

boundary of the State, and in case the west bounds of the State be extended to the Missouri on the North West, that the said grant of land be also extended to the other western boundary, and that the lands likely to be within the scope of the applied for grant now for sale, be immediately withdrawn from market, and wherever the lands are not in market the same be withheld from sale, until sufficient time shall have expired for the particular location of this road, and the selecting of said lands, to be conveyed in said grant.

Forward copy *Resolved*, That the Secretary of State be instructed to forward a copy of the foregoing memorial and resolutions to each of our Senators and Representatives in Congress, to the Secretary of the Interior, and to the Commissioner of the General Land Office.

APPROVED July 15th 1856.

MEMORIAL NO. 3.

SWAMP LANDS.

MEMORIAL AND JOINT RESOLUTION in relation to the swamp land.

To the Senate and House of Representatives of the United States, in Congress assembled.

Recital.

Your memorialists, the General Assembly of the State of Iowa, respectfully represent, that under the act of Congress entitled "an act to enable the State of Arkansas, and other states, to reclaim the swamp lands within its limits," approved September 28th, 1850, a considerable amount of such land accrued to the State of Iowa; that by an act of the General Assembly of the State of Iowa, passed in January, 1852, entitled "an act to dispose of the swamp and overflowed lands within the State, and to pay the expenses of selecting and surveying the same," those lands were

granted to the counties respectively in which they were situated, in trust for the purpose of draining and reclaiming the same, and provisions were made for the selection, survey and disposal of the same.

That under the last named act the greater part of the or-Selections. organized counties of the State, containing swamp lands, proceeded to select and survey the same.

That much of the land so selected has been returned, ac-Returned. cording to the provisions of law, and the instruction of the proper department, to the land offices of the several districts in which it was situated, marked upon the plats as swamp land, and withheld from sale or entry, and plats of land so withheld furnished to the several counties in which it was situated, that subsequently, to-wit: on the 25th of January, 1855, an act of the General Assembly of this State was approved, entitled "a bill to prevent trespass or waste upon the swamp or other lands in the State of Iowa, and for other purposes;" by which, among other things, pre-Pre-emptions. emptation rights were granted to actual settlers upon the swamp or overflowed lands, when the same had been selected, and return thereof made to the County Judges of the several counties; and at the same session of the General Assembly, an act was passed authorizing the Governor of the State, to cause the swamp lands in the unorganized counties of the State to be selected.

That under the provisions of the acts above mentioned, a Lands sold. large quantity of these lands has been sold to or pre-empted by actual settlers, and especially since the passage of the law above named, granting pre-emption rights; the withdrawal of the same from sale or entry, at the land offices, and the furnishing of the several County Judges with plats thereof, having been considered by the people settling upon the same and by the counties as a sufficient guaranty of title in the State, and through the State to the counties in Guarantee of title. which they are situated. That in many of the counties the funds arising from the sale of the swamp lands have been Funds appor- appropriated according to the intent of the act of Congress tioned. to reclaiming the same, and contracts have been entered in-Contracts. to for ditching and draining.

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Instructions of
Commis'r. Your memorialists would further represent, that under the instructions of the Commissioner of the General Land Office, dated February 11th, 1856, much hardship, and in many instances great injustice has been and will be wrought upon actual settlers upon the swamp lands, as well as upon the counties in which they are situated; under those instructions the question as to whether the lands selected were swamp or not, has been permitted to be opened, and applications for said lands been allowed at the Land Offices, by filing the following affidavit, viz:

Affidavit.

STATE OF IOWA, }
COUNTY OF _____ } ss.

On this _____ day of _____ 1856, personally appeared before me the undersigned _____, in the State of Iowa, _____, who being by me duly sworn deposes and says that he is well acquainted with the character of the soil in the following described tract of land, to-wit: _____ of section _____, in township _____, of range _____, in the district of lands subject to sale at _____, in the county of _____. That he has been over and examined the lines of said land and the marks or designations on the corner posts or trees, and from such examination has ascertained and knows the greater part of each forty acre tract thereof to be dry and fit for cultivation, without artificial drainage or embankment, and free from such regular periodical overflow, either at the planting, growing, or harvesting season, as would materially injure or destroy a crop.

And further, that such was the character thereof on the 28th day of September, 1850, the day on which the Swamp Land Law was passed.

Subscribed and sworn before me, on the day aforesaid.

Not final.

Those instructions are based upon the supposition that the selections made by the state or county agents, even when properly authenticated, and followed by a withdrawal of the lands so selected from sale or entry, are not final nor binding upon the General Government. This supposition your memorialists do not design at this time to controvert, nor do they deny that the selections may not in some in-

stances have embraced dry and tillable lands; but they do say that the character of many of the lands selected as swamp lands, has materially changed within the last two years; that this change is owing, partly to the improvement of contiguous lands, partly to the construction of roads through them, which in some instances operate as drains, but mainly to the drought of the summer of 1854; that there are numerous tracts of land in many counties, which, prior to said drought, could not be crossed by teams, and upon which there was always standing water, which could not now be proved to be swamp lands. Change.

The particular point which your memorialists wish to make is, that after the General Government has acquiesced for a series of years in the action taken by the State of Iowa in relation to those lands, without any interference, after vested rights have been permitted to accrue, and contracts to be made for the purpose of reclaiming those lands, rights and contracts accruing, and made in good faith, based upon a grant of several years' standing, it would be an act of injustice, that would inevitably work much wrong and hardship, both to individual settlers and to counties, resulting in the loss of homes to the former, and involving the latter in debt, to permit the question of the character of these lands to be opened at this late day, and allow applications for the same to be filed at the Land Offices, without providing against infringement of vested rights, and securing the counties from loss under contracts made in good faith. In many of the counties bordering on the Missouri river, the proportion of the swamp land is large. They embrace the bottom lands of the Missouri and its tributaries, and are so liable to inundation that it would require an extensive system of draining and dyking to reclaim them and render them fit for cultivation. In those counties we are informed a large amount of those lands have been applied for by non-resident speculators, covering in many instances the entries made by actual settlers under the provisions of the State laws. The settler of course, if they lose their homes, will look to the counties for indemnity, and will demand, not only a return of the purchase money, but damages; while

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for swamp
lands.

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the counties must either loose the lands applied for, and pay damages to actual settlers, or become involved in expensive litigation, in many instance at a remote land office, to prove each separate tract applied for under the instructions of the Commissioner of the General Land Office, to be swamp land. The large amount of lands in some of the western counties applied for by non-residents, amounting in some instances to twenty or thirty thousand acres, precludes the possibility of the affidavits upon which they are based having been made in good faith by persons so familiar with the lands as to be able to swear to the metes and bounds of each tract. Your memorialists, therefore, are impressed with the belief, that if the true character of those lands was ascertained, it would be found that but a small proportion of them are dry and fit for cultivation, and that while the General Government will suffer but a trifling loss by confirming them to the State, much wrong will be wrought upon the settlers who have entered or pre-empted them under the State laws, and upon the counties in which they are situated, if this question of their actual character is yet to be determined. Their original selection by the state and county agents, was prima facia evidence that they are swamp or overflowed, and their reservation from sale or entry at the Government Land Offices, for so long a period, should be conclusive.

Grant conferred.

Your memorialists, therefore, respectfully urge the passage of an act confirming the grant to the State of Iowa; and authorizing patents to be issued for all the lands that have been selected and reserved from sale or entry, at any of the Land Offices in this State.

Patents.

Instructions.

Be it resolved by the General Assembly of the State of Iowa, That our Senators in Congress be instructed, and our Representatives requested, to use their best exertions to procure the passage of such an act as is contemplated by the foregoing memorial, and that copies of this memerial be forwarded without delay to each of our Senators and Representatives in the Congress of the United States, by the Secretary of State.

By Secretary.

APPROVED, July 12th, 1856.

STATE OF IOWA—S S.

I, GEO. W. McCLEARY, Secretary of State, of the State of Iowa, do hereby certify that the foregoing acts, resolutions and memorials are truly copied from the original rolls on file in my office.

In testimony of which, I have hereto subscribed my
{ L. S. } name, and affixed the great seal of the State of
{ } Iowa. Given at Iowa City, Iowa, the 9th day
{ } of September, A. D., 1856.

GEO. W. McCLEARY,
Secretary of State.
