60 proposed to be redeemed \$34,750 00, all of which has been paid, as before stated, by the Railroad Com-

pany to the State. Therefore we say, as a question of law, that before the State can at any time
reclaim and otherwise dispose of these lands, she must tender back to the company the \$34,750.00, that it
may be re-charged to this 100,000 acres; and without this the State cannot in any event resume this
land. All of which is respectfully submitted,

N. W. ROWELL, *Chairman.*

McCOUN, ELBERT, MIRACLE, STONE, HUFF and LACEY, concurring.

MINORITY REPORT.

Mr. Parsons, from the committee on Judiciary, submitted the following report :

2 Mr. Speaker : The undersigned, members of your committee on Judiciary, to whom was referred
3 House File No. 147, "A bill for an act resuming certain lands heretofore granted to the Des Moines
4 Valley Railroad Company and to provide for the sale of the same," beg leave to submit the following
5 report :

6 That on the 8th day of August, 1846, the United States, by act of Congress, granted to the territory
7 of Iowa for the purpose of aiding said territory to improve the navigation of the Des Moines river from
8 its mouth to the Raccoon Fork thereof, an equal moiety in alternate sections of the public lands remaining
9 unsold, and not otherwise disposed of, incumbered, or appropriated, in a strip, five miles in width on
10 each side of said river ; that on the 9th day of January, 1847, the State of Iowa by a joint resolution
11 of the Legislature thereof, accepted said grant for the purposes specified in said act of Congress ; that
12 there was afterwards certified to said State by the secretaries of the treasury and of the interior, prior, to,
13 and upon the 30th day of December, 1853, 593,964.42 acres of land, of which 271,572.24 acres were
14 situated above the Raccoon Fork ; prior to that time there was a conflict of opinion among the
15 officers of the federal government as to the construction of said grant ; and after the 30th of December
16 1853, the secretary of the interior refused to certify lands lying above the Raccoon Fork. On the 9th day
17 of June, 1854, the State of Iowa entered into a contract with the Des Moines Navigation and Railroad
18 Company, by which said company agreed to make and finish the Des Moines river improvement from
19 the Mississippi river to the Raccoon Fork of the Des Moines river in consideration of which the State
20 agreed to sell and convey to said company all of the lands donated to the State of Iowa for the improve-
21 ment of said river ; said company further agreed that it would at its own expense, in consideration
22 of the conveyance of said lands in eight years from the date of said contract, or by the 9th day of June,
23 1862, improve the said river so as to render it navigable for boats of at least two hundred and fifty tons
24 burthen, to Fort Dodge or to such other point above Des Moines as might be found practicable.

25 Certain differences having arisen between the State and said company, the State by joint
26 resolution of the General Assembly, on the 22d day of March, 1858, proposed to said company terms
27 of settlement, by which the lands then certified under said grant, and which had not been otherwise
28 disposed of by the State, should be conveyed to said company, and in case Congress should permit a

29 diversion of the remainder of the lands then claimed by the State as included in said grant, or the title
30 thereto should become vested in the State so as to become subject to grant, the same should,
31 after the payment of certain liabilities mentioned in said resolution, be granted to the Keokuk, Fort
32 Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along
33 the valley of the Des Moines river, upon such terms and in such manner as the General Assembly
34 should thereafter provide. It was further provided that one-fourth of said lands should be applied to
35 the construction of said railroad above the city of Des Moines. On the 15th day of April, 1858,
36 the Des Moines Navigation and Railroad Company accepted the terms of settlement proposed by
37 said joint resolution.

38 On the same day—March 22d, 1858—and in pursuance of said proposition for settlement, the legis-
39 lature granted the remainder of said lands to the Keokuk, Fort Des Moines and Minnesota Railroad
40 Company, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des
41 Moines river, up and along the valley of said river, by way of the City of Des Moines, to the northern
42 line of the State, in the direction of the southern bend of the Minnesota or St. Peter's river; said
43 grant to become operative as soon as Congress should assent to or permit a diversion of said lands, or
44 the title thereto should become vested in the State so as to be subject to grant. It was provided
45 by said act that said railroad should be constructed in a continuous line above the town of Benton-
46 sport up the valley of said river, and one-fourth of said lands was reserved for the construction of
47 said road from the city of Des Moines up the valley of said river; and the whole of said road
48 was to be completed to the northern line of the State on or before the first day of December, 1868,
49 and in case of failure, it was further provided that it should be competent for the State to resume
50 the lands then uncertified to said company, or in case said company should fail to have completed and
51 equipped seventy-five miles of road up the valley of the Des Moines river above Bentonsport within
52 three years from the first day of December, 1858, and thirty-three miles each year for four years there
53 after.

54 Said company accepted said grant and agreed to perform the conditions thereof.

55 Said company failed to perform the conditions of said grant, and said lands became liable to resump-
56 tion. On the 28th day of March, 1864, the General Assembly passed an act by which, among other
57 things, it was provided that one-fourth of said lands should be applied to the construction of said rail-
58 road from the City of Des Moines to Fort Dodge. Said company assented to and accepted the
59 provisions of said act, January 23d, 1866. On the 12th day of July, 1862, Congress passed an act
60 extending the grant for the improvement of the navigation of the Des Moines river, so as to include
61 the odd sections lying between the Raccoon Fork of said river and the northern line of the State, and
62 within five miles upon each side of said river. It was provided by said act that said lands should be used
63 in accordance with the original act, except that the consent of Congress was given to the application
64 of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Rail-

65 road Company, in accordance with the provisions of the act of the General Assembly of Iowa,
 66 approved March 22d, 1858. There would have fallen to said railroad company according to the claim
 67 of the State as to the extent of the original Des Moines river grant, at the time of the passage of the
 68 joint resolution and act of March 22d, 1858, upon its full performance of the conditions of the grant,
 69 298,214.60 acres of land. At its December term of 1859, the Supreme Court of the United States
 70 decided that the grant of 1846 did not extend above the Raccoon Fork. In April, 1863, there was
 71 certified by the department of the interior, as enuring to the State under the act of Congress of May
 72 15th, 1856, 166,498.16 acres of land, which had been previously certified according to the construction
 73 at that time given by the federal officers under the grant of 1846. On the 21st of May, 1866, an
 74 adjustment was made between the State and the general government, by which other lands were
 75 certified under the act of July 12, 1862, in lieu of these lands, the title to which was at that time
 76 supposed to have failed.

77 The company having failed to perform the conditions of the grant, and the said lands having become
 78 subject to resumption, the General Assembly on the 31st of March, 1868, passed an act declaring
 79 the terms and conditions upon which it would relinquish the right of resumption to said company, and
 80 providing for the conveyance to said company of all of the lands which it would have been entitled to
 81 receive upon the completion of the road to the city of Des Moines, and the payment of the liabilities
 82 growing out of the improvement of the navigation of the Des Moines river, the payment of which it
 83 had assumed. Under this act said company was entitled to receive all but 100,000 acres of the land
 84 granted to it, upon the payment of said claims. Said claims were discharged, and the Governor has
 85 issued to the company patents for 362,997.68 acres of land.

86 By a settlement made by the State with said company on the 20th day of June, 1866, it was
 87 credited upon the claims, the payment of which it had assumed, an amount equal to 35,473.54 acres,
 88 which had been retained by the general government on account of the excess of the selections made
 89 by the State under the 500,000 acre grant, making an aggregate chargeable to said company, and
 90 what it has already received, of 397,471.22 acres, or 100,256.62 acres more than it would have
 91 been entitled to receive upon the completion of the road to the northern line of the State, according
 92 to the construction given to the grant of 1846, at the time of the grant by the State to said company.
 93 It is further provided by the act of March 31st, 1868, that 100,000 acres of said land "shall be held
 94 and applied exclusively for the construction of said railroad above Des Moines, as now provided by
 95 law, and shall be conveyed and patented to said railroad company" only upon completion of said
 96 railroad into the town of Fort Dodge, situated upon the east side of the Des Moines river, within the
 97 year 1866, "which said company agrees to do," and that seventy-five miles of said railroad from its then
 98 terminus should be graded during the years 1868 and 1869.

99 It was at that time provided by law that said railroad should be constructed up and along the valley of
 100 the Des Moines river to the northern line of the State in the direction of the southern branch of

101 the Minnesota river, which point is about eleven miles east of the town of Fort Dodge; said company
102 has constructed exceeding sixty-five miles of road, but said road leaves the valley of the Des Moines
103 river at the city of Des Moines, and is at the average distance of fourteen or fifteen miles from said river
104 and is not at any point within the limits of the land grant. Said act further requires said company
105 to accept the same within thirty days after its approval, which said company has not done.

106 Prior to 1866 the lands certified by the general government as falling to the State under the grant of
107 1846, above the forks of said river, were upon and along the east branch thereof.

108 The undersigned are of the opinion that it is the duty of the State, as the trustee of the General Gov-
109 ernment, and in justice to those who have settled along the valley of the Des Moines, in reliance
110 upon its good faith in the application of this grant to the construction of a road up and along that
111 valley in accordance with the letter and the spirit of the law, at the time of such settlement, and ever
112 since, to resume said grant. We recommend that the bill do pass.

GALUSHA PARSONS,

WM. MILLS,

FRED O. DONNELL,

H. O. PRATT.

HOUSE FILE NO. 147.

[SUBMITTED TO THE JUDICIARY COMMITTEE.]

REPORT OF S. MURDOCK.

MR. SPEAKER:—Being absent from the deliberations of the Committee upon this bill, and not having an opportunity to hear all the legal arguments made upon either side, and disagreeing with both the majority and minority in their able reports, in a few particulars, I deem it just and proper to all parties concerned to file this opinion.

It seems that by an act of Congress, approved August 8th, 1846, one “equal moiety” in “alternate sections” of the public lands, in a strip five miles wide on each side of the Des Moines river, was granted to the then Territory of Iowa, for the purpose of aiding said Territory to improve the Des Moines river from its mouth to the Raccoon Fork of said river.

By the same act, the State, upon its admission into the Union, acquired a title in fee-simple to these lands, for the purpose above stated, and none other.—*Report of Register of State Land Office, pages 28 and 29.*

Subsequently, by a joint resolution of the General Assembly, approved March 22, 1858, after providing for certain preliminaries and contingencies, these lands, or what remained of them, after the payment of certain liabilities, were granted to the “Keokuk, Fort Des Moines and Minnesota Railroad Company,” “to aid in the construction of a railroad *up and along* the valley of the Des Moines river, upon such terms, and in such manner as the *Legislature may provide*, one fourth of which said lands shall be applied by said Company to aid in the construction of said road above the city of Des Moines.”

The railroad company ratified and accepted the terms and conditions of this resolution, and the State of Iowa on the 3d day of May, 1858, executed to said Des Moines Navigation and Railroad Company, fourteen deeds or patents purporting to convey to them 256,703.64 acres, describing the same by sections, town and range, evidently supposing at the time of the conveyance that *all* of these lands were included in the donation of Congress by the act of August, 1846, and that 53,367 acres were below the mouth of the Raccoon Fork of the Des Moines, and the balance 212,741 were above the mouth of that stream.

At the same time the Legislature, by an act approved March 22d, 1858, in order to approve and confirm the deeds and patents made by the Governor, and in order, too, to sanction the acceptance of said deeds and patents on the part of said company, provided that “*all* the lands” granted by the act of Congress aforesaid, as well as “*all* lands and compensation which may be given in extension or in lieu of any

28 portion thereof, by the general government," shall be "disposed of and granted" to said company, to
29 aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines river "up
30 and along the valley of said river by way of the city of Des Moines to the northern line of the State, in
31 the direction of the southern bend of the Minnesota or St. Peter's river," and providing further, "that one
32 fourth in quantity of said land shall be applied by said company in the construction of said road above
33 the city of Des Moines, the said one-fourth to be certified in manner as in this act provided from the
34 completion of each twenty miles from the city of Des Moines "up the valley of the Des Moines river,"
35 and providing further in the 4th section of said act that the whole grant is made to said company upon
36 the "express condition" that in case such company shall fail to have the whole line of said road com-
37 pleted by the first day of December, 1868, then it shall be competent for the State to reserve all rights
38 to the lands hereby granted.

39 Now it must be clear to the mind of all, that the joint resolution of March 22, 1858, together with the
40 deeds and patents of the Governor, the acceptance of the said company, and the above act of the Legis-
41 lature, altogether from the contract on the part of the State on the one side, and the company on the
42 other, in relation to these lands.

43 It is therefore expressly stipulated in this contract, by the first proposition made by the State to this
44 company, in the resolution referred to, and afterwards sanctioned and accepted by said company, that
45 these lands were granted to them to aid in the construction of a railroad "up and along the valley of the
46 Des Moines river," and "upon such terms, and in such manner, as the Legislature may provide."

47 In the 1st, 3rd and 4th sections of the act of the General Assembly above referred to, the Legislature
48 did provide the "terms and manner," by saying that the road should be constructed "up and along the
49 valley of the Des Moines River."

50 An important question has arisen before the judiciary committee as to the construction of the word
51 "valley," as it appears in what we must call the contract between the State and this Company, and as a
52 member of that committee I regret exceedingly, that I cannot agree with the majority in their construc-
53 tion of that word, as is set forth in their able report.

54 It seems to me that the word "valley," in this contract, should have a reasonable construction, and
55 one not inconsistent with the manifest intention of the parties to it.

56 "Up and along the valley of the Des Moines River," means up and along the valley of the main
57 stream, and not one of its tributaries, and it was clearly the "manifest intent" of the parties to this
58 contract, that the road should follow on the most practicable ground, the valley of the main stream, and
59 any divergence from it, without a reasonable obstacle, is a violation of the terms of the contract.

60 The Mouth of the Des Moines, and the South bend of the St. Peters, are two objective points in the
61 contract, and the shortest, best and most practicable route keeping along and up the main valley of the
62 former, is in my judgment the true and legal interpretation.

63 Webster defines the word "valley" to mean, "a low, extended plain, usually alluvial, penetrated or

64 washed by a river," and this in the absence of any other construction must be the legal signification of
65 the word "valley," for the statute provides that "words shall be construed according to the approved
66 usage of the language."

67 According then, to this construction of the word "valley," the road by the "terms" of this contract,
68 should follow as near as practicable the valley penetrated by the main stream, diverging only to avoid
69 deep and unnecessary cuts, impracticable grades, and the windings of the valley. In a word, the gen-
70 eral course of the main valley washed by the river, from one of the points named to the other.

71 I know we often speak of the valley of the Mississippi, as extending from the foot of the Alleghanies
72 to the base of the Rocky Mountains. But this is only a 4th of July interpretation of the word "valley."
73 In contracts, it must have a clear, more definable and a more technical construction.

74 We are told that the Legislature has defined the meaning of the word "valley" as it appears in this
75 contract, in the sixteenth section of the act of March 28, 1864, by requiring said Company to diverge
76 from the valley of the Des Moines to the city of Oskaloosa. In this view I cannot concur. Both
77 parties are bound alike by the terms of this contract, and if the city of Oskaloosa is without the main
78 valley of the river, the Legislature had no right to require the Company to go there, and it was at their
79 own option whether they did so or not; and the fact that the Company complied with this special request
80 of the Legislature, cannot be tortured into a license to go where they pleased afterwards.

81 If this view of the majority of the committee be correct, then the Company could have struck off
82 through the prairies from Oskaloosa in the direction of the St. Peters, and never returned to the
83 "valley" again.

84 Nor is there any thing in this special act to warrant the belief that the Legislature intended by
85 implication to allow the company, afterwards, to go in and out of the valley of the Des Moines at their
86 pleasure.

87 On the contrary, the eighteenth section of the same act referred to by the committee, still uses the
88 words "up the valley of the Des Moines river."

89 Clearly showing that no such construction as that contended for by the committee was ever intended
90 by the Legislature.

91 The committee tell us again that while the act of March 31, 1868, was pending in the Senate, an
92 amendment to said act was proposed, and voted down, requiring said road to be constructed within the
93 land grant and within five miles of the river, and that the voting down of said amendment by the Senate
94 was a "legislative construction" that the "valley of the Des Moines" was not confined within five miles
95 on either side of the river.

96 To this doctrine I cannot subscribe. We are here dealing with a contract, where the State is a party
97 on the one side, and the railroad on the other. The company speak through their agents, and
98 are bound by their acts. The State can only speak and be bound by the joint acts of both branches of
99 its Legislature, approved by the Governor.

100 Nothing, therefore, can be claimed as a "legislative construction," unless it has passed through the
101 usual course of legislation.

102 It would be a dangerous precedent to establish that all the great contracts which the State has made,
103 or may hereafter make, must be construed and governed by the voting up or voting down of propositions
104 in either branch of its Legislature.

105 Suppose that instead of being voted down, the amendment had been adopted by the Senate, would any
106 one contend that this act would be a "legislative construction" of the word "valley," and that the
107 company were bound by it? Certainly not.

108 The committee further say that there has been an "executive construction" of the words "valley of
109 the Des Moines" in executing the conveyance to the company, for the lands below the city of Des
110 Moines, at a distance of more than ten miles from the bank of the river.

111 This act of the Governor was only performed in accordance with the special act of the Legislature
112 requiring the company to construct their road to Oskaloosa; and I have before stated that if Oskaloosa
113 is or was without the valley, the Legislature have no power under the contract to compel the company to
114 leave it, unless they choose to do so.

115 In this instance the company did as they were directed, but again reached the valley of the Des Moines
116 at one of the objective points named in the contract. Again in the valley, the company had no right to
117 leave it, nor has the Legislature any power to require them to do so.

118 But if these executive and legislative acts referred to by the committee are to be taken as precedents
119 for our guide in the constructions of this contract, then it is admitted that both the executive and Legis-
120 lature had a right and authority to make them, and that the Governor and the Legislature, as well as the
121 Senate alone, has a power at all times under the contract to determine what is and what is not, the
122 "valley of the Des Moines."

123 Having a right to determine this question at one time, gives them the right to determine it until the
124 completion of the contract, if this view of the committee be correct.

125 Consequently, the present Legislature may say, that the road above Des Moines is without the valley,
126 and resume the grant.

127 If one Legislature could say that Oskaloosa is *within* the valley, this Legislature may say that the
128 present terminus of the road is *without* it, as well as the whole track.

129 I am compelled to differ again from the majority of the committee in their construction of the act of
130 March 31st, 1868. They say that "the non-acceptance in writing, by said company of said act, did not
131 in law, and was not intended to effect in any manner its acquirement of the title to the lands by building
132 said road." "But on the contrary (they say), the act expressly provides that the non-acceptance by said
133 company of this act shall not prevent all the foregoing provisions thereof, from having the same operation
134 and effect as if they had been accepted by said company."

135 This is a singular statute, and at first sight would puzzle a Choat or a Marshal, and I do not wonder
136 that seven good lawyers have been led astray in its construction.

137 Now the first section of this act contains five divisions, and these divisions are all numbered, and are
138 what are called in the second section "foregoing conditions," and in the third section "foregoing pro-
139 visions." These "provisions" require certain officers of the State to perform the services therein stated,
140 and some of these requirements depend upon no future contingency whatever.

141 One of these "conditions," or "provisions" directs the Register of Land Office to select one hundred
142 thousand acres of land in a certain place, and hold it for payment of certain debts, and this he must do
143 whether the company accept of these "provisions" or not.

144 Another "provision" requires him to sell this land if the company do not by a certain time pay a
145 certain debt.

146 Another "provision" requires the Register, in case he has to sell the land, to give the purchaser a
147 certificate, and upon that certificate the Governor shall execute a deed.

148 Another "provision" requires the Register to select another one hundred thousand acres, which he
149 shall hold to be applied exclusively for the construction of a railroad into the town of Fort Dodge.

150 Then, again, these "conditions" provided that if the company pay this debt, the Register shall not sell
151 the land, and the Governor shall deed it to them.

152 And again, if this company shall build the road into the town of Fort Dodge, then the Governor shall
153 also deed to them this additional one hundred thousand acres.

154 Now, after reciting all these "conditions" and "provisions" in the first section, the second section
155 provides that, in case of non-compliance by said railroad company with these "foregoing conditions"
156 by it to be performed, then, without further legislation, this act shall have the force and effect of an act
157 of resumption.

158 The next section provides that the company shall accept of these "conditions" and "provisions" in
159 writing, within thirty days after the approval of the act.

160 But in case they do not accept by filing this writing, this fact shall not prevent the "foregoing
161 provisions" from having effect and operation.

162 That is, the Register shall still select the one hundred thousand acres, sell it, and pay the debt himself.
163 Secondly, he shall select the other one hundred thousand acres, and hold it for the purpose of building a
164 road into the town of Fort Dodge. In a word, this act declared these lands forfeited, resumed them,
165 offered them back upon certain "conditions," if the company accepted the "conditions" all right, if
166 not, it directed an officer to sell a certain part for a certain purpose, and to reserve the rest for another
167 purpose.

168 Whether this company has accepted of these "provisions," and paid the debt they were required to
169 pay as a "condition precedent," to obtaining these lands, or whether they are building the road to Fort
170 Dodge or not I do not know. But if this company have performed their contract thus far, and have

171 accepted of the terms of this act in every other respect, they certainly have until the first day of January
172 next to reach Fort Dodge with their road.

173 The committee say that if it be true that this company has perfected these lands under the provisions of
174 this act, then no further legislation is necessary. As a legal proposition this is true, but it is a matter
175 purely within the province of the Legislature to determine this necessity.

176 The committee further say that at the time of the passage of this act there was a lien upon these
177 lands, amounting to the sum of one hundred and sixty thousand dollars, and that of this amount there
178 would be chargeable to this one hundred thousand acres, the sum of \$34,750, and that said company has
179 paid this amount. This is purely a question of fact of which I know nothing.

180 But if this company has violated its contract and forfeited the land, I know of no rule in equity that
181 would compel the State to refund this money.

182 I am aware that at the time of making the original contract, the title to all these lands above the
183 Raccoon Fork was not in the State, and the title has since been acquired, consequently these lands, both
184 by the original deeds and an act of Congress, inured to the benefit of this company.

185 But in the original contract the lands were deeded to aid in the construction of railroad upon such
186 "terms and manner as the legislature may provide," hence it is that all such questions as the one last
187 mentioned by the committee are in the discretion of the Legislature.

188 The men who compose this Judiciary Committee are all of them men with whom I am proud to associ-
189 ate, and I must say that it has seldom, if ever, been my lot to be cast among so able a body of men.
190 Yet it is due to all parties concerned to have this matter presented in all its views, and no one regrets its
191 necessity more than myself.

S. MURDOCK,
One of Judiciary Committee.