REPORT
OF
MR. M'INDOE,
FROM THE COMMITTEE TO WHOM WAS REFERRED SO MUCH OF THE
GOVERNOR'S MESSAGE,
AS RELATES TO
SWAMP LANDS.

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CONGRESS

TERRITORY

OF

SWAMP

LANDS.

Proceedings of the

First Congress of the

Territory of Swamp Lands.

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REPORT

The Select Committee to whom had been referred so much of the message of his Excellency the Governor, as relates to the subject of the grant of "overflowed and swamp lands," have had the same under consideration, and beg leave most respectfully to make the following:

REPORT:

The swamp and overflowed lands lying in each state were, by an act of Congress, approved September 28th, 1850, granted to the states in which they are situated, with the following provisions, viz.: "Provided, however, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, for the purpose of reclaiming said lands by means of the drains and levees aforesaid." The lands granted to this state comprised those portions remaining unsold at the passage of the act. A portion of them had been surveyed and platted; a portion consisting of large quantities that line the banks of rivers and islands which are partially or wholly overflowed, it during certain months in the year. The balance consists of the quantities both swamp and overflowed land, lying in portions of the state still unsurveyed. The amount which has been surveyed and which is now at the disposal of the state, is said by his Excellency, the Governor, in his annual message, to be as follows:
In the Milwaukee Land District, 53,636 93-100 acres.

" Mineral Point, " 13,515 40-100 "
" La Crosse, " 217,295 18-100 "
" Willow River, " 118,015 45 100 "
" Menasha, " 717,528 62-100 "
" Stevens Point, " 521,670 52-100 "

Total, 1,641,662 10-100 "

The amount still unsurveyed can be estimated only upon the basis of remote probabilities, but it cannot be far from 1,400,000 acres; so that the amount which will finally accrue to the State will hardly vary far from 3,000,000 of acres. Such is the calculation expressed in the last annual message of his excellency the governor, and your committee is of the opinion that it approximates, as nearly as possible, to correctness.

The present and the ultimate value of these lands affords a still more unsatisfactory field of speculation than their amount. Many of the tracts, are probably entirely worthless, or will be so unless at an expense in reclaiming them far exceeding any possible value they might attain; others are doubtless among the best lands in the state for meadows and for grazing purposes; while the quantity is not small that is fitted for any purpose of settlement and culture. When a portion of a quarter section descends into a marsh, or to the low banks of a stream, so that more than half of the subdivision was affected by it, it has been the custom of the Government surveyors to designate the entire tract as swamp lands, and wherever such cases occur the tract is more valuable than any other species of land as it comprises every variety, upland, wood, pasture and meadow, necessary to the wants or the convenience of the settler. But what portion of the entire amount consists of this, the most valuable character of lands, and what portion consists of the other, which is wholly worthless, is a subject upon which your committee is unable to offer any reliable information, and nothing but a personal survey, the cost of which would far exceed its
benefits, could furnish any knowledge beyond general estimates upon the subject. Perhaps the following crude supposition may be as near as it is possible to arrive at present.

**Amount partly swamp and partly upland,** 250,000 Acres.

" wholly swamp, and fitted for meadow,** 850,000 "

" wholly swamp, which might be reclaimed at slight expense,** 750,000 "

" wholly swamp, to reclaim which would cost their entire value,** 500,000 "

" wholly swamp, worthless,** 650,000 "

**Total,** 3,000,000 Acres.

These are but rough estimates, yet as they are based, to a certain extent, upon the personal acquaintance of your committee with the condition of the swamp lands in their several localities, and, to a still greater extent, upon the information of men from various parts of the state, possessing a knowledge upon the subject, we are of opinion that they cannot vary widely from the truth.

The gran. by the terms of which these lands, have or will come into the possession of the state, provides that the proceeds arising from their disposal shall be applied "as far as necessary" to reclaiming them by levees, drainage, &c. The phrase "as far as necessary" has been regarded as more than equivocal in its meaning; whether it is intended to express the requirement that the lands shall be all reclaimed by means of drains and levees, and their proceeds, "as far as necessary," shall be applied to that purpose, or whether they shall be reclaimed "as far as necessary" to the convenience of the settler, and salubrity of the neighborhood, is a question which has arisen in the minds of your committee, and of able and learned lawyers who have thought upon the subject. The only object which the government can entertain, in enacting a requirement upon the subject, is the health and comfort of its citizens. The personal and pecuniary advantage of drainage and reclamation, if no other cause existed for requiring it, would, of
course, be left to the choice and enterprize of the settler, or person immediately interested. As the salubrity of the climate and the health of the neighborhood in which the lands lie, is therefore the end desired by the government, and as the drainage of all the lands may be far from necessary to that object, your committee is of opinion that the phrase "as far necessary" applies to the extent to which the work of reclamation shall be carried, and not to the amount of proceeds to be used for that purpose.

It is evident that the labor of digging drains and constructing levees can never be performed to advantage by the State. The small results that are accomplished by even a lavish expenditure of money when the government is the paymaster, has become proverbial. It is well understood that a private individual can execute the same amount of the same quality of work at one-half or two-thirds the cost for which the public authority can do it. Congress itself seems to have contemplated the fact in the peculiar phraseology of the act of grant, that the proceeds "whether from sale, or by direct appropriation in kind," should be applied to the purpose designated.

A single phrase of the constitution of this State has also been supposed to create difficulties in deciding what shall be done with these lands after we have obtained them. Sec. 2, article 10, provides that among other lands and resources, "all moneys arising from any grant to the State, when the purposes of such grant are not specified," shall be set apart as a separate fund, to be called the "school fund." The liberality which dictated the bounteous provision made by our constitution for the education of the people of the State, was enlarged and noble. It has secured an ample fund, which, for all time to come, is an inexhaustible inheritance to be applied to the worthiest objects of public enlightenment and intellectual renown. But whether the precise terms of the constitution, apply to the grant under consideration, is a question with your committee. The purposes of the grant of "swamp and overflowed lands" are specified to be their drainage and reclamation for culti-
vation. If an overplus shall exist, the object to which it is to be
devoted is not, to be sure, specified; but we think it very doubt-
ful whether a provision of the constitution can cover part of the
proceeds of the grant, and not the other. The constitution either
relates to the whole of the grant, or to none of it. It cannot relate
to the whole, because a part is otherwise provided for; and we are
therefore of opinion that no part of the proceeds of the "swamp
and overflowed lands" is justly applicable to the increase of the
school fund. It may be further urged that the grant was made
subsequent to the adoption of the constitution, and that had the
terms of that instrument been even less dubious, they would in no
way applied to the swamp land grant:

The considerations bring us to the conclusion that the state rests
under no restrictions as to its disposal of the proceeds of the grant,
with the single exception that it shall secure, "so far as necessary"
their drainage and the removal of such causes as might prove dele-
terious to the health of those neighbourhoods in which the lands
are situated.

Your committee has considered the subject of restricting the
sale to limited quantities and actual settlers. Yet while strongly
in favor of the principle as applied generally to the public lands,
both of the state and general governments, they have thought
that the swamp lands constitute an exception to a rule the general
justice and good policy of which they freely admit. The "swamp
and overflowed lands," are of course, valueless for settlement, ex-
cept a few of the highest tracts, and portions of those subdivisions
which are upland and which have been thrown in because, more
than half of the tract was overflowed or marshy land. The
swamp lands are valuable only as appurtenances to cultivated
farms, when they lie in large tracts, of thousands of acres, as they
sometimes do, it is impossible that the central portions should be
sold to an actual settler, as none would settle upon it. Further, it is
the evident intent of the act of grant that these lands should be
reclaimed as speedily as possible. To restrict the sale would also
delay it, and long delay might work a forfeiture of the grant, and
finally, there are other terms of sale proposed in the bill herewith
submitted, which will probably act virtually as a preventative of mo-
nonopoly to the disadvantage of him whose intention to devote the
land to his own use gives him a prior and preferred claim to it. We
have provided that the purchaser shall execute the labor of recla-
mation, have given pre-emption every usual and advantageous
right, and have given the purchaser for cultivation precedence in
every case of doubt or privilege.

In considering the disposal of these lands, and that disposition
which would be best and wisest for the state, your committee has
thought that plan most politic which, while lessening the burthen
of public taxation, increases the ability of the people to bear it.
This they consider to be a primary object of government and a
creditable achievement of statemanship—to reduce as greatly as
possible the necessary expense which is borne by the citizen, and
to add to his means of paying it. We have endeavored to apply
this principle to the disposal which, in our opinion, the state should
make of these lands. We have thought that a portion of them would
form a proper fund to be used for works of local improvement, to
provide means for which is now the heaviest task borne by the
early and by no means opulent settlers in our state. We have,
therefore, recommended the unsurveyed portion of the "overflowed
land," lying in the surveyed portion of the state, and those swamp
lands lying and being on the odd numbered sections, should be do-
ated to the counties in which they lie, for the purposes of reclama-
tion and to form a fund for opening and improving roads, build-
ing bridges, and such works of this nature as the county to which
they are donated may designate. This will develop the resources
of the state, open avenues of inter-communication, bring the pro-
ducer nearer to market, and it will discharge an expense which
has hitherto been a heavy draft on the means of new settlers,
struggling with the first difficulties of settlement in an uncultiva-
ted country. It will render farms more valuable, increase the
price of produce by lessening the cost of transportation, and it will
accomplish these results without expense to those upon whom the benefit is conferred.

The "swamp and overflowed lands" being on the even-numbered sections, we have proposed should be sold by the state according to a plan which will, we trust, be a security against frauds in the purchase, and in the expectation that the treasury will realize from it an ample sum that can be devoted to the discharge of the indebtedness contracted by the state in its labors of beneficence in erecting asylums for the indigent insane, blind, deaf and dumb, the state's prison, and other works of a public and necessary character. This disposition was recommended by his excellency the governor, for the whole of the lands; we think their proceeds will amount to far more than will be necessary for those objects, and have recommended the additional plan for disposing of the balance.

In the details of the bill we have framed, a protection for the pre-emptor, have given the intended cultivator of the lands preference over other purchasers, and have provided that the primary objects of the grant, the reclamation of the lands shall be coined into effect. The minimum price of the lands is fixed, for the present, at one dollar and twenty-five cents per acre.

Your committee would also recommend that his Excellency, the Governor, be requested to carry into effect as speedily as possible, the measures adopted by him to secure to the state the title to these lands, that the people may be reaping from them the benefits they were designed to restore.

And your committee would adopt the language of the last annual message of the Governor, as follows: "There are numerous considerations which should weigh, in urging an early disposition of these lands. To dispose of them, would tend greatly to improve the health of localities contiguous to them; would hasten the settlement of the country, and make productive taxable property of much of that, which in many instances, is at present use-
less, and no law for their protection, or against taking the timber from them, it is believed, could be rendered sufficiently efficacious to prevent them being thus despoiled, of what, in many instances, constitutes their chief value. Besides, even admitting the possibility of enforcing such a law, it could not be done without great perplexity and expense to the state.

All of which, with the accompanying bill, is respectfully submitted.

WALTER D. McINDOE, Ch'n.