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REPORT

OF THE

CHIEF INSPECTOR

FOR THE

Department of Public Lands

OF THE

STATE OF WISCONSIN,

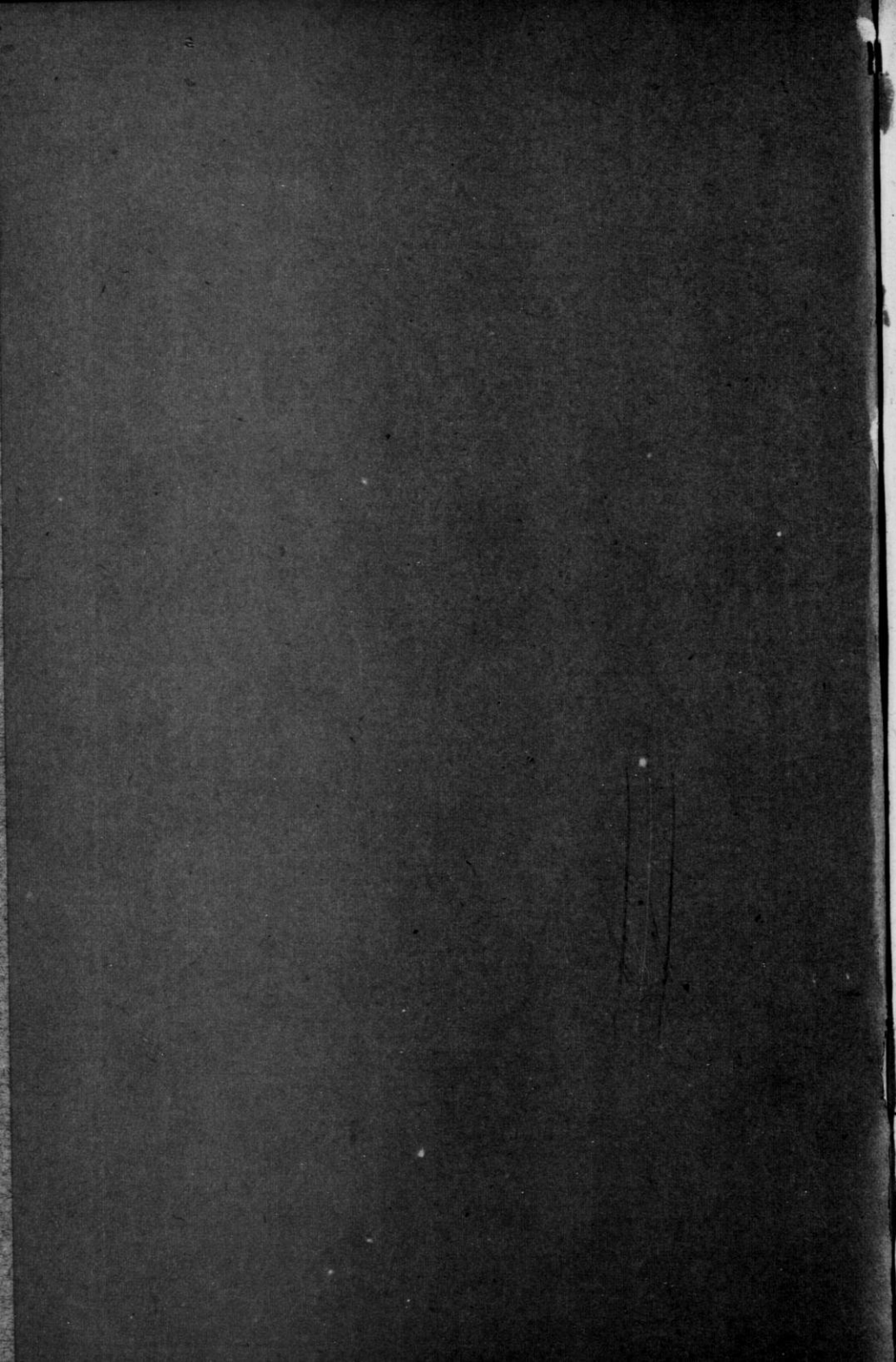
For four years ending December 30, 1898.



MADISON, WIS.:

DEMOCRAT PRINTING COMPANY, STATE PRINTER

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State Historical Society
OF WISCONSIN,
MADISON, - WIS.

MADISON, WIS.:
DEMOCRAT PRINTING COMPANY, STATE PRINTER

1899



LETTER OF TRANSMITTAL.

STATE OF WISCONSIN,
Department of Public Lands,
Madison, Wis., December 30, 1898.

HON. EDWARD SCOFIELD,
Governor of Wisconsin.

SIR—We have the honor to transmit herewith, for your consideration, the report of E. G. Mullen, Chief Inspector of Lands, covering the operations of the Department of Public Lands relative to trespass on public lands, swamp lands in Indian Reservations, and the efforts made for a settlement of the state claim for swamp land indemnity during the past four years.

We desire, in this connection, to express our appreciation of the very efficient and valuable services rendered by Mr. Mullen to the state of Wisconsin.

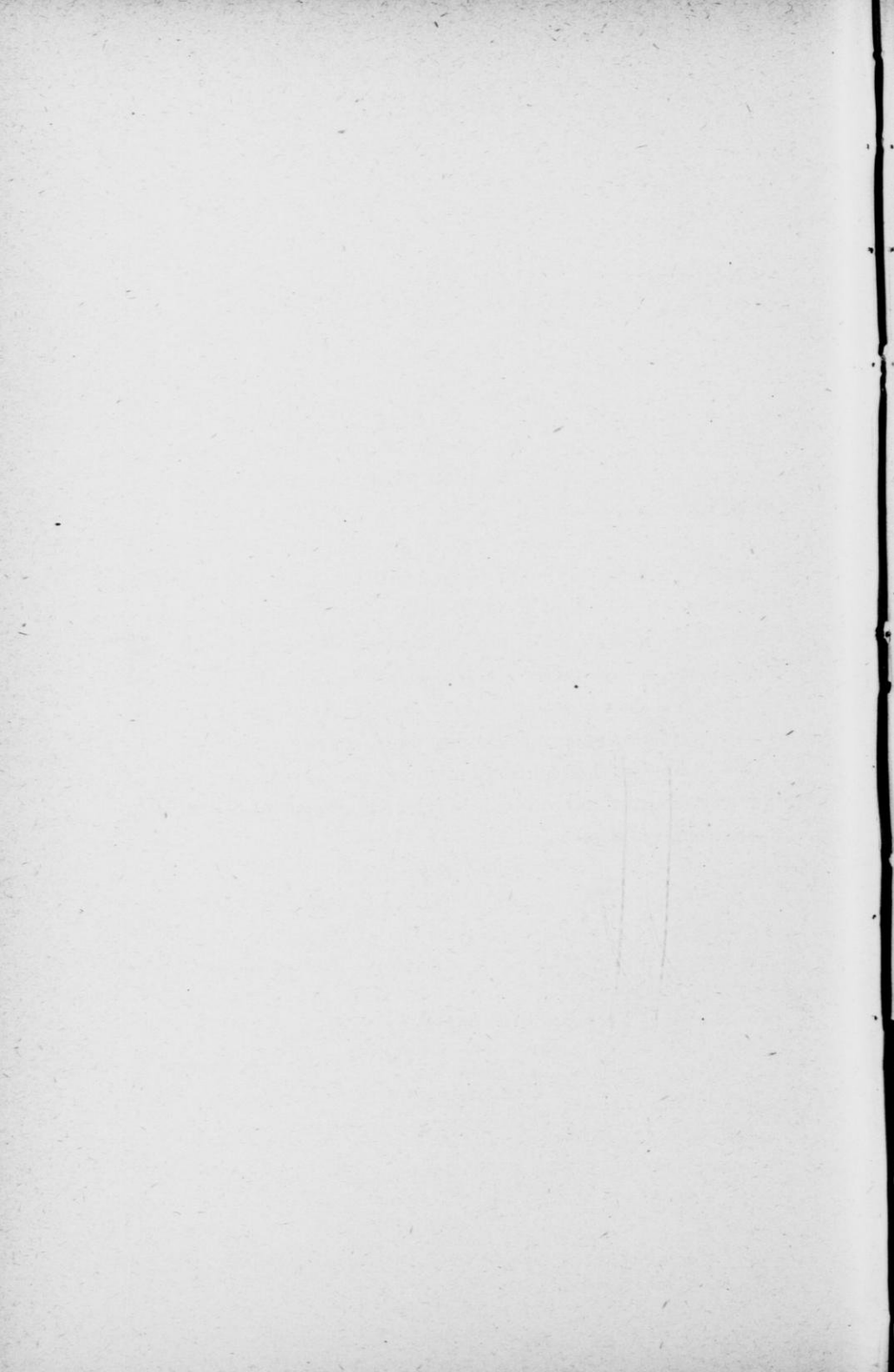
Very respectfully,

HENRY CASSON,
Secretary of State.

SEWELL A. PETERSON,
State Treasurer.

W. H. MYLREA,
Attorney General.

Commissioners of Public Lands.



REPORT OF CHIEF INSPECTOR OF LANDS.

Madison, Wis., December 28, 1898.

The Honorable Commissioners of the Public Lands.

SIRS:—I have the honor of submitting the following report on the present status of various matters which, by your direction, have been given attention:

TRESPASS ON THE PUBLIC LANDS.

The investigation of trespass on the Public Lands covers one hundred and four cases, of which forty-four have been settled and the sum of \$22,099.11 collected therefor and deposited in the State Treasury. There remains to be disposed of sixty cases, nearly all of which have been fully investigated and are in process of settlement. In nearly all of these cases the state will receive the full value of the timber cut and removed from the state lands. During the four years next preceding the present administration there were settled seven cases for the sum of \$2,278.03.

It is a matter for congratulation that owing to the care given to the Public Lands during the four years of your administration trespassing on the lands of the state has not been popular or profitable and has almost, if not entirely, ceased. This is evidenced by the fact that up to this time there has been discovered but one trespass (outside of Indian Reservations) made during the last logging season, and that was made through an error in running lines. The trespasser reported the matter and asked to make a settlement. I believe the lumbermen are in hearty accord with the present policy of the state in this matter, as they have, when called on, cheerfully and promptly given any information requested, notwithstanding that in many cases it has entailed upon them payment for logs for which they had already paid the trespasser.

TRESPASS ON SWAMP LANDS IN THE LAC DU FLAMBEAU
INDIAN RESERVATION.

An investigation into the logging operations on this reservation made in 1897 disclosed the fact that there had been cut by J. H. Cushway & Company, contractors, from school and swamp lands during the logging season of 1896-7 pine and other valuable timber to the amount of 4,636,260 feet. The stumpage value of this timber, based on the contract price paid to the Indians, was \$12,265.94. This timber was cut on authority granted by the Honorable Secretary of the Interior on the representation made to him that it was for the improvement of various buildings on the reservation.

When this matter had been carefully looked into, both in Wisconsin and Washington, it was presented by Governor Scofield to the Honorable John C. Spooner, United States Senator from Wisconsin, for such action as in his opinion would protect the interests of the state. It is only necessary to add that he decided promptly that the state's interests were being sacrificed, presented the matter to the Honorable Secretary of the Interior, convinced him of the wrong being done under a misapprehension of the rights of the state and procured an order revoking all former authorities for cutting timber on these lands. On authority of Governor Scofield suit has been brought by the Honorable Attorney General (Mr. Mylrea) for the recovery of the value of the timber cut. This suit is now pending in the circuit court for Marathon county.

TRESPASS ON SWAMP LANDS IN THE MEMOMONEE
INDIAN RESERVATION.

By an act of Congress approved June 12, 1890, entitled, "An Act to authorize the sale of timber on certain lands reserved for the use of the Menomonee tribe of Indians in the State of Wisconsin," the Secretary of the Interior was authorized to issue contracts for the cutting of pine timber to the Indians on the Menomonee Reservation.

The State of Wisconsin is the owner of the fee to about 22,000 acres of swamp land in this Reservation, of which amount

15,737 acres was patented to the state on November 13, 1865, Patent No. 8.

It does not appear that any attention was given to the protection of these lands by former Commissioners of Public Lands. While investigating the status of the claims of the state for swamp lands at Washington, it was discovered that the Indians, acting under authority given by the Department of the Interior, had cut, during the four years following 1890, about four million feet of pine timber, and that the department had disposed of this timber at public sale for the benefit of the Indians.

The investigation disclosed also that there had been cut by the Indians, under the same authority, during the logging season of 1897-98, from swamp lands which had been patented to the state, over one million feet of pine timber. This timber, with the timber cut from lands belonging to the Indians, was sold to Perley, Lowe & Company, of Chicago, Illinois, the highest bidder for same at the sale of said timber. Perley, Lowe & Company re-sold all of the timber to Seymour W. Hollister, of Oshkosh, Wisconsin.

The whole matter was laid before the Honorable Assistant Attorney General (Mr. Erdall), who determined that under the circumstances the state owned the timber and could replevin the same. The matter was then laid before Governor Scofield by the Honorable Commissioners and authority was granted for the bringing of a suit of replevin in the circuit court of Oconto county for the recovery of this timber. The proper papers were prepared and served on the parties in interest. Mr. Hollister immediately gave bond, as provided by statute, in the sum of twenty-five thousand dollars to pay any amount found to be due the state for the timber cut from its lands. This bond was accepted by the Honorable Attorney General (Mr. Mylrea), and on May 15th, 1898, the sheriff of Oconto county was instructed to surrender said logs and timber to said Mr. Hollister.

The action taken by the state was communicated to the Honorable Commissioner of Indian Affairs and a plan suggested for determining the amount of timber cut from the lands owned by the state and a basis of settlement.

It appearing that nothing could be accomplished by corre-

spondence, on June 10, 1898, Governor Scofield went to Washington and presented the matter to the Honorable Secretary of the Interior and the Honorable Commissioner of Indian Affairs. They arrived at an agreement to the effect that representatives of the General Land Office, Indian Bureau, State of Wisconsin, Perley, Lowe & Company and Seymour W. Hollister should go upon the lands of the state in the Menomonee Indian Reservation, with skilled woodsmen and estimators, and determine by survey and estimate the amount of timber cut during the logging season of 1897-98 from swamp lands, which had been patented in the state.

On July 6, 1898, the representatives made their report as follows:

"In the matter of the claim of the state of Wisconsin against the United States and Seymour W. Hollister for damages by reason of the cutting and removal of Pine timber from lands owned by the state of Wisconsin, as show in Swamp Land Patent No. 8, dated Nov. 13, 1865.

"We, the undersigned, representing the parties in interest, certify that a careful examination has been made of the lands hereinafter described and we find that there has been cut and removed from said described lands during the logging season of 1897-8, one million forty-four thousand five hundred feet, board measure, of pine timber and logs; that said timber and logs were landed on the south branch of the Oconto river in township 30 N. of range 16 east; that the records in the office of the Indian Agent for the Menominee Indians show that said timber and logs, were on March 15, 1898, sold to Perley, Lowe & Company of Chicago, Ill., at a price and for a consideration of thirteen dollars sixty cents (\$13.60) per thousand feet board measure; that said logs and timber were thereafter sold and transferred by Perley, Lowe & Company to Seymour W. Hollister of Oshkosh, Wisconsin, and said sale and transfer was thereafter confirmed by the Honorable Secretary of the Interior.

"The following is the description of the lands from which said timber and logs were cut, and the amount of the same, viz.:

N. W. of N. E. Sec. 1,	Tp. 30 N.,	R. 16 E.	} 883 Trees: 698,000 ft. B. M.
S. W. of N. E. Sec. 1,	" " "	" "	
S. E. of N. E. Sec. 1,	" " "	" "	
N. E. of N. W. Sec. 9,	" " "	" "	} 119 Trees; 170,000 ft. B. M.
N. W. of N. W. Sec. 9,	" " "	" "	
S. W. of N. W. Sec. 9,	" " "	" "	
S. E. of N. W. Sec. 9,	" " "	" "	

N. E. of S. E. Sec.29,	Tp. 30	N.,	R. 16	E. }	9 Trees;
S. E. of N. E. Sec.29,	" "	" "	" "	" "	6,500 ft. B. M.
N. E. of S. W. Sec.32,	" "	" "	" "	" "	} 176 Trees;
N. W. of S. W. Sec.32,	" "	" "	" "	" "	
S. E. of S. W. Sec.32,	" "	" "	" "	" "	
Total.....					1,187 Trees; 1,044,500 ft. B. M.

"The amount of timber and logs as stated above is all of the timber and logs claimed by the state of Wisconsin as having been cut and removed during the logging season of 1897-8, (See authority No. 53369 of Aug. 13, 1897), from lands owned by said state as shown by Patent No. 8, dated March 15, 1865, and sold by the United States to Perley, Lowe & Company, and by them sold and transferred to Seymour W. Hollister.

For the state of Wisconsin:

E. G. Mullen, Chief Inspector of Lands.

E. S. Shepard, Examiner and Scaler.

H. H. Schwartz, Special Agent for United States Interior Department.

James Houston, Examiner and Scaler for the United States.

D. H. George, U. S. Indian Agent, Green Bay Agency, Wisconsin.

P. E. Doyle, Logging Superintendent.

S. W. Hollister, for himself and Perley, Lowe & Company.

Signed in Duplicate."

On July 7, 1898, the above report was transmitted to the Honorable Commissioner of Indian Affairs with the following recommendation:

UNITED STATES INDIAN SERVICE,
Green Bay Agency,
 Keshena, Wisconsin, July 7, 1898.

Hon. Com. of Indian Affairs, Washington, D. C.

SIR—I have the honor to state that in accordance with instructions contained in your letter dated June 25th ult., Harry H. Schwartz, Special Agent of the General Land Office; James Houston, scaler; P. E. Doyle, Logging Superintendent at this Agency, and myself on the part of the Department; E. G. Mullen, Chief Inspector of Lands for the state of Wisconsin, and S. W. Hollister on the part of Perley, Lowe & Company and him-

self, mailed you a report in duplicate of the amount of timber cut on lands claimed by the state of Wisconsin located within the boundaries of the Menominee Indian Reservation, during the winter of 1897-98. The report covers the timber cut from all lands claimed by the authorities of the state of Wisconsin under Patent No. 8, dated November 13th, 1865, located near the south branch of the Oconto river. The report covers more land than was described in the letter of instructions, but I wanted to make a clean job of it and had all the lands claimed by the state examined. The report shows that 1,187 trees were cut, scaling 1,044,500 feet.

This timber was cut, with other timber, on the Menominee Indian Reservation, under authority 53369, dated August 13th, 1897, under the provisions of the Act of June 12th, 1890, (26 Stats., 146), providing for the cutting of the pine timber on the Menominee Indian Reservation.

The logs cut on lands claimed by the state of Wisconsin and other logs cut by the Menominee Indians were sold on March 15, 1898, to Perley, Lowe & Co. of Chicago, Ill., for \$13.60 per thousand feet. The sale was approved by the Department under date of March 25th, 1898, authority 55997. The logs were resold by Perley, Lowe & Co. to S. W. Hollister of Oshkosh, Wisconsin. On or about April 30, 1898, the authorities of the State of Wisconsin attached or seized the whole amount of logs cut and banked by the Menominee Indians on the south branch of the Oconto river, and now claim \$13.60 per thousand feet for the logs cut from the lands claimed by the state of Wisconsin.

I would state that the trespass (if a trespass) was not malicious or wilful, and in my opinion the demand of the State of Wisconsin for payment for the logs cut on lands claimed by it is exorbitant and excessive and should not be allowed.

It is my opinion that the cost of cutting and banking the logs should certainly be deducted from the price the logs sold for.

It cost to cut and bank the logs claimed by the state as follows:

Logs cut on Section 1, Tp. 30 N., R. 16 E., 883 trees, 698,000 feet. These logs were cut and banked by Eliza Fredenburg, contract No. 19, and she was paid \$4.50 per thousand feet for cutting and banking the same.

The logs on Sec. 9, Tp. 30 N., R. 16 E., 119 trees, 170,000 feet, were cut and banked by Barney Stone, contract No. 7, and he was paid \$4.25 per thousand feet for cutting and banking the same. The logs on Sec. 29, Tp. 30 N., R. 16 E., 9 trees, 6,500 feet, were cut and banked by William Kinney, contract No. 51, and he was paid \$4.40 per thousand feet for cutting and banking the same. The logs on Sec. 32, Tp. 30 N., R. 16 E., 176 trees,

170,000 feet, were cut and banked by Rachel Warrington, contract No. 28, and she was paid \$4.50 per thousand feet for cutting and banking the same.

I would say that it has always been the custom in this vicinity that where a trespass of cutting timber has been committed that was not malicious or wilful, to settle with the owner of the timber for what the standing trees or stumpage was worth, and as the standing trees or stumpage on this land claimed by the state was worth, in my opinion, about \$8 per thousand feet, I think that the state of Wisconsin ought to settle on that basis, if they have a just claim.

Copies of the logging contracts are on file in the Indian Office.

(Signed) Very respectfully,
D. H. GEORGE,
U. S. Indian Agent.

UNITED STATES INDIAN SERVICE.

Green Bay Agency,

Keshena, Wis., July 7, 1898.

HON. Commissioner of Indian Affairs, Washington, D. C.

SIR—I have the honor to state that I have read the letter of D. H. George, U. S. Indian Agent, Green Bay Agency, Wisconsin, relative to the claims of the authorities of the state of Wisconsin for pine timber cut on the lands claimed by the state on the Menomonee Indian Reservation, and I agree with him in his conclusions.

(Signed) Very respectfully,
P. E. DOYLE,
Logging Superintendent.

The foregoing reports were transmitted by the Honorable Commissioner of Indian Affairs to the Honorable Secretary of the Interior, with the recommendation that the state be allowed eight dollars per thousand feet for the amount of timber ascertained to have been cut and removed from the lands of the state.

By letter, dated July 27, 1898, the state was advised that the Honorable Secretary had approved the recommendation of the Honorable Commissioner, and request was made that a claim on that basis, viz.: for 1,044,500 ft., at \$8.00, \$8,356.00, be presented.

Governor Scofield refused to approve a settlement based on their finding as to the value of the stumpage, or to

file a claim with the United States. Many letters and telegrams were exchanged. The Honorable Commissioner refused to re-submit the matter to the Honorable Secretary on the basis claimed as fair by the state, and the state authorities refused to recede from the position originally taken. It became apparent that, although the state and the United States authorities were anxious to effect a settlement, they were unable to do so by correspondence. Finally it was decided that Governor Scofield should visit Washington and endeavor to get the differences adjusted. At a meeting with the Honorable Commissioner they agreed that the state was properly entitled to the amount claimed, and to re-submit the matter to the Honorable Secretary. This was done and authority was granted for a settlement with Perley, Lowe & Company and Seymour W. Hollister on the basis and for the amount claimed by the state, to-wit.: 1,044,500 ft., \$9,548.10. This gave to the state \$1,192.10 more than the United States were at first willing to concede as the amount due.

On November 12, 1898, Governor Scofield met Mr. Hollister and Mr. Lowe at the office of Perley, Lowe & Company, Chicago, and there all the proper papers were executed and Mr. Hollister on behalf of himself and Perley, Lowe & Company, paid to the Governor a certified check for \$9,548.10, in full for the claim of the state.

The firm stand taken by the administration in this matter resulted not only in the recovery of a large sum of money for the state, but it established the fact that the United States could not damage the lands of the state in Indian reservations and escape paying the penalty.

STATE PARK LANDS.

By chapter 324, laws of 1878, entitled, "An Act to provide for a state park in the State of Wisconsin," it was provided that all lands owned by the state of Wisconsin within the limits of certain townships named were set apart from the public domain as a state park.

Twenty-four townships were covered by this act, the aggregate area of which is:

Land	412,475 acres
Water	74,672 acres
Total	<u>487,147 acres</u>

The area of land owned by the state of Wisconsin within the State Park limits on January 1st, 1897, was 59,030 acres, or about one-seventh of the entire area. The sale price of these lands, computed at the rate per acre established by law, was \$81,737.00.

It will appear from the foregoing that what is known as the "State Park" was in reality many small tracts of land scattered through twenty-four townships. Part of them were classed as pine lands, and the timber thereon was in constant danger of destruction by fire, owing to the choppings left by lumbermen on adjoining lands. This danger was increasing each year as logging operations were extended. The timber on the state lands had reached its maximum value, by reason of the fact that logging railways had been extended through the territory, dams had been built, streams cleaned out for driving logs, and logging roads cut. It was deemed unwise to keep these lands out of the market until the improvements had fallen into disuse, as there was not enough timber on them to warrant rebuilding or repairing them, and therefore it would have had to be sold for a low price owing to the lack of facilities for getting it to the market.

The whole matter was fairly covered by Governor Scofield when he said to a reporter for the "Times-Herald":

"The question of disposing of what are known as the 'State Park' lands, is a question of business, and not one of politics or sentiment."

By chapter 367, laws of 1897, provision was made for the examination and appraisal of the State Park lands, and the offering for sale of the same to the highest bidder over such appraised value. The examination and appraisal was made during the summer of 1897, and the lands were offered for sale at Rhineland, Wisconsin, on December 15, 1897. The appraised value of the State Park lands was \$346,000.00.

There has been disposed of, (at the public sale, and in the State Land office since the date of the sale), 12,853 acres for \$133,-

876.00, an average of over \$10.40 an acre. There remains unsold 46,177 acres, the appraised value of which is \$212,124.00.

It is apparent from the above statement that the legislature of 1897 acted wisely, and for the best interests of the state, when they enacted the law for restoring the State Park lands to the Public Domain, and provided a safe and profitable method for their disposal.

SWAMP LAND INDEMNITY.

By an act of congress approved September 28, 1850, (known as the swamp-land act), there was granted to the state of Wisconsin "the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act."

By the terms of this act it was made the duty of the Secretary of the Interior to administer the same.

On November 21, 1850, instructions were sent to the Surveyor General providing two methods of selecting swamp lands under this act, to-wit.: by the plats and field notes of government survey, or by surveys and examination in the field, to determine whether or not each smallest legal sub-division was more than one-half swamp or overflowed.

On June 3, 1851, Governor Dewey, on behalf of the state, elected to make swamp selections by the plats and field notes of government survey, and the grant to Wisconsin has been administered on that basis.

It appears as the years went on that inaccuracies were discovered in the surveys and field notes, and in 1859 an effort was made to have new surveys made for the purpose of establishing what lands were swamp and thereby passed to the state. This in fact, was an effort to have the method of selecting swamp lands changed. Although a strong case was made, the Secretary of the Interior refused to permit the change, saying:

"Our predecessors in office, both on the part of the state and the United States, concluded the adjustment adopted was most just and fair, and dictated by the best interests of Wisconsin. I think we have a pretty strong case against a change."

Authority for a survey was granted by the legislature at the expense of the state. This survey was completed for nine counties in 1860, a list of swamp lands prepared therefrom and filed in the General Land Office by the governor, with a request that it be administered on. The Commissioner of the General Land Office, on receipt of these lists, and referring to the Governor's request, said:

"In view, therefore, of the decision of the Secretary, the lists presented by you cannot be regarded as selections made in accordance with the arrangements entered into in 1851, and which has been the basis of all our official action so far as your state is concerned."

The office of Surveyor General for Wisconsin was abolished in June, 1866, and all of the plats and field notes were deposited with the chief clerk of the state land office in Madison.

No swamp selections had been made after 1859, but the government was disposing of the public lands without regard to their character, or the rights of the state. The governor took the matter up with the General Land Office and succeeded in getting authority to make swamp selections in certain townships. The lists of these selections were filed in the general land office, were passed on in due course of business, and many acres were patented to the state. In 1869 and 1870 other lists were filed, which were generally rejected on the ground that the Surveyor General had made selections in the same townships. Each succeeding governor made claims for swamp lands and an effort to get the whole matter adjusted, but were generally unsuccessful.

In 1879 the commissioners of the public lands caused an examination of the plats and field notes on file in the state land office to be made, with a view of obtaining some basis on which to make a final claim for losses of swamp lands. It was ascertained that more than 800,000 acres to which the state was entitled under the grant, had not been listed or patented. This fact was communicated to the governor on March 24, 1880, with the suggestion that he proceed to Washington and lay the matter before the Secretary of the Interior. This he did, and on his presentation of the matter to the Secretary of the Interior and the Commissioner of the General Land Office they decided that

the state had a just claim. They refused, however, to entertain his proposition for a change in the method of selection, and it was finally agreed to abide by the rules in force, to-wit.: the selection of swamp lands by the plats and field notes of government survey, and a commission was appointed, consisting of a clerk from the general land office (Mr. Darragh) and a clerk from the state land office (Mr. Foresman) to make a report on the claim of the state. They were instructed to examine the plats and field notes of government survey, of all lands in the state of Wisconsin, and record, in books prepared for the purpose, a list of all lands which appeared therefrom to be swamp or overflowed.

"The Commission" began its work in May, 1880, and completed it on August 13, 1881. They recorded their lists of swamp selections in volumes 6 and 7, Division K, General Land Office, and attached thereto the following certificate:

"Washington, D. C., August 13, 1881.

"In pursuance of an agreement entered into between the Governor of Wisconsin, on the part of the state, and the Commissioner of the General Land Office, and the Secretary of the Interior, on the part of the government, we, the undersigned, hereby certify that we have examined the plats and field notes of the government survey in the state of Wisconsin, and find that the greater portion of each smallest legal subdivision of the tracts herein described is swamp or overflowed land within the meaning of the Act of 28th September, 1850, and as such inures to the said State.

C. M. FORESMAN,
State Agent.

H. C. DARRAGH,
Clerk, General Land Office.

From the record of these lists it is ascertained that
 "The Commission" selected, including Swamp-lands in
 Indian Reservation.....1,307,560 acres

Of this amount the State has received:

Patents for Swamp-land in place.....	180,000 acres.
Patents for Swamp-land indemnity	72,000 acres.
Cash indemnity, based on a price of \$1.00 per acre.....	142,000 acres.

There was included in their selections,
lands sold prior to the grant, by the
United States..... 491,099 acres.

There was included in their selections
lands granted to the State for internal
improvements which had been accepted
and generally patented to the state for
such improvements 110,971 acres.

996,070 acres.

(The state, having taken these lands by
one grant and disposed of them, is not
fairly entitled to indemnity for their loss
under another grant.

There is claimed by the state, lands in place or indemnity
therefore (including Swamp lands in Indian Reservation,) 311,490 acres.

The status of the claim was laid before Governor Scofield in
1897, and it was decided to put the whole matter into the hands
of Senator Spooner, with a view of obtaining the needed legisla-
tion. He prepared the following bill, which was introduced by
him in the Senate, and by Hon. S. S. Barney in the House of
Representatives:

"A BILL

"To indemnify the State of Wisconsin for swamp and over-
flowed lands therein, granted by Congress to said State, but dis-
posed of by the Government, for cash or otherwise, and to quiet
the title of the settlers and other purchasers of lands within said
State from the United States, and for other purposes.

"Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,

"That it shall be the duty of the Secretary of the Interior, and
he is hereby directed, to adjust at the earliest practicable date

the claim of the State of Wisconsin against the United States for any and all tracts of land included in any grant of swamp and overflowed lands to said State which have been sold or otherwise disposed of by the United States; and in making said adjustment the said Secretary shall accept as the basis thereof the list of lands made by an official of the United States and one representing the said State, acting jointly, pursuant to agreement entered into between the Secretary of the Interior, the Commissioner of the General Land Office, and the State of Wisconsin, through its Governor, on or about the first day of April, anno Domini eighteen hundred and eighty, the said list having been completed August thirteenth, anno Domini eighteen hundred and eighty-one, and duly recorded and certified to in volumes six and seven of swamp-land selections of the State of Wisconsin, now on file in Division K of the General Land Office and for all lands embraced in said list which have been otherwise disposed of by the United States for which indemnity has not been heretofore granted and received, said state shall be entitled to select from any public lands of the United States situated in Wisconsin to which the United States has full title an equal number of acres, said selections to be approved by the Secretary of the Interior.

"Sec.2. That patents shall issue to said State, conveying the title to the lands so selected and approved: *Provided, however,* that no such patent shall issue until the State of Wisconsin shall have duly relinquished, by legislative act or instrument of quit-claim, all its right, title and interest to the swamp lands so disposed of by the United States and in lieu of which the said selections are made, and also all its right, title, claim, and interest in and to all swamp lands now embraced within the limits of any existing Indian reservation in said State, and also all its right, title, claim and interest in and to any swamp lands which shall have been allotted in severalty to Indians in said State, if any such lands have been so allotted."

The bill was properly referred in both houses of Congress, and the Senate Committee on Public Lands transmitted it to the Honorable Secretary of the Interior for report and recommendation.

On December 20th inst., the reports and recommendations of the Honorable Commissioner of the General Land Office and the Honorable Commissioner of Indian Affairs on the bill having reached the Honorable Secretary, a meeting was held at his office,

at which the United States was represented by Commissioner Herman and Judge Vandeventer, Assistant Attorney General, and the State of Wisconsin, by Senator Spooner and the undersigned.

At this meeting the Honorable Secretary decided that the state was entitled to indemnity for swamp lands disposed of by the United States for cash or warrants, and all swamp lands included in any Indian Reservation, as shown by "The Commission's" list heretofore referred to, and that as to lands, which by this list were shown to be "swamp," that had heretofore passed to the state and been accepted under other grants, and lands which had been sold by the United States prior to the date of the Swamp-land Act, the state was not entitled to indemnity.

This decision was accepted as fair, and Judge Vandeventer was authorized to prepare a substitute bill, that will carry out the decision, and prepare a letter for the Honorable Secretary's signature in which he will recommend the passage of the said substitute.

The people of the state are to be congratulated that, owing to the untiring efforts of this administration and Senator Spooner, the swamp-land grant made to the State nearly half a century ago is in a fair way to be closed up, and indemnity given for swamp lands wrongfully disposed of by the United States.

There is hard work yet to be done, but the strength of Wisconsin's delegation in Congress gives assurance that there can be but one result, and that, the passage of the Indemnity Bill.

Respectfully,

E. G. MULLEN,
Chief Inspector of Lands.

APPENDIX.

Since the foregoing report was placed in the hands of the printer, the following report of the United States Senate committee, together with the text of the substitute bill, recommended by the Honorable Secretary of the Interior, has been received. The substitute bill passed the Senate, Jan. 13, 1899.

E. G. MULLEN,
Chief Inspector of Lands.

Calendar No., 1508.

55TH CONGRESS, }
3d Session. }

SENATE.

{ REPORT
{ No. 1465.

SWAMP AND OVERFLOWED LANDS IN WISCONSIN.

January 11, 1899.—Ordered to be printed.

Mr. HANSBROUGH, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany S. 5171.]

The Committee on Public Lands, having considered the bill (S. 3094) to indemnify the State of Wisconsin for swamp and overflowed lands therein, granted by Congress to said State but disposed of by the Government for cash and otherwise, and to quiet the title of settlers and other purchasers of lands within said State from the United States, and for other purposes, beg leave to report a substitute bill in lieu thereof and to recommend that the substitute bill do pass.

The recommendation of the Secretary of the Interior with regard to the bill is respectfully submitted.

Department of the Interior,
Washington, January 5, 1899.

Sir: In obedience to your reference I have considered the bill (S. 3094) providing for an adjustment of the swamp-land grant to the State of Wisconsin, which bill reads as follows:

A BILL to indemnify the State of Wisconsin for swamp and overflowed lands therein, granted by Congress to said State but disposed of by the Government for cash and otherwise, and to quiet the title of settlers and other purchasers of lands within said State from the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Secretary of the Interior, and he is hereby directed, to adjust at the earliest practicable date the claim of the State of Wisconsin against the United States for any and all tracts of land included in any grant of swamp and overflowed lands to said State which have

been sold or otherwise disposed of by the United States; and in making said adjustment the said Secretary shall accept as the basis thereof the list of lands made by an official of the United States and one representing said State, acting jointly, pursuant to agreement entered into between the Secretary of the Interior, the Commissioner of the General Land Office, and the State of Wisconsin, through its governor, on or about the first day of April, anno Domini eighteen hundred and eighty, the said list having been completed August thirteenth, anno Domini eighteen hundred and eighty-one, and duly recorded and certified to in volumes six and seven of swamp-land selections of the State of Wisconsin, now on file in Division K of the General Land Office; and for all lands embraced in said list which have been otherwise disposed of by the United States for which indemnity has not been heretofore granted and received, said State shall be entitled to select from any public lands of the United States situated in Wisconsin to which the United States has full title an equal number of acres, said selections to be approved by the Secretary of the Interior.

Sec. 2. That patents shall issue to said State conveying the title to the lands so selected and approved: Provided, however, That no such patent shall issue until the State of Wisconsin shall have duly relinquished, by legislative act or instrument of quitclaim, all its right, title, and interest to the swamp lands so disposed of by the United States, and in lieu of which the said selections are made, and also all its right, title, claim, and interest in and to all swamps lands now embraced within the limits of any existing Indian reservation in said State, and also all its right, title, claim, and interest in and to any swamp lands which shall have been allotted in severalty to Indians in said State, if any such lands shall have been so allotted.

The act of September 28, 1850 (9 Stat. L., 519), made a grant in presenti to the State of Wisconsin of the whole of the swamp and overflowed lands therein, made unfit thereby for cultivation, which remained unsold at the passage of this act. The duty of determining what were swamp lands within the meaning of this grant was placed upon the Secretary of the Interior, and he was directed to class as swamp lands all legal subdivisions the greater part of which was wet and unfit for cultivation, and to class as non-swamp lands all legal subdivisions the greater part of which was not wet and unfit for cultivation. The evidence upon which the Secretary of the Interior was to base his determination, and the means of obtaining such evidence, were not prescribed, but were left to his judgment and discretion.

November 21, 1850 (1 Lester, 543), the Commissioner of the General Land Office, with the subsequent approval of the Secretary of the Interior, addressed a letter to the several surveyors-general respecting the method of identifying and listing the swamp lands inuring to the several States under the grant, wherein it was said:

"This act clearly and unequivocally grants to the several States those lands which, from being swampy or subject to overflow, are unfit for cultivation. In this class is included also all lands which, though dry part of the year, are subject to inundation at the planting, growing, or harvesting season, so as to destroy the crops, and therefore, are unfit for cultivation, taking the average of the seasons for a reasonable number of years, as the rule of determination.

"You will please make out a list of all the lands thus granted to the State, designating those which have been sold or otherwise disposed of since the passage of the law, and the price paid for them when purchased.

"The only reliable data in your possession from which these lists can be made out are the notes of the surveys on file in your office, and if the authorities of the State are willing to adopt these as a basis of those lists, you will so regard them. If not, and those authorities

furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them."

It is thus seen that the several States were given the opportunity of electing to have their swamp lands identified and listed from the field notes of the public surveys or from an inspection of the lands in the field.

June 3, 1851, the State of Wisconsin elected to have its swamp lands identified and listed from the field notes of the public surveys, as shown by a letter of that date written by the governor to the surveyor-general of Wisconsin and Iowa, wherein it is said, *inter alia*:

"I have to advise you that this State is willing to adopt the field notes of the surveys on file in your office as the basis of making out the lists of lands granted by the act of Congress named.

"This determination is the result of mature deliberation, and dictated by true economy on the part of this State."

May 2, 1859, in a letter to the Commissioner of the General Land Office complaining of the operation of the method theretofore adopted for identifying the swamp lands in said State, the governor of the State said:

"I submit that the State ought not to be concluded or prejudiced by any erroneous or unfortunate mode of selecting these lands which may have been adopted."

August 1, 1859, in considering this letter of the governor, the Secretary of the Interior wrote the Commissioner of the General Land Office as follows:

"Since the grant was made, and up to the present time, the field notes of the public surveys have been the basis of the selections. * * * The governor of Wisconsin in June, 1851, * * * advised the Land Office that Wisconsin would be willing to adopt the field notes of the United States surveys as the basis of setting apart the granted lands.

"The present governor, however, * * * suggests a reexamination and resurvey, with a view of ascertaining what lands have been erroneously omitted from the lists of swamp lands, that they may be hereafter certified to the State. The most serious objection to this course is that it would unsettle everything that has been done. The reexamination would necessarily extend to the lands heretofore certified and patented, and the State would have to restore to the United States such tracts as may have been improperly listed as inuring to her, for it could not be asked that all errors and inaccuracies should be corrected in favor of the State, but none corrected against her. The inevitable results would be delay in administering the grant, dissatisfaction and litigation among the citizens of the State, and appeals to the legislature for relief or damages.

"A second consideration is this: Our predecessors in office, both on the part of the State and the United States, in view of all the facts existing at the time, concluded that the method of adjustment adopted was the most just and fair, and dictated by the best interests of Wisconsin. * * * I think we have a very strong case against a change. * * * We could not hope to make a change for the better * * *"

June 29, 1870, the Commissioner of the General Land Office wrote a letter to the governor of the State of Wisconsin, wherein it was said, *inter alia*:

"Wisconsin at an early day elected to make the selection of lands inuring to her under the swamp grant from the field notes of public surveys to be designated and listed by the United States surveyor-general. An effort was subsequently made on the part of the State authorities to change the basis of selection from the field notes to an examination by agents in the field; but the proposition was declined by the Secretary in his letter of October 4, 1855, and the original plan was adhered to."

February 11, 1874, the governor of the State, in writing to the Com-

missioner of the General Land Office respecting a claim of the State to lands alleged to be actually swamp in character, but not so shown by the field notes, said:

"Will you please advise me whether such claim of the State has ever been recognized by the General Government, or whether the Government still holds the State to the selection of such lands only as appear to be swamp lands on the plats of the General Land Office?"

The Commissioner of the General Land Office replied February 21, 1874, saying:

"The field notes have always been held conclusive, both for and against the State, and on the 4th of October, 1855, the then Secretary of the Interior sustained the decision of this office, refusing to take testimony to disprove the swampy character of land in Wisconsin shown to be swamp by the field notes."

It is thus seen that, after electing to be bound by the statements in the field notes respecting the character of the lands in that State, the State of Wisconsin repeatedly sought to have this method of identifying and listing the lands inuring to it under the swamp-land grant changed so that the character of the lands might be determined from an inspection in the field, but the authorities of the Land Department of the United States held the State to its original election to abide by the field notes, and would not consent to a change.

Undoubtedly there were mistakes and errors in the surveys whereby swamp lands were sometimes shown by the field notes to be dry lands, and dry lands were sometimes shown to be swamp lands. The State claimed that these mistakes preponderated very largely against it, and that it suffered a great loss by the adherence to the field notes as a test of the character of the land, but it is now practically impossible to tell which way these errors or mistakes preponderated. In addition to this controversy there was great delay in the examination of the field notes and in the listing to the State of lands shown by field notes to be swamp lands, and out of all of this many differences arose between the State and the Land Department of the United States.

In the spring of 1880 the governor of Wisconsin visited Washington for the purpose of securing an adjustment of these differences; and at a conference between the governor of the State, the Secretary of the Interior, and the Commissioner of the General Land Office it was agreed that the method of referring to the field notes of the public surveys for the purpose of determining what were and what were not swamp lands should be continued, and that the field notes of surveys in that State should be examined by an agent of the Land Department of the United States and by an agent of the State, and that their joint report as to what lands were described as swamp and overflowed by such field notes should be the basis of adjusting the swamp-land grant to that State. The Land Department of the United States accordingly selected one agent and the State selected another, who, after spending over a year in examining these field notes, made a report and list of the lands therein described as swamp and overflowed. This report is embraced in what is known as volumes 6 and 7 of the Wisconsin Swamp Selections in the General Land Office, labeled "Report of Swamp-Land Commission—Wisconsin," and has appended thereto the following certificate, executed by the agents who made the examination:

Washington, D. C., August 13, 1881.

In pursuance of an arrangement entered into between the governor of Wisconsin, on the part of the State, and the Commissioner of the General Land Office and the Secretary of the Interior, on the part of the Government, we, the undersigned, hereby certify that we have examined the plats and field notes of Government survey in the State of Wisconsin and find that the greater portion of each smallest legal subdivision of the tracts herein described is swamp or overflowed land

within the meaning of the act of 28th September, 1850, and, as such, inures to the State.

C. M. FORESMAN,
State Agent.
H. C. DARRAGH,
Clerk, General Land Office.

Referring to this matter, the Commissioner of the General Land Office says, in his annual report for the fiscal year ending June 30, 1881, page 204:

"The basis for selecting the swamp lands in the State of Wisconsin is the plats and field notes of Government survey. Upon examination of the lists of lands furnished this office claimed by the State as swamp or overflowed, many of the tracts did not seem, by the evidence in this office, to be of the character contemplated by the grant.

"With a view to arriving at some understanding between the State and the Government, the governor of Wisconsin came here in the spring of 1880, and upon consultation with the Commissioner and Secretary of the Interior it was decided to continue the method then in force in this office, and the work of making selections was immediately commenced by an agent appointed by the governor on the part of the State, and a clerk from this office, detailed for that purpose, on the part of the Government.

"The work of making the selections has been completed, and will account for the large number of tracts that have been examined, with the plats and field notes of public survey, during the past year."

This report and list of swamp lands embraces about 843,000 acres, of which all but 336,300 were embraced in lists theretofore made and then awaiting action. This report and list has since been recognized to the extent of patenting to the State as swamp lands in place 180,000 acres (estimated), allowing swamp-land indemnity for 72,000 acres (estimated), and allowing swamp-land cash indemnity to the amount of about \$142,000, and there remain in the report and list about 494,640 acres which have not been patented to the State under the swamp-land grant and for which no indemnity has been allowed.

After the making of said report and list, the Land Department, without the consent, and, indeed, against the objection of the State, receded from its former position and ruled that neither the State nor the United States was bound by the field notes of surveys, or by the report and list made by the two agents of the State and Land Department; and notwithstanding the said examination of the field notes, of surveys, and notwithstanding the said report and list of lands described as swamp and overflowed by such field notes, a large amount of the lands embraced in said report and list were sold and otherwise disposed of by the United States under the public-land laws in opposition to the claim of the State. In the meantime, however, lands which were by the field notes erroneously shown to be dry, had been sold and disposed of by the United States, and lands which were by the field notes erroneously shown to be swamp and overflowed, had been patented to the State, and had been by it sold and disposed of, so that neither the United States nor the State was in a position to give full operation to any new or substituted method of identifying the swamp and overflowed lands. An examination of the lands in the field had also become, to some extent, impracticable, because with the settlement of the country the swamp and overflowed districts had been materially reclaimed by the construction of ditches and drains under private and public supervision.

Under the circumstances, I respectfully submit:

First. That the field notes of public surveys should be continued as the basis for adjusting the swamp-land grant to the State of Wisconsin.

sin, and that after holding the State to its original choice of that plan for over thirty years it should not have been changed.

Second. That under the agreement and understanding effected between the governor of the State, the Secretary of the Interior, and the Commissioner of the General Land Office, the report and list made by the two agents aforesaid should be accepted and adhered to as determining the character of the lands in said State, as shown by the field notes of surveys, so far as the surveys were then completed in said State.

Passing over some minor and probably immaterial matters, the pending bill is believed to be properly subject to the following objections:

First. The two agents of the State and Land Department were only authorized to make an examination of the field notes of public surveys for the purpose of determining what lands were by those field notes described as being swamp and overflowed; in other words, their duty was limited to determining this single question of fact. The report and list made by them includes a class of lands described as swamp and overflowed by the field notes, but which have been disposed of by the United States, and for which no indemnity ought to be allowed. The lands within this class approximate 128,000 acres, and include lands sold or disposed of prior to the date of the swamp-land grant, and lands either patented or approved to the State under grants other than the original swamp-land grant. That grant, by its own terms, had no application to lands theretofore sold, and hence no indemnity should be allowed for them. Where the State could take the same lands either under the original swamp-land grant or under some other grant, as was the case with some of these lands, and chose to take them under another grant, it is believed that indemnity should not be allowed for them. The bill as introduced would allow indemnity for all these lands, and is therefore objectionable in its present form.

Second. Existing laws provide for cash and other indemnity for swamp and overflowed lands otherwise disposed of by the United States between September 28, 1850, and March 3, 1857, which, on the basis of the said report and list, would give to the State of Wisconsin cash and other indemnity for, perhaps, not exceeding 5,000 acres, in addition to the indemnity heretofore allowed. It is believed that the bill should provide that the land indemnity thereby given shall be in lieu and in full satisfaction of all claim for cash and other indemnity under existing laws, so as to avoid a possible claim for double indemnity for the same land.

Third. To avoid possible complication and confusion by reason of others becoming parties in interest in the adjustment of this grant, the bill should expressly provide that no scrip or land warrants shall be issued on account of the land indemnity allowed by the act, and that no assignment or transfer by the State of any right to land indemnity under the act shall be recognized or given any effect whatever. In this way alone can the adjustment be confined to the State and Land Department of the United States.

Recently the swamp-land claim of the State and the provisions of this bill were the subject of a conference held in the office of the Secretary of the Interior, at which there were present, on behalf of the State, Senator Spooner, who introduced the bill, and Mr. E. G. Mullen, an agent of the State, and on behalf of the Land Department of the United States, the Secretary of the Interior, the Commissioner of the General Land Office, and the Assistant Attorney-General assigned to this Department. After careful consideration the representatives of the State assented to the objections herein made to the pending bill, and it was conceded on the part of the representatives of the Land Department that subject to these objections the State of Wisconsin

is equitably entitled to relief on the general line named in the bill. The opinion was also earnestly expressed by all participating in this conference that the swamp-land grant to said State could be best adjusted and settled, with justice to the State and to the United States, under the provisions of a substituted or amended bill reading as follows:

A BILL providing for the adjustment of the swamp-land grant to the State of Wisconsin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Secretary of the Interior, and he is hereby directed, at the earliest practicable time to complete the adjustment of the grant of swamp and overflowed lands to the State of Wisconsin, and in completing such adjustment the report and list on file in the General Land Office, known as volumes six and seven of Wisconsin Swamp-Land Selections, labeled "Report of Swamp-Land Commission, Wisconsin," bearing date August thirteenth, eighteen hundred and eighty-one, made by C. M. Foresman and H. C. Darragh, agents acting on behalf of said State and the Land Department of the United States, respectively, and containing a statement of lands within said State returned and described as swamp and overflowed by the field notes of public surveys, shall be accepted and considered as the basis of such adjustment, subject, however, to the conditions and provisions of this Act.

Sec. 2. That the said adjustment shall be made as follows:

First. All lands embraced in said report and list which have not been heretofore otherwise disposed of and for which no indemnity has been heretofore allowed, and which are not within the limits of an existing Indian reservation, shall be patented to the State of Wisconsin as swamp and overflowed lands.

Second. Upon relinquishment by the State, by or under appropriate legislative enactment, of all right, title, claim, and interest in and to all the lands embraced in said report and list which have been heretofore disposed of otherwise than according to the provisions of an act entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September twenty-eighth, eighteen hundred and fifty, the State of Wisconsin shall be entitled to select, according to the legal subdivisions of the public surveys, from the unappropriated public lands within that State, to which no claim lawfully arising under the public-land laws is asserted in any proceeding pending before the Land Department at the time of such selection, a like quantity of lands which shall be patented to the State in lieu of the lands so otherwise disposed of: Provided, however, That no indemnity shall be allowed to said State for lands for which cash or other indemnity has been heretofore allowed or for lands which were sold or otherwise disposed of by the United States prior to September twenty-eighth, eighteen hundred and fifty, or for lands which have been heretofore patented or approved to the State of Wisconsin under grants other than the grant of swamp lands made by the act of Congress approved September twenty-eighth, eighteen hundred and fifty, aforesaid.

Third. Lands embraced in said report and list shall be considered and held to be otherwise disposed of within the meaning of this section if at the time of the passage hereof they are included within a claim lawfully arising under the public-land laws and asserted in any proceeding then pending before the Land Department.

Fourth. For all swamp and overflowed lands embraced in an existing Indian reservation in said State, as shown either by the said report and list or by the field notes of public surveys approved after August thirteenth, eighteen hundred and eighty-one, whether the said lands have been patented to the said State or remain unpatented, and whether heretofore or hereafter surveyed, the State shall be entitled to select and receive patents for a like quantity of indemnity land under the provisions of this act, upon relinquishing to the United States, by

or under proper legislative enactment, the said swamp and overflowed lands within such Indian reservation, free from any and all right, title, claim, and interest of the State or those claiming through or under the State, and this provision shall equally authorize the relinquishment by the State of any school lands within an existing Indian reservation in said State and the selection and patenting of indemnity land therefor.

Sec. 3. No cash indemnity shall hereafter be paid under any law heretofore or hereafter enacted, on account of the sale or disposition of any of the lands embraced in said report and list, and the land indemnity provided for in this act shall be in lieu, and in full satisfaction, of all claim for cash or other indemnity under existing laws.

Sec. 4. No scrip, land warrant, or other evidence of a right to select or locate public lands shall ever be issued under this act, and no assignment or transfer by the State of any right to land indemnity under this act shall ever be recognized or given any effect whatever, but after the said indemnity lands shall have been selected and patented according to the provisions of this act, they may be sold or otherwise disposed of by the State according to its laws.

Sec. 5. The Secretary of the Interior may adopt and prescribe all needful rules and regulations for carrying into effect the provisions of this act.

Sec. 6. This act shall have no force or effect unless the State of Wisconsin not later than the next regular session of its legislature after the passage of this Act shall by legislative enactment accept the provisions hereof, and make or authorize the making of the relinquishments herein required, a certified copy of which enactment shall be filed with the Secretary of the Interior.

Respecting the provisions of the third subdivision of section 2 of the substituted or amended bill hereby proposed, I desire to say that in the existing Indian reservations within the State of Wisconsin very considerable annoyance and difficulty have resulted from the State's ownership of and claim to lands in such reservations. In some instances, lands within these reservations have been patented to the State and in other instances the right of the State thereto accrued before the reservations were established. The Indians, in some instances, have selected these State lands for allotments and, notwithstanding the right of the State therein, such lands have been allotted to Indians, so that to-day in Wisconsin there are lands within some of the Indian reservations which have been both patented to the State and allotted in severalty to Indians. It is the purpose of this subdivision of the bill to give the State other lands in exchange for those to which it is entitled in the Indian reservations, and thus bring all the lands within such reservations under the ownership of the United States, so that they may be allotted or otherwise disposed of according to treaty stipulations with the Indians or as may be deemed best in dealing with the Indians.

The act making a grant of swamp lands to the State of Wisconsin and other States is dated, as before shown, September 28, 1850, and directs that the lands to which the State is entitled thereunder shall be ascertained and identified by the Secretary of the Interior "as soon as practicable after the passage of this act." Almost half a century has elapsed since that enactment, and this delay has largely added to the difficulties which naturally attend the adjustment of such a grant. It is believed that the best interests of all concerned not only justify but demand that the adjustment of the grant be completed and the rights of all parties be ascertained and defined within the shortest reasonable time. The substitute or amended bill herein proposed seems to me to furnish the best means of accomplishing this much desired end, and I therefore earnestly recommend its enactment.

Very respectfully,

C. N. BLISS, Secretary.

Hon. HENRY C. HANSBROUGH,

Chairman Committee on Public Lands, United States Senate.

