

## Syllabus.

could, without a breach of trust, apply lands for the benefit of one road that had been granted to aid the construction of another road.

Besides, it is manifest from the face of the act of the Iowa legislature of 1878 that there was no purpose to give the Milwaukee or McGregor road the benefit of any lands not granted to aid in its construction. For the language of that act was that "when said railroad [the McGregor road] shall have been built and constructed to the point of connection with the Sioux City and St. Paul Railroad, then and thereupon the governor of this State shall patent and transfer to said Chicago, Milwaukee and St. Paul Railway Company all the remaining lands belonging to or embraced in said grant *appertaining to their line of railroad*, including all or any part or moiety of the lands in said overlapping limits which, by the terms of said act of Congress, *appertain to their line of road.*" § 3.

It having been finally adjudged as between the Sioux City company and the Milwaukee company that these lands did not appertain to the latter road, there is no foundation for a suit by the Milwaukee company to compel the United States to surrender any title it may have or claim, however such title may have been acquired.

*Decree affirmed.*

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SIOUX CITY AND ST. PAUL RAILROAD COMPANY  
*v.* COUNTRYMAN.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 30. Argued April 16, 17, 1895. — Decided October 21, 1895.

At the time when the United States instituted the suit against the plaintiff in error which has just been decided, the plaintiff in error had no interest whatever in the 26,017.33 acres of land certified back to the United States by the governor of Iowa, pursuant to a statute of that State, and all such land was then subject to entry under the preëmption and homestead laws.

## Opinion of the Court.

THE case is stated in the opinion.

*Mr. George B. Young*, (with whom was *Mr. J. H. Swan* on the brief,) for plaintiff in error.

*Mr. M. B. Davis* for defendants in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

The history of the lands, of which those here in dispute form a part, is fully stated in the opinion just delivered in *Sioux City & St. Paul Railroad Co. v. United States*.

By reference to that opinion it will be seen that the only certificates given by the governor for the benefit of the Sioux City company were certificates showing the construction by it of fifty miles, or five sections of ten consecutive miles each; that, in 1872 and 1873, the Secretary of the Interior caused to be issued patents to the State for 407,870.21 acres, of which 322,412.81 acres were certified by the State to the company, the State retaining within its control 85,457.40 acres; that of the 322,412.81 acres 41,687.52 acres were awarded to the Milwaukee company, as successor in right of the McGregor Western Railroad Company, leaving with the Sioux City company 280,725.29 acres that it has disposed of, and about which no question is here made; that out of the 85,457.40 acres 37,747.89 acres were awarded to the Milwaukee company; and that of the 85,457.40 acres, 21,692.38 acres were those in dispute in *Sioux City & St. Paul Railroad Co. v. United States*, and 26,017.33 acres were formally relinquished and conveyed by the governor of Iowa, pursuant to the act of the Iowa legislature of March 27, 1884. Laws of Iowa, 1884, 78, c. 71; Laws of Iowa, 1882, 102, c. 107.

After this conveyance by the governor of Iowa, the question as to the disposition of these 26,017.33 acres came up for consideration in the Department of the Interior. Upon the hearing of this question, Secretary Lamar said: "The certification by the governor under this act was not made without an effort on the part of the railroad to prevent it. He was enjoined by the company, but the injunction was dissolved, and the cer-

## Opinion of the Court.

tification followed. The company is still opposing reassertion of title by the United States, and is now here, by its president and by counsel, claiming in effect that the grant for the benefit of the company was one of quantity and not lands in place, and that, therefore, the company has earned the lands in question, notwithstanding they are outside of the fifty-mile terminal limits." The conclusion of the Secretary is thus stated: "I must conclude, after a careful examination of the matter as presented, that neither the State of Iowa nor the Sioux City and St. Paul Railroad Company ever had any title under the granting act of 1864 to the lands in question beyond the *prima facie* legal title which would appear from the face of the patents, which, so far as these lands are concerned, were improperly and illegally issued. This title, such as it was, had gone no further than the State, for it had not patented or certified the lands in question to the company. The State having relinquished and reconveyed to the United States such title as it had, I have no hesitation in concurring in your recommendation that the lands so certified and conveyed be restored to entry under the settlement laws of the United States. You will, therefore, treat them as public lands and they will be thrown open to settlement and entry, as are other public lands of the United States." 6 Land Dec. 47, 53.

By an order of the Interior Department made August 4, 1887, these 26,017.33 acres were restored to entry under the preëmption, homestead, and timber-culture laws of the United States. Entries were made September 12, 1887, as follows: By defendants in error, Lewis Countryman and Adam Phillips, respectively, under the homestead laws; and by defendants in error, Washington Royer and Basil D. Battin, respectively, under the preëmption laws.

The railroad company brought separate actions of ejectment in the District Court of Woodbury County, Iowa, against these persons, in which it asserted title to the lands so entered by the respective defendants. By stipulation of the parties the four cases were heard and determined together. Judgment in each case was rendered for the defendant, and upon

## Syllabus.

error to the Supreme Court of Iowa each judgment was affirmed.

For the reasons stated in the opinion in *Sioux City & St. Paul Railroad Company v. United States*, just decided, it must be held that the railroad company did not have, at the time those actions were instituted, any interest whatever in the 26,017.33 acres, or any of them, certified back to the United States by the governor of Iowa pursuant to a statute of that State. It had previously received its full complement of public lands under the act of May 12, 1864, on account of road certified by the governor of the State as having been constructed in accordance with the requirements of that act.

The judgment, in each case, is

*Affirmed.*

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SWEET *v.* RECHEL.

## ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 18. Argued December 14, 1894. — Decided October 21, 1895.

The authority of a legislature to enact provisions for taking private property for public use rests upon its right of eminent domain; and it is a condition precedent to its exercise that the statute conferring the power make reasonable provision for compensation to the owner of the land.

Unless the constitution of the State in which the lands are situated requires payment or tender of payment for land so taken for public use before the rights of the public therein can become complete, a statute which authorizes the taking of the property for public use and directs the ascertainment of the damages without improper delay and in a legal mode, and which gives the owner a right to judgment therefor, to be enforced by judicial process, is sufficient to transfer the title.

The act of the legislature of Massachusetts of June 1, 1867, c. 308, to enable the city of Boston to abate a nuisance, and for the preservation of the public health in said city, and which provided for the taking of certain private lands therein, and for their improvement, filling up, and complete draining, so as to abate an existing nuisance and preserve the health of the city, and which further provided for the payment of the cost of the lots so taken through judicial proceedings, was within the