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THE HOMESTEAD LAW IN AN INCONGRUOUS LAND SYSTEM [1]

THE Homestead Act of 1862 is one of the most important laws which have been enacted in the history of this country, but its significance has been distorted and grossly misinterpreted. An important misconception concerning the Homestead Act is that its adoption marked a more or less complete break with the past, in that the lands which previously had been considered as a source of revenue were now to be given free to settlers. As part of this interpretation it is held that direct land sales virtually ceased except for transactions under the Pre-emption Law, the commutation clause of the Homestead Act, the Timber and Stone Act, and the Desert Land Act. Each of the first three of these acts permitted the purchase by individuals of 160 acres and the Desert Land Act permitted the purchase of an additional 640 acres, making a total which could be acquired under them of 1120 acres. Aside from this maximum which was open to purchasers, the accepted view is that speculators [2] in lands were barred from direct transactions at the land offices and that, to secure large tracts, they were forced to operate through dummy entrymen or buy from states and railroads.

To state this view differently, it is held that after 1862 the chief way in which settlers and speculators alike acquired land from the government was through the Pre-emption and Homestead laws and their subsequent modifications. Indeed, some writers have maintained that the region beyond the Mississippi was largely settled by homesteaders taking up free land under the Act of 1862. Congressman Harvey B. Ferguson stated in 1914, "It was great statesmanship that created the homestead laws under which such a State as Iowa developed".[3] Another

[1] The material for this article was gathered in part while the writer was Fellow of the Social Science Research Council in 1933 and 1934. Grateful acknowledgments are due to the Council and especially to Donald Young of its staff for many kindnesses. The article was completed while the writer was engaged in a study of Recent Land Policies of the United States for the Land Policy Section of the Agricultural Adjustment Administration, later the Resettlement Administration.

[2] The word "speculator", as used in this article, refers to large-scale land operators, and does not include many farmers who speculated in a small way.

[3] "Grazing Homesteads and the Regulation of Grazing on the Public Lands", *Hearing before the Committee on the Public Lands*, House of Representatives

writer made an even broader statement as follows: "Under the homestead law were taken up the rich agricultural alluvial lands of the central Mississippi basin. . . ." [4] Even Professor Hibbard, the authority on American land policies, has misunderstood the developments in land matters after 1862. He states that land sales made after 1862 were "only in connection with preemption and miscellaneous parcels of land, the preemptions covering by far the larger part of the operations". He also states that a congressional resolution, expressing opposition to the further sale of agricultural lands, which passed the House in 1868 but failed of adoption in the Senate, was virtually "tantamount to a law".[5] As these views have been widely accepted it is essential to examine briefly their source and then to test their accuracy.

The principle of free homesteads for settlers had long been the goal for which the West had struggled, and as each succeeding land law, more liberal than its predecessor, was passed, that goal came constantly nearer until, in 1862, it was attained. So generous seemed this policy in contrast with the earlier one of regarding the lands as a source of revenue, and so significant did it appear prospectively, that it became the subject of eulogy at the outset. Furthermore, the measure had been sponsored by the Republican party and when this party was later accused of representing the interests of large capitalistic combines and of neglecting the farmers, its leaders pointed to the Homestead Act as a refutation of the accusation.[6] Consequently there was built up around the law a halo of political and economic significance which has greatly magnified the importance to be attributed to it and which has misled practically every historian and economist who has dealt with land policies. The Homestead Law has been considered the capstone of an increasingly liberal land policy, and to it has been ascribed the rapid settlement of the West and the large percentage of farmer owners in the United States. It has also been regarded as providing an outlet for the discontented and surplus labor of the East with the result that, as compared with

[4] Leifur Magnusson, *Disposition of the Public Lands of the United States with Particular Reference to Wage-Earning-Labor* (Washington, 1919), p. 29. See also Arthur C. Cole, *The Irrepressible Conflict*, 1850-1865 (New York, 1934), pp. 119, 357; John Ise, *The United States Forest Policy* (New Haven, 1920), p. 56.

[5] Benjamin Horace Hibbard, *History of the Public Land Policies* (New York, 1924), pp. 111, 112.

[6] The shallowness of this contention was pointed out by George W. Julian in 1884 (*Political Recollections, 1840 to 1872*, Chicago, 1884, p. 218). Speaking of the continua-

European countries, high wage rates have prevailed in that section. The influence of free land has been blithely discussed by writers who have never taken the time to examine the facts with which they dealt so lightly.[7]

The source of most of these ideas concerning the Homestead Law is, of course, the *Congressional Globe*, later the *Record*, upon which so many writers completely depend. A careful reading of the congressional debates should, however, lead one to question the general conception above outlined. Professor Hibbard bases his generalizations upon even more untrustworthy evidence. He quotes from the *Report* of the Commissioner of the General Land Office for 1863 wherein it is stated that it is not the design of Congress "to look to the public lands as a source of direct revenue",[8] and, from the exceedingly small amount of sales reported in the first year that the Homestead Law was in operation, draws the inference that cash sales were thenceforth of no importance. Professor Hibbard may also have been depending upon a statement made by that great compiler of land statistics, Thomas Donaldson, in his book, *The Public Domain*, originally published in 1880, in which it is stated that lands available for cash entry are few and isolated, except for those in the five Southern states of Alabama, Louisiana, Florida, Arkansas, and Mississippi. The statement was correct in general in 1880, in so far as it applied to the lands ordinarily described as "public domain",[9] but there were many million acres of rich agricultural lands which at that time were rapidly being brought into the market for cash sale by the Federal government.[10] It would not apply at all to the period prior to 1880 when large areas of the best agricultural lands in the country were subject to sale.

It is the purpose of this paper to show that the Homestead Law did not completely change our land system, that its adoption merely superimposed upon the old land system a principle out of harmony with it, and that until 1890 the old and the new constantly clashed. In presenting this view it will appear that the Homestead Law did not end the

[7] In contrast, Herbert Heaton ventures the view that the importance of free land in drawing immigrants to America has been overestimated while the influence of high wages has been underestimated. "Migration and Cheap Land—the End of Two Chapters", *The Sociological Review*, XXVI (July, 1934), 237.

[8] *Report*, 1863, p. 7. See also *Report*, Secretary of the Interior, 1862, p. 4.

[9] 1884 edition, pp. 25, 415. It is worth noting that a total of 4,851,296 acres was entered in Michigan, Wisconsin, and Minnesota in the eighties with cash, scrip, and warrants. This is exclusive of pre-emption, homestead, and other limited entries.

[10] These lands, which were being ceded by the Indians, are neglected by both Donaldson and Hibbard.

auction system or cash sales, as is generally assumed, that speculation and land monopolization continued after its adoption as widely perhaps as before, and within as well as without the law, that actual homesteading was generally confined to the less desirable lands distant from railroad lines, and that farm tenancy developed in frontier communities in many instances as a result of the monopolization of the land. The efforts to abolish cash sales will also be outlined briefly.

The moderate land reformers of the mid-nineteenth century believed that the enactment of a homestead measure would retard if not end speculation in public lands.[11] They argued that once free homesteads were available to settlers speculators would no longer have a market for their lands and all inducements to purchase in advance of settlement would be ended. Parenthetically, similar arguments have been advanced by certain historians to prove that there was little or no profit in land speculation.[12] The land reformers reckoned too lightly, however, with the astuteness of the speculators who in the past had either succeeded in emasculating laws inimical to their interests or had actually flouted such laws in the very faces of the officials appointed to administer them.

From the outset the cards were stacked against the efficient and successful operation of the Homestead Law. Other acts in existence in 1862 greatly limited its application and new laws further restricting it were subsequently enacted. The administration of the law, both in Washington and in the field, was frequently in the hands of persons unsympathetic to its principle,[13] and Western interests, though lauding

[11] The more advanced reformers demanded that all sales should be discontinued, grants to railroads and other special interests ended, and all the public lands reserved for actual settlers under the provisions of the homestead measure. The differences between what may be called the moderate and the radical land reformers is apparent in the congressional debates. See also George M. Stephenson, *The Political History of the Public Lands from 1840 to 1862* (Boston, 1917), p. 166 and elsewhere; Roy M. Robbins, "Horace Greeley: Land Reform and Unemployment, 1837-1862", *Agricultural History*, VII (Jan., 1933), 26, *passim;* St. George L. Sioussat, "Andrew Johnson and the Early Phases of the Homestead Bill", *Mississippi Valley Historical Review*, V (Dec., 1918), 253, *passim;* Hibbard, p. 347, *passim;* John Bell Sanborn, "Some Political Aspects of Homestead Legislation", *Am. Hist. Rev.*, VI (Oct., 1900), 19, *passim*.

[12] Speaking of the period from 1836 to 1876 Professor Joseph Schafer writes: "It was, in this period, a rare thing for an outside speculator in wild lands to make any profit on his speculation." *Wisconsin Magazine of History*, XIII (June, 1930), 428. See also his *The Wisconsin Lead Region, Wisconsin Domesday Book*, "General Studies", III (Madison, 1932), p. 153; *Wisconsin Domesday Book, Town Studies* (1924), I, 10.

[13] Wm. A. J. Sparks, commissioner of the General Land Office, in his *Report* for 1885 (pp. 3-4), writes as follows concerning the administration of the land laws:

> I found that the magnificent estate of the nation in its public lands had been to a wide extent wasted under defective and improvident laws and through a

the act, were ever ready to pervert it. The existence of the Pre-emption Law and its later variations, the Desert Land Act, the Timber Culture Act, the Timber and Stone Act, the land grants to railroads and states, the cash sale system, the Indian land policy, the acts granting land warrants to ex-soldiers or their heirs, and the Agricultural College Act of 1862, which granted millions of acres of land scrip to Eastern states, tended to make it practically as easy for speculators to engross huge areas of land after 1862 as before.

The retention of the Pre-emption Law and the commutation clause of the Homestead Law made it possible for timber dealers,[14] cattle graziers, mining interests, and speculators to continue to acquire lands through the use of dummy entrymen, false swearing, and, often, the connivance of local land officers. That this was done on a large scale is evident by the frequent and sometimes pathetic admissions of the apparently helpless land commissioners. The Desert Land Act, the Timber Culture Act, and the Timber and Stone Act provided even greater opportunities for dummy entrymen to enter lands and assign them to hidden land engrossers.[15] The palpable frauds committed and

> laxity of public administration astonishing in a business sense if not culpable in recklessness of official responsibility.
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> The widespread belief of the people of this country that the land department has been very largely conducted to the advantage of speculation and monopoly, private and corporate, rather than in the public interest, I have found supported by developments in every branch of the service. It seems that the prevailing idea running through this office and those subordinate to it was that the government had no distinctive rights to be considered and no special interests to protect; hence, as between the government and spoilers of the public domain, the government usually had the worst of it. I am satisfied that thousands of claims without foundation in law or equity, involving millions of acres of public land, have been annually passed to patent upon the single proposition that nobody but the government had any *adverse* interest.
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> The vast machinery of the land department appears to have been devoted to the chief result of conveying the title of the United States to public lands upon fraudulent entries under strained constructions of imperfect public land laws and upon illegal claims under public and private grants.

[14] Ise, *passim*, has drawn together and summarized the published information concerning the vast frauds committed by the lumber interests in their efforts to acquire great areas of timber lands. See also Jenks Cameron, *The Development of Governmental Forest Control in the United States* (Baltimore, 1928), *passim*.

[15] The commissioners of the General Land Office from 1875 onward recommended annually the repeal of the Pre-emption Law; in 1883 the commissioner recommended the repeal of the commutation clause of the Homestead Law and the Timber Culture Act (*Report*, 1883, pp. 6-7); in 1884 the commissioner suggested the repeal of these laws and

the large areas transferred under these acts and their interference with the homestead principle lead one to suspect that their enactment and retention were the results of political pressure by interested groups.

It was not entirely necessary, however, for speculators to resort to these illegal and fraudulent methods of acquiring land since Congress proceeded to aid their schemes by enacting a series of laws which went far toward vitiating the principle of land for the landless. By continuing after 1862 the policy of granting lands to railroads to encourage their construction, Congress from the outset struck a severe blow at the principle of free homesteads. In the eight years after the passage of the Homestead Law five times as much land was granted to railroads as had been given in the twelve preceding years; 127,628,000 acres were granted between 1862 and 1871 to aid in the extension of the railroad net and 2,000,000 acres were granted for wagon roads and canals. Such imperial generosity was at the expense of future homesteaders who must purchase the land.[16] As it was necessary to withdraw all lands from entry in the regions through which such roads were projected to prevent speculators from anticipating the railroads in making selections of land, and as the routes were rarely definitely established when the grants were made, more than double this amount of land was withdrawn from entry and remained unavailable to settlement for a long period of years.[17]

The railroads were, of course, built through undeveloped regions and, other things being equal, routes were selected which would ensure to the companies the largest amount of what was then considered to be the best agricultural land. When the alternate government sections were finally restored to market settlers were frequently outbid for them by speculators.[18] Moreover, the provision in the Homestead Law which confined the homesteader to eighty acres within the limits of a railroad

[16] Computed from Donaldson, pp. 258-273. The best criticism by a contemporary of the railroad land grant policy, is found in Henry George, *Our Land and Land Policy, National and State* (San Francisco, 1871). See also George W. Julian, "Railway Influence in the Land Office", *North American Review*, CXXXVI (Mar., 1883), 237-256, and his "Our Land-Grant Railways in Congress", *International Review*, XIV (Feb.-Mar., 1883), 198-212.

[17] G.L.O. *Report*, 1885, pp. 26, *passim*. As late as 1883, twelve years after the last land grant was made to railroads, it was estimated that more than 100,000,000 acres were withdrawn from settlement pending selection of the railroad sections. Julian, *N. Am. Rev.*, CXXXVI, 252.

[18] For large speculative purchases within the limits of the Illinois Central Railroad

grant [19] was sufficient to send many homeseekers farther afield. On the railroad sections, of course, no free homesteading was permitted and thus the prospective settler found it necessary to go far from transportation facilities in order to take advantage of the government's bounty. In numerous instances the land policies of the railroads encouraged speculative and large-scale purchases with the result that millions of acres were turned into bonanza farms, such as those found in Dakota Territory,[20] or were rented or leased to incoming settlers who had expected to find free land available to them.

These grants to railroads after 1862 were a limitation on the homestead principle and indicate cynical indifference to the idealistic expressions constantly voiced concerning the principle. That some doubt existed among members of Congress as to the propriety of continuing to make grants for railroads is revealed by a resolution adopted by the House in 1870 [21] which stated:

> That in the judgement of this House the policy of granting subsidies in public lands to railroad and other corporations ought to be discontinued; and that every consideration of public policy and equal justice to the whole people requires that the public lands of the United States should be held for the exclusive purpose of securing homesteads to actual settlers under the homestead and preëmption laws, subject to reasonable appropriations of such lands for the purposes of education.

Although adopted without any debate the resolution was just a bluff, for within the next twelve months Congress made one of the largest and most indefensible of the railroad grants which, together with a number of smaller ones, totaled nearly 20,000,000 acres.[22] The anti-railroad feeling which swept over the West in the early seventies finally brought these grants to an end. After 1871 no more grants were made [23] although various interests were at the time seeking additional grants which, if made, would have required practically all the valuable lands remaining to the government.

[19] This provision was practically repealed by the acts of Mar. 3, 1879 (20 *U. S. Stat.*, 472), July 1, 1879 (21 *U. S. Stat.*, 46), and June 15, 1880 (*ibid.*, p. 238).

[20] James B. Hedges, "The Colonization Work of the Northern Pacific Railroad", *Mississippi Valley Hist. Rev.*, XIII (Dec., 1926), 327; Harold E. Briggs, "Early Bonanza Farming in the Red River Valley of the North", *Agricultural History*, VI (Jan., 1932), 26, *passim*; Alva H. Benton, "Large Land Holdings in North Dakota", *Journal of Land and Public Utility Economics*, I (Oct., 1925), 405-413.

[21] *Cong. Globe*, 41 Cong., 2 sess., p. 2095.

[22] Donaldson, p. 272.

[23] Lewis H. Haney, *A Congressional History of Railways in the United States*

The continuation of the policy of granting to the states Federal lands within their borders was likewise contrary to the homestead principle. With the exception of the swamp land grants, the purpose of these donations was to provide the states with a valuable commodity, the sale of which would produce revenue or endowment for educational and other state institutions. Over 72,000,000 acres were granted to states which came into the Union after 1862 while other states had their grants increased subsequent to the enactment of the Homestead law.[24] It is safe to say that over 140,000,000 acres of land were in the hands of the states for disposition after 1862.[25] The philosophy behind the grants, and frequently the conditions embedded in the donations, required their sale at the highest market price. The states were prevented, therefore, from giving homesteads to settlers and the prices asked for their lands, with the exception of the swamp lands which were generally sold at low prices or granted to railroads, made them the prey of speculators. It is true that limitations were sometimes placed on the amount of land which individuals could purchase, but dummy entrymen were usually employed to circumvent such restrictions.[26] The states, like the railroads, naturally endeavored to secure the best possible lands in order to ensure large returns therefrom. The following table,[27] showing the land sales of and the prices received by representative states, reveals clearly that persons seeking cheap or free lands found little encouragement from state officials.

State	*Net amount of land sold to date*	*Average price per acre*
Idaho [28]	838,140	$16.90
Kansas	3,064,547	3.22
Minnesota	2,306,600	6.53
Montana	1,587,488	15.50
North Dakota	1,686,436	16.73
South Dakota	873,960	35.22
Utah	3,448,876	2.44

[24] Computed from G.L.O. *Report*, 1932, pp. 45-50.

[25] A total of 230,088,219 acres have been patented to the states of which 38,206,487 acres were given for railroads, 3,359,188 acres for wagon roads, and 6,842,921 acres for canals. Most of these special grants were quickly transferred to construction companies or disposed of by the states. The total also includes 7,672,800 acres in land scrip which was granted to the states in which there were no remaining public lands for the endowment of agricultural colleges. The scrip could not be located by the states and had to be sold promptly. Of the remaining lands granted, or which were subsequently granted to the states, it seems safe to say that at least 140,000,000 acres were still unsold to 1862.

[26] U. S. Department of Commerce and Labor, Bureau of Corporations, *The Lumber Industry* (1913), pt. 1, p. 252.

The maintenance of the cash sale system after the Homestead Law went into operation did even greater violence to the principle of free lands. It is not generally appreciated that there were available in 1862 for cash sale 83,919,649 acres of land.[29] Contrary to the views of Hibbard and others, this figure was later increased to well over 100,000,000 acres by the opening up of new lands to the auction and cash sale system.[30] Throughout the sixties and seventies and, indeed, until 1888 the government continued to offer land at auction in Oregon, Washington, California, Kansas, Nebraska, Colorado, New Mexico, and in practically all of the states in the Lakes region and in the Mississippi Valley where it still had land. It is true that after 1870 most of the land so offered was timbered but by then a goodly portion of the arable lands had been surveyed and opened to sale. The richest and most fertile sections of Kansas, Nebraska, Missouri, California, Washington, and Oregon were thus open to the cash purchaser after the enactment of the Homestead Law and, as will be seen later, great landed estates were acquired through outright purchase in these states.

Little attention has been devoted by historians to the Indian lands and yet there is a story involved in their disposition totally at variance with the conventional account of the era of free land. At the time the Homestead Law was passed the government was following the policy of concentrating the Indians on reservations where they would be in less conflict with white settlers. The rights of the Indians in lands claimed by them were recognized and, when they were persuaded to leave a hunting area over which they claimed ownership to dwell in a reservation, they were generally compensated for their lands either by the Federal government or by a purchaser acting with the consent of the government. Some of the lands were ceded outright to the government for a consideration; others were ceded in trust, the lands to be sold for the benefit of the Indians; the disposition of still others to railroads was authorized in a number of treaties. As these Indian lands were frequently the very choicest and contained some improvements they were much desired by speculators. No uniform policy concerning their final disposition was worked out—both legislative and administrative regulations as to their disposal varying widely—and consequently

[29] G.L.O. *Report*, 1862, p. 8.

[30] Volumes of "Proclamations for Public Land Sales", General Land Office; G.L.O. *Reports*, 1862 and following. It is true that 46,000,000 acres in the South were withdrawn from cash entry under the Act of June 21, 1866, but these lands were restored to sale in [illegible]

speculators were able to get their grasp on them more easily than if the lands had been subject to a clearly defined policy. The only consistent rule concerning them was that they must be sold for a consideration, which, of course, denied to the homesteader the right to enter them free. The obligation of the government to compensate the Indian for his land did not necessitate a policy of sale to settlers but the revenue complex with reference to the public lands was still prevalent in spite of the Homestead Law, and the Indian lands were reserved for cash sale.

The amount of land in Indian reservations or claimed by the Indians in 1862 was probably 175,000,000 acres.[31] The land was scattered throughout the Western states, but large amounts were concentrated in the states of Kansas and Nebraska and the Dakota and Indian territories into which settlers were eagerly pressing in the sixties, seventies, and eighties, or where they looked longingly for lands. At the outset, these lands were sold in large blocks to groups of capitalists and railroads, as is seen below, without being offered in small lots. Slightly later they were appraised, generally at high valuations, offered at auction and sold to the highest bidders. Still later, some of the Indian lands were sold in small tracts to settlers, a slight concession to the homeseekers.[32]

The Indian Allotment Act of 1887, as modified by the Burke Act of 1906[33] and subsequent measures, was undoubtedly in part the result of Western pressure to have the lands of the Indians made available to white settlement. These acts provided for the allotment of Indian lands and eventually for their sale. The Dawes Act continued the policy whereby the government purchased the surplus lands from the Indians and subsequently resold them, but it provided that lands so acquired in the future should be reserved for actual settlers in tracts of 160 acres. This provision did not apply to ceded lands transferred before 1887 nor did it open the ceded lands to free homesteading. Congress has been consistent at least in requiring payment for Indian land. Between 100,000,000 and 125,000,000 acres of Indian land have been sold since

[31] Indian reservations and claims were not sharply defined in 1862, much of the area not having been surveyed. In 1875 the Commission of Indian Affairs (*Report*, 1875, p. 142) gave the acreage in Indian reservations as 165,729,714 acres. The amount of Indian lands sold directly to individuals and corporations and that sold through the General Land Office during the years 1862-1875 would bring this figure to 175,000,000 acres for 1862.

[32] There is little available information on the Indian lands and their disposition, the most important published source being the *Annual Reports* of the Commissioners of Indian Affairs during the years after the Civil War.

1862, practically one half as much as the total acreage which has been entered under the Homestead Law.[34]

With over 125,000,000 acres of railroad lands,[35] 140,000,000 acres of state lands, 100,000,000 acres of Indian lands, and 100,000,000 acres of Federal lands for sale in large or small blocks, and with the opportunities for evasion of the Homestead and Pre-emption laws and their variations outlined above, it is obvious that there were few obstacles in the way of speculation and land monopolization after 1862. As before, it was still possible for foresighted speculators to precede settlers into the frontier, purchase the best lands, and hold them for the anticipated increase in value which the succeeding wave of settlers would give to them. It has heretofore been maintained that the existence of free land after 1862 greatly diminished the speculators' chances of profit and consequently limited their activities. This view will not bear careful scrutiny. Except for the squatters' claims, the speculators were generally able to secure the most desirable lands, that is, those easily brought under cultivation, fertile and close to timber, water, markets, and lines of communication. The subsequent settler had the choice of buying at the speculators' prices, from the land grant railroads which held their alternate tracts at equally high prices, from the states whose land policies were less generous than those of the Federal government, or of going farther afield to exercise his homestead privilege where facilities for social and economic intercourse were limited. The fact that their lands were more advantageously situated was effectively advertised by the land companies. Thus the American Emigrant Company in advertising its Iowa lands in the sixties summed up under the caption "Better than a Free Homestead" all the disadvantages of free land:

[34] Recent addresses by John Collier, commissioner of Indian Affairs, and Senator William H. King have called attention to the alienation of Indian lands since the Allotment Act of 1887, but they have not been concerned with the previous crowding of the Indians on the reservations and the forced cession or sale of their surplus lands which antedated that act. See the speech of Senator King on "Condition of Indians in the United States", *Senate Document*, 72 Cong., 2 sess., no. 214. It is difficult to estimate the total amount of Indian land which was sold prior to 1887 and after 1862 but it would certainly bring the total Indian land sales since 1862 to over 100,000,000 acres.

[35] The railroads have received 132,425,571 acres of land directly from the Federal government or from grants originally given to the states for railroad construction. *Report*, Secretary of the Interior, 1934, p. 73. This amount would be greatly augmented by grants made by the State of Texas from its public lands and by other states from the swamp lands received from the Federal government, and also by the lands purchased by railroads from the Indians. As used here only the 132,425,571 acres are considered. Only a small part of this vast area was sold prior to 1862. Not all of it was available for sale even by

Under the homestead law the settler must, in order to get a good location, go far out into the wild and unsettled districts, and for many years be deprived of school privileges, churches, mills, bridges, and in fact of all the advantages of society.[36]

Settlers arriving in Kansas—to consider a typical state—between 1868 and 1872 were greeted with advertisements announcing that the choicest lands in the state had been selected by the State Agricultural College which was now offering 90,000 acres for sale on long term credits. The Central Branch of the Union Pacific Railroad offered 1,200,000 acres for prices ranging from $1.00 to $15.00 per acre; the Kansas Pacific Railroad offered 5,000,000 acres for $1.00 to $6.00 per acre; the Kansas and Neosho Valley Railroad offered 1,500,000 acres for sale at $2.00 to $8.00 per acre; the Capital Land Agency of Topeka offered 1,000,000 acres of Kansas land for sale;[37] Van Doren and Havens offered 200,000 acres for $3.00 to $10.00 per acre; T. H. Walker offered 10,000 (or 100,000) acres[38] for $5.00 to $10.00 per acre; Hendry and Noyes offered 50,000 acres; and even the United States government was advertising for bids for approximately 6000 acres of Sac and Fox Indian lands.[39] That virgin lands in Kansas were selling for substantial prices in this period is shown by the following tables:

Table showing Sales of State Lands[40]

		Acres	*Average price per acre*
Common School lands	(1865-1882)	450,764	$4.00
Agricultural College lands	(1868-1882)	48,465	4.78
University lands	(1878-1882)	6,224	2.88
Normal School lands	(1876-1882)	4,966	4.72

[36] Pamphlet: *Two Thousand Families Wanted For Iowa*, n. d., n. p.

[37] Letterhead of letter of W. C. Fitzsimmons, a member of the firm, July 15, 1871, to E. S. Parker, commissioner of Indian Affairs, file of material on Indian land sales, Indian Office.

[38] In June, 1870, Walker was advertising 10,000 acres of Kansas land for sale (Leavenworth *Bulletin*, June 13, 1870), while in February, 1871, he was advertising 100,000 acres for sale (*ibid.*, Feb. 7, 1871). Thaddeus H. Walker of Topeka, Kansas, formerly of Washington County, New York, had entered in 1855 to 1859 in the Kickapoo, Kansas, Land District 16,000 acres, 46,000 acres in the Lecompton, Kansas, Land District, 14,000 acres in the Junction City, Kansas, Land District, and 4600 acres in the Decorah, Iowa, Land District. The lands were entered mostly with military land warrants. See the abstract and entry books of the above-mentioned land districts in the General Land Office.

[39] The advertisements appeared in the *Kansas Farmer*, the Leavenworth *Bulletin*, the Lawrence *Republican Daily Journal*, the *Cultivator and Country Gentleman*, and the

Table showing Land Sales of Atchison, Topeka, and Santa Fe Railroad[41]

Total Sales from March 1, 1871, to Dec. 31, 1879

Year	*Acres*	*Principal*	*Average price per acre*
1871	71,801.51	$ 425,013.75	$5.91
1872	45,328.81	269,627.66	5.94
1873	133,507.30	748,977.25	5.61
1874	200,459.96	900,973.30	4.49
1875	75,415.33	416,409.85	5.52
1876	122,201.17	665,455.17	5.44½
1877	85,047.78	423,477.49	4.98
1878	267,122.47	1,206,527.64	4.52
1879	104,744.41	494,353.73	4.72
Total	1,105,628.74	$5,550,815.84	$5.02

Such sales—and many others might be cited—are evidence that free homesteads on the most desirable land were not available in this state to incoming settlers.

A strong impulse to speculation was provided by the existence of large amounts of land warrants, chiefly those of the Act of March 3, 1855,[42] which were to be had in the market at prices of a dollar an acre or less.[43] They could be used to locate solid blocks of land wherever the surveyed area of the public domain was open to cash entry. In addition, it is startling to find a provision in the Agricultural College Act of July 2, 1862, whereby 7,672,800 acres in land scrip,[44] which likewise could be used to locate surveyed lands open to cash entry, were

[41] Compiled from *Annual Reports* of the Atchison, Topeka, and Santa Fe Railroad, 1873-1880.

[42] 10 *U. S. Stat.*, 701-702. It should be pointed out that prior to the adoption of the prospective pre-emption principle public lands were not subject to disposal until they had been surveyed and offered at public auction. Lands then remaining unsold were subject to private entry for cash, scrip, or warrants. After prospective pre-emption was adopted settlers could make claims upon surveyed but unoffered lands, thus preceding the speculators. When the homestead idea was being debated its advocates argued that its effects would be largely mitigated unless all lands were withdrawn from speculative entry upon its passage. Such a radical proposal was too much for many homestead advocates and it failed of serious consideration. Nevertheless, it was expected by many people that no additional lands would be offered at auction after 1862 and therefore the area open to private entry would become progressively smaller as time passed. Unfortunately, additional land was put up at auction in the sixties, seventies, and eighties, thus increasing the areas open to speculative and large-scale entries. At the same time land was being opened to homestead and pre-emption entry which was not offered at auction and therefore not subject to private entry for cash, scrip, or warrants.

[43] G.L.O. *Report*, 1862, p. 9. In 1862 there were 7,123,380 acres of military warrants outstanding.

thrown on the market. Within a comparatively short time this scrip depreciated greatly in value. Some states sold their scrip for an average price of less than fifty cents an acre and such prices tempted many individuals to purchase and locate large areas in the Western states.[45] Probably no other scrip or warrant act was used so extensively by speculators to build up large holdings as was this Agricultural College Act. Other special acts were passed after 1862 creating smaller amounts of Indian land scrip and other compensatory scrip, part of which possessed the special privilege of being subject to location on any part of the public domain, whether or not it was surveyed or had been offered for sale.[46]

The existence of large areas of rich lands open to speculative entries and the availability of warrants and scrip at depreciated prices made possible large-scale engrossment after the Homestead Law was passed. Some of the richest and most fertile sections of Iowa, Kansas, Nebraska, Missouri, California, Washington, and Oregon were thus open to cash or warrant entry and after the adoption of the Homestead Law they were quickly engrossed by speculators.

Some of the land entries[47] made after 1862 are interesting to note. Senator John Sherman, who, like most politicians of his day, was not averse to speculating in lands, located with Agricultural College scrip 2560 acres in Missouri in 1868; Robert Mears with the same kind of scrip located 29,280 acres in the Boonville district of Missouri; Amos Lawrence, prominent among the promoters of the Emigrant Aid Company at an earlier date, located 58,360 acres in Kansas in 1866 with Agricultural College scrip; Charles and Henry Stebbins and Henry M. Porter entered 53,760 acres in Kansas and Nebraska in 1866, 1867, and 1868 with the same kind of scrip; John C. Work and Rufus Hatch of New York, John J. Blair of New Jersey, and James C. Cusey of Sioux City, Iowa, entered in western Iowa in 1869 and 1870 12,200, 28,671, 20,970,

[45] Of course the Southern states did not receive their scrip until after the Civil War but it took some time for the Land Office to handle the details involved in issuing it and consequently most of it was located between 1864 and 1868. The price which each state received for the sale of its scrip is given in *History of the Agricultural College Land Grant of July 2, 1862, together with a Statement of the Conditions of the Fund derived therefrom as it now exists in each State of the Union* (Ithaca, 1890), pp. xvi, xvii.

[46] G.L.O. *Report*, 1875, p. 69; *Public Land Statutes of the United States*, Daniel M. Greene, compiler (Washington, 1931), pp. 637-639.

[47] These land entries were compiled from hundreds of volumes of abstracts in the General Land Office, Department of the Interior, Washington, the listing of which would be almost impossible and equally futile. Following are the chief types of entry books

and 9280 acres respectively; John P. Crothers, of Berks County, Pennsylvania, later of Clark County, Ohio, entered with scrip and cash 44,140 acres in Nebraska; William Scully, one of the greatest landed proprietors in the United States whose relations with his tenants have been the subject of much hostile comment and legislation,[48] purchased for cash in a single land district in Nebraska in 1870, 41,421 acres; Ira Davenport of Steuben County, New York, whose land operations extended throughout most of the Northwestern states entered with cash and land warrants 16,949 acres in the Dakota City district of Nebraska. Perhaps the largest purchasers of land in Nebraska were a group of Providence, Rhode Island, speculators, consisting of Robert H. Ives, John Carter Brown, Charlotte R. and Moses B. J. Goddard. Ives alone had previously purchased 82,431 acres in Illinois, 50,000 acres in Iowa, and smaller amounts in Minnesota and Missouri, while Brown had acquired over 30,000 acres in Iowa and Illinois. These four individuals entered with cash over 96,000 acres in the Dakota City district. Between 1862 and 1873, twenty-seven other persons entered a combined area of 250,000 acres in Nebraska. Numerous other illustrations could be cited to indicate that speculation in agricultural lands in the Great Plains area did not cease with the passage of the Homestead Law.

Not only were the best agricultural lands being snapped up by speculators but the richest timber lands remaining in the possession of the United States were being rapidly entered by large dealers during the post-Civil War period. There were three areas in which vast amounts of timber land were still owned by the Federal government, the Lake states, the Gulf states with Arkansas, and the Pacific Coast states. In each of these three regions millions of acres of pine, spruce, hemlock, and fir were available for cash entry and in the Pacific area lands covered with the rich redwood and other trees peculiar to that region had been or were just being brought into the market. In the timber lands of these three sections some of the largest purchases by speculators or lumber men took place. Many thousands of acres in Wisconsin and Michigan were located by Isaac Stephenson, Philetus Sawyer, and Russell A. Alger, influential lumber dealers, who were subsequently to become members of the Senate of the United States. Ezra Cornell located 385,780 acres in the Eau Claire, Wisconsin, land district, 76,180 acres in the Bayfield district, 29,200 in the Stevens Point district, 12,480 acres in Minnesota, and 4000 acres in Kansas, all with Agricultural College scrip of New York. A group of New York magnates, Thomas F. Mason, George B. Satterlee, and William E. Dodge, entered 232,799 acres in the Marquette, Michigan, district, 10,850 acres elsewhere in that state, and 10,359 acres in Wassau, Wisconsin. Francis Palms purchased in Wisconsin and Michigan 286,208 acres, and with Frederick E. Driggs entered in the eighties about 200,000 acres more in the Marquette district. Three Ithaca, New York, lumber dealers, Henry W. Sage,[49] John McGraw, and Jeremiah W. Dwight, like Ezra Cornell benefactors of Cornell University, entered 277,000 acres in Michigan, Wisconsin, and Minnesota, and 75,000 acres in Mississippi, Alabama, and Arkansas. Other large timberland entrymen in the Northwest were Calvin F. Howe of New York who acquired 105,000 acres in Minnesota, Thomas B. Walker[50] who alone and with others acquired 166,000 acres in the St. Cloud, Minnesota, district, George M. Wakefield who accumulated 110,000 acres in the Marquette district, and Jesse Spaulding and H. H. Porter of Chicago who purchased 113,000 acres in the same district. Fifty-six other persons purchased a total of 1,514,000 acres in Michigan, mostly in the Marquette district.

The same concentration of ownership of timber lands developed in the South after 1877. Some of the large purchases in this section were Daniel F. Sullivan's purchase of 147,000 acres in the Montgomery, Alabama, district in 1880-1882; Jabez B. Watkins's purchase of 145,000 acres in the New Orleans district; Delos A. Blodgett's purchase of 136,000 acres in the Jackson, Mississippi, district in 1885 to 1888; Lutcher and Moore's purchase of 108,000 acres in Louisiana in the eighties; and Franklin Head's and Nathan B. Bradley's purchases of 110,000 and 111,200 acres respectively in the New Orleans district. Sixty-eight other persons entered 2,110,000 acres in the Southern districts. Altogether, over five and one half million acres of land were sold in the five Southern states between 1880 and 1888, exclusive of pre-emption sales. Practically all of this area went to large land and lumber dealers. These lands comprised some of the very choicest timbered areas in the South and within less than a generation were selling at prices which brought enormous profits to the owners. It is worthy of note that many of the large timber dealers in Wisconsin, Michigan, and Minnesota made great acquisitions in the South.

The engrossment of timber and agricultural lands on the Pacific

[49] The land empire of Henry W. Sage alone is said by a local historian to have included over 500,000 acres. John H. Selkreg, ed., *Landmarks of Tompkins County, New York* (Syracuse, 1894), pt. 2, p. 4.

[50] Walker acquired 700,000 acres of valuable sugar pine and western pine timber land California, chiefly through the use of dummy entrymen. Bureau of Corporations, *The*

Coast proceeded at an even more rapid rate than in other sections of the country. Here in the years immediately following the Civil War a relatively small group of speculators sought to monopolize the best timber and agricultural lands. A group of Eastern speculators consisting of W. W. Corcoran of Washington, ex-Senator Bright of Indiana, and Elisha and Lawrason Riggs, whose land acquisitions in the Middle West had been very profitable, purchased over 7000 acres in Washington and Oregon in the early seventies; another group of San Francisco speculators purchased 59,000 acres in the Olympia, Washington, district; J. W. Sprague of Minnesota purchased 24,000 acres in the same district, and five other persons acquired 42,000 acres. More spectacular were the huge entries in California.

Land monopolization in California dates back to the Spanish and Mexican periods when large grants were made to favored individuals. After investigation by an American commission, 588 of these claims amounting to 8,850,143 acres, or an average of 15,051 acres each, were confirmed.[51] Following 1848 there came a rapid influx of settlers which, together with the large profits realized from the grazing industry in the interior valleys, created a land boom and led to extensive purchases. With great areas of land in the San Joaquin and Sacramento valleys open to cash purchase the opportunity for speculative profits was unparalleled elsewhere; nor was the opportunity neglected. From 1862 to 1880 land sales and warrant and scrip entries in California were on an enormous scale, surpassing all other states for the period and in some years comprising well over half of the sales for the entire country. In the single year, ending June 30, 1869, 1,726,794 acres were sold in this state by the Federal government, and for the entire period from 1862 to 1880 well over 7,000,000[52] acres were entered with cash, warrants, or scrip. It should also be remembered that the State of California which received 8,426,380[53] acres from the Federal government was disposing of its most valuable holdings at this time.

Greatest of all the speculators operating in California was William S. Chapman whose political influence stretched from Sacramento to St. Paul, Minnesota, and Washington, D. C. Of him it was said, with apparent justice, that land officers, judges, local legislators, officials in the Department of the Interior, and even higher dignitaries were ready and anxious to do him favors, frequently of no mean significance. Between 1868 and 1871 Chapman entered at the Federal land offices ap-

[51] "Report of the Public Lands Commission" [cite illegible]

proximately 650,000 acres of land in California and Nevada with cash, scrip, and warrants. At the same time he entered additional land through dummy entrymen, purchased many thousands of acres of "swamp" lands from the State of California, and otherwise added to his possessions till they totaled over 1,000,000 acres. Fraud, bribery, false swearing, forgery, and other crimes were charged against him but he passed them off with little trouble.[54] The most remarkable feature about his vast acquisitions is that when plotted on a land-use map today they appear to be among the choicest of the lands. Chapman was not able to retain this vast empire for long. He became deeply involved in a grand canal project and eventually lost his lands, many of them going to a more constructive but equally spectacular land plunger, Henry Miller.[55]

Miller, unlike Chapman, bought lands for his cattle business which was his main interest. As the activities of his firm—Miller and Lux, of which he was the chief promoter—expanded, he pushed its land acquisitions until they mounted to over a million acres. One hundred and eighty-one thousand acres of this amount were acquired directly from the Federal government, with cash, Agricultural College scrip, and military warrants; large amounts were purchased from Chapman and other big land speculators and from the State of California. Miller's lands were slowly irrigated, parts were disposed of to small farmers, and upon them today exists a veritable agricultural empire.[56]

Other large purchasers of land in California were Isaac Friedlander, E. H. Miller, and John W. Mitchell, who acquired 214,000, 105,000, and 78,000 acres respectively. The total amount purchased from the Federal government by Chapman, Miller and Lux, Friedlander, E. H. Miller, and Mitchell was one and a quarter million acres. Forty-three other large purchasers acquired 905,000 acres of land in the sixties in California. Buying in advance of settlement, these men were virtually thwarting the Homestead Law in California where, because of the enormous monopolization above outlined, homesteaders later were able to find little good land.

Further details concerning the widespread speculative activity in public lands—both agricultural and timbered—after the passage of the

[54] There is a mass of testimony offered to prove these charges in *Reports of the Joint Committees on Swamp and Overflowed Lands, and Land Monopoly*, presented at the Twentieth Session of the Legislature of California (Sacramento, 1874).

[55] Edward F. Treadwell, *The Cattle King* (New York, 1931), p. 73.

Homestead Act are unnecessary; it is clear that speculation and land engrossment were not retarded by the act. Homeseekers in the West, being unwilling to go far afield from means of transportation or to settle upon the inferior lands remaining open to homestead, and lacking capital with which to purchase farms and to provide equipment for them, were frequently forced to become tenants on the lands of speculators. Thus farm tenancy developed in the frontier stage at least a generation before it would have appeared had the homestead system worked properly. In the states of Kansas and Nebraska, in which large-scale land monopolization has been revealed, sixteen and eighteen per cent respectively of the farms were operated by tenants in 1880, the first year for which figures are available, and in 1890 twenty-eight and twenty-four per cent respectively were operated by tenants.[57] This continued monopolization of the best lands and the resulting growth of farm tenancy led reformers and others who feared the establishment of a landed aristocracy similar to that existing in many European countries to advocate the ending of the cash sales system entirely. Their demands were expressed in petitions to Congress, agitation in the press, and union of effort with other antimonopoly groups which were coming into prominence in the last third of the nineteenth century. Their agitation and the growing seriousness of the monopoly movement led to a series of halting steps toward the abandonment of cash sales, which frequently were offset by movements in the opposite direction.

The first step in the direction of abolishing the cash sale system was taken in June, 1866, when Congress provided that all public lands in the five Southern states of Alabama, Arkansas, Florida, Louisiana, and Mississippi should be reserved from sale and subject only to entry under the Homestead Law.[58] The avowed purpose of this apparent discrimination against land speculation in the South while it was permitted to flourish elsewhere, was to prevent speculators from monopolizing the land when it was restored to market—all land transactions had of course ceased in these states during the Civil War—and to encourage the growth of small holdings among the freedmen. By the South, the act was regarded, perhaps rightly, as a punitive measure. Certain it is that much of the 46,398,544 acres[59] thus reserved from cash entry was unsuited to

[57] *Eleventh Census*, 1890, "Statistics of Agriculture", p. 4. There is some detail on the relation of land policy and farm tenancy in an article by the present writer on "Recent Land Policies of the Federal Government" which is to appear in part VII of the Supplementary Report of the Land Planning Committee to the National Resources Board, en-

small-scale farming and the freedmen showed no great desire to take advantage of the homestead privilege thus safeguarded. Nevertheless, the act was the first attack on the cash sale system.

Two backward steps were tried the same year, however. In the same month that the law was passed restricting Southern public lands to homestead entry an apparently innocuous measure slipped through Congress without much debate or opposition, giving to the New York and Montana Iron Mining and Manufacturing Company the right to purchase at $1.25 per acre twenty sections—12,800 acres—of unsurveyed and unopened lands in the territory of Montana, three sections of which might contain iron ore or coal and the remaining sections would presumably be timber lands. This measure was put through by Benjamin Wade of Ohio and Thaddeus Stevens of Pennsylvania of whom it cannot be said that the interests of the homesteaders were nearest to their hearts.[60] It gave a gross extension of privilege to a group of speculators or land monopolists. Never had such a *carte blanche* grant been made before, though frequently petitioned for, and it aroused the indignation of President Johnson who, in a ringing veto message, declared that the privileges conferred by the act "are in direct conflict with every principle heretofore observed in respect to the disposal of the public lands".[61] If the measure had been signed, the principle of granting lands free or for the minimum price to mining companies and other industrial organizations might have been established and the remaining portion of the public domain might have been divided among such capitalistic groups, just as millions of acres were being parceled out among the railroads. In placing himself squarely against the law, President Johnson aided in preserving the lands from speculators.

President Johnson's opposition to the granting of such special privileges to private business groups did not end the matter, however, for a similar measure passed the Senate in 1870. This second measure would have authorized the Sierra Iron Company of California to purchase 640 acres of land containing iron ore in the vicinity of Gold Lake, California, and 3200 acres of timber lands for $2.50 per acre. As originally proposed by Senator Cole of California it would have permitted the purchase of 10,000 acres of timber lands at $1.25 per acre but was amended as above. The measure was rushed through the Senate at a night session when there was a very small attendance, but was later reconsidered, amended to provide further safeguards, and sent to the House where the opponents

of land monopoly succeeded in preventing its adoption.[62] Eternal vigilance on the part of true friends of the homesteaders was essential to prevent such laws being slipped through without adequate consideration.

The second backward step was a series of Indian treaties and administrative measures by which substantial areas of land in the Great Plains were sold to railroad companies and other speculative groups. When railroads were projected through Kansas and Nebraska, it was found that they must run through Indian reservations. Congressional land grants did not apply to such lands and the railroad officials therefore sought to purchase the lands which they could not receive as a gift. Instead of asking for alternate sections, however, as in the grants, they sought to purchase solid areas which would enable them to secure the entire benefits resulting from the construction of the railroads. As the Granger period had not yet arrived, railroads were still popular throughout most sections of the country. Furthermore, they possessed great influence at the seat of power and it was not difficult for them to prevail upon the proper officials to make treaties for the cession or sale of Indian lands. The Senate at this time was far more friendly to the railroads than to the homeseekers, as shown by its generous land grants and financial subsidies to the former and its refusal to place restrictions upon speculative purchases of land. Apparently it saw little difference between making donations of alternate sections of the public domain to the railroads and selling solid blocks of Indian lands to them for a low price. It therefore ratified such treaties with little hesitation.

In the years immediately following the enactment of the Homestead Law, a number of such treaties and subsequent sales contracts were ratified, providing for the sale of several million acres in Kansas to railroad companies.[63] That which aroused the greatest local opposition was the sale of some 800,000 acres of Cherokee Indian lands in southeastern Kansas. A treaty was negotiated with the Cherokees which permitted the sale of 800,000 acres to a single individual or corporation for $1.00 per acre, and which completely disregarded the white settlers already on the lands. Before ratification, the treaty was amended to permit the sale of tracts of 160 acres to the squatters.[64] In the meantime, the Secretary of the Interior had sold this great tract to the American Emigrant Company. This company was organized to operate under the nefarious contract labor law of 1864 but quickly saw that larger profits were to be realized in land speculation and it began to deal in lands. Its record of land deals is obscure but is accompanied by sufficient evidence to indicate that the transactions were not always legitimate.[65] The purchase of 800,000 acres of Cherokee lands at $1.00 per acre on long credit was the result of secret negotiations; the lands were not offered at public sale, and the settlers were given no opportunity to purchase the tracts upon which they were squatting. The sale was, then, an outrageous violation of the principle of land for the landless and was immediately attacked as a gross fraud upon the public. Subsequent investigations revealed much that could not be satisfactorily explained and the Attorney General held that it was not in conformity with the treaty with the Cherokees.

Meantime, the Cherokee tract, through widely circulated rumors as to its fertility and desirability for settlement, was attracting the attention of many interested people. Following 1866 settlers flocked to the area in large numbers so that by 1867 there were reported to be 10,000 or 12,000 people there,[66] and the number was shortly increased to 20,000. The settlers expected from the government the same lenient attitud toward their intrusions upon land not open to settlement as was being rendered to other people in similar circumstances elsewhere. Unfortunately for them the value of the tract was appreciated by a numbe of railroad groups which desired to secure ownership of the entire are as a means of financing the construction of their lines. Concrete pr posals for the purchase of the tract were made by three railroads—t Tebo and Neosho Railroad Company of Missouri,[67] the Atlantic a Pacific Railroad, and the Kansas City, Fort Scott, and Gulf Railroa Prominent Missouri and Kansas politicians, John C. Fremont and Jam F. Joy—"The Railroad King"—were interested in these lines and ea sought to secure the much coveted lands for his company. Althou not the highest bidder, the sale was finally awarded to James F. J who purchased the land for the Kansas City, Fort Scott, and Gulf R road. After the sale was made and the rival proposals turned do the lenient officials of the Department of the Interior permitted Joy

62 *Ibid.*, 41 Cong., 2 sess., pp. 3659-3670, 4543-4546.

63 These treaties are included in *United States Statutes-at-Large*, vols. XII, XIII, XIV. They are analyzed and the areas conveyed by them are pictured on maps in Charles C. [illegible] Annual Report of the Bureau

65 The sale of 18,000 acres of "swamp lands" in Wright County, Iowa, to the A ican Emigrant Company for $1500 and the subsequent recovery of a portion of the is described by W. J. Covil in the Webster City *Freeman-Tribune*, July 13, 1904, re lished in *Annals of Iowa*, 3d ser., VII (1905), 360.

66 Governor S. J. Crawford, Topeka, Kansas, Aug. 19, 1867, to Secretary Brow file of material on Indian land sales, Indian Office.

[illegible] Missouri, Jan. 19 [illegible] C. Bogy, commissio

surrender his contract and to substitute the original but less exacting contract with the American Emigrant Company which was now assigned to him. This necessitated a supplementary treaty with the Cherokees to validate a contract previously held to be illegal. The contract was modified, however, to permit settlers who resided upon the land in 1866 to purchase their tracts at the appraised value.[68] Joy was required to pay but $1.00 an acre and generous credit was allowed him, while the settlers were asked to pay an average of $1.92 per acre in cash.[69]

The second sale was an equally great violation of the principle of free homesteads, and, it should be noted, was ratified by the Senate the same year that the House resolution frowning upon the further sale of agricultural land was passed. Secretary Browning who, as Harlan's successor, had negotiated the sale, came in for as bitter accusations as had his predecessor and, it must be admitted, with some justification. The sale was made to his brother-in-law, Joy; his partner was at the time employed by Joy to negotiate the transaction; Browning himself had earlier represented Joy, and the following year was again retained by him in a series of important cases.[70] Furthermore, as was pointed out in a joint resolution adopted by the House on July 13, 1868,[71] the sale failed to consider the rights of a large number of people who had settled upon the tract between 1866 and 1868 and who were subsequently forced to purchase their lands from the railroad. Petitions from settlers upon the Cherokee tract demanding the abrogation of the sale poured in upon the Interior Department; [72] the governor of Kansas denounced the sale as "a cheat and a fraud in every particular, and should have been encircled with hell's blackest marks", a "gigantic swindle"; [73] and in 1868 both the Republican and Democratic state conventions condemned the policy

[68] The sale of the Cherokee lands is discussed in a letter of Charles Mix, acting commissioner of Indian Affairs, Apr. 21, 1869, to J. D. Cox, secretary of the Interior, Cherokee File, Indian Office. Secretary Harlan's interpretation of the sale may be read in *Cong. Globe*, 40 Cong., 3 sess., pp. 409 ff., and 41 Cong., 1 sess., pp. 21-23; also in Johnson Brigham, *James Harlan* (Iowa City, 1913), pp. 235 ff. See also Eugene F. Ware, "The Neutral Lands", Kansas State Historical Society, *Transactions*, VI (1900), 147-169.

[69] *Report*, Commissioner of Indian Affairs, 1869, p. 502.

[70] Theodore Calvin Pease and James G. Randall, eds., *Diary of Orville Hickman Browning* (Illinois State Historical Library, *Collections*, vols. XX, XXII, 1925-1933), I, 645-646; II, 219, 239, 257, 276, *passim*.

[71] *Cong. Globe*, 40 Cong., 2 sess., pp. 4000-4001.

[72] These petitions are filed in the Indian Office, Cherokee File.

[73] Samuel J. Crawford, *Kansas in the Sixties* (Chicago, 1911), p. 310. Crawford, as governor, took an active part in the campaign to end the sale of large tracts of Indian lands to railroads and other speculative groups. Aside from his interest in the settlers who

of disposing of Indian lands to "speculators and foreign corporations".[74] The campaign to have the second sale annulled was unsuccessful but, combined with the opposition to similar sales of Indian lands, it was eventually to end the policy.

Equally inconsiderate of the rights of settlers were the sales of the lands of the Delaware, Pottawatomie, Kickapoo, and Sac and Fox of the Mississippi Indians in Kansas. Treaties authorizing the sale of the surplus Delaware and Pottawatomie lands to the Leavenworth, Pawnee, and Western Railroad for $1.25 per acre were proclaimed on August 22, 1860, and April 19, 1862, respectively.[75] This railroad was unable to carry through the purchase of the Pottawatomie lands but did succeed in negotiating a sufficiently liberal contract for the Delaware lands whereby it acquired title to 223,966 acres of rich farming lands in Leavenworth, Atchison, and Jefferson counties for $286,742 paid in its own bonds, instead of cash as originally required.[76] In 1866, the Delaware Indians having decided to abandon their diminished reserve in Kansas, which had been allotted in severalty, accepted a second treaty which provided for the sale of the 92,598 acres contained in the reserve to the Missouri River Railroad for $2.50 per acre, exclusive of improvements, which were to be appraised and sold at a fair valuation.[77]

The Pottawatomie lands were subsequently sold, in 1868, to the Atchison, Topeka, and Santa Fe Railroad. This sale called for the payment of $1.00 per acre, not $1.25 as the earlier treaty provided, and five years' time was given during which no payments were required except advance interest of six per cent annually upon the purchase sum. The government thus not only denied to settlers the right to acquire the land directly but gave the railroad company the use of 340,180 acres of rich agricultural lands for annual payments of $20,410 for five years. At the end of this time a payment of $340,180 was required, which could be paid in greenbacks.[78] The policy of making land sales to settlers on credit had been abandoned in 1820 and Congress had resisted all efforts to restore the credit system but credit was extended to railroads in the sixties. The Atchison, Topeka, and Santa Fe Railroad proceeded to sell the lands at prices well over double their cost, and charged seven per cent

[74] D. W. Wilder, *Annals of Kansas* (Topeka, 1886), pp. 481, *passim*. In this book are found a number of items indicating the emotions which were aroused in the settlers of the Cherokee tract by the arbitrary sale of the lands.

[75] 12 *U. S. Stat.*, 1129, 1193. This railroad later became the Union Pacific Railway Company, Eastern Division, and still later the Kansas Pacific Railroad.

[76] *Ibid.*, p. 1177.

[77] 15 *U. S. Stat.*, 793-794; O. H. Browning, secretary of the Interior, Oct. 21, 1867,

interest on delayed payments. By 1873 it had received in cash and notes $646,784 and valued the remaining lands at $507,366,[79] no small profit for the times. A substantial part of the amount due the government in 1873 was paid from cash sales. The mortgage bonds based on these lands, obtained for only $20,410 down, enabled the railroad to begin construction without the promoters having to supply any capital of their own worth mentioning.

A treaty similar to that with the Pottawatomie Indians was concluded with the Kickapoo Indians under the terms of which 123,832 acres were sold in 1865 to the Atchison and Pike's Peak Railroad for $1.25 per acre, on generous credit.[80] This treaty was negotiated with a railroad whose president, Samuel C. Pomeroy, was not only senator from Kansas and thus in a position to support its adoption, but was also very close to the administration of the Indian Office and the Department of the Interior. Pomeroy represented the attitude of his state in demanding the speedy removal of the Indians and the disposal of their lands but he went against popular opinion in supporting the sale of the Cherokee, Delaware, Pottawatomie, Kickapoo, and Osage lands to railroads.

The sale of the Sac and Fox Indian lands differs somewhat from those previously mentioned. These lands, comprising 272,200 acres, were advertised for sale to the highest bidders but, unlike the public land auctions, the bids were to be submitted by letter. This of course had the effect of preventing settlers upon the lands from combining into a claims association and preventing outsiders from bidding as was done at the public auctions. As a result most of the land was acquired at low prices by speculators, among whom the largest buyers were John McManus,[81] William B. McKean, Fuller and McDonald, Robert S. Stevens, and the Hon. Hugh McCulloch who acquired respectively 142,915, 29,677, 39,058, 51,689, and 7014 acres.[82]

The treaty providing for the largest sale of Indian lands was negotiated in 1868 between the Osage Indians of Kansas and representatives of the Department of the Interior, according to which 8,000,000 acres of land were to be sold to the Leavenworth, Lawrence, and Galveston

[79] *Report*, Atchison, Topeka, and Santa Fe Railroad, 1873, p. 10. It is true that in later reports the meager data given indicate the estimate of return contained in the *Report* for 1873 as somewhat optimistic.

[80] 13 *U. S. Stat.*, 623 ff.; *Cong. Globe*, 40 Cong., 2 sess., p. 1715; Royce, *passim*.

[81] John McManus, of Reading, Pennsylvania, was a director of the Kansas Pacific Railway Company which had the largest land grant in Kansas. *Report*, Kansas Pacific Railway Co., 1870.

Railroad for $1,600,000.[83] This was at the rate of twenty cents an acre for lands to which settlers were eagerly looking for homes. Characterized by Governor Crawford as "one of the most infamous outrages ever before committed in this country", it was indeed a most disgraceful and unjustified action. If adopted it would have deprived the State of Kansas of 500,000 acres of school lands, robbed the Indians of a fair price for their lands, and would have killed a number of rival railroads, including the Atchison, Topeka, and Santa Fe. Worst of all, the treaty ignored the rights of settlers already on the lands. Furthermore, it was stated that a substantially higher bid had been turned down in order to accept that of the Leavenworth, Lawrence, and Galveston Railroad. The hand of James F. Joy was again seen, for the latter road had already come under his control as part of the great transportation system he was constructing. The Osage treaty brought to a climax the utter disregard shown by the officials of the Department of the Interior for the rights of settlers and aroused a storm of criticism, both in Kansas and in Washington.[84]

Representative George W. Julian, than whom no one had the interests of the homesteader more at heart, saw the iniquity in these Indian treaties and subsequent land sales to railroads and others. He introduced a resolution into the House of Representatives to the effect that these sales were a usurpation of power by the Senate which was endangering the entire land system and urged upon the Senate the advisability of ratifying no more such treaties. He pointed out that by using the treaty making power in this way it was possible for the Senate to transfer all the public lands to the Indians and then by other treaties to arrange for their sale to railroads or other speculative groups, thus completely frustrating the Homestead Law and subverting the land system. Julian succeeded in winning the support of the House for his view and the resolution was adopted.[85] The enactment of this resolution and the storm of criticism which rained upon the Senate apparently had some effect, for the treaty with the Osage Indians, although urgently supported by the Commissioner of Indian Affairs, was not ratified and Congress later provided for the sale of the Osage lands to actual settlers.

One may plainly see from events in Congress during 1867 and 1868 how insincere that body was in rendering lip service to the homestead principle. In this year Representative Julian introduced two measures

[83] *Report*, Commissioner of Indian Affairs, 1868, p. 5.

[84] Crawford, pp. 299 ff.

into the House, the action on which throws a flood of light on the question. The first was a resolution that:

> In order to carry into full and complete effect the spirit and policy of the preëmption and homestead laws of the United States, the further sale of the agricultural public lands ought to be prohibited by law and that all proposed grants of land to aid in construction of railroads, or for other special objects, should be carefully scrutinized and rigidly subordinated to the paramount purpose of securing homes for the landless poor, the actual settlement and tillage of the public domain, and the consequent increase of the national wealth.[86]

The second was a bill to prevent any further sale of the public lands except as provided for in the Pre-emption and Homestead laws.[87] In support of these measures Julian made a number of strong speeches in which he described the evils resulting from speculation in lands, showed that, except for the Southern states, free homesteading was restricted to the least attractive lands, and denounced the land monopoly which was rapidly being created by the lavish grants to the railroads. Julian was followed by two congressmen from Michigan districts in which lumbering was the chief industry. They favored large grants to railroads and no restrictions on land sales, and argued that Julian's bill, if passed, would ruin the lumber industry, increase speculation and fraudulent entries, and thus frustrate its own purpose.[88] Although unanimously reported by the Committee on Public Lands, nothing further was heard from the bill to end cash sales. The resolution, on the other hand, which had no binding effect but which favored exactly the same policy toward cash sales as the bill, passed the House without any important opposition.[89] Congress was far from ready in 1868 to end cash sales, and the passage of the resolution was certainly not "tantamount to a law".[90]

Between the enactment of this resolution in 1868 and 1876, the forces interested in opening up the public domain to large-scale purchases were fighting the advocates of the homestead principle on two grounds; they struggled to repeal the Act of 1866 which placed restrictions on cash sales in the South, and they tried to prevent further limitations on land engrossment in the West.

The discriminatory character of the restrictions upon cash sales in the South and its obviously punitive features rankled with the Southern congressmen who sought to repeal the act of 1866. They were vigorously supported by representatives from other sections who were either interested in the lumber industry themselves or whose constituents looked with longing eyes upon the rich pine lands of the South. In the early

[86] *Ibid.*, p. 97. [87] *Ibid.*, p. 371. [88] *Ibid.*, pp. 1712-1715, 2380-2387.

seventies the movement for repeal gained headway. Its leaders harped on the discriminatory features of the Act of 1866, its retarding effects upon immigration and the lumber industry, and argued that it led to the public lands being stripped of their only valuable commodity—timber. In 1875 the commissioner of the General Land Office came to the support of the repealists. Indeed, the land commissioners in their reports of 1875, 1876, and 1877 favored opening up all public lands to cash sale.[91] Strong opposition was voiced against the repeal measure by the Northern radicals for political purposes and by land reformers who foresaw the effects of such a backward step, but the combination of Southern resentment and Northern economic interests was too strong, and the measure became a law on July 4, 1876, without the approval of President Grant.[92] Southern lands were again made subject to cash entry, the unfortunate results of which have already been seen in the large-scale monopolization by lumber interests, mostly from the Northern states.

Although defeated in the South, the land reformers, under the leadership of Senator Harlan of Iowa and Representative Julian of Indiana, continued the fight to limit or end cash sales to large purchasers. In the House three measures were passed in 1870, one to end cash sales in California, another to end cash sales in Dakota Territory, and the third to prevent cash sales in Nebraska, Nevada, California, Arkansas, and Utah.[93] Similar measures were introduced in the Senate but were uniformly unsuccessful, because here the interests of lumber men, mining groups, and large speculators were well represented. In 1872 a congressman from California proposed an amendment to the Constitution which would have prohibited the further disposal of the public lands except to actual settlers but it made no progress.[94]

From the date of the repeal of the restrictions on cash entry in the South until 1889 there was not a session of Congress in which the question of reserving all the public lands for homestead entry was not fiercely debated. Continued efforts were made to end the cash sale system. Following 1880, the Pre-emption, Timber and Stone, Timber Culture, and Desert Land acts came in for much criticism since it was apparent that, like the commutation clause of the Homestead Law, they lent themselves to abuse and fraud. In the eighties the movement was given a

[91] *Cong. Globe*, 41 Cong., 3 sess., pp. 539-540; *Cong. Record*, 43 Cong., 1 sess., pp. 4633, *passim*; 44 Cong., 1 sess., pp. 815 ff., 1090, 3655. G.L.O. *Report*, 1875, pp. 8-9, 17-19; 1876, p. 7; 1877, p. 34.

[92] *Cong. Record*, 44 Cong., 1 sess., p. 4469; 19 *U. S. Stat.*, 73-74. The debates on the repeal measure are discussed in Ise, pp. 49-53.

[93] *Cong. Globe*, 41 Cong., 2 sess., pp. 738-739, 5129.

[94] *Cong. Globe*, 42 Cong., 3 sess., p. 84.

great impetus by the discovery of enormous frauds in which foreign corporations and titled noblemen were engaged for the purpose of building up vast estates. The fact that most of this alien ownership was English[95] was used effectively by the Anglophobes and, added to the antimonopoly movement which was rapidly gaining in strength, it made easy the conversion of many politicians to the cause of land reform.

President Cleveland's land commissioner, William A. J. Sparks, dramatically brought the issue to the front by revealing with overwhelming evidence that "the public domain was being made the prey of unscrupulous speculation and the worst forms of land monopoly through systematic frauds carried on and consummated under the public land laws".[96] In cold, biting language, he accused the administration of the General Land Office of being either extraordinarily inept in its management or directly involved in the great frauds which he unearthed. So general were the illegal or fraudulent entries that within a month after his accession to office he suspended all final entries under the Timber and Stone Act and the Desert Land Act, and in Colorado, Dakota, Idaho, Utah, Washington, New Mexico, Montana, Wyoming, Nevada, and parts of Minnesota, Kansas, and Nebraska suspended all entries except those made with cash and scrip. The evidence of fraud continued to come in, and, as the demand for complete suspension of all non-homestead entries stimulated speculators and monopolists to feverish activity, Sparks in desperation, in 1886, ordered the land officers to accept no further applications for entries under the Pre-emption, Timber Culture, and Desert Land acts.[97] This precipitate action stirred up a veritable hornets' nest of opposition and the order was rescinded, but its effect remained.

The onslaught of the antimonopolists had the effect of stimulating the speculators, cattlemen, lumber and mining companies to prompt action before the public domain should be closed to them. Land sales and entries under the Pre-emption, Timber Culture, Timber and Stone, and Desert Land acts and the cash sale system shot up to a high point in 1888, exceeding those of any year since 1856 and being surpassed only four times in our entire history.

This enormous speculation, added to the widespread frauds which were being uncovered, produced a demand for reform which swelled to a tremendous volume. Hundreds of petitions with innumerable signatures flooded Congress urging changes in land policy and administra-

[95] In 1884 the Senate called for an investigation of the foreign land holdings and the

tion. They made it plain that public opinion had been aroused and could no longer be ignored.

Measure after measure providing for repeal of the objectionable laws passed the House in the eighties only to be defeated in the Senate. Finally, under the stimulus of Sparks's dramatic gesture, repeal measures passed both houses in 1886 and again in 1887, but were defeated through failure to harmonize conflicting views. These were to be the last defeats, however, because Congress was rapidly being forced into a position where it had to take action. In May and July, 1888, two measures were passed by which land sales in the five Southern states were temporarily suspended, and the Act of 1876 was reversed. This was followed, on March 2, 1889, by an act ending all cash sales of public lands except in Missouri where the remaining lands were mostly mineral in character or scattered fragments of little value for agriculture. In 1890 a rider was attached to an appropriation act by which it was stipulated that henceforth no person should acquire title to more than 320 acres in the aggregate under all of the land laws.[98] Finally, in 1891 a combination of antimonopoly land reformers and conservationists placed upon the statute books a law which was as far reaching, as important, perhaps, as the Homestead Act of 1862. This law[99] repealed the Pre-emption and Timber Culture acts and placed additional safeguards in the Desert Land Act and the commutation clause of the Homestead Act. Except for Indian lands and small isolated tracts the speculators could no longer purchase whole counties for the minimum price and land engrossment by fraudulent means was at least made more difficult. Unfortunately these land reforms were not enacted until the best of the area suitable for farming without irrigation had passed into private ownership.

The most important section of the Act of 1891 was that which authorized the creation of forest reservations on the public lands. Here was the first fundamental break with the underlying philosophy of our land system—the desire to dispose of the lands and hasten their settlement. The conservationists had now convinced the country that a part of our natural resources must be retained in public ownership and preserved for the future. Unfortunately, conservation, when first adopted, was embedded in an outworn laissez-faire land system of a previous age just as the free homestead plan had been superimposed upon a land system designed to produce revenue. In both cases the old and the new clashed with disastrous effects.

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