PUBLIC LAND POLICY IN MINNESOTA

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PREFACE

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The thesis which follows does not include all the topics which logically fall under the title, "Public Land Policy in Minnesota." It is the intention of the author ultimately to add chapters on "The Special Problems of the Timber Lands," "The Special Problems of the Mineral Lands," "The Reclamation of the Swamp Lands," The State as Trustee of the Railroad Lands," "The Internal Improvement Lands and the Payment of the Railroad Bonds," "The Salt Spring Lands and the Geological Survey," and "The Developement of the Land Administration and Its Logical Consummation."

CHAPTER I.

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INTRODUCTORY.

To a citizen of the commonwealth a knowledge of the public lands of Minnesota, their acquisition and administration, becomes a matter of some moment when he considers that one-third of the area of the State has come to it as the gift of the nation and that the objects to which the funds derived from this domain have been devoted touch him directly on every hand, as a tax-payer and as a beneficiary in the heritage. With the proceeds of these vast land holdings Minnesota is largely supporting her system of common schools and is assisting her University and her charitable institutions. Liberal grants of land alone made possible the rapid development of Minnesota railroads. Various public improvements have received assistance from the same source. And the funds accumulated from the sale of

one class of lands have been applied to the liquidation of the so-called "Railroad Bonds," the payment of which the Legislature in a moment of unthinking generosity guaranteed, thus removing the stain of repudiation which for twenty-four years had clouded the State's fair name.

And the question appears to be of more than state-wide importance. More and more the American commonwealths are coming to note and profit by the legislative and administrative experiments of their sister states, as the corrupt practices acts, the primary election laws, and the commission plans of city government bear witness. Moreover, the extensive and fairly uniform character of the federal land grants has given to a majority of the states problems similar to those of Minnesota. Thus a discussion of the management of the public lands in the one state becomes, in a measure, a treatment of the subject in all.

Nor is the question of mere passing interest. Four of the funds derived from the sale of State lands

are permanent. Their total amount will depend upon the wisdom and integrity of the State's legislators and administrators, past and future. And here is the significant point - there is still a future. The last chapter of the story of the public lands has not been written, and how the story shall be told, still rests with the citizens of the commonwealth.

A number of the states have squandered their inheritance of public land. In this respect Minnesota has shown far more wisdom than some of her neighbors. Yet she, too, has many things to regret. There have been mistakes and fraud in administration and legislation. Lack of the necessary knowledge, judgment, integrity, or these in combination, have in a few cases resulted in a loss of millions to the Permanent School and Permanent University Funds. There have been enormous losses by theft and fire because the State's timber has not been properly safeguarded. Incalculable values of iron ore have been rendered inaccessible because of the careless methods of some of the mining companies, free to follow their selfish

policy because of the lack of inspection. To wield the "muck rake" among these half-forgotten transactions would be a task but thankless unless the recording and discussion of past failures may in some small measure help to indicate the road to improved methods of administration.

To show how Minnesota acquired title to her public lands and how she has cared for her heritage, to point out the weak and the strong points in the present system of administration, and to indicate the road to improved methods - such will be the aims of this thesis. And not alone the returns in money to the State treasury will be kept in mind, but the effect of the policy pursued upon the mineral, timber, and agricultural resources of the State, present and future.

CHAPTER II.

THE ORIGIN AND DEVELOPMENT OF THE SYSTEM OF LAND GRANTS IN THE UNITED STATES.

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Not many years after the New England colonists landed on American shoresthey set aside certain tracts of land for the support of elementary schools. The idea, however, did not here have its birth. The first settlers were Englishmen and they were but following the precedents of their native country.

Before the destruction of the monasteries and chantries by Henry the Eighth many English grammar schools were supported from the income of the Church lands. But when the King destroyed the monasteries and chantries, the grammar schools went down with their supporters. The English people,however, were too much under the influence of the intellectual awakening of the Renaissance to stand idly by while their means of elementary education were being swept away. Edward and

Elizabeth received many petitions for the re-establishment of the schools. Some of these were granted, and in such cases the schools were endowed with a portion of the sequestered Church lands.(1)

The English colonists thus landed on American soil imbued, not alone with the love of School and Church, but with the idea that one proper mode of helping to maintain them was through endowments of public land. Their charters conferred title to areas of land which in the early years must have seemed well nigh boundless. Here, then, was a need, a precedent, and the means at hand of satisfying that need in the English way. Under the circumstances it is not surprising to find that a part of the public domain was set apart for the support of education and religion. All of the colonies followed the practice, but it reached its highest develop ment in New England.

In the New England colonies each town was granted some part of the public land of the colony for distribut-

(1) In tracing the development of the system of land grants to and through the colonial period professor Schafer's monograph, "The Origin of the System of Land Grants for Education", has been of very much assistance in connection with the history of grants pertaining to education and religion.

ion as it might see fit. It is in the records of these towns that we first find evidences of grants of land for the support of schools and ministers, and to individuals for carrying out enterprises of benefit to the public.

In 1639 the town of Dorchester in the Massachusetts Bay Colony devoted a part of this common land, known as"Thomson's Island", to the support of the town school. Later the General Court of the Colony revoked the grant of the "Island". The people of the town then petitioned for another grant to take the place of the land lost, and finally secured a thousand acres in the western part of the State. In 1657 the town voted to appropriate an equal amount of its own territory for the support of its schools.

Many of the towns present a similar history. Others, however, took so little interest in education that no such provisions are recorded. The colonial governments, however, came to the rescue of the grammar schools by granting tracts of land to the various towns on the

express condition that they should be devoted to the support of elementary education. This was the second step in the develop ment of the land grant policy.

It was, however, not only the schools that became beneficiaries in these grants. May 18,1653, the town of Lancaster received its grant of land from the General Court of the Massachusetts Bay Colony.(2) October 18 of the same year the freeholders of the town agreed to set aside "ffor the maintainance of the ministree of Gods holy word----thirty acors of uppland and fortie acors of Entervale Land and twelve acors of meddowe".(3) It was customary for Massachusetts and Connecticut to make sales of land in township lots. The provisions included in one of these sales by Massachusetts in 1704 may be taken as typical. The charter to the land stipulated that there should be reserved,"three hundred acres of the said land for the first settled minister four hundred acres for the ministry and two hundred acres for the use of a school."

The reservation of public land for public purposes

(2) Early Records of Lancaster, 25.
(3) Ibid., 27.

did not stop with education and religion. It is interesting to find that the practice of making grants of land to assist in carrying through enterprises of importance to the whole community was also in vogue in New England at this early period. When the first New England settlers set out to conquer a home on a new continent they went with full knowledge that they must forego the luxuries and comforts of life in England. To eke out a living from forest and field and stream, to provide shelter against the inhospitable climate, to guard against the attacks of the lurking foemen of the forest - these were the activities that occupied the energies of the first years of each settlement. The luxuries of the Old World were scarcely given a thought, but lumber and flour these men must have, or perish. At first the corn for each loaf had to be ground by hand in a mortar, or parched, Indian fashion. Each piece of timber for the dwelling houses and forts had to be hewn by hand from the rough logs

felled in the forest.(4) Here was a pressing need for flour mills and saw mills. But for an individual to set up either was no small undertaking, the more so that the machinery required had to be imported from England at great cost. In order to secure mills the towns therefore held out inducements in the form of land grants to persons enterprising enough to construct and equip such establishments.

In the town record of Dedham, a village in the Massachusetts Bay Colony, for March 23,1637, we find an account of one of the first grants of public land to promote a public improvement, made in America. The record reads in part; "Wheras ther hath ben made some proposicions by Abraham Shawe for ye erecting of a Corn Mill in our Town. We doe now grante unto ye sayd Abraham Sixty Acres of Land to belong unto ye said Mill soe erected provided allwayes yt the same be a Water Mill, els not. We order also yt evry man yt hath lott wth us, shall assist to breng the Milestones from Watertowne Mill by land unto ye boating place near mr

(4) Early Records of Lancaster, 31.

Haynes his farm."[5] Abraham Shawe evidently did not carry out his contract, for two years later the following paragraph appears in the town records. "Ordered yt if any man or men will undrtake & erect a water Cornemill shall have given unto him soe much grownd as was formrly granted unto Abraham Shawe for yt same end & purpose with such other benefitts & privelidges as he shold have had in all respects accordingly, provided yt ye sayd Mill doth grinde Corne before ye First of ye tenth month as it is intended!"[6]

The town of Rowley, Massachusetts, made use of the same policy to secure a mill. The earliest account is lost, but a record of the laying out of lands, made out in 1643, gives us sufficient information. The record reads; "Impr to Mr. Thomas Nelson thirty-six Acres of upland in the ffield called the Mill ffield twenty six wherof was laid out to him as pt of his first division of upland the other tenn was given him for incouragement towards building the Mill."[7] The grant was probably made in 1639, when the town was founded.

(5) Dedham Town Records, 28-29.
(6) Ibid., 51.
(7) Records of Rowley, Massachusetts, 34.

The town of Lancaster even better exemplifies the policy. In the Lancaster town record for November 20, 1653, which was less than a year from the time of the first considerable settlement, we find an account of a "covenant," as it is called, which reads as follows: "This witnesseth that wee the inhabitants of Lancaster for his encouragement in so good a worke for the behoofe of our Towne upon condition that the said intended worke by him or his assignees be finished, do freely and fully give graunt, enfeoffe, and confirm unto the said John Prescott, thirty acres of intervale Land lying on the north river—— and ten acres of land adjoyneing to the mill; and forty acres of Land on the south East of the mill brooke.—— To have and to hold forever. And also wee do covenant and grant to and with the said John Prescott his heirs and assignes that the said, with all the above named Land thereto apperteyneing shall be freed from all common charges for seaven years next ensueing, after the first finishing

and setting the said mill to worke."(8) It is significant that temporary exemption from taxation, so characteristic of Minnesota grants for public improvements, was a feature of the earliest colonial grants.

Prescott seems to have been the one enterprising man in the community for at a town meeting five years later it is he who offers to set up a saw mill. This time his condition is that he shall be given title to a certain one hundred and twenty acre lot, that the mill and saws shall be free from the town rates permanently, and that the land shall be similarly exempt until improved. His "motion" was granted on condition " that the inhabitants of the towne should bee suplyed with boards and other sawing on such terms as (was) usually aforded att other saw mills in the cuntrie".(9)(10(

The same policy was followed in Providence, Rhode Island. January 27,1678, it was "voted by ye towne upon ye presentation of a bill by John Smith (Miller) Thomas Arnold, Nathainell waterman, John whipple Junr, & John Dexter, in ye behalfe of them & ye rest of there

(8) Early Records of Lancaster, 32.
(9) Early Records of Lancaster, 56. See also Watertown Records,1;Usher's History of Medford,380; Braintree Records,1.
(10) To the possible objection that it was customary for the towns to grant land to all of their inhabitants and that therefore these grants were not especially significant attention is called to the fact that the grant was made for the definite purpose of securing to the inhabitants the (cont) next page.

pertners, upon ye 27th of this instant January; That ye above named shall have ye full and sole power of ye use of two Acars & half of ye Townes Comon, upon ye hill called hurttlebury hill, any where upon ye sayd hill, where they shall see cause to sett up a Sawmill; And to be to theire owne proper use & behoofe of them & theire heires soe Longe as ye sayd mill shall stand, or by them be maintained, & not deserted."(11)

In the next century examples of land grants of this character are not numerous. The older towns were supplied with mills, and with the rapid increase in population, private capital no longer hesitated to enter the field unassisted. An abstract of title of the town of Southold, New York, dating from 1706, shows that the practice was still resorted to occasionally, however. The abstract follows. "Now Know Ye, that we the said Thomas Mapes, have sett out and delivered one acre of land situate nere ye Wind Mill at ye westermost end of ye said Town to him ye said Lazarus Manly;-

the advantages of the mills and that Prescott had already received his regular allotment.

(11) Early Records of the Town of Providence, V111,36.

and also three acres of land adjoyning to ye said one acre, for his use soe long as he or his heirs shall keep and maintaine a sufficient gristmill at or neere ye said place where the mill now standeth at ye westermost end of ye said Town Street and not longer! (12)

Examples such as these that have been given could, of course, be multiplied; but enough have been presented to show that the practice of making grants of land to promote semi-public enterprises is not a Nineteenth Century invention, as is quite currently believed, but was in common use in many of the colonies during colonial times- the natural refuge of communities with abundant areas of public land and a pressing need for certain improvements of importance to the people as a whole.

By the time when the victorious struggle with the Mother Country and the cession of their Western lands to the Federal Government by the various states had created a national land reserve, the policy of governmental grants in support of education was well established.

(12) Southold Town Records, 11,435.

Thus the Pennsylvania Assembly in 1779 authorized the Supreme Executive Council "to reserve --- so many of the Confiscated Estates as(might) be necessary to Create a fund for the support of the Provost, and other officers of the University of the State".(13) And in 1780 Virginia set aside eight thousand acres of land in the County of Kentucky to support "a public school or seminary of learning, to be erected within the said county".(14)

October 10,1780, Congress passed a resolution recommending that the states holding western lands should cede them to the United States. New York, Massachusetts, Connecticut, and Virgi nia claimed land north of the Ohio. By 1785 all of these states but Connecticut had ceded their entire claims,and their cessions had been accepted by Congress. Connecticut made her final cession in 1786.(15) The nation thus came into possession of a very extensive area of wild land. Would it adopt a policy similar to that of the colonies and colonial towns? The decision was to be of the utmost importance

(13) Colonial Records of Penn. Vol. 2.
(14) Henings Statutes. Vol 10, p 287.
(15) Journals of Congress. Vol 3,p584, Vol 4,p343,502, 697,771.

to American educational institutions, and ,later, internal improvements.

When Virginia's first cession came up for discussion in Congress in 1783 one of the Virginia delegates, Colonel Bland, moved that one-tenth of the land should be reserved for the payment of the civil list of the United States, the erection of frontier forts, and the founding of seminaries of learning. The surplus, if any, was to be used for building a navy. The motion was lost. It is indicative of the influence of colonial and state practice on national policy that a motion for providing a reservation of land for seminaries of learning should have come from Virginia. That state, it will be remembered, had made a similar grant from its state lands three years before.

Next year a measure for a temporary government of the western territory came up for discussion and was passed. In this act there was no provision for any reservation of land.(16) But the ordinance of 1784 is important for the purpose of our study as embodying

(16) Journals of Congress, Vol 4,p401.

for the first time in a federal law a number of the conditions upon which land grants were made to new states at a later period.

Again a year passed before any important movement was made in this matter. But March 6,1785, "an ordinance for ascertaining the mode of locating and disposing of lands in the western territory" came before Congress. No further action was taken on the bill before March 16. In themeantime copies had been circulated through the country, and Timothy Pickering had written to Rufus King, who was a member of the committee that reported the bill,objecting to the measure on the ground that it made no provision "for ministers of the gospel, nor even for schools and academies."(17) The bill was recommitted on March 16 to a committee consisting of one member from each state, King being once more a member.(18) This committee reported a bill including the following paragraph: "There shall be reserved the central section of every township, for the maintenance of the public schools;

(17) Life and Correspondence of Rufus King. I,284.
(18) Journals of Congress, IV, 482,500.

and a section immediately adjoining the same to the northward, for the support of religion."(19) The provision concerning the support of religion was stricken out and an amendment to set apart a section for maintaining charitable institutions was rejected. As finally passed the ordinance provided: " There shall be reserved the lot No.16 of every township for the maintenance of public schools within the township."(20)

To what extent Pickerings opinion was influential in shaping the committee's report may be surmised from a statement by King in a letter to Pickering shortly afterward; "You will find thereby that your opinions have carried weight with the committee that reported the ordinance."(21) It was thus,in the end, the men from New England - the home of the land - endowed grammar school who were chiefly instrumental in carrying into the national policy the system of land grants in support of elementary education.

In the meantime a movement for emigration to the Ohio Valley had been developing in New England. As early

(19) Ibid., 506-507.
(20) Ibid IV, 520.
(21) Life and Correspondence of Rufus King.I.

as April,1783, Pickering drew up a rough draft of "propositions for a western settlement," among which were included the following: " These surplus rights being secured, all the surplus lands shall be the common property of the State and disposed of for the common good, as for laying out roads, building bridges, erecting public buildings, establishing schools, and academies, defraying the expenses of the government, and other public purposes."(22) March 3,1786, the Ohio Company was formed to promote settlement of the western territory and to purchase land. A new ordinance for the government of this reg ion received the half hearted attention of Congress in the fall of 1786. It became a different proposition, however, when Manasseh Cutler appeared on the scene in the spring of 1787 with an offer to purchase a large tract of land for the Ohio Company. The renewed interests in the western land hastened the passing of the ordinance, and on July 13,1787, it(23) became a law. In it we read the memorable passage which has meant so much for

(22) Cutler' I, 157
(23) Journals of Congress, XII, 61

the education of the country:"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and other means of education shall be forever encouraged."(24) Here, again, provision is made that the legislatures of the new states shall never interfere with the primary disposal of the soil by the United States, nor with any regulation Congress may find necessary to make for the securing of the title in such soil to bonafide purchasers, nor tax lands, the property of the United States, or non-residents more than residents, provisions which we shall meet again in the Enabling Act of Minnesota, as the conditions upon which the State received its grants of land.

Consistently with the provision of the Northwest Ordinance and in compliance with Cutler's demands, the committee appointed to take charge of the sales of lands to the Ohio Company agreed that section 16 of each township purchased should be given perpetually for the maintenance of schools, section 29 for the"pur-

(24) Journals of Congress, XII, 61.

pose of religion" and that "two townships near the center and of good land" should be given by Congress for the support of a "literary institution". It should, however, be noted, that Congress objected to making a grant for the support of religion and only agreed to do so because Dr. Cutler would agree to no other terms. A similar reservation was made in the Symmes Purchase of the same year. After this Congress omitted the grant for religion and went back to the "section 16" provision of the ordinance of 1785.

Thus, shortly after the time of the adoption of the United States constitution, the federal government had definitely adopted the system of making land grants in support of education, had as definitely refused to give a like support to religion, and had not yet had occasion to take action concerning the support of internal improvements in the states.

CHAPTER III.

FEDERAL LAND GRANTS TO THE STATE.

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Before taking up the discussion of the policy of Minnesota in the management of her lands it seems desirable to consider the manner in which she acquired title to her public domain, and the conditions upon which the lands were bestowed; for the terms of the original grants have in a large measure determined their later history.

The first federal act setting aside any portion of the territory within the later State of Minnesota for a public purpose was the Ordinance of 1785, referred to in the second chapter. By this act section sixteen of each township was reserved for the support of the Common Schools. This law, however, applied only to that portion of the State east of the Mississippi. The same is true of the famous provision of the Northwest Ordinance.

During the first half of the Nineteenth Century the future state or some portion of it at some time or another formed a part of the territories of Indiana, Louisiana, Illinois, Missouri, Michigan, Wisconsin, and Iowa. Familiar with the Organic Act of Minnesota we perhaps look for some provision concerning a federal land grant in the corresponding enactments for these territories. But the search is futile. Not one of these organic acts makes a direct grant of public land. The nearest approach to such a provision, and one common to the organic acts of all these territories, except Louisiana and Missouri, extends the rights, privileges, and advantages guaranteed by the Ordinance of 1787 to the inhabitants of the respective territories, and thus, presumably, the very indefinite proviso concerning the encouragement of schools and the means of education.(1) This does not mean that these territories, or rather such parts of them as were embraced in the region northwest of the Ohio River, were to receive no land from the United States Government, for the provision of the Ordinance of 1785 for the reservation

(1) Laws of the U.S. III, 367, 603,632. IV, 198,438;V,139; IX, 310.

of section 16 in each township for the support of schools was still operative.

The federal land grants to the State fall into nine well defined classes, distinguished from one another primarily by the difference in the purposes to which the grants might be applied, as provided by the law reserving or granting the lands. These nine classes of lands are the Internal Improvement Lands, the School Lands, the Salt Spring Lands, the University Lands, the Capitol Lands, the Railroad Lands, the Swamp Lands, the Agricultural College Lands, and the Park and Forestry Lands.

After the reservation of section 16 of each township by the Ordinance of 1785 the first congressional land grant applying to Minnesota was that of the Internal Improvement Lands, which provided that each new state upon admission to the Union should receive 500,000 acres of land for purposes of internal improvement. This was the grant which was later to give rise to the Internal Improvement Land Fund, of which the people of the State were to hear so much in the

sixties and seventies.(2)

The second came in 1849 - a part of the Organic Act of Minnesota. The act provides"that when the lands in the said territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections sixteen and thirty - six in each township in said territory, shall be, and the same are hereby reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same". This,it is clear, is not an explicit grant, but merely a reservation of the land for the Territory. In other words, it may require another act of Congress before the Territory or State can secure full title to the land.

Minnesota was the second territory for which Congress reserved two sections in each township to assist elementary education. Oregon, created a territory a year earlier, was the first.(3) Two years before, in

(2) Laws of the U.S. X, 157.
(3) Statutes at Large, IX, 300.
The slavery question was of such over-shadowing importance at this time that in a discussion of the measure lasting several weeks the reservation of an additional section in each township for school purposes was not even mentioned.

1846, a bill had been introduced into Congress to appropriate an additional section in each township of the public lands of the United States to the support of schools, but the measure was not heard from after its second reading.(4)

The next act reserving Public Land for Minnesota was passed February 19,1851. This directed the Secretary of the Interior to reserve from sale a quantity of land not to exceed two townships for the use and support of a University in the Territory, the land to be applied to no other purpose whatever.(5)

The Enabling Act of Minnesota, passed February 26, 1857, granted or reserved to the State four classes of lands, the School lands, reserved by the Organic Act since 1849, the State University Lands, the Capitol Lands, and the Salt Spring Lands.(6) That part of this law in which we are interested was in the form of a proposition to the Constitutional Convention about to assemble at St.Paul to grant these lands to the state on condition that the Convention insert a

(4) Congressional Globe, XV, 172
(5) Statutes at Large, IX, 568.
(6) Organic Acts of Minnesota, Revised Laws of Minnesota 1905,1199.

clause in the Constitution, or pass an ordinance irrevocable without the consent of the United States, agreeing to the three following conditions.

1." That the State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulation Congress may find necessary for securing title in said soil to bonafide purchasers thereof.

2. That no tax shall be imposed on lands belonging to the United States.

3. That in no case shall non-resident proprietors be taxed higher than resident."

In return for complying with these very reasonable requirements the United States agrees,

1." That sections numbered sixteen and thirty-six in every township of public land in said State, and where either of said sections, or any part thereof, has been sold, or otherwise disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools.

2. That seventy-two sections of land shall be reserved and set apart for the use and support of a State University, to be selected by the Governor of said State, subject to the approval of the Commissioner of the General Land-Office, and to be appropriated and applied in such manner as the Legislature of said State may prescribe for the purpose aforesaid, but for no other purpose.

3. That ten entire sections of land, to be selected by the Governor of said State, in legal sub-divisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the Legislature thereof.

4. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use; the same to be selected by the Governor thereof within one year of the admission of said State, and when so selected to be

used or disposed of on such terms, conditions, and regulations as the Legislature shall direct; Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said State."(7)

These grants were alike in a number of important particulars. Except in the case of the Salt Spring Grant Congress limited the use to which the lands might be put. It was, however, expressly left to the Legislature to prescribe the exact manner in which three of the four grants should be applied. Where a conflict between the claims of the State and of private persons was anticipated, the rights of the individual were carefully protected. Where the grant did not specify definite tracts of land the Governor was authorized to make the selection.

The grant of section 16 and 36 in each township of public land in the State did not include all the

(7) Poore's Charters and Constitutions, 1028.

sections so designated. Not only were sections sold or otherwise disposed of not embraced in the grant, but it was later held by the Supreme Court of the United States that such landsof the State as were included in Indian Reservations at the time of the grant were not public lands within the meaning of the act. Thus the State could not assert title to these School Land sections until the Indian right of occupancy had been extinguished. This was to give rise to endless controversy. More serious complications, however, arose from a resolution which was passed five days after the Enabling Act became law. The Minnesota Legislature of 1856 had memorialized Congress, representing that many settlers in the Territory had opened farms, erected buildings, and bought and improved townsites on unsurveyed public land, which proved to be School Land after the Survey, and requesting that persons in the territory who had settled upon School Sections before the Government Survey should have the same rights as if located upon unappropriated Government land.

The memorial also asked that town sites in the Territory, which were on school sections and had been occupied before the Government Survey, might be entered the same as townsites upon other Government land.(8) It was in response to this memorial that Congress passed the troublesome resolution of March 3,1857. That resolution complied with the two requests of the Minnesota Legislature and added another restriction to the grant of School Lands, namely, that if such lands had been "reserved for public uses before the survey", other lands should be selected by the proper authorities.(9) The justice of the call for relief by bonafide settlers on School Lands is undeniable, but the manner of giving that relief was so unfortunate that the State has had cause to regret the solicitude of the territorial Legislature for the early settlers.

The next grants in point of time were those of the Railroad Lands. When Minnesota became a territory its one means of communication with the settled portions of the country was by steamboat, down the Mississippi,-

(8) Laws of Minnesota, 1856, 368.
(9) Statutes at Large, XI, 254.

an improvement indeed, upon the canoe of the old voyageur, but slow and uncertain, and blocked for several months during the winter. Thus the news of the passing of the Organic Act in the winter of 1849 was not known at St.Paul before the breaking of the ice in Lake Pepin in the Spring. The organization of Minnesota as a territory quickened the influx of settlers. On an average he population increased at the rate of twenty thousand a year during the territorial period. A vast amount of fertile land awaited the plow of the pioneer, but the railroad, which even at this early period had carried the wealth of the world to his very doors in his eastern home, was here but a dream of the future. And without it the wealth of the prairies was securely sealed.

But although the need for better means of communication was pressing, the population of the territory was so small that private enterprise was not ready to enter upon railroad construction without government assistance. In 1851 the Legislature mem-

orialized Congress for a liberal grant of land to assist in the building of a railroad from St.Paul to Milwaukee.(10) Several other memorials followed.

The response was generous. The United States at this time was the largest landowner in the world. The urgent need for means of transportation, the poverty of the frontier communities, the advantages of peopling the West with a mighty population appealed to Congress. For these reasons the policy of assisting canal development by grants of public land, which had been practiced since 1833, was now extended to the railroads.

The first grant of Railroad Land to Minnesota was made in 1854. The act of that year donated to the Territory for the purpose of aiding in the construction of a railroad from the southern line of the State, by way of St.Paul, to the eastern line in the direction of Lake Superior, the alternate odd numbered sections on each side of the road for a distance of six miles.(11) This act was repealed the same year,(12) because the Legislature failed to abide by one of its conditions.

(10) Laws of Minnesota 1851,44-45.
(11) Statutes at Large, X,302.
(12) Ibid., 675.

From 1857 to 1866, however, several similar grants conveyed vast areas of land to Minnesota to be thus applied.(13) The total amount exceeded 8,000,000 acres-nearly one-sixth of the area of the State.

The largest single grant to the State was that of the Swamp Lands, which were granted to Minnesota in 1860. In 1850 Congress granted to Arkansas all the swamp and overflowed lands within the state. All lands too wet for cultivation were to be regarded as included in this category. The Secretary of the Interior was directed to make out a list and plats of all such lands and issue a patent for them at the request of the Governor of Arkansas. The selections were to be made by legal subdivisions, and all subdivisions, the greater part of which consisted of swamp land, were to be included. The proceeds from the lands were to be applied exclusively, "as far as necessary," to the purpose of re-claiming the lands by means of irrigation.(14) In 1860 the provisions of this act were extended to Minnesota. The selections were to be

(13) Ibid., X1, 195;X11, 625;X111,64,74, 526; X1V, 87.

(14) Statutes at Large, 1X, 520.

made from time to time as the survey of the public lands should be completed.(15)

It will be remembered that the Act of 1851 merely ordered the reservation of two townships of land for a University. Some question having arisen as to whether this was sufficient to justify the action taken by the Interior Department in patenting these lands to the State, an act was passed in 1861 by which the land reserved for the Territorial University by the Act of 1851 was donated to Minnesota for the support of its leading educational institution . The question then arose whether this fulfilled the provisions of both the Act of 1851, which had reserved lands for a territorial university, and the Enabling Act, which had made a similar provision for a state university. The State held that the second act contemplated a double University Grant. This led to a protracted controversy with the Land Department at Washington, which will be discussed later. The result, however, was that Congress in 1870 passed an act directing the Commis-

(15) Ibid., XII,3.

sioner of the General Land Office to approve the selections of land made by the Governor of the State to the amount of seventy-two sections, without taking into account the previous grant.(16)

In 1862 one hundred and twenty thousand acres were added to the States prospective domain by an act donating to each state 30,000 acres for each senator and representative to which it was entitled by the apportionment of 1860. It was required that this land should be used for the benefit of one or more colleges of agriculture and the mechanic arts. Each state was to select the land within its own limits if there was enough public land of the United States within the state to fill the grant. If not, the Secretary of the Interior was to issue land scrip sufficient to make up for the deficiency. This "scrip" which entitled the holder to select public land in any portion of the United States to the amount named, was to be sold by the state to individuals. The income from the land and scrip sold was to be invested in safe stocks and re-

(16) Ibid XVI, 196.

main a perpetual fund, except that one tenth of it might be invested in sites and experimental farms. The interest from this fund was to be devoted to the endowment of at least one college where the leading object should be to teach such branches of learning as are related to agriculture and the mechanic arts. If any lands should be selected from what was known as double price lands the amount was to be proportionately reduced. Other important conditions attached to the grant were: that any part of the permanent fund lost must be made good by the state, that no part of the fund, nor the interest derived from it, should be devoted to the erection or repair of buildings; that annual reports must be made to the Secretary of the Interior regarding the progress of the College, and results of experiments, and industrial and economic statistics.

In 1868 two hundred thousand acres of land were granted to Minnesota to aid the State in improving the navigation of the Mississippi from the Falls of St.Anthony to the mouth of the Minnesota by the construction

of a lock and dam at Meeker's Island. The land was to be selected by an agent appointed by the Governor, and was to be subject to the disposal of the Legislature for the purpose provided,. Unless the work should be completed in two years the land was to revert to the United States.(17) No work was done. This, it would seem, by the provisions of the act, would make the land revert to the United States "ipso facto", but it appears to be the act of Congress to repeal such acts. This has not been done in this case, and a bill for that purpose introduced in 1892 by John Lind, still sleeps in committee.

From 1868 to 1892 no new grant of federal land was made. But in the latter year the movement for the preservation of American forests found expression in an act granting to the State all unappropriated lands of the United States in thirty-five specified sections near the head-waters of the Mississippi, where the Legislature had established Itasca State Park the year before. Unless the State uses the land exclusively for park purposes, and protects the timber, the grant

(17) Ibid., XV, 169.

reverts to the United States.[18]

In 1904 a grant of 20,000 acres of public land followed. This was to be selected by the State Land Commissioner and Forestry Board from third and fourth rate public land as nearly contiguous as possible, and must be used for experimental and forestry purposes. No tract could be included which, in the opinion of the United States Forester, should make part of any federal forest reserve.[19]

In 1905 a small island in Bartlett Lake was granted as a park or forest reserve,[20] and two years later Cooper Island in Cass Lake was added. The latter being part of an Indian reservation and heavily wooded, the State was required to pay for the pine timber.[21] Terms were to be arranged between the Secretary of the Interior and the Governor. The transaction is yet to be completed.

Many sections of school land were pre-empted before the Survey was completed. A large part of the Salt Spring Lands were lost through blunders of the

(18) Ibid., XXVII, 347.
(19) Ibid., XXXIII, 536.
(20) Ibid., 1001
(21) Ibid., XXXIV, 352.

federal officials. University Lands were entered by homesteaders through ignorance of the fact that the State claimed ownership. School Lands in Indian reservations were sold by the United States Government. In place of most of the land lost the State has been authorized to select, as indemnity, other lands of equal area.

At the end of the first half century of the State's history the United States has given Minnesota over sixteen and a half million acres, or nearly twenty-six thousand square miles of land. Hundreds of thousands of acres of swamp land are still in dispute. When these claims have been adjudicated the total will perhaps pass seventeen million acres - a region as large as Massachusetts, Rhode Island, Connecticut, Vermont, and a third of New Hampshire, or about one-third of the area of the State - truly a princely heritage.

CHAPTER IV.

PERFECTING THE STATE'S TITLE.

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Except in the case of the School Lands the wording of the federal statutes granting lands to Minnesota has been such that the Interior Department has had the final word in giving the State a complete title. Not until the United States Land Commissioner has placed in the hands of the proper State officer a patent to each individual tract, has the State's title become perfect. But sometimes it has happened that at the time of the grant other parties had a claim to portions of the land donated. More frequently such claims have been derived after the time of the grant, but before patent had been issued to the State. Of this class of claims the long delay in the completion of the Government Survey has been a most fruitful cause. In other cases it has proved extremely difficult to determine just what territory should be regarded as included in the grant. Moreover, the wheels of the

administration of the United States Bureau of Public Lands, move slowly - exasperatingly slowly, it has sometimes seemed to Minnesota officials. For these reasons and others, which will appear, it has taken half a century of almost constant litigation before the United States Land Commissioner, the Secretary of the Interior, and the Courts, State and Federal, to adjust the conflicting claims. And even today large areas of Swamp Land are still in dispute.

Of the various land grants it has proved particularly difficult to secure good title to the University Lands, the School Lands, and the Swamp Lands. The peculiar complications arising in connection with the University Lands calls for treatment in a separate chapter. The last two classes have each given rise to their own distinct problems, and must be considered separately. The other groups of public land over which there has been any difficulty will also be briefly discussed.

Section five of the Enabling Act of Minnesota provides "that sections sixteen and thirty-six in every

township of public lands in(Minnesota), and where either of said sections, or any part thereof, has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to said state for the use of schools."(1) Over the wording of this section two disputes were to arise. 1.What constituted a disposal of a tract of land? 2. Were all lands within the State at the time of the grant public? A partial answer to the first question was given by a joint resolution which Congress passed five days later. This provided that in case any person should build a house on section 16 or 36 of any township of Minnesota or should cultivate any part of the land before it had been surveyed; or in case such sections had been or should be selected or occupied as townsites under the act of 1844, or had been reserved for public uses before the Government Survey, the State must surrender its claims.(2) As the latter act was passed before the provisions of the former were accepted by Minnesota, Congress, of course,was free to change the conditions. That the second act is not

(1) Statutes at large, XI, 167.
(2) Ibid., 254'.

merely an interpretation, but really a change in the conditions, becomes evident when we note that under the first act conflicting claims could arise only from some right existing prior to the grant, while in the second such adverse title might arise up to the time of the completion of the Survey.

The matter was of great importance to the State, inasmuch as homesteaders always took up the most valuable lands first. Thus, although the State might select an equal area as indemnity for lands pre-empted, it could almost never secure as valuable lands as the tracts lost.

Large numbers of quarter sections were pre-empted before the lands were surveyed, especially tracts lying near growing towns. To many other settlers secured titles by fraudulently claiming to have held pre-emption rights before the survey. To test the legality of the title of persons holding land under the resolution of March 3,1857, several suits were instituted in 1860 against parties in Rice County. In these cases two questions arose, 1. Did the State have any

title to sections 16 and 36 as against parties claiming the land under the joint resolution of March 3rd.? 2. Granting that the title of settlers was good if fairly obtained, did the State have a right to go back of the patents to show fraud in pre-emption?(3) Upon presenting these questions to the Supreme Court of Minnesota a difficulty arose, all of the judges announcing that they were the owners of land which had been pre-empted by virtue of settlements made prior to the Survey. The objection was waived. The decisions handed down determined the important questions adversely to the State.(4) The case was then taken on a writ of error to the Supreme Court of the United States, which decided that the State might go behind the patent to show fraud in pre-emption.(5) This was an important victory for the State for two reasons. First, valuable lands, fraudulently pre-empted, had to be restored to the State in case it could prove such fraud. Secondly, and more important, it deterred many

(3) Attorney General's Report 1860, Minn. Ex Doc. 1860,4.
(4) Ibid., 1862, Minn. Ex Doc 1862, 676.
(5) Ibid., 1864, 187. U.S. Reports, LXVIII,109, Minnesota v. Batchelder.

settlers from attempting fraud in the future.

In the meantime a protest had been filed with the Secretary of the Interior against the continued pre-emption of School Lands, which resulted in an order from the department to the local land offices requiring that the Governor should be notified in each case of application for a patent to section 16 or 36. When such notices were served, the matter was referred to the Attorney General, who, in turn, directed the proper county attorney to appear and present the State's claim.(6) No specific statute, however, made it the duty of the county attorney to prosecute this class of cases, and some of these officers refused to act. This defect in the law was not remedied till 1905.

But although the State had succeeded in establishing its right to have fraudulent patents declared void, and secured notification of application for patents to School Lands, large areas of the richest and most valuable land in the State continued to pass into the hands of men who settled on sections 16 and 36

(6) Attorney General's report 1860, Minn Ex.Doc. 1860,4.

before the slowly progressing Survey, and thus secured an unimpeachable title. So great were the losses resulting that the State officers repeatedly urged the Legislature to memorialize Congress to repeal the joint resolution of March 3,1857.(7) To cap the climax, the Commissioner of the General Land Office, in 1870, ruled that, within the meaning of the resolution, public lands were not surveyed until the townships were subdivided and the sections marked on the ground. As soon as the township lines had been run it became a simple matter to determine which sections were school sections. Yet persons knowing the land to be School Land were allowed to pre-empt, to the great loss of the Permanent School Fund.(8)

Contests of this class continued to arise till the close of the century, although in diminishing numbers as the unsurveyed area receded northward. In 1899 there were three. In 1900 there was none. In 1908 the completion of the federal Survey rendered all future contests impossible.

(7) Ibid., 1862, 678.
(8) Auditors Report, Minn. Ex. Doc. 1870 II, 611-612.

Of even greater consequence have been the cases that have arisen over the School Lands in Indian reservations. Sections 16 and 36 in the Lake Pepin Half-breed Reservation gave rise to the first controversy. From 1830 to 1854 the Lake Pepin Reservation was held in common by the Sioux Half-breeds. In the latter year Congress authorized the President to make a treaty with the Half-breeds securing the cession of the reservation to the United States. In return the Indians were to receive scrip equal in amount to the land to which they would have been entitled in case of a division of the reservation, such scrip to be located upon "any" of the land within the reservation not occupied by bona-fide settlers, or upon other unoccupied lands. In 1858 an act was passed opening the tract to pre-emption settlements. On behalf of the State it was argued that the act of 1854 extinguished the Indian title; that therefore the land belonged to the United States when the Minnesota Enabling Act was passed in 1857, and that only those parts of it could be regarded as otherwise

(9) Attorney General's Report, Minn. Ex. Doc 1870 II, 30.

disposed of upon which Half-breed settlements had been made, or scrip located prior to the passing of the act; finally, that Congress, having exercised the right of disposal by opening the tract to pre-emption in 1858, thereby showed that it possessed that right and could exercise it in favor of the State in 1857. The United States Land Commissioner took the view that the arrangement effected in 1854, by which the Half-breeds in return for giving up their common title to the reservation, were authorized to locate their scrip on "any" of the lands within it, merely changed their common title to one"in severalty". Hence the grant to the State, giving title to sections 16 and 36 of the "public lands" only, gave no claim to such sections in this reservation, which was not "public land" at the time of the grant. It was held, however, that equivalent lands might be selected.(10) An appeal was taken to the Secretary of the Interior, but the result was a confirmation of the Land Commissioner's decision.

While this case was pending a dispute arose over

(10) Governor of Minn. to the Commissioner of the General Land Office. Commissioner of the General Land Office to the Governor of Minn. Attorney General of Minn. to the Commissioner of the General Land Office.
Attorney General's Report, Minn. Ex. Doc., 1862, 5-8.

the Winnebago Trust Lands. Upon the removal of the Winnebago Indians from the reservation their former lands were advertised for sale, by the Commissioner of Indian Affairs. The lands offered included sections 16 and 36. The Attorney General of Minnesota at once entered a protest, in which he pointed out that sections 16 and 36 had been reserved for school purposes by the Organic Act of 1849; that Indian title, as decided by the Supreme Court of the United States in Fletcher versus Peck, was merely a right of occupancy; and, therefore, that when such Indian occupancy had been terminated by treaties between the United States and various Indian tribes in 1851 and 1852, ceding all Indian lands west of the Mississippi to the federal Government, the Territory became entitled to all School Land sections west of the river. From this it followed, the argument continued, that when the Winnebago Indian Reservation was set apart for occupation by that tribe in 1855 sections 16 and 36 could not legally be conveyed to the Indians, the Territory having the prior claim. (11)

(11) Attorney General's Report, Minn. Ex. Doc., 1863, 11-12.

The State's claim was rejected and the sale continued.

And the State was not only to lose its claim to the valuable School Lands in the reservation; it was compelled to fight for its right to secure other lands in their place. In 1870, when 12,527 acres had been selected as indemnity for school sections on the Winnebago Reservation, the entire list was rejected on the ground that the act of 1849 was merely a reservation and not a grant, and hence did not confer title. The Act of 1857 was disposed of by the old argument that the school sections in townships of "public lands" (12) only were included. For these reasons Minnesota had obtained no interest in sections 16 and 36 on the Winnebago Reservation, and could claim no equivalent. The case was appealed to the Secretary of the Interior, who took the State's view of the matter. In 1874 the 12,527 acres of indemnity lands selected were certified to the State. (13)

The sorest spot in the history of the School Fund is perhaps the loss of the Mountain Iron Mine. In 1884

(12) Attorney General's Report, Minn. Ex. Doc. 1870, 611.
(13) Auditor's Report, Min. Ex. Doc. 1874,48.

the land on which the mine is situated was selected by the Auditor as indemnity School Land. The selection list was in proper form according to the rules of the General Land Office in force at that time. During the year 1887 the Commissioner of the General Land Office promulgated new rules to govern such selections. These rules, however, were not to apply to lists filed previously. Nevertheless, on January 11,1888, State Auditor Braden wrote to the Commissioner of the General Land Office proposing that he file a substitute list, No.12, in place of lists No.1 to 11, previously submitted. On January 25 the Commissioner replied, advising that the lists be left as they were. January 26, before receiving this reply, Auditor Braden caused a new list, No.12, to be made. This was filed in the Duluth Land Office together with a relinquishment of all selections made in lists No.1 to 11, and on March 15 the Commissioner of the General Land Office agreed to accept the change. The land on which the Mountain Iron Mine is now situated was included in list No.9 of

the old selections, but was not included in the new list. Thus property valued at $12,000,000, more than the total accumulations of the Permanent School Fund at the time, was lost to the State for good. When this transaction took place it was generally supposed that there were large deposits of iron ore on the Mesabi Range. The ore differed greatly from the ore on the Vermillion Range, however, and was not thought to be of much value. Still, even considering the incomplete knowledge of the district, there was a grave error of judg ment in omitting the Mountain Iron tracts from the new selection. In 1895 the question arose whether the relinquishment of the lists selected was valid. If not valid the State still had a good claim to the Mountain Iron Mine. A committee appointed by the Legislature of 1895 made an investigation of thecase, but no action was taken.(14)

After the settlement of the Winnebago controversy no other important cases of this class arose till 1889. That year the cession of some 3,000,000 acres

(14) Auditor's Report, Minn. Ex. Doc. 1896, 344-345.

of Indian Lands in northern Minnesota to the Government reopened the whole question. Nearly all the good land in the State had passed into the hands of private owners. On this account it was now far more difficult than at an earlier period to make satisfactory indemnity selections, and thus very important to establish the State's claim to the original School Land sections.

Briefly stated, these are the facts of the case. The Red Lake and White Earth Reservations had been held by the Chippewa Indians from 1820 or earlier to 1889. In 1889 Congress passed an act providing for the appointment of a Commission to negotiate with them for a cession of parts of these reservations. The lands ceded were to be sold and the money deposited in the national treasury as a permanent fund to the credit of the Indians. The consent of the Indians was secured by the Commissioners in 1890, and in May, 1896, a part of the land was thrown open to settlement. The State at once asserted its ownership, and sections 16 and 36 were reserved pending the decision.(15)

(15) Auditors Report, Minn. Ex. Doc. 1896, 328.

E.T. Byrnes was employed as special counsel to argue the case before the Interior Department.[16] The decision was unfavorable. Cushman K. Davis was then requested to institute an action against Secretary of the Interior, Hitchcock, in the Supreme Court of the United States, to establish the State's title to the land in dispute.[17] Davis died before the case came up for argument. Other able counsel was thereupon authorized to defend the claims of Minnesota, the case being finally presented by Frank B. Kellogg and Henry W. Childs.

The argument for the State centered about the following propositions. 1. That the Indian title was merely a right of occupancy. 2. That when the Chippewas ceded portions of their reservations to the United States in 1889 the title of Minnesota to sections 16 and 36, which had been suspended during the period of Indian occupancy, became perfect. 3. That to interpret the clause in the Joint Resolution of March 3, 1857, as giving the Government the right to exclude the State

(16) Auditor's Report, 1898. 157.
(17) Attorney General's Report Minn. Ex. Doc. 1900 Vol 2,8.

from title to sections 16 and 36 in millions of acres of Indian Reservations was to read into the expression a meaning which it had never been intended to convey. The counsel for the State argued that the words, "public use", as here employed, were meant to include only actual utilization by the Government, as for arsenals and barracks, and not the sale of the land, as here contemplated. About this third proposition the State's case centered, and it must stand or fall with the decision on the point.

The case was a difficult one. On the one hand was the claim of the Chippewa Indians to the funds accruing from the sale of all the lands ceded. That was certainly their understanding of the treaty of 1889, as well as the intention of the Government. On the other hand was the claim of the State and the practice of construing statutes involving School Lands in a liberal spirit. But in the case of the Indians there was no provision for any indemnity in case any part of the land in question was held to belong to

Minnesota, while in the case of the State provision had been made for indemnity selections.This circumstance is mentioned in the decision and probably carried more weight than is there accorded to it.The case was decided against the State mainly on the argument that the Act of 1857 was not a present grant, that is, did notoperate to convey title to sections 16 and 36 until the land became public land; that the Joint Resolution of March 3,1857, showed that Congress did not intend to bind itself to reserve for the State every section not actually disposed of in 1857; and, finally, that the agreement with the Chippewa Indians amounted to a reservation of the school sections for a public purpose, and consequently extinguished the State's claim.(18)

This is the last important case involving title to any part of the School Lands. After the Supreme Court's decision the only thing for the State to do was to push its indemnity selections. Since 1902 about 300,000 acres have been selected and approved. July 31, 1908, the total indemnity selections in lieu of School

(18). Minn v Hitchcock. U.S. Reports. CLXXXV,373. Brief of the State in Minn. v. Hitchcock.

Lands amounted to 519,976 acres, or about one-sixth of the total grant.(19) But in spite of the fact that in most cases the prospective Permanent School Fund has been diminished by the exchange, it has on the whole, been vastly increased, for over thirty-three million tons of iron ore,worth over $8,000,000 even at the present ridiculously low royalty rates, have been located on indemnity lands.(20) According to the statement of the Mining Inspector it is almost certain that large bodies of ore are yet undiscovered. If this opinion should prove correct the gain to the State from the exchange of the original School Land sections for these indemnity selections may ultimately exceed $10,000,000.

To secure title to the Swamp Lands granted to the State in 1860 has proved even more difficult than to perfect the State's title to the School Lands. The Act of 1860 did little more than to extend to Minnesota and a number of other states the provisions of the Act of 1850. Section 2 of the Act of 1850 reads

(19) Auditor's Report, 1907-1908. 13'
(20) Auditor's Report, 1907-1908. XXX.

in part; "It shall be the duty of the Secretary of the Interior to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and, at the request of said Governor, cause a patent to be issuedto the State therefor ." And section 3 provides," "That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is wet and unfit for cultivation, shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom."(21) This act was incomplete and somewhat indefinite. It declared that the Secretary of the Interior should make out the lists and plats of the swamp lands, but failed to say just how he should determine what lands were of this character at the time of the grant.

Shortly after the passing of the Act of 1860, in order to arrive at some satisfactory adjustment of this important matter,the Commissioner of the General Land

(21) Statutes at Large, IX, 519.

Office, acting under the instructions of the Secretary of the Interior, wrote to the Governor of Minnesota asking to be advised as to whether the State would be willing to abide by the Government Survey or would prefer a re-survey by the State's own agents as the basis for determining which lands were swamp lands.(22) To this the Governor replied asking whether the Government would consider itself bound by the notes and plats of the Survey if Minnesota should elect to be so governed.(23) The reply was somewhat evasive, the Government reserving the right to supervise the selection and of holding the land subject to its control until patented to the State.(24) The Governor laid the matter before the Legislature in January,1861. That body, desiring to secure for the State as large an area of Swamp Land as possible, determined to test which basis of selection would obtain that result. It therefore directed the Board of Commissioners of Public Lands to order a survey of a number of congressional townships by surveyors to be employed by the State for that purpose.

(22) U.S. Land Commissioner, Jas. Wilson, to Governor Ramsey, May 21,1860. Auditor's Report, Minn. Ex. Doc. 1903-1904, Vol. 4, XVI.
(23) Governor Ramsey to U.S. Land Commissioner, July 14,1860.
(24) U.S. Land Commissioner to Governor Ramsey, Oct.8,1860, Minn. Ex. Doc. 1903-1904, Vol 4,XII.

These were to plat the land in such a manner as to show exactly what part of it was swamp land. Thereupon the plats of the land surveyed were to be submitted to the Commissioner of the General Land Office with the request that he signify his approval or rejection of these surveys as the basis of determining which lands were swamp lands. In case he should accept the State survey the Minnesota Commissioners of Public Lands were ordered to compare the area of swamp lands according to the State survey with the area according to the Government Survey. In case the former should exceed the latter by ten percent or more the Governor was to give notice to the federal officials that the State would submit the plats of its own surveyors as the basis for determining what lands were swamp lands. In case the swamp land, according to the State survey, should not come up to the amount mentioned, the Governor was instructed to notify the Commissioner of the General Land Office that the State was willing to abide by the Government Survey.(25) The purposes of this act were manifestly

(25) Laws of Minnesota. 1861, 76-78.

two; to determine whether it would be of advantage to the State to order a re-survey; and to commit the Bureau of Public Lands at Washington to the policy of accepting the State's survey as final evidence of the character of the lands in case it should be found that the federal surveyors had omitted to plat ten percent of the swamp land. Two townships were surveyed, and from the results obtained the Board reported that no benefits would accrue to the State from a re-survey.(26) The Legislature thereupon accepted the United States Survey as the basis for the selection of the Swamp Lands,(27) and their decision was communicated to the proper Government officials.(28) From this time up to 1886 it was the invariable practice of the Interior Department to follow the notes and plats of theGovernment Survey in certifying Swamp Lands to the State. Thus,in the case of the Northern Pacific Railroad Company versus the State of Minnesota, which arose over conflicting claims to certain swamp lands,in which the Company offered to prove that the lands were not of

(26) Auditor's Report. Minn. Ex. Doc. 1861, 561.
(27) Laws of Minn. 1862, 131, 28. Auditor's Report Minn.
(28) Ex.Doc. 1902-1904, XVI.

that character, the evidence was not admitted because of the precedent of abiding by the Survey. But in 1886, in the case of Lachance versus Minnesota, the policy was changed. In this decision the Secretary of the Interior said; "The acceptance of the field notes as the basis of settlement simply makes them prima facie evidence of the condition of any given tract; it is not tantamount to an assertion that the field notes shall govern always and absolutely, irrespective of demonstrated fraud or falsity; but it places the burden of proof of such fraud or falsity on the party alleging it". After the rendering of this decision any party having an interest in the land might question the returns of the United States surveyors. The State, on the other hand, might not question the surveyor's returns in cases where swamp lands had not been platted as such. When ever the character of a tract of land was called into question special agents were appointed by the Government to investigate, and on their decision the State's title depended. Plainly, in order to be fair

to the State, these agents must determine, not what was the character of the land when viewed by them, but what was its character in 1860. But this was practically impossible. Personal testimony could not be secured, because of the uninhabited condition of the country at that early period. The great reduction of timber areas, the great increase of cultivated areas, artificial drainage - all these had tended to reduce the area of swamp lands; but how much it was impossible to say. Moreover seasonal differences had to be considered, as the area of the swamp land advanced and receded according to the time of the year. For these reasons the numerous cases which arose proved extremely difficult to decide under the new mode of procedure. On this account, and because the new practice was working injustice to the State, Secretary of the Interior Hitchcock issued an order in 1903 - after the other procedure had been in operation for seventeen years - which restored the earlier practice. All contests which had been commenced by bonafide homestead or

pre-emption settlers were to be decided under the rule of the Lachance decision, and all decisions rendered under that rule were to stand.

During the last decade several Indian reservations in Minnesota have been opened to settlement - all in the great lake region of Minnesota - the swamp land area of the State. Hundreds of thousands of acres of swamp lands were included in this territory, but it was a mooted question whether the State had a good claim. As the principal value of these lands consisted in their timber the matter was forced to a decision when the United States Land Commissioner announced a sale of several hundred million feet of standing pine for December 3, 1903. This timber was located in the Mississippi Chippewa Reservation. To save the timber on the swamp land for the State the Attorney General presented a brief to the Land Commissioner in support of the claim of Minnesota to the swamp lands in the reservation.(28) The decision depended upon the status of the lands in 1860, when the grant was made. The

(28) Auditor's Report, 1903-1904 IV, XXX.

State showed that the lands in question had been ceded to the United States by the Chippewa Indians in 1855, and had remained unreserved public lands from that time until 1864. The Secretary held that the grant of 1860 was a present grant, lacking only identification to complete the right of the State to the land donated. It followed that since the Mississippi Chippewa Reservation was unreserved public land at the time of the grant in 1860 the State's claim was valid.(29) The same reasoning applied to the White Oak Point and Winnibigoshish reservations, so that the decision in the case cited determined the State's title in all. Title to approximately 141,000 acres of swamp land depended upon the decision.(30)

After the decision a complaint was made to the Commissioner of Indian Affairs by the Indian Agent at the Leech Lake Agency, alleging that high and dry pine lands had been returned as swamp lands by the field notes of the Survey, and that the same man who had surveyed the lands for the United States made the

(29) Land Decisions, Vol. 32, 328-329.
(30) Auditor's Report, Minn. Ex. Doc. 1903-1904, Vol 4. XXXl.

selections for the State. This was followed by a protest from forty-six Chippewa Indians against the patenting of the lands to the State. The matter was placed before the Secretary of the Interior. He expressly refused to reverse the decision of the previous year, which declared that the character of the land should be determined by the field notes of the Government Survey. And yet, with questionable consistency, he ordered an examination, arguing that the field notes adverted to in the rule were not such as might have resulted from gross error or fraud, but field notes of a fairly accurate and honest survey. (31)

But even now the question was not settled. In December, 1905, the Secretary of Agriculture, in a communication to the Secretary of the Interior, protested against the action of the latter in approving the claim of Minnesota to these swamp lands. The Secretary of the Interior referred the legal questions involved to the Department of Justice for the opinion of the Attorney General. On June 16, 1906, the Attorney General

(31) Land Decision, Vol 32, 498-499.

rendered his opinion, sustaining the action of Secretary Hitchcock. In the fall of 1907 the attorney for the Indians petitioned the new Secretary of the Interior, James R. Garfield, to re-open the entire question, alleging that the treaties by which the Indians ceded the areas of which these swamp lands were a part were invalid. A hearing was arranged for December 3,1907, at which Minnesota was represented by her Senators, Governor, Attorney General, and Auditor . In January, 1908, Secretary Garfield decided not to reverse the decision of his predecessor.

The decision of Secretary Garfield determined the legal right of the State to the lands within the reservations which are in fact swamps. During the year 1908 the Government sent out two crews to determine the character of the land,each of which was accompanied by a competent cruiser and surveyer, representing Minnesota, to see that the State's interests were protected. The examination has now been completed.

Unsuccessful before the Interior Department, the Chippewa Indians brought suit in the Supreme Court of the District of Columbia against the Secretary of the Interior and the Commissioner of the General Land Office, seeking to restrain them from patenting the lands to the State. The suit was dismissed for want of jurisdiction. The case was thereupon appealed to the Court of Appeals of the District, whose decision is still pending. The State has won every point in the contest thus far and expects to secure a favorable decision.(32)

Another important controversy connected with the Swamp Land Grant was decided the same year. It involved the title to a small piece of land known as Lot No.1, Section 6, Town 58½, Range 17. A triangular piece of land containing fifty-six acres, overlooked by the first surveyors, was surveyed in 1894 and Lot No1. marked "swamp land". But because of the failure of the surveyor to comply with all the requirements

(32) Auditor's Report 1907-1908 XXVIII.

the survey was not approved. The land was again surveyed in 1901, and this time no mention was made of any swamp land. January 15,1902, a plat of the land was filed with the State Auditor, whereupon he requested the surveyor general of the districtto submit a list of swamp lands. The list was filed the next day, and showed Lot No.1 to be swamp land. But two days earlier Town 58½ had been opened for entry at the Duluth Land Office, and as the records did not show Lot No.1 to be swamp land,it was entered with the rest. The conflicting claims that thus arose came before the Commissioner of the General Land Office in 1903, Minnesota being represented by her Attorney General, W.B. Douglas. A favorable decision was secured, and on appeal to the Secretary of the Interior, he confirmed his subordinate's opinion.(33)

This was an important victory for the State, for "Lot No.1 is now the Mabel Evans Mine, with an estimated tonnage of a quarter of a million tons.(34)

The rapid development of the iron mines of Northern

(33) Auditor's Reports, Minn. Ex.Doc.1903-1904-XXX.
(34) Auditor's Report 1907-1908 XXX.

Minnesota has brought up another question which may prove of much importance. After the discovery of the Misaba mines it was found that iron ore existed under some of the meandered lakes. It then became important to decide whether the riparian owners, or the State, owned the lake beds. In the opinion of the Attorney General the land lying beneath the waters of these lakes inside the meander line was vacant, and therefore belonged to the State. State Auditor Iverson urged upon three successive legislatures the desirability of asserting the State's ownership to the land. At the session in 1907 a bill for that purpose was introduced, but failed to pass. During the summer of 1908 the State Mining Inspector reported that a private company was preparing to commence mining operations under one of these lakes, and in his report to the Legislature of 1909 the Auditor emphasized the importance of immediate action.(35)

Sufficient interest had now been aroused to secure the passage of the bill which was introduced at this

(35) Auditor's Report, 1907-1908 XXXl-XXXll.

session. The act declares that iron ore and other minerals that lie beneath the waters of meandered public lakes and rivers belong to the State and that the State has the right to enter upon the land to explore for minerals, as well as to mine and remove the ore. It had been observed that these bodies of water were gradually disappearing. The provision was therefore inserted that the drying up of the meandered lakes or rivers should not affect the State's rights. The proceeds from the sale of any minerals disposed of under the provisions of this act are to go to a permanent fund, the income from which shall be paid into the Road and Bridge fund.(36) As there is some question as to the constitutionality of this law, and large property rights are involved it is expected that a test case will soon be brought to settle the matter.

In contrast with the complications that have arisen in perfecting the State's title to the School, Swamp, and University Lands is the ease with which its claim to the other land grants has been adjusted. The ten

(36) Laws of Minnesota, 1909. Chapter 49.

sections of Capitol Lands were selected by the first Governor and approved in 1863.(37) For a number of years after the admission of the State its right to 500,000 acres of Internal Improvement Land was lost sight of. The Governor makes no mention of this grant in his enumeration of the public lands of Minnesota in his Annual Message in 1861.(38) The Auditor omits it from every similar enumeration as late as 1866.(39) Some of the State Officers were under the impression that the federal land grants to Minnesota railroads fulfilled any obligation that might have existed under the Act of 1841. But in 1866 the Governor's attention was directed to the act by E.T. Drake. The Governor gave Mr. Drake a letter to the Secretary of the Interior, requesting facilities for investigating the matter, with the result that the Secretary conceded the State's right.(40) The land was speedily selected and patented to the State.(41) In 1874, five years after the State's selections had been approved, the Interior Department requested the Governor to relinquish

(37) Auditor's Report, Minn. Ex. Doc. 1863,430.
(38) Governor's Message. Minn Ex. Doc. 1860,13.
(39) Auditor's Report, Minn. Ex. Doc. 1862,593;1865,199; 1866, 27.
(40) Governor's Message Minn Ex.Doc. 1866,18. Auditor's Report, Minn. Ex. Doc 1866, 31.
(41) Ibid., 1872, 1, 383.

the State's claim to 9040 acres of land included in an earlier grant to the St.Paul and Pacific Railroad Company. As indemnity lands of equal value could not be secured, the request was refused.(42)

Immediately after the grant was made steps were taken to locate the Salt Springs given to the State by the Enabling Act, an act being passed in 1858 directing the Governor to appoint suitable persons to make the selections.(43) The persons appointed evidently were not mining experts, for no difficulty seems to have been experienced in locating the"springs! But a number of the springs were outside of the limits of the Government Survey, and the lands adjoining these could not be patented. On some of these lands settlers located. To make matters worse the United States Land Office at Ottertail, in which a record of a part of the lands patented to the State was kept, was destroyed in 1862, and with it the Government records. When subsequently duplicated the Salt Spring entries were omitted for a number of

(42) Ibid., 1874, 49; 1875, 1,51.
(43) Laws of Minn., 1858. 284.

years, and 6752 acres of the land certified to the State were occupied by settlers.(44) As these entries had been made in good faith it seemed unjust to press the State's claim. In 1875 the Legislature therefore passed an act requiring the Governor to relinquish any title or color of title which the State might have to lands to which homesteaders had adverse claims, providing they had made bonafide entries. This, however, was to be done only on condition that the United States should grant indemnity lands.(45) A year later the Legislature passed a joint resolution requesting Minnesota congressmen to make an attempt to secure for the State the right to make indemnity selections for the Salt Spring Lands to which there were adverse claims.(46) As no action was taken a second resolution in 1877 repeated the request of the previousyear.(47) Finally, in 1879, Congress settled the matter by granting to Minnesota twenty-four sections in lieu of the lands lost.(48) The Agricultural College lands were all patented to the

(44) Auditor's Report, Minn. Ex. Doc. 1871,212.
(45) Laws of Minnesota, 1875, 124.
(46) Ibid., 1876, 148-149.
(47) Ibid., 1877, 273.
(48) Governor's Message. Minn. Ex.Doc.1881,25.

State within five years of the making of the grant.(49) In spite of the fact that the Act of 1862 provided that any land selected from double price public land should receive double credit 25,925 acres of this class of lands were selected. There can be little question that this was a mistake, for although these lands brought a slightly higher price, the advance was by no means sufficient to make up for the reduced area. It is not an overstatement to say that the Permanent University Fund has suffered a loss of $100,000 because of this action. The area to which the State might receive title was reduced from 120,000 acres to 94,119.(50)

The grant of Park and Forestry Lands have for the most part conveyed to the State definite tracts of land, so no adverse claims have arisen. The half century of litigation, the thousands of cases that have arisen over the federal land grants to Minnesota, illustrate one thing and bring it home most forcibly, and that is the importance of framing bills with the

(49) Auditor's Report, Minn. Ex. Doc. 1867,464.
(50) Ibid., 1869, 719.

same care that great corporations use in drawing contracts. All the different classes of controversies that have arisen can be traced to some omission or inaccurate statement in the act of Congress making the grant, as the controversies discussed have shown. To this it may be objected that it is impossible for legislators to foresee every contingency and therefore impossible to frame a perfect measure; and the validity of the objection must be conceded. And yet it remains notoriously true that Congress frames its measures through individuals or committees which are not expert in the field, instead of letting bills receive their final form from the hands of men who have made a life work of constructing measures which will bear the strain of judicial interpretation without having the intent of the legislators negatived, as is the practice in leading countries of Europe.

CHAPTER V.

EARLY FINANCIAL DIFFICULTIES OF THE UNIVERSITY OF MINNESOTA.

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The institution which today has to its credit a permanent fund of nearly one and a half million dollars,(1) besides owning mineral lands that promise in time to bring it an endowment that will compare favorably with those of the wealthiest of the state universities, was during the late fifties and early sixties a bank-rupt corporation. This thesis does not purport to relate the financial history of the University of Minnesota, but the financial straits of the institution during the first fifteen years of its corporate existance are so closely interwoven with the land policy of the Board of Regents and Legislature at that time that a knowledge of the one requires an understanding of the other.

The first mention of the University of Minnesota in a public document occurs in Governor Ramsey's

(1) Auditor's Report, 1907-1908. XXX.

Message to the second legislative assembly of the Territory, in 1851, in which he suggests that it might be well to memorialize Congress for a grant of one hundred thousand acres of land for the endowment of a University.(2) The Legislature followed the Governor's suggestion.(3) The petition proved unnecessary, however, for on the very same day the President signed the Act, mentioned in a previous chapter, which directed the Secretary of the Interior to set apart and reserve from sale from the public lands in the Territory a quantity of land not exceeding two entire townships for the use and support of a University in the Territory.(4) Before the news reached St.Paul an act was passed incorporating the University of Minnesota. In order that there might be no waste of funds there was included in this act the following provision: "The proceeds of all lands that may hereafter be granted by the United States for the support of a university shall be , and remain a perpetual fund, to be called the 'University Fund', the interest of which shall be appropriated to the

(2) First Annual Report of the Board of Regents, 5-6
(3) Laws of Minn, 1851, 42.
(4) Statutes at Large, IX, 968.
(5) Laws of Minn. 1851, 10-11.

support of a university." The government of the institution was vested in a board of twelve regents to be elected by the two houses of the Legislature in joint meeting. To the Regents was intrusted the selection, management, and control of all lands that should be granted thereafter by Congress for the endowment of the University.(5)

At the first meeting of the Board, June 7,1851, it was decided to advertise for free gifts of land for a University site. In response several liberal offers were received, and after an examination of the properties the tract offered by Franklin Steele was accepted. Here begins that series of indiscreet and unbusinesslike acts of the Board which for a time was to threaten the University with destruction. No deed was secured. When the funds contributed by public-spirited citizens had provided a building for a preparatory school it was found that the Territory did not have title to the land.

In 1854 Mr. Steele proposed to give the University a five acre lot in some other part of the city in place of the first site, and to purchase the University building. The offer was refused,and instead twenty-five acres of the present Campus were purchased,at a cost of $6000. This was the second step in the financial embarrassment of the institution - a transaction unnecessary, illegal, and careless. Unnecessary,because as good a site could havebeen had without cost; illegal, because the charter of the University did not give the Regents power to create a debt before funds had been provided to meet it; careless, because two years later it was discovered that the University had received title to but seventeen of the twenty-five acres for which it had contracted.(6)

In 1856 the Legislature authorized the Regents to issue bonds to an amount not exceeding $15,000,($5000 to be expended in payment of the debt on the Campus and $10,000 in erecting buildings,)and to mortgage any lands belonging to the University as surety for the

(6) First Annual Report of the Board of Regents. 1861, 7-9.

payment of the bonds.(7).

The meaning of the Legislature was unmistakable. The Board of Regents was empowered to erect a building costing ten thousand dollars, and that was the extent of their authority. Otherwise seems to have been the interpretation of the enactment by that body, for the same year we find them letting a contract for the construction of a forty-nine thousand dollar structure. Designs had been drawn for a building larger than any on the Campus today, and this was to be a part of it. Be it said to their credit that a minority of four, among whom we find Ramsey and Sibley, voted against the project.(8)

Such was the situation when the Constitutional Convention assembled in 1857. The disregard of charter and statute restrictions on the part of the Regents naturally elicited some unfavorable comment in both branches of the Convention, which had divided on party lines into two separate bodies, each claiming to be the legal convention. In the Republican section three

(7) Laws of Minn. 1856, 173-4
(8) First Annual Report of the Board of Regents 1861,10

questions were raised, of paramount importance to the future of the University. 1. Should the money to be derived from the sale of the University Lands be made a perpetual fund? 2. Should the fund be indivisible? 3. Should the location of the institution be permanently fixed at St. Anthony?

On the first question there was substantial accord- the fund should be made perpetual. Concerning the second the proposition was advanced and defended with more ardor than common sense that it would be no more than fair to other sections of the State to establish branches of the University in various cities, so that St. Anthony might not be the only center to profit by the expenditure of the large University Fund. A determined attempt was made to include in the constitution a provision providing that the location at St. Anthony should be the permanent one, but this was defeated. (9).

In the Democratic branch of the Convention the section regarding the disposition of the University fund came from the committee almost word for word

(9) Minn. Convention Debator 447 et seq.

as stands in the Constitution today.(10) The distrust of the management of the University property here took the form of opposition to giving to the institution all future land grants. Said Mr. Emmett, in his remarks on the subject; "If you look a little further on in the section you will see that its phraseology, which on the face seems to be intended to secure the immunities, franchises, and endowments which it has already received, has really the effect of securing, also to it all other donations for University purposes which may hereafter be made by Congress to the State. Now, sir, the gentleman has disclaimed all intention of covering up anything, and of course I take his word for it, but still I tell you, sir, there is a nigger under the fence in some place".(11) Attempts toamend the section failed, however, and the Republican Convention accepted it without change.

The section is sufficiently important to give in full. " The location of the university of Minnesota, as established by existing laws, is hereby confirmed,

(10) Journal of the Constitutional Convention.623.
(11) Minn. Convention Debates 455.

and said institution is hereby declared to be the "University of the State of Minnesota". All the right immunities, franchises, and endowments heretofore granted or conferred are hereby perpetuated unto the said university; and all lands which may be granted hereafter by Congress, or other donations for said University purposes, shall vest in the institution referred to in this section".(12) From the wording of this section it is evident that the Constitution does not make the income from the sale of University land a perpetual fund, but leaves that matter to the discretion of the Legislature.

The construction of the University building came to a standstill with the financial crash in 1857,and the Regents found themselves with an uncompleted building and a heavy debt on their hands, and no funds. But the territorial Legislature, at its last session,in order to save the money already invested, came to the rescue, and authorized the issue of bonds to an amount of $40,000. Twelve percent was set as the maximum

(12) Constitution of Minnesota. Art.8,Sec 4.

interest rate. Payment was to be guaranteed by a mortgage on University land.(13)

With the passing of the Territory passed the old Board of Regents. The first State Legislature passed an act on February 14,1860, which incorporated the State University and provided for a Board of Regents consisting of the Governor, Lieutenant Governor, Chancellor, and five members appointed by the Governor. The Board was given authority to sell the University Lands and to use such portion of the resulting fund as it might deem expedient in the purchase of apparatus and a library. The land and fund were safe-guarded by a provision that no sale should be made unless authorized at a regular meeting of the Board and that no member of the Board should be interested directly or indirectly in any sale. Any surplus not immediately required for current expenses was to be invested in State or United States Bonds. This fund was to be perpetual.(14)

The authority given was used to make extensive leases of University Lands. On December 1,1861, the treasurer of the Board reported nearly 4000 acres so

(13) Laws of Minn. 1858. 287-288.
(14) Laws of Minn. 1860, 266-267.

leased. But theincome was only $170.20, an average return of less than half a cent for each acre. The contracts called for from ten to twenty cents an acre, but most of the renters failed to make settlement, and left their holdings before payment could be enforced. The income from stumpage amounted to only $600, and no lands were sold. After paying the officers and printing the Board had $190.37 left with which to meet the annual interest of over $8000, not the most encouraging outlook.(15) Something had to be done, and quickly.

The new Regents found the accounts of the old Board in almost inextricable confusion. When the tangle had in a measure been straightened out, it appeared that the State University, on December 1,1860, was heir to a debt of about $85,000, the original cost of the building and site, $55,000, having been increased by more than one-half through extremely high rates of interest- in many cases no less than thirty percent, and payable semi annually at that.(16) Sales of timber had amounted to $12,000, but only half of that amount

(15) Second Annual Report of the Board of Regents. Minn. Ex. Doc. 1861.
(16) First Annual Report of the Board of Regents,1861,14.

had been paid in cash, and a considerable part of the remainder could never be collected. Of the total debt $15,000 consisted of bonds secured by mortgages on the building and grounds; $40,000, of bonds secured by 20,000 acres of University Lands; the rest, of notes and accounts on the Board of Regents, and the accumulated interest.(17) The bonded debt had express legislative authorization and was therefore legally binding on the Board. The notes had been given without authority and were of questionable validity. There were thus two questions before the new Regents. 1. Should the validity of the notes and accounts against the University be recognized? 2. How should the debt be paid? In the second annual report both matters were referred to the Legislature.(18)

Governor Ramsey, also, took up the critical situation of the University in his message to the Legislature in January, 1862, and came to the conclusion that the only thing that could be done was to appoint a commissioner with full power to transfer all the

(17) Second Annual Report of the Board of Regents, 1862, Minn. Ex. Doc. 1861, 664.
(18) Second Annual Report of the Board of Regents Minn. Ex. Doc. 1861.669.

lands of the University in payment of its debts. The claims against the University had then grown to $93,000. The Governor expressed the hope that the 46,000 acres which it owned might prove sufficient to meet its liabilities, and thus save to the State the Campus and buildings.(19)

The reply of the Legislature to the Governor and Regents was an act authorizing the latter to sell to the holders of University bonds "any or all lands reserved by Congress for the use of a Territorial or State University". The question as to the validity of the notes was referred back to the Board with authority to compromise the indebtedness or resist payment, as the interests of the University and of the State might dictate.(20)

In the Spring of 1862 Uriah Thomas, secretary of the Board, was appointed special agent to negotiate with the creditors of the University for a transfer of land in liquidation of their claims. After months of correspondence and travel he managed to put himself

(19) Governor's Message, January 1862. Minn. Ex. Doc. 1861.
(20) Laws of Minn. 1862.

into communication with most of the creditors, but with indifferent success. With the triple disasters of financial panic, Civil War, and Indian massacres on the frontiers, wild lands in Minnesota had become a drug on the market. Proposals were received for the liquidation of $3273 of the outstanding debt by the transfer of about 1200 acres of land at from $1.25 to $3.50 an acre. These were referred to the Regents at the November meeting in 1862 and Mr. Thomas was given authority to settle any indebtedness of the University by conveying lands to the creditors in payment, two dollars and a half being fixed as the minimum price per acre.(21)

An important development of the year was a State Supreme Court decision on the question of the validity of the notes and judgements against the Regents for debts not authorized by acts of the Legislature. Judgement for $2000 had been rendered against the University in the inferior court for material used in the construction of the University building. The

(21) Third Annual Report of the Board of Regents, Dec 1,1862, Minn Ex. Doc. 1862,736-752.

Attorney General, at the request of the Regents, took the case on appeal before the Supreme Court, which confirmed the decision of the lower court, but held that the judgement was a lien only on the fund of $10,000 provided for the erection of the University building. As this had been expended before the notes were issued it followed from the decision that there was no legal process by which this and a number of other notes and judgements could be collected.(22) Their settlement, therefore, rested on grounds purely equitable.

No further progress was made in the liquidation of the debt, for on March 5, 1863, the Legislature, dissatisfied with the slow progress made and anxious to reduce the expense of managing the University and its lands, passed a joint resolution, ordering the State Auditor, as Commissioner of the State Land Office, to take charge of the lands, building, and grounds of the University, and suspending the operation of the Act of 1862,(23) under which payment of the University

(22) Third Annual Report of the Board of Regents, Minn. Ex. Doc. 1862, 745, Hart and Minson v the Regents of the University of Minnesota, Appellants Minn. Reports 1862.
(23) House Journal 1863, 384, Senate Journal 302
(24) Laws of Minn., 1863

debt had commenced.

The Board of Regents, unable to secure a quorum, did not turn over the University property to the Auditor before in September, and that officer did nothing beyond extending the leases in force. In his annual report he called attention to the fact that the timber was being stripped from the University lands in Rice County, and recommended that the lands should be sold - a curious commentary on the administrative efficiency of the Land Office at this time. (25)

The next Legislature reversed the policy of its predecessor. An act was passed on March 4,1864, appointing three business men, John S. Pillsbury, O.C. Merriman, and John Nicols , sole Regents of the University for the term of two years. Each of these men had to file bonds with the Secretary of State in the sum of $25,000. The University building, lands, and grounds, were transferred to the care of the commission and it was authorized to compromise and pay all claims against the University by the sale of an amount of University land

(25) Auditor's Report, Minn. Ex. Doc. 1862,428.

not to exceed 12000 acres. The commission might authorize the State Auditor to sell these lands or a part of them, it if chose. All personal property of every nature, such as notes, stocks, bonds, claims, and the proceeds from the sale of lands, while in the hands of the Regents, was made exempt from judicial proceeding. The last provision was an important factor in the success of the commission, inasmuch as it left it free from interference on the part of the creditors of the University while raising funds to pay the debts of the institution. (26)

For four years these men labored, sacrificing valuable time and business interests, and bringing to the service of the cause that business ability which alone could save something from the wreckage. Well may they be pardoned the note of exultation which runs through their first report, in February, 1867, when the work was all but accomplished. The policy pursued was to sell agricultural lands and with the proceeds take up and cancel the bonds, notes, judgments, and

(26) Laws of Minn. 1864, 61-64.
(27) Their term of Office was extended to four years in 1866. Laws of Minn 1866,33.

other evidences of indebtedness against the University, f r the least amount which the creditors could be persuaded to accept.(28)

At the date of the first report 10,750 acres of land had been sold, and from these sales $52,000 had been realized. The payments from leases, stumpage, and trespasses had raised this total to $60,000. The debt with interest at contract rates amounted to $120,000 in June,1866. Of this debt all but about $10,000 had been cancelled. This means that the creditors of the institution had consented to abate claims aggregating about $50,000. This amount consisted of a reduction of both interest and principal. The amount received by the creditors varied pretty much according to the value of their security. The holders of the fifteen bonds backed by the building and Campus received the principal on their bonds in full and the major part of the interest. The holders of bonds secured by University lands in some cases had to be content with as little as thirty six cents on the dollar. The notes

(28) Annual Report of the Board of Regents,Minn. Ex. Doc. Feb. 15,1867, 1866.5.

and miscellaneous claims were likewise greatly reduced.(29)

When the term of Pillsbury, Merriman, and Nichols ended, in March,1868, the outstanding indebtedness of the University consisted of but a single one thousand dollar bond, and a three thousand mortgage on the building and Campus; and of the 14000 acres set apart by the Legislature there remained 1690 to meet these claims.(30)

Thus,instead of sacrificing the entire endowment of the University in order to save the building and grounds, as Governor Ramsey had suggested in his second message, and which many men in the early sixties believed would not even suffice, more than two thirds of the nation's gift to the State's first institution of learning had been saved.

The finances of the University once more on a sound basis, the care of its lands was once more restored to the State Land Office, which still continues in charge.

(29) Reports of the Treasurer of the Board of Regents, 1864, 1865,1866, Minn. Ex. Doc, 1866-8-20.
(30) Annual Report of the Board of Regents, Dec.22, 1868, 7.

One other matter in connection with the early history of the University Lands calls for separate treatment- the double University land grant.

In the Enabling Acts of Michigan, Wisconsin, and Iowa, whose University Lands were unincumbered in territorial times, the section conveying lands for the use of a state university is phrased in this manner: " Seventy-two sections of land, set apart and reserved for the use and support of a University by an Act of Congress approved on------day of------are hereby granted and conveyed to the State"(31) In the corresponding act for Minnesota we find the following provision: "Seventy-two sections of land shall be set apart and reserved for the use and support of a State University." In the former case the act expressly declares that the lands granted are those previously reserved for the Territorial University. In the case of Minnesota no reference is made to the former grant. It is easy to see that on the basis of this distinction the claim could be advanced that the provision of the

(31) First Annual Report of the Board of Regents, Minn. Ex. Doc. 1860, 21.

Enabling Act contemplated a second grant, and Minnesota politicians were quick to see the possibility. Moreover, the probable loss of the whole territorial grant strengthened the determination to secure the second seventy-two sections. The first mention of the possibility of securing one hundred forty-four sections that is on record occured in a debate on the question of the University Lands in the Republican division of the Constitutional Convention. Perhaps the best idea of the conflicting opinions on this matter in the Convention can be conveyed by quoting a part of the argument.

Mr. Billing's. "Congress gave the Territory two townships of land. These lands have been selected, and they are now the property of the University of Minnesota.

Under the Enabling Act, which has been referred to so often, Congress proposes to make a further donation to the State of Minnesota - not to the Territory - to be selected by the Governor of the State -not of the Territory - a thing which is to be done in the future; thus making two separate donations for two separate

purposes - one under the act of Congress, the land of which is located and is the property of the University of the Territory; and the other, of seventy-two sections, is for a State University."

"Mr.North, The gentleman is entirely mistaken, for they mean the same thing precisely, and apply to the same land".

"Mr. Billings. The gentleman says that Congress means something which they certainly do not say."(32)

From this time on the question looms up large among the problems before the central government of the State. Nearly every report of the Board of Regents, Governor's message, and Auditor's report contains some reference to the matter. Correspondence with the Interior Department at Washington commenced in 1858.

In 1860 the Regents laid the matter before Governor Ramsey, and asked him to select seventy-two sections of land.(33) The Governor, however, did not wish to complicate matters by pressing the matter of the second grant until all the selections under the grant

(32) Minnesota Convention Debates, 489-490.
(33) Second Annual Report of the Board of Regents, Minn. Ex. Doc. 1861,690.

of 1851 had been accepted by the Land Commissioner at Washington. Thirty-four thousand acres had been turned over to the State in territorial times.

In the correspondence on the question of patenting to the State the remaining 12,000 acres it was discovered that the act of 1851, setting aside lands for a Territorial University, did not grant, but merely reserved the lands in question. The action of the Interior Department in giving the State title to two-thirds of these lands was in excess of its authority and not strictly legal. In order to make the State's title unimpeachable Congress passed an act in 1861 donating to Minnesota the lands reserved in 1851, and by 1863 the State had received the balance of the grant.

Now that the first grant was safely disposed of the time seemed opportune for pressing the claim for the second. In order to bring the matter squarely before the Land Department at Washington the Governor

had a portion of the lands selected, and filed a notice of his action in the United States Land Office at Taylor's Falls.(34) The Commissioner of the General Land Office denied the State's claim and refused to give deed to the lands selected. The case was appealed to the Secretary of the Interior,with no better success.

In his annual message in 1867 Governor Marshall recommended that the Regents of the University should be authorized to employ counsel to prosecute the claim and to give inpayment a percentage of the lands that might be obtained.(35) The Legislature followed the Chief executive's suggestionand gave the Regents authority, with the approval of the Governor,to employ counsel to assist them in prosecuting the claim of the State "upon a contingent compensation in land or money, as the Regents in their judgement(might) deem for the best interest of the University". The Regents employed Henry Beard of Washington to press the demands of the State. So successful was the

(34)Governor's Messaage, Minn. Ex. Doc. 1864,17.
(35)Governor's Message, Minn. Ex. Doc. 1866.

presentation of the case by Mr. Beard and the mission of Governor Marshall, who had been persuaded to go to Washington to urge the justice of the State's cause, that a bill granting seventy-two additional sections to the State passed the Senate in 1867, and only failed to pass in the House because of the adjournment of Congress.(36) The same measure was introduced again in 1870 by a Minnesota representative, Mr. Wilson. Although the bill received only a few minutes consideration in each house it is evident that there was a widespread feeling that the measure was merely a blind to give Minnesota an additional grant to which previous acts did not entitle her. The vote in the house was close, standing 84 to 76 in favor of the bill.(37) In the Senate, which had passed the same measure once before, the bill met with little opposition.(38) The twelve year struggle with the Interior Department had ended with victory for the State.

The victory, however, turned out to be a little less

(36) Governor's Message, Minn. Ex. Doc. 1869, 19
(37) Congressional Globe, 1869 -1870, Part 5, 4686
(38) Ibid., Part 6, 4830

complete than was at first believed. The act directed the Commissioner of the General Land Office to approve the selections of land made by the Governor of Minnesota" to the full amount of seventy-two sections mentioned in the act of Congress approved February 26,1857, without taking into account the lands that were reserved at the time of the admission of the State into the Union, and donated to said State by act of Congress approved March 3,1861."(39) In construing this act the Commissioner of the General Land Office held that all the University Lands patented to the State after the passing of the Enabling Act must be taken to apply to the grant of 1870. As approximately fifteen sections had been patented to Minnesota since February 26,1857, the result of this decision was that the State received only fifty-seven additional sections instead of seventy-two, or a total of one hundred twenty-nine sections.(40)

Acting under the authority given to them by the Legislature in 1867 the University Regents in 1872

(39) Statutes at Large, XVI, 196
(40) Auditor' Report Minn. Ex. Doc. 1876,1.329.

voted to give Mr. Beard permission to select 1950 acres of the University Lands as payment for his services. The selection was made and deed given in 1874. There seems to have been some doubt as to the legality of this transaction, for in 1876 the Legislature passed an act declaring the deed valid.(41) The land selected was heavily timbered and on it was located one of the most valuable iron mines of the State, representing value far beyond any services that could have been rendered by the most efficient counsel. There is no reason, however, to question the integrity of the men connected with the transaction. It was merely a case of ignorance on the part of the Regents of the immence value of the property conveyed.

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(41) Laws of Minnesota, 1876.

CHAPTER VI.

THE APPRAISAL, SALE, AND LEASE OF THE STATE LANDS.

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The subject matter of this chapter is detailed and somewhat complicated. In order to simplify the discussion and secure something like consecutive treatment for each topic the chapter has been divided into four sections. First the laws governing the manner of appraisal and the manner and terms of sales and leases will be traced. Next the acts placing the various classes of land on the market will be reviewed. The acts in which the Legislature has sought to shield individuals from its own regulations will be noted in passing; and finally the present status of the several land grants will be outlined.

As a territory Minnesota held no public lands which she could sell. Thus it comes that when we omit the extensive leases of University Lands, which have been considered, the territorial period, for the

purposes of this chapter, may be passed with the mention. There was, indeed, a law passed in 1858, for the selling of the grass on School Lands by the chairman of the town supervisors in their respective districts, the proceeds to be paid into the county treasury for the benefit of the School Fund.(1) But the sales were inconsiderable. During the year 1860 only the modest sum of ten dollars was realized.(2)

The State constitution imposed a healthful check upon those who for private gain might have desired to hasten the School Lands into the market, by providing "that not more than one-third of said lands (might) be sold in two years, one-third in five years, and one-third in ten years," and that all lands should be sold at public auction. It also provided that the lands of the greatest valuation should be sold first.

These restrictions, however, still left very much to the discretion of the Legislature. It is this which makes the sane advice of Governor Ramsey in his first

(1) Laws of Minn. 1858, 135-136.
(2) Auditor's Report, Minn. Ex. Doc. 1860,7.

message of so much importance. Had he performed for the State no other service his claim to recognition as one of the State's benefactors would have rested on a solid basis. And of the sage counsel which he gives his remarkable plea for a careful stewardship of the State lands has perhaps been of most permanent value to the Commonwealth. Some of the earlier states had rushed the sale of their school lands at any price, and excused themselves with the plea that their citizens were poor and needed assistance in educating their children, then, as never later. Wisconsin had all but given away her birthright - her school lands passing into the hands of speculators at less than two dollars an acre. In Iowa the sale of the lands and the investment of the funds had been entrusted to county officers with great losses to the state. To these mistakes of the earlier states the Governor pointed to emphasize the dangers of ill - considered legislation. Most important among his suggestions were the following.

1. That the financial supervision of the public lands should be vested in a separate central department at the seat of government.
2. That the Land Commissioners should be entrusted with the entire superintendence and disposition of the State lands, and the State Treasurer with the care of the funds.
3. That lands should not be sold before they would bring a fair price. Five to eight dollars an acre was suggested for the School Lands.(3) The first Legislatures followed many of the Governor's suggestions.

In 1861 was passed the first act for the appraisal, sale, and lease of School Lands, For an initial measure it is carefully drawn and fairly complete. There was created a Board of Commissioners of School Lands, consisting of the Governor, Attorney General, and Superintendent of Public Instruction. Of this Board the State Auditor was made the Register and the State Treasurer the Receiver and to it was given general supervision of the selling and leasing of School Lands.

(3) Annual Message of Governor Ramsey, Jan.1861 Minn. Ex. Doc. 1860. 22-23.

Before any part of the public domain could be either leased or sold it was necessary to determine its value. To do this work local boards of appraisers were to be chosen, consisting of three men, one appointed by the Board of Land Commissioners, one by the county commissioners of the county, and one by the supervisors of the town in which the land was situated. Each appraiser had to take an oath that he would discharge his duty to the best of his ability, that he was not interested directly or indirectly in the School Lands or the improvements on them and had entered into no combination to purchase any part of them. Obviously the purpose of these provisions was to guard against under-appraisal. One of the duties of the appraisers was to divide the land into lots such as would sell to the best advantage. 160 acres was made the maximum size for lots of agricultural land and 10 acres for timber land outside of the pine areas. Village lots might be platted by special direction of the Board.

Seven dollars an acre was fixed as the minimum price. Nevertheless the appraisers were required to set down the value of lands found to be worth less than this amount in order to have a basis on which to calculate the amount of rent to be charged in case the lands should be leased. On many of the lands permanent improvements had been made by persons who had occupied them without authority. So numerous were the trespassers that the legislature thought it well to give them a legal status by authorizing them to change their trespassing occupation into a lease. No such lessee was permitted to retain lands upon which he had made no improvements, nor more than 160 acres. To take possession of School Lands except as purchaser or lessee was made a misdemeanor, punishable by a fine of from $25 to $100. Any person knowing of illegal occupancy might report the matter to any justice of the peace of the county, who was given authority to hear the case and order imprisonment, not to exceed three months, until the fine should be paid. Any balance left

after paying the cost of the trial was to be paid into the county treasury to become a part of the School Fund. County sheriffs were directed by the act to remove from the Schools Lands in a summary manner any person who had occupied any of them after January 1 of the year in which the act was passed, which practically amounted to saying subsequent to the passage of the act, as no improvements could have been made during the winter months intervening.

The annual rental of the School Lands was fixed at 5% of the appraised value of the land and improvements. But grass and cranberry lands might be rented upon the terms best calculated to increase the State's revenue, and for this purpose the Board of Land Commissioners might auhorize the chairman of the board of supervisors of the proper town to take charge of such lands for that purpose.

As soon as the lands in any county had been appraised persons who desired to purchase any part of them might submit offers to the State Auditor, as

Register of the Board of Land Commissioners. Such offers, to be considered, must equal or exceed the appraised value of the land. When the number of bids from any one county appeared sufficient to warrant the expense of a public sale the Board might direct the Auditor of the proper county to advertise a sale of the lands for which bids had been made, and such other lands as it might order, the most valuable lands being selected first. Six days notice of the sale had to be given by the county auditor. Each lot or tract was to be offered separately. No land was to be sold for less than the appraised value, nor for less than seven dollars an acre. To each purchaser a certificate of sale was issued by the county auditor. This certificate gave title to the land as against any party except the State. In case the purchaser should become delinquent in his payments for a period longer than 6 months the certificate became void. No deed could be secured before the land had been paid in full. Lest the purchaser should strip the land of its timber and minerals, and then leave it, he was forbidden

to cut any timber, except for fuel and permanent improvements, and to remove any minerals, except by permission of the board of county commissioners.

Under the provisions of the act the terms of payment for School Lands were these.

1. All payments had to be made in specie.

2. 25% of the purchase money must be paid to the county treasurer on the day of purchase, together with interest at six percent on the balance to the first of the following November.

3. For the balance notes were to be given, payable in one or more installments at any time within twenty years, and bearing interest at six percent.

4. The interest on the unpaid principal was to be paid annually in advance to the treasurer of the proper county.

5. In the case of lands the principal value of which consisted of timber, payment either had to be made in full on the day of sale or the purchaser had to give a mortgage to the State upon unencumbered

real estate worth twice the amount of the unpaid balance. In case the purchaser should fail to pay either principal or interest according to the terms of his contract the board of county commissioners of the proper county were directed to foreclose, and, if necessary, bid in the property for the State.

Upon payment in full on any purchase it was provided that the county auditor should certify that fact to the Register of the Board of Land Commissioners, whereupon the Governor should issue a patent for the land.

In the case of lands on which there were permanent improvements the purchaser, in addition to such sum as he might offer for the land, had to pay to the owner of the improvements their appraised value.(4)

A feature of this act characteristic of the period is the large share given to local officers in the administration of the public lands. Perhaps such a system tended to lower the cost of caring for the State

(4) Laws of Minn., 1861,79-94.

lands, but it may well be questioned whether the cost of a more centralized administration would not have been more than balanced by increased returns. To cite the instance in which the loss to the State was most obvious, the appraisal of the State lands may be mentioned. The majority of each appraising board being appointed by local officers from men of the county and town in which the land was situated they were subject to the influence of local public opinion, which always favored a low appraisal.

No lands were sold under the provisions of the Act of 1861. The minimum price had been put too high. Moreover, the Legislature of 1861 had created two boards of commissioners to care for the public lands, the Board of Commissioners of School Lands, whose duties have been discussed above, and the Board of Commissioners of Public Lands, with general supervision of all classes of State lands. The duties of these two boards overlapped, and although they consisted of exactly the same officers, the result was confusion. (5)

(5) Laws of Minn. 1861, 75-79.

The Governor and Auditor called the attention of the Legislature to the inconsistency of these acts. To correct these mistakes , and improve the law in other particulars, both the acts of 1861 were repealed in 1862. Instead of a board the State Auditor, as ex-officio Commissioner of the Land Office, was given general supervision of all lands belonging to the State or which might come into its possession.

The terms of sale were modified in a number of essential points. The minimum price was reduced to five dollars an acre - a change which previous and later experience proved to be necessary. Timber lands were divided into two classes, pine lands, and lands the greater part of whose value consisted in timber. Pine lands had to be paid for in full on the day of purchase, while only seventy-five percent of the purchase price of the other class of timber lands had to be paid at that time. The provision of the previous act for the giving of time if bonds were deposited as

security was omitted. The cash payment on all other lands was reduced from twenty-five to fifteen percent. The time for paying the balance was left as before - twenty years, but the rate of interest was advanced to seven percent. The requirements to secure the payment of interest were made very strict, only six days being allowed after the regular date of payment before the certificate of sale became void. The previous act had allowed six months. After such forfeiture the Commissioner might take possession and re-sell the land. The first purchaser, however, was allowed to redeem his rights by paying to the State Treasurer before the date of the special sale twice the amount of interest due, and all costs incurred. An important improvement in the law was the provision for more adequate notice. The county auditor must now publish a notice of the sale in some newspaper of the county or one having general circulation in the county eight weeks before the sale. No material alterations were made in the

other provisions of the Act of 1861.(6)

The Legislature of 1863 made a few more changes and additions of sufficient importance to be noted. Pine lands need now no longer be sold in the county in which they were situated. A new method was invented for collecting the rent on land leased. The assessors of towns and cities were directed to appraise the value of the occupied School Lands and the county auditors to place upon the personal property tax rolls a tax of seven percent per annum upon the assessed valuation of such lands. Improvements on the land might be sold in case the tax was not paid. Far the most important change, however, was the provision that pine timber might be sold without at the same time disposing of the land. This topic will be considered at length in a later chapter and is therefore merely mentioned at this point.(7)

Up to 1868 all sales had been conducted by the Land Commissioner.. In his report for that year that officer suggested that sales in certain counties should

(6) Laws of Minn. 1862, 122-132.
(7) Laws of Minn. 1863, 46-50.

be discontinued and the lands in those counties sold at public auction sales at the State Capitol.(8) But instead of following his suggestion the Legislature authorized him to appoint a deputy to seal the land in the eleven counties specified.(9)

In 1877 the laws governing the sale of State lands were revised and improved in a number of particulars. Important among these were the following. 1.Pine lands were not to be sold. This provision has been of great value, for the lands when sold with the timber on, did not bring as much as the land and timber, when sold separately.(10) It had, however, been the policy of the University Regents and the Land Commissioners not to sell pine lands, so the State has not suffered large losses from this source. The act sought to prevent future mistakes rather than to remedy past errors. In the case of lands containing pine timber, although not in sufficient quantities to be classed as pine lands, in addition to the usual payment, the value of such timber had to be paid for in full at the time of purchase.

(8) Auditor's Report Minn. Ex. Doc. 1867,461.
(9) Laws of Minn. 1868.185-186.
(10) Auditor's Report 1867, Minn. Ex. Doc 1867-462.

The purpose was to prevent the practice of stealing State timber, under the veil of purchase.

It had namely become customary to buy land partly timbered, make the first payment, clear the timber, and then leave the worthless denuded ground to the State.

3. The time of payment was extended from twenty to thirty years.

4. When authorized to do so by the Land Commissioner the county auditors were directed to make sales in their respective counties.(11)

In 1878 all the State Swamp Lands in Ottertail County were granted to the Northern Railroad Company. Only one provision of this grant is important in this connection. At all times after receiving title to the lands the company was required to offer them for sale at two dollars an acre. This was the first act framed primarily with a view to encourage immigration by holding forth the promise of cheap land.(12)

Another act of this year provided that railroad

(11) Laws of Minn. 1877,86-88.
(12) Laws of Minn. 1878, 510.

companies crossing School, Agricultural College, or Internal Improvement Lands should pay the appraised value of the land for the right of way.(13) With its Swamp Lands the State was much more bounteous, giving railroad companies a ninerod passageway through all such lands free of charge.(14)

The next change of any consequence in the laws having to do with the sale of lands came in 1885,(15) when the cut-over pine areas were thrown on the market in response to a rising demand for these lands for agricultural purposes in the St.Cloud and Taylors Falls land districts.(16) The same law gave the Land Commissioner power to withdraw from sale at any time any land advertised to be sold. Up to this time the county treasurer had been collecting the money due on State lands without additional pay. By this act he became entitled to a fee of one half of one percent on each dollar collected, interest and principal, this to be paid from the interest fund of the land on which payment was made. The same year the rate of interest on future land sales was lowered from seven to five percent.(17).

(13) Ibid., 121.
(14) Ibid., 1881, 61.
(15) Laws of Minn. 1885, 95.
(16) Auditor's Report1883,1884, 64.
(17) Laws of Minn, 1885. 259.

The purpose was to discourage early payments. This was the situation-rather than pay seven percent interest on the money due to the State the purchasers of public lands borrowed the money at lower rates and paid in full. This was quite satisfactory as long as there were public securities in which the funds could be invested at as high rates and higher. But by 1885 the interest rates on State and National Bonds had taken such a downward plunge that it was impossible to make safe investments at rates higher than from three to four percent. A few days later the Legislature came to the conclusion that it would be wise to extend the provisions of the act to past sales. Holders of certificates with interest paid to date might return them to the Land Commissioner with a signed statement that the balance of the purchase money would not be paid for fifteen years. The interest then would be reduced to five percent. In case they should decide to pay earlier they might do so by paying the interest in full at the old rates.(18)

(18)Laws of Minn. 1885, 271.

In 1893 the interest on all outstanding payments was reduced to five percent without any restriction whatever, and the time of payment for lands to be sold in the future was extended to forty years.(19) But even with these reductions the State treasury received more money on outstanding land contracts than could be invested to advantage. In 1901 the rate of interest was therefore reduced to four percent on all sales, past and future, provided that payment was not made within ten years from the date when the act was passed, in which case the old rate would hold.(20) The result was a marked decrease in the total amount of the annual payments.

The mode of appointment of appraisers was again changed in 1895. The Governor was now directed to appoint one, the Land Commissioner another, and the County Commissioners of the respective counties, the third. This act also changed the provision for notices of sales of State lands. Before each sale a notice including descriptions of all lands that would be offered had to be printed once a week for four weeks in a

(19) Laws of Minn. 1893,216.
(20) Ibid., 1901, 97.

St.Paul newspaper and in a newspaper of the county in which lands were to be sold. In case there should be no newspaper notice had to be posted in three conspicuous places in the county four weeks prior to the sale.(21) In 1905 there was added to this the requirement that notice of the time and place of the sale should be posted on the front door of the court house at least three months before the day of the sale.(22)

From the very beginning the mode of appraisal of the State Lands had been the least efficient part of their administration. Repeatedly the State auditors had complained of low prices resulting from the low appraisal of men influenced by local opinion. Add to this the fact that not any of the men appointed were experts in land valuation and the wonder is that the system worked even passing well. In 1905 a last attempt was made to apply the remedy needed. Whenever there is occasion to sell State land in any county the Auditor must now appoint one appraiser, who shall be one of the regularly employed State cruisers. So far, good.

(21) Laws of Minn. 1895,354.
(22) Ibid., 1905, 197.

This gives the expert skill required. The Governor appoints a second appraiser and the County commissioners the third. The appointee of the Governor must be a resident of the county and the man selected by the county commissioners is certain to be. This means that a majority of each board of appraisers still consists of local men; men biased by the desire to build up their county and perchance to assist a neighbor to secure land at a low price. To be sure the appraisers must swear to perform their duties to the best of their ability, but even granting their perfect integrity, their judgment is likely to be influenced by an unconscious bias. If the Governor were required to appoint a non-resident we should secure more nearly perfect results.

The same Legislature passed an act designed to prevent speculation in State lands. A man who buys land from the State must comply with at least one of the following conditions.

1. Twenty-five percent of the land must be fenced

(23) Laws of Minn, 1905, 197.

and converted into pasture land.

2. Five percent of the land must be cultivated.

3. A house must be built and the man must reside upon the land twelve months.

One of the conditions must have been fulfilled within five years, and before the end of that period the purchasers must furnish to the State Auditor satisfactory proof of having lived up to his contract. His statement must be attested by two members of the school board in the district where the land lies. If such proof is not submitted to the Land Department within the required time the land reverts to the State and all payments made are forfeited. Not more than three hundred and twenty acres of state land can be bought by any one purchaser. (24)

This law is a step in the right direction, but it does not go far enough to fully accomplish its end. The conditions are too easy. It is not a difficult matter for the speculator to hire some farmer of the locality

(24) Laws of Minn. 1905, 446.

to plow ten acres on each quarter section, and put them into crop. And then he has fulfilled his agreement. The limitation on the amount that may be purchased works no better, for it is a matter of common knowledge that men who desire to buy more than three hundred twenty acres of State land manage to do so by using the names of some intimate friends.

Going back for a moment to 1889 we find that in that year commenced the legislation with reference to the State's mineral lands. As a separate chapter is devoted to this phase of the land administration there is here mentioned only the provision authorizing the Land Commissioner to endorse across all patents to lands in St.Louis, Lake, and Cook Counties the words, "All mineral rights reserved to the State."(24) But this act was neither phrased in terms to make it obligatory upon the Land Commissioner to reserve the mineral rights nor did it apply to all the counties in which minerals were later discovered. These defects were not remedied till 1901, when the present

(25) Laws of Minn. 1889. 73.

act went into operation. This act reserves for the State all coal, iron, copper, gold or other valuable minerals which may be found upon any land owned or to be owned by the State by virtue of any act of Congress. It directs the Land Commissioner to see to it that the provision is inserted in every deed conveying public land, but declares that failure on his part to do so shall not affect the State's title. This effectually secures to the State all minerals on lands not sold before the passage of the act. As new iron ore deposits are coming to light each year and some of these in sections of the State far distant from known ore regions, this reservation of all mineral rights may prove of great importance to Minnesota.

Coming to the second topic of this chapter we find that the School Lands were the first to be placed on the market.(26) Four years later, in 1865, the Agricultural College Lands were added, and the laws concerning the appraisal, sale and lease of School Lands were extended to to them.(27) After 1868 the University

(26) Laws of Minn. 1861, 82
(27) Ibid., 1865, 32-33

lands might be included by special request of the Board of Regents.(28)

In 1870 the Legislature directed the Land Commissioner to advertise a sale of the 500 ,000 acres of Internal Improvement Lands,to be held at the capitol that year. The sale, however, was not to take place unless the owners of the Railroad Bonds should deposit with the State Auditor bonds to the value of $2,000,000 and agree to buy lands to the amount of the bonds deposited. The minimum price of the lands was fixed at $8.70 an acre. But although the value of Minnesota Railroad Bonds at this time was very uncertain, the holders were not willing to exchange them for wild land, and nothing came of the Legislature's proposal.(29) The ac t is significant only as being the first and only act providing for the sale of public land at the State Capitol.

From 1868, when the University Lands were transferred to the care of the State Auditor,to 1873, all the public land of Minnesota was under the control

(28) Ibid., 1868, 93
(29) Ibid., 1870, 18-21

of the Land Department and all the lands sold were disposed of under the supervision of the Land Commissioner. In 1873 an exception was made in the case of the Salt Spring Lands, these being transferred to the Regents of the University of Minnesota, to be sold in such manner as they might direct.(30) The Land Commissioner objected to this encroachment upon his field, but appealed in vain to the Legislature to restore the lands to his control.(31)

In 1881 an amendment to the Constitution added the Swamp Lands to the territory which might be sold.(32) The manner and terms of sale were to be the same as for School Lands except that the minimum price was reduced by one-third. The Land Department now had authority to sell five classes of lands: The University, Agricultural College, School, Internal Improvement, and Swamp Lands. The Capitol Lands alone were not on the market. As early as 1875 the State Auditor had urged the Legislature to give the necessary authority.(33) But not till the building of the New Capitol did that body say the word.

(30) Laws of Minn., 1873, 254'
(31) Auditor's Report, Minn., Ex. Doc., 1875, 5; 1876, 331.
(32) Laws of Minn., 1881, 23.
(33) Auditor's Report, 1875, Minn. Ex. Doc. 1875, 5.

In 1891 the Legislature authorized the Land Department to lease the State Capitol Lands at a minimum annual rental of fifty cents an acre, one fourth of the income to go to the Road and Bridge Fund of the township in which the lands are situated, one-fourth to the Revenue Fund of Kandiyohi County, and one-half to the General School Fund of the State.(34) But the lands were too low and wet to be of much value before they were drained. So in 1895 they were leased to Kandiyohi County for ten cents an acre, the income for the first three years to be used by the county in draining the land and thereafter to be paid into the State Treasury.

Nearly every Legislature has passed some law to save some individual or group of individuals from the operation of regulations which were working injustice. Conspicuous among these special acts and typical of a group were those passed during grasshopper times of the late seventies.

By the terms of sale of State lands the failure

(34) Laws of Minn., 1891, 226

to pay interest on the unpaid balance for a period of six days after the payment fell due rendered the buyer's certificate of purchase void. This was no hardship in ordinary times, but proved extremely oppressive in 1875 and the years following, when vast swarms of grasshoppers did all the harvesting. Large numbers of purchasers of State land could not make their annual interest payments and thus lost title to lands which they had not only improved, but in many cases paid for in part. The injustice of the operation of this law under these circumstances was so obvious that, commencing in 1876, the Legislature for a number of years passed acts directing the Land Commissioner to abate the penalty for failure to pay interest upon application for relief filed at his office. Such application had to have the approval of the auditor and treasurer of the county.(35) Even where it was the mistake of the administrative officers which inflicted losses upon purchasers, such officers were often powerless to correct them. Thus, when the same piece of land

(35) Laws of Minn., 1876, 113; 1877,205; 1878, 128.

was sold twice it required a special act of the Legislature to reimburse the second purchaser for his payments.(36) In such cases the appropriation was generally made from the general or permanent fund which had profited by the mistakes.(37)

The first sales of public lands were held in 1862, when 38,247 acres of Sdhool Lands were sold. The average price per acre was $6.35.(38) It was thus that the Permanent School Fund had its beginning, the year ending with $242, 876 to its credit. Since 1862 sales of School Lands have been held every year, the amount sold ranging from 1219 acres in 1895 and 7495 in 1875 to 108,292 in 1902. The average of the annual sales has been 44,895 acres. To a person who has lived in one Minnesota community during the past two decades and seen the land advance in value five hundred percent or more it is at first surprising to find that the State lands have brought a remarkably uniform price from the first sale to the last. Comparing the average price received for School Lands at ten year intervals we find

(36) Laws of Minn., Special Session, 1881,95
(37) Laws of Minn., 1881, 115 - 116; 1885, 348
(38) Auditor's Report. 1907 - 1908 - 4

that in 1865 it was $5.98 per acre; in 1875, $5.65; in 1885, $5.71; in 1895, $5.10; and in 1905, $5.77. The highest average is that for 1902 - $9.78 an acre. The explanation for this uniformity, however, is not far to seek. It is accounted for by two circumstances. In the first place the provision of the Constitution to the effect that the most valuable lands should be sold first has compelled the Land Commissioner to offer for sale the lands in the more populous sections of the State first. Sound business policy and the demand of public opinion dictated the same course. Moreover, it has been the consistent policy of the Land Department to sell land only in counties where settlement has advanced to the point where the desirable free government lands have been taken. Thus the first sales were made in the southern and southeastern counties, where the first settlements were made. Then, as population moved westward and northward and took up the available homesteads, the land sales followed. Thus the first sales in each of the various counties came at about the same stage in their development. In the second place, the natural

desire of the early settlers to buy choice farms even at somewhat higher prices led them to call for the sale of the best land in each community first and to buy the choice quarters at the first sale in a given community. Thus the first sales in each county, where settlers were few and land prices low, brought as high prices as the sales of the greatly inferior tracts some years later. In this way it comes that the State is receiving but little more for its lands today than it did in the sixties.

In the amount of sales from year to year there has been considerable fluctuation, due in part to the varying policy of the Land Department, and in part to exterior circumstances. The financial panic of the early seventies and the early nineties reduced the land sales for those years by about one-half. The grasshopper visitation of the late seventies produced a like result. The total number of acres of School Lands sold by 1908 was 1,951,084. 1,015,187 remain. The average price per acre has been $6.30 and the total returns to the Permanent

School Fund $12,545,867, or a little less than two-thirds of the total fund.(39)

To trace in detail the sales of the other State lands would be tedious and unprofitable. But it may be worth while to point out the present status of each grant. Of the 94,439 acres of Agricultural College Lands only forty acres still belong to the State. The total returns have been $570,000. Of the 85,540 acres of University Lands the State now owns 24,768. Of the land disposed of between fourteen and fifteen thousand acres went to pay the debt of the Territorial University. The remaindar, 44,500 acres, has produced a permanent fund of $269,000. Of the 500,000 acres of Internal Improvement Lands all but 12, 156 have been sold, the total returns being $2,800,000. 2,893,000 acres of Swamp Lands have been given away. Railroad Companies have received the lion's share. 4684 acres have gone to the building of the Madelia and Sioux Falls Wagon Road. A like area was given to Stevens Seminary at Glencoe, in return for giving up the State Agricultural College; and 25,000 have been granted to the Cannon River Manufacturing Association for de-

(39) Auditor's report, 1907 -1908, 4.

veloping the water power and manufacturing resources of the Cannon River. 114,134 acres of the Swamp Lands have been sold, from which $750,00 have been realized. This leaves the State 1,491,000 acres to which it has received patents from the United States Government, and nearly a million more to which it is seeking to establish title. The Railroad Lands have all been transferred to the Land Grant Companies.

Of the 17,000,000 acres which the State has received as owner or trustee it now has title or color of title to but 2,600,000.

CHAPTER VII.

THE INVESTMENT AND PROTECTION OF THE PERMANENT TRUST FUNDS

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When the Constitutional Comvention and the State Legislature adopted the policy of making several of the trust funds permanent they thereby placed the State Government in the responsible position of caring for funds which now aggregate nearly twenty-three million dollars and to which each year adds a million more. This has given rise to a separate problem in the land administration - the management of the permanent trust funds. Of the many questions that have arisen, two have been of primary importance: 1. How to invest the State's money in securities safe, and at the same time profitable. 2. How to give the people of the State the advantage of the use of the permanent funds and still maintain a safe, business-

like administration. Upon the solution of these problems and the proper balancing of the two motives the State's success in this field was to depend.

Since the Territorial Legislature had no land at its disposal the problem did not arise until the admission of the State into the Union had perfected its title to the School Lands. In 1861, in the same act which provided for the sale of School Lands, provision was made for the investment of the resulting funds. The Board of Commissioners of School Lands, consisting of the Governor, Attorney General, and Superintendent of Public Instruction, were directed to invest the Permanent School Fund of the State in United States stock or stocks of the State at current value in New York. Upon each certificate was to be written, "Minnesota School Fund." Whenever bonds should be sold a statement to the effect that such bonds no longer were a part of the School Fund was to be written across the certificate and signed by each member of the Board. The State Auditor, as Register of the

Board, and State Treasurer, as Receiver, were required to keep an account of sales of public lands, contracts, leases, and the resulting funds, and a separate account of the Permanent and Current School Fund. The Receiver was required to give bonds in the sum of $10,000. The Board was directed to examine the books of these officers at least once in each quarter of the fiscal year. The second Tuesday in December was set for the annual settlement of accounts between the Board and the Treasurer. On or before this date the county treasurers were required to place in his hands the school funds received by them during the year. In order that the Legislature might keep in touch with the work of the School Land Commissioners it was made the duty of the Superintendent of Public Instruction to incorporate in his annual report a complete statement of the condition of the current and permanent School Funds and of other related matters. (1)

(1) Laws of Minn., 1861, 79 - 94

In a rudimentary and very general way the act outlines the policy pursued up to the present time. The investment of the funds by a board restricted to certain specified securities. The position of the Auditor and Treasurer as register and receiver of the funds, the collection of the money through the county treasurers, the safeguarding of the funds through the requirement that bonds shall be given andrecords inspected - these features have been permanent. Minor changes in the law and numerous additions will have to be noted, however.

Thus in 1863 a special Board of Investment was created, consisting of the Governor, Auditor, and Treasurer - clearly an improvement upon the previous commission. The same securities were left open to investment, with the additional restriction that all united States bonds to be purchased must bear at least six percent interest. Transfers of bonds could now be made only upon the order of the Governor.(2) In 1868 the laws concerning the management of the Permanent School Fund were extended to the corresponding University fund which, with the payment of the University debt, was just beginning to accumulate.(3)

(2) Laws of Minn., 1863, 50
(3) Ibid., 1868, 94.

The increasing importance of the duties of the Board of Investment and the coming in of the University Fund led to the enlargement of the board in 1873 to include the Chief Justice of the Supreme Court and the President of the Board of Regents. To prevent loss from the accumulation of large sums of dead money in the State treasury, it was provided that whenever the Permanent School and University Funds should have $10,000 to their credit the Board of Investment should use the money for purchasing bonds. The State Auditor was required to publish his record of the proceedings of the Board with his Annual Report.(4) The same Legislature passed an act constituting the Governor, Secretary of State, and Attorney General a Board of Auditors to examine the records and count the funds of the State Treasurer. This was to be done at least four times a year without previous notice.

That provision of the Federal Constitution forbidding the State to emit bills of credit has meant that accumulations in state treasuries have been so much

(4) Laws of Minn., 1873, 150.

unproductive property. The gold and silver in the national treasury perform a necessary function in serving as a backing for the various issues of paper money. It was neither desirable nor possible to make a similar use of Minnesota's reserve funds. Thus there was an annual loss which some years amounted to several thousand dollars because large sums for which there was no immediate use lay idle in the treasury. This condition continued till 1873, when an act was passed providing that all the State funds should be deposited in one or more national banks. Such banks were to be selected by the Board of Auditors after advertising in at least one of the daily newspapers of St. Paul for two weeks or more for proposals stating what security would be given and what rate of interest would be paid on weekly balances. No bank could be designated as a depository unless it should offer to place in the State Treasury as security bonds of the United States or of some state equal in market value to the sum to be placed in its keeping. It was even required that

any depreciation in market value should be made good.(5) At about the same time an act was passed which made a corresponding provision for State funds in the hands of county treasurers. In this case, however, state and private, as well as national banks, were made legal depositories. The safety of the funds was insured by requiring a bond in at least double the amount of the deposit. This bond had to be signed by at least five freeholders. The county auditor, the chairman of the board of county commissioners, and the clerk of the district court were created a board of auditors with functions corresponding to those of the State board. Neglect to act made the guilty parties liable to a fine of from $100 to $500.(6)

But in the opinion of the Attorney General these laws were unconstitutional. Section 12 of Article 9 of the State Constitution originally provided that all officers charged with the safekeeping, transfer, or disbursement of State and school funds must give ample security for all money and securities received by them.

(5) Laws of Minn., 1873, 152 - 153
(6) Laws of Minn., 1873, 158

The section continued: "And if any of said officers or other persons shall convert to his own use in any form, or shall loan with or without interest, contrary to law, or shall deposit in banks, or exchange for other funds, any portion of the funds of the State, every such act shall be adjudged an embezzlement of so much of the State funds as shall be thus taken, and shall be declared a felony; and any failure to pay over or produce the State or School Funds intrusted to such persons, on demand, shall be held to be prima facie evidence of such embezzlement."(7) From the language of this act it was held that the Legislature did not have the power to pass an act providing for the deposit of the State or School Funds in banks. In order to settle all doubt as to the constitutionality of these acts Section 12 was amended in 1873 so as to read in part: "And if any of said officers or other persons shall convert to his own use in any manner or form, or shall loan with or without interest, or shall deposit in his own name or other than in the name of

(7) Constitution of Minn., Art. 9, Section 12, Journal of the Constitutional Convention, 187.

the State of Minnesota, or shall deposit in banks or with any person or persons, or exchange for other funds or property, any portion of the funds of the State or of the School Funds aforesaid, except in the manner prescribed by law, every such act shall be and constitute an embezzlement."(8)

In 1874 the Legislature passed an act requiring the State Treasurer to publish every two months in one or more of the daily newspapers of St. Paul a condensed statement of the condition of the several funds in his hands at the date of the publication. As soon as the accumulations of any permanent trust fund should amount to $1000, bonds must be purchased. This requirement, if strictly adhered to, would effectually have prevented large accumulations of idle money. But $1000 proved too small a sum for the most productive investment, and in 1895 the amount was again fixed at $10,000. Instead of requiring a deposit of bonds the Act of 1874 required the banks entrusted with State funds to give personal bonds satisfactory to the Treasurer and the Board of Auditors. Every such

(8) Constitution of Minn., Art. 9, Sect. 12, Revised Laws of Minn., 1905, 1183.

bond had to be in at least double the amount of the deposit and had to have the backing of at least five sureties. Interest was now to be calculated on daily instead of weekly balances and at no time was the rate to be less than that paid on daily balances by leading New York banks.(9)

In 1875 the policy of the Legislature in providing that school funds should be invested in state and United States bonds was anchored in an amendment to the Constitution.(10) The same year the setting apart of 525,000 acres of Swamp Land for various State institutions made necessary a provision for the investment of the prospective fund. Accordingly an act was passed declaring that the State Institutions' Fund should be invested in the same manner as the Permanent School Fund.(11) By a constitutional amendment of 1872 the Internal Improvement Land Fund could be invested only in Minnesota and United States bonds.(12) The Act of 1868 providing that the proceeds from the sale of Agricultural College and University Lands should be invested

(9) Laws of Minn., 1874, 124 - 126
(10) Ibid., 1875, 20
(11) Laws of Minn., 1875, 126
(12) Constitution of Minn., Art. 4, Sect. 32b, Revised Laws of Minn., 1905, 1171

in the same manner as the Permanent School Fund has already been referred to. Thus, by 1875, there were statutory or constitutional provisionsfor the investment of the income from all of the five classes of land which were to give rise to permanent funds.

That class of acts designating in what class of securities the trust funds might be invested have thus far been omitted in order that they might here be taken up consecutively. The constitution of the State in its original form imposed no restriction upon the investment of any fund. The Act of 1861 limited the investment of the Permanent School Fund to bonds of the United States or of the State ofMinnesota.(13) The investment in Minnesota bonds was limited the next year to eight percent bonds.(14) This was amended in 1863 by confining the investment in United States bonds to such as bore six percent or more and removing the restriction on investment in Minnesota bonds. But lest the "Railroad Bonds" should be regarded as Minnesota bonds these were specifically excepted.(15)

(13) Laws of Minn., 1861, 94
(14) Ibid., 1862, 132
(15) Ibid., 1863, 49

This arrangement proved satisfactory during the war period, when the State loaned heavily at high rates, and United States bonds were at par or below. By 1869, however, this narrow limitation upon the investment of the trust funds had become detrimental. In his report for that year the State Auditor pointed out that United States six percent bonds sold at 106 3/4, while Michigan seven percent bonds could be purchased at par. Had not the law indicated the kind of bonds Michigan bonds would have been purchased, giving an income of seven percent on a hundred dollars instead of six percent on a hundred six and three-fourths. He therefore recommended that bonds of the Northern States be included among those open to investment.(16) The Legislature promptly accepted his suggestion, passing an act in 1870 which directed the Board of Investment to sell $77,800 of United States 5-20 bonds and invest the proceeds in such bonds of New York, Pennsylvania, Ohio, Illinois, Michigan, Wisconsin or Iowa as would pay the highest interest

(16) Auditor's Report, 1869. Minn. Ex. Doc. 1869, 698

and afford the best security.(17) In 1872 Missouri bonds were added.(18) In an act of 1873 the provision of these two acts were repeated with the restriction that no investment must be made in bonds of other states bearing less than six percent interest. The minimum rate for United States bonds was fixed at four percent. Bonds issued to aid in the construction of any railroad were not to be purchased.(19) By the amendment to the constitution in 1875 the investment of the Permanent School Fund was limited to state and United States bonds.(20) No such constitutional limitation has ever been placed upon the investment of the Permanent University Fund. A statute of this year provided that the State Institutions Fund should be invested in the same manner as the Permanent School Fund.(21) The same Legislature added Indiana and Massachusetts bonds to the list open to investment.(22) But notwithstanding this extension of the field it became increasingly difficult to secure good interest rates. Up to 1875 Missouri bonds had been below par, and money placed

(17) Laws of Minnesota, 1870, 204
(18) Laws of Minn., 1872, 204
(19) Ibid., 1873, 150
(20) Ibid., 1875, 30
(21) Laws of Minn., 1875, 126
(22) Ibid., 1875, 139

in these securities yielded a large return. But in that year her bonds rose to par and bade fair to go higher, and those of Northern and Eastern states were already above par. Wisconsin had been confronted with the same problem and had solved it to her satisfaction by loaning money from the trust funds to counties and school districts. The State Auditor therefore recommended that the Legislature should propose an amendment to the constitution making it possible for Minnesota to follow the example of her eastern neighbor.(23) But instead of opening new channels for the funds the Legislature sought to accomplish the same end by successive reductions in the interest on outstanding land contracts, as has been explained in a previous chapter.

But interest rates on securities continued to decline, while prices soared. Thus Minnesota six per cent bonds sold at 131 1/2 in 1883.(24) At this rate four and one-half per cent bonds at par yielded nearly as high a rate of interest. Moreover counties and school districts were anxious to loan money for the erection

(23) Auditor's Report, Minn. Ex. Doc., 1875, I,38
(24) Ibid., Minn. Ex. Doc., 1883-1884, IV, 62

of public buildings and willing to pay higher rates than the bonds in the market were yielding. The Legislature finally yielded to the double pressure and proposed an amendment to Article 8 of the State Constitution making it lawful to loan the Permanent School Fund of the State to the several counties and school districts, to be used in the erection of county or school buildings. The rate of interest was fixed at five percent. No loan was to be made until approved by a board consisting of the Governor, Auditor, and Treasurer, nor to an amount greater than three percent of the assessed valuation of the county or school district at the preceding assessment. To insure payment it was made the duty of the State Auditor to include with the State tax certified to county auditors the amount necessary to meet the interest on any such loan and of the principal, when due. The county auditor must then extend the amount so certified to the tax list of the county or school district and the tax so assessed was to be fifty percent in excess of the amount to be raised. Lest the State's security might be impaired

the new section declared that no change in the boundaries of any school district should operate to withdraw any of the property from taxation for the purpose mentioned. No law could be passed extending the time of payment of interest or principal or reducing the rate of interest, or waiving or impairing the rights of the state in connection with any such loan. This amendment was submitted to the people in the November election of 1886 and accepted by a vote of 131,533 to 17,914. (25)

To carry out the intention of this amendment the Legislature passed an act the following year prescribing the mode of procedure in making loans. Any county desiring to secure the use of a portion of the Permanent School Fund had to adopt a resolution to that effect through its county commissioners, specifying for what purpose the money would be used. The county auditor was then required to report the action taken to the State Auditor and certify the taxable valuation of the county, its indebtedness, and the money in the county treasury available for paying such indebtedness. School districts which might desire

(25 Laws of Minn., 1885, 6, Ibid., 1887,2

a loan to be used in erecting school houses were required to take a vote upon the question at regular or special school-meetings. If a majority of the voters at such a meeting favored the project it became the duty of the clerk of the district to send to the State Auditor an accurate account of the proceedings, the numbers of votes cast for and against the measure, a certified copy of the notice posted to call the meeting, an accurate description of the land of the district and of its indebtedness, and finally a certified statement from the county auditor showing the last taxable valuation of real estate and personal property in the district. In the case of independent and high school districts the mode of procedure was to be the same or as nearly so as possible.

The first Monday of each month was fixed as the time when the Board of Investment should meet to pass upon applications for loans. The order of preference was to be : common school districts, independent school districts, high school districts, counties. Additional

information could be required by the board and unsatisfactory applications rejected. No applications could be granted until the Attorney General had passed upon the question of its legality.

The bonds were to be signed by the proper officers of the county or school district in such form as the Investment Board might prescribe. Not until these bonds were presented to the State Auditor could he draw his warrant on the State Treasurer for the amount to be loaned. The Auditor thereupon had to deposit the bonds with the Treasurer, and then only could the latter pay over the money.(26)

The importance of this amendment and statute is shown by the fact that by 1890 eight hundred forty school districts and six counties had made use of the opportunity presented, while the total loans amounted to $630,907.83.(27)

This sum would have been far larger but for the limitation upon the amount which each division could secure. With the financial panic of 1893 and the hard

(26) Laws of Minn. 1887, 310 - 312
(27) Auditor's Report, 1889 -1890, Minn., Ex. Doc., 1889 - 1890, 12.

times following the need for larger loans became more and more pressing. A further amendment was therefore proposed in 1895, which embodied this change and made other alterations of importance. The Permanent University Fund as well as the School Fund was now included. These funds might be invested in the bonds of any school district, county, city, town, or village of the State without any restriction as to the purpose for which the money might be used. Instead of limiting the amount to three percent of the assessed valuation of the property of the district attention was now directed to the total indebtedness - the only businesslike way - and it was laid down that there should be no investment in the bonds of any division when the issue of which they made a part brought the entire bonded indebtedness of such division above seven percent of its assessed valuation. The minimum interest rate was reduced from five to three percent. The bonds to be purchased must run not less than five nor more than twenty years. No change in the boundary of any division was to relieve

any part of it from liability. Each investment had to be passed upon by the board of commissioners designated by law to look after the investment of the Permanent School and Permanent University Funds.(28) This amendment received the approval of the voters of the State in November, 1896, by an overwhelming majority.(29) The Legislature was now free to extend the earlier law and accordingly passed an act at the next session including cities, villages, and townships. In cities and villages the common council was authorized to apply for the loan; in the towns this authority was given to the board of supervisors. The interest rate was reduced to four perdent and the amount to be placed upon the tax list of the proper division was reduced from 150 to 130 per cent of the amount due. Outside of these modifications the statute is practically a copy of the previous one.(30)

The very next Legislature proposed to extend the amendment of 1896 so as to provide that no loan should be made to any division which would make its entire

(28) Laws of Minn., 1895, 13-14
(29) Laws of Minn., 1897. VII.
(30) Ibid., 1897, 90 - 93

bonded indebtedness exceed fifteen percent of its assessed valuation.(31) But the people of the State were otherwise minded and rejected the proposed amendment. The Legislature enacted it once more in 1901 and the voters again said "no." The amendment was rejected at three successive biennial elections and as many times re-enacted. Finally, in the fall of 1905, the increased desire for larger loans from the State funds and the greater familiarity of the voters with the measure told in its favor, and it was accepted by a vote of 190,718 to 39,334.(32)

Reviewing briefly the history of the investment of the permanent funds we find that the first investment was made in 1863, when $111,687.50 of the Permanent School Fund was applied to the purchase of Minnesota seven percent War Loan Bonds and United States six per-cent 5 - 20 bonds. This policy of buying Minnesota bonds for the permanent funds has been carried out at all times. Not infrequently all unredeemed State bonds have been in the State treasury, credited to the permanent funds. Up to 1870 all investments were made in

(31) Laws of Minn., 1901, IV.
(32) Ibid., 1905, 3.

United States or Minnesota bonds, because it had proved impossible to make any satisfactory purchase of bonds of the states recommended by the Legislature.(33) In 1871 the Land Commissioner, purchased $50,000 of Missouri six percent without specific authority. The Legislature ratified his action and authorized further investments. By 1873 the Permanent School Fund held $192,000 of Missouri six percents, as compared to $250,000 of Minnesota 7 percents, and $442,200 of United States six percent gold and currency bonds.(34) During the ten years period following all permanent funds of the State were placed in these three classes of securities. In order to make possible the purchase of the large issue of Minnesota Railroad Adjustment Bonds in 1881 a large share of the other bonds belonging to the School and University Funds were sold. In 1884 the Permanent School Fund held $3,133,000 of Minnesota bonds, $425,000 of United States four and four and one-half percent bonds and $81,000 of Missouri six percents. $3,136,313.08 were in land contracts bearing seven percent interest.

(33) Treasurer's Report, 1870, Laws of Minn., 1871,220
(34) Treasurer's Report, Minn., Ex. Doc., 1873, 8

The Permanent University Fund had $277,000 of Minnesota Railroad Adjustment Bonds and $347,326.69 in land contracts. The Internal Improvement Land Fund had land contracts outstanding to the amount of $962,470.60 and held $322,000 of Railroad Adjustment Bonds.(35) During the next decade Tennessee, Alabama, and Minnesota furnished all of the state bonds purchased In 1893 the Permanent School Fund held $303,737.50 of Alabama four and five percent bonds, $409,000 of Minnesota three and one-half and four percent bonds, and no less than $2,144,900 of Tennessee three and four and one-half percent bonds. The school district and county five percent bonds amounted to $1,027,739.72, and the land contracts to $6,711,863.43. The Permanent University Fund held bonds of Minnesota and Tennessee aggregating, with the land contracts, a little over $1,000,000. The Internal Improvement Land Fund, which had been devoted to the liquidation of the Railroad Adjustment Bonds in 1881, had paid all these bonds, $2,533,000, and had about $110,000 to its credit in

(35) Auditro's Report, 1882-1884, 44

cash and land contracts. The State Institutions Fund had begun to accumulate, but no investments had been made.(36)

From 1894 to 1904 Massachusetts, Virginia, Alabama, Louisiana, Utah, Delaware, Minnesota, and the local divisions of the State furnished the bonds purchased. The investments in the bonds of Massachusetts, Virginia, and Minnesota were especially large, the holdings of these securities by the Permanent School Fund in 1903 amounting to $3,895,000, $1,635,000, and $2,288,000 respectfully. The large amount of Minnesota bonds on the market is accounted for by the building of the New Capitol. The amount in school district, city, county, and township bonds showed but a slight increase, amounting now to $2,359.496.99, while the total sum owing on land contracts had sunk to $5,715,136.31. The Permanent University Fund, which had passed by $363,638.97 the million dollars mark prophesied for it by early auditors, held practically the same classes of securities as the School Fund. The Internal Improvement

(36) Auditor's Report, 1893 -1894, 8-11

Land Fund held $337,577.58 in land contracts, $23,000 of Louisiana four percent and $55,000 of Virginia three percent bonds. The State Institutions Fund held a total of $388,000 of Louisiana four percent, and Virginia and Minnesota three percent bonds; with the outstanding land contracts and the cash on hand the fund amounted to $514,465.54. During this decade another fund appeared, the Swamp Land Fund. The enormous grants of swamp land to railroads and other corporations had delayed the sale of the Swamp Lands. During the decade all these grants were adjusted, and sales commenced. By 1904 this fund had reached $80,685,32, of which $50,000 had been placed in Minnesota Capitol Bonds. (37)

When the last report of the State Auditor was written, July 31, 1908, the Permanent School Fund lacked less than $300,000 of $20,000,000. Of this total approximately twelve and a half millions are the returns from sales of land, five and a half from sales of timber, one and a fourth from mineral leases

(37) Auditor's Report, 1903-1904, IV -VI.

and permits and royalty on iron ore, and $361,000 the profits on the sale of bonds. The large amount of the last item speaks well for the efficiency of the work of the Investment Commission.

To mention in detail the holdings of the various funds would be but to repeat the statement for 1904. One most striking change should be noted, however, The total amount of the school district, city, county, and township bonds held by the permanent funds had jumped in the four years from $2,502,696.99 to $6,628,485.28. The explanation for the sudden and remamkable increase is found in the constitutional amendment of 1905.

The Internal Improvement Land Fund had passed $400,000. The State Institutions Fund and Swamp Land Fund, both the product of the Swamp Land Grant and now finally devoted to the same purposes, had been united as the Swamp Land Fund and amounted to $1,243,273,35.(40)

The Permanent University Fund approached a million and a half.

(40) Auditor's Report, 1907 - 1908, VIII - X.

The story of the management of the permanent funds is a record of efficiency. The question of the safe and profitable investment of the State's permanent funds has been met and solved. Every bond purchased has proved a safe investment. It is no mere accident that the Permanent School Fund has been increased over a third of a million by the purchase and sale of bonds. The interest rates maintained on land contracts have been such as to keep a large proportion of the funds in a class of securities of unquestioned safety. They have been high enough to yield an income larger than a corresponding investment in bonds and yet low enough to offer a distinct advantage to purchasers over rates that could be secured from private parties. The question of how to give the communities of the State the advantages of the use of a portion of the permanent funds has also been satisfactorily adjusted. The analysis of the statute has shown the sufficiency of the safeguards with which these loans are hedged. Their amount

speaks for the greatness of the need that has existed and has been satisfied.

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