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HISTORY AND MANAGEMENT OF LAND GRANTS FOR EDUCATION IN THE NORTHWEST TERRITORY

(OHIO, INDIANA, ILLINOIS, MICHIGAN, WISCONSIN)

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PREFATORY NOTE.

is paper was prepared when the writer was studying in chool of Political Science of the University of Michi- nd was presented to the Faculty of the Department of ture, Science, and the Arts of that institution, as a for the degree of Doctor of Philosophy. In collecting ial for the paper the writer visited Columbus, Indian- Chicago, Lansing, and Madison, and in no case has nation received at second-hand been used where origi- pers and documents were obtainable. All of the nces given in the foot-notes, with a single exception, been made after a personal examination of the pas- referred to, and it is believed that the list of authorities at the end of the paper embraces every book of im- ce bearing on the subject.

abstract of the paper was read by Professor Charles ll Adams before the American Historical Association, irst public meeting, in Saratoga, September 1, 1884.

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tional, proper, and wise from the standpoint of the government, and as certain to promote the general welfare of the people.[1] While the proposition never obtained the approval of Congress, the report is remarkable for its broad view of the relations of the national government to the education of the people. A later generation has advanced one step further in claiming that any national revenues may be used in this cause, but no later advocate of a broad construction of the powers of Congress over education has adduced a single valid argument which was not put forth in this report in 1825.

The policy of setting aside a certain section in each township for schools, regardless of the character of the land, gave rise to some inequalities in the endowment of the townships. In many instances the section fell upon poor or worthless land which could contribute little toward supplying school facilities. So long as each township derived its sole government support for learning from its own reserved section, the quality of the land was an important element in determining the character of the schools in the township. Many attempts were made to induce Congress to allow townships having an inferior section to exchange it for better land. Congress in considering the first of these petitions wisely declined to take a step which would have resulted in endless confusion, and have given rise to incessant demands for exchange, and opportunities for fraud.[2] This policy has been departed from on one or two occasions, but only for a single township in each instance.[3] In the States admitted since 1836 the proceeds of all sales of school lands have been consolidated into one fund, and the income distributed *pro rata* over the whole State. In this way the inequalities produced in the older States have been avoided, and all the people derive equal benefit from the grant.

About the year 1840 the States of Arkansas and Missouri memorialized Congress on the subject of draining and reclaiming a large tract of swamp lands lying along their common border. They represented that if Congress should

[1] State Papers, 4 Public Lands, 750. [2] 4 Cong. Debates, 479.
[3] Illinois School Reports, 1881–82, cxxxi.

not deem it proper to enter upon such work itself, they would undertake and complete the task provided the land in question was given to them as a partial compensation for the expense involved. For some time these memorials, renewed annually, obtained no response from Congress. At length, in 1847, the Commissioner of the General Land Office suggested that "such swamp and other lands as are from local causes unfit for settlement and cultivation in their present condition" be granted by Congress to the States in which they lie, "in order that such portions of them as may be reclaimed may be made productive and available to such States for purposes of education, internal improvement, and such other public uses as those States may deem best calculated to advance their own peculiar interests."[1] In 1848 the usual petitions of Arkansas and Missouri were referred to a select committee who reported a bill making a grant to those States.[2] This, however, failed to become a law. In the next Congress a bill was introduced which proposed to grant to the State of Arkansas, "to enable her to construct the necessary levees and drains," all the unsold swamp and overflowed lands in the State "made unfit thereby for cultivation." It was supposed that the sale of the lands when drained would in a great measure reimburse the State for the expenses of reclaiming them. In the committee to whom the bill was referred, its provisions and benefits were extended, "to each of the other States of the Union in which such swamp and overflowed lands may be situated."[3] With this broad extension it was passed in 1850.[4] The act required that "all legal subdivisions, the greater portion of which is 'wet and unfit for cultivation,' should be included" in the grants to the States, the only requirement in return being that the proceeds in any way de-

[1] Document B, 32.
[2] The reasons adduced by the committee were that the work was needed, that Congress would not and could not do it, and that from a mere pecuniary standpoint the United States would lose nothing, for the neighboring lands, then undesirable, would by the improvement be greatly increased in value —Document C.
[3] 21 Globe, 232. [4] 9 U. S. Stat., 519.

rived from them should be used, "as far as necessary," in reclaiming the lands. By this almost unexpected act the several States of the Northwest Territory received a valuable gift.[1] In these States much of the so-called swamp land, granted by the broad terms of the act, required little drainage, and a still greater amount, owing to the nature of the land, could be reclaimed at slight expense. These facts made it evident that a large sum above the cost of drainage would be derived from their sale. The law laid no restrictions upon the disposition of such a surplus, and several of the States, acting upon the suggestion of the Land Commissioner,[2] soon enacted that the whole or a portion of the net proceeds of the lands should be devoted to the support of common schools. Thus, though Congress gave no evidence of an intention to increase the endowment of education when granting the swamp lands,[3] the subsequent action of the States themselves brings the consideration of the management and disposition of the lands within the scope of this paper.

While Congress was engaged with the swamp-land bill, the establishment of schools or colleges whose special object should be to afford instruction in methods of agriculture and all kindred subjects, was beginning to attract attention in some of the Western States. The possible benefits of such schools were seen and urged by prominent agriculturists. Soon the Legislatures of the States became interested in the matter. The people remembered the great impulse and valuable assistance given by Congress to the cause of common-school and academical instruction, and it was not long before the idea of obtaining land grants for the endowment

[1] Prior to June 30, 1880, Ohio had received under this law 25,640 acres; Indiana, 1,257,588 acres; Illinois, 1,454,283 acres; Michigan, 5,659,217 acres; Wisconsin, 3,071,459 acres.—Document A, 222.

[2] *Supra*, 21.

[3] The possibility of a surplus revenue accruing to the States was known to the committee who reported the bill to Congress in 1850. In their report they quoted with approval the suggestion of the Land Commissioner regarding the use which the States might make of the proceeds of the lands.—Document D, 3. In the debates in Congress the question of a surplus, or its disposition, seems not to have been brought forward.

of these proposed agricultural schools presented itself as a proper and easy method of supporting them. In 1850 the Legislature of Michigan asked Congress for a grant of 350,000 acres of land for the establishment and maintenance of agricultural schools within the State.[1] Congress took no action upon the petition.

During the next few years the general interest in the subject increased. At every session of Congress memorials, resolutions, and petitions were received from individuals, from Boards of Agriculture, from Farmers' Conventions, and from State Legislatures asking for the national endowment of agricultural schools in each of the States. For several years these memorials received no attention, and there was an evident disinclination, even on the part of those members of the National Legislature who were friendly to the project, to urge its consideration. The reason for this is not far to seek. In 1854 President Pierce had vetoed a bill granting a large amount of land to the States for the establishment of asylums for the care of the indigent insane. The reasons given for the veto were that the care of the insane was a State matter, and that a grant of lands for such a purpose was unconstitutional.[2] Passages in the veto message made it certain that the President would also veto any measure which might come before him for the appropriation of lands for educational purposes. The friends of the project, therefore, allowed it to slumber during his administration.

In 1857 James Buchanan became President, and in the first session after his inauguration a bill was introduced in the House of Representatives[3] to grant to each State in the Union, for the maintenance of agricultural schools, a quantity of land equal to twenty thousand acres for each senator and representative in Congress to which the State was entitled. In any State where there were public lands, the lands granted to that State were to be selected therefrom; to every State in which the public lands did not equal the proposed grant, land scrip was to be issued to make up the deficiency. This

[1] Mich. Laws, 1850, 462. [2] Senate Jour., 33d Cong., 1st Session, 363–369.
[3] Globe, 35th Cong., 1st Session, 32.

question his statement concerning the roads in Illinois, it is true that the proposition to devote the proceeds to education had much in its favor. This novel and important amendment was unanimously adopted.

While two townships were granted for higher education, the appropriation was made in such terms as to permit the State to select at least one half of the lands in small tracts wherever a choice piece might be found. The older States had been compelled to locate each township as a single tract. As it is rare that all the land in any one township is valuable, the result was that Illinois obtained much better lands for higher education than could have been selected under the old requirement. The saline lands in Illinois, though subsequently sold, were not used for purposes of education.

(*d*) MICHIGAN.

In 1835 the Territory of Michigan held a convention and framed a State constitution. This constitution was adopted and the machinery of State government set in motion after application to Congress for admission into the Union, but before Congress had acted upon the application. The action of the territory was denounced by many members of Congress, who regarded the consent or authority of the United States as an essential preliminary step in the formation of a State government. The justification of the action of Michigan was found in the organic law of the territory. The ordinance of 1787 provided that the States formed from the Northwest Territory should be admitted upon the attainment of sixty thousand inhabitants. The population of Michigan exceeded that number. That she could not be admitted as a State without the action of Congress may have been true. That she had the right to frame a constitution and prepare for admission without the consent of Congress was a proper interpretation of the ordinance. The "irregular" proceedings of Michigan were used in Congress as a cloak to cover other deep-seated objections to her immediate admission as a State. These are not, however, germane to the present subject.

A dispute as to the boundary line between Michigan and Ohio also introduced a disturbing element into the question. At length an act was passed for the admission of the new State on the acceptance by a convention of the people of certain boundary lines on the south, in return for which a large tract between Lake Michigan and Lake Superior was to be attached to Michigan.[1] So little were the mineral resources of the Lake Superior region known at that time, that the first convention rejected the propositions, thinking a tract a few miles in width along the southern border of more value to the State than the wilderness of the upper peninsula. A second convention, called and held without any legal authority,[2] accepted the conditions. Congress, assuming that this convention was a legally organized body, admitted the State in 1837.

The ill feeling engendered in Congress by these disputes militated against the desires of the people of the State concerning education. The convention which framed the constitution in 1835, reversing the usual order of things, adopted an ordinance submitting several propositions to Congress for their approval or rejection.[3] Of the propositions touching educational matters the first provided that the sections number sixteen should be granted "to the State for the use of schools." This seemingly slight change from the usual terms[4] was made designedly and was of great importance. In the other three States the funds arising from each school section were required to be kept separate. While some townships had accumulated large funds, others, owing to poor lands or mismanagement of the proceeds, had little or nothing. By the proposed change the proceeds of all school lands in Michigan would be consolidated into one State school-fund. This could be more easily, safely, and economically managed, while the income would be distributed *pro rata* to all parts of the State, thus insuring uniformity and equality in school facilities.

[1] 5 U. S. Stat., 49. [2] Campbell, 477, 478.

[3] Journal, Mich. Constitutional Convention, 1835, 219, 220.

[4] In the case of Illinois the law provided "that section number sixteen in every township shall be granted to the State *for the use of the inhabitants of such township* for the use of schools."—3 U. S. Stat., 428. In Indiana each school section had been granted directly to the people of the township in which it lay.—3 U. S. Stat., 289.

The second proposition secured the seventy-two sections or two townships of university lands to the State. The saline lands were to be granted to the State, unconditionally, and the usual five per cent. of the proceeds of public lands was to be distributed essentially as in Illinois—two per cent. for building roads, and three per cent. "to the encouragement of education."[1] Should Congress make these and other specified gifts, the State agreed to exempt public lands from taxation. Since the United States had ceased selling lands on credit, and the necessity and object of the exemption for five years no longer existed, the State, while conforming to the compact of 1787, omitted the usual clause providing such exemption.[2]

These propositions were rejected by Congress. Some of their features, however, were embodied in a series of propositions, afterward submitted by Congress to the State Legislature,[3] and accepted by the latter.[4] In this way the State succeeded in obtaining some of the desired modifications in the usual educational endowment provided for new States. The school lands were granted directly to the State as had been desired. The grant of the saline lands was limited to the power to lease them.[5] The five-per-cent. fund was to be used wholly for internal improvements, in obedience to older precedents, thus leaving Illinois as the only State, up to that time, in which a portion of the five-per-cent. fund was devoted to educational objects.

The conditions on which these grants rested were the same as those offered by the propositions of the constitutional convention—the State was to agree not to tax public lands, nor interfere with the primary disposal of the soil.[6]

[1] Journal, Const. Conven., 1835, 220. [3] 5 U. S. Stat., 59.

[2] *Ibid.* [4] Mich. Laws, 1835–6, 57.

[5] In 1847 permission was given to the State to sell these lands (9 U. S. Stat., 181), the State Legislature having represented to Congress that the lands "in their present form are unavailable and unproductive for the objects intended by the grant."—Mich. Laws, 1845, 154.

[6] This is almost the identical language of the ordinance of 1787.

This last innovation was strenuously opposed in Congress, where it was immediately perceived that it destroyed the *quid pro quo* appearance of the contract, on which many had become accustomed to lay stress in developing their theories of the powers of Congress under the Constitution. The change did operate to the advantage of Michigan as compared with Ohio, Indiana, and Illinois (and all other States admitted after 1802), but in the principle there was no change. Now as before the requirement was that public lands should not be taxed until the title had passed to individuals—until they had ceased to be public lands. The change in the system of selling lands produced the corresponding change in the form of these conditions. The new features of the propositions submitted at the admission of Michigan, have been used in the case of all States admitted since.

(*e*) WISCONSIN.

In 1836 the region now embraced in Wisconsin was detached from Michigan,[1] and formed into a separate territory.[2] In the laws reserving seminary townships for the Northwest Territory[3] the creation of a fifth State seems not to have been contemplated and no reservation was made for it. In 1838, however, on application of the territory, seventy-two sections or two townships were set apart for the use and support of a university within the territory.[4] When the territory applied for admission as a State in 1846 the usual propositions were offered to the constitutional convention.[5] In this convention the subject of education received special and unusual attention. The constitution which was framed by the convention provided that all lands granted to the State for educational purposes (except the university lands), all grants whose purpose was not specified, the five hundred thousand acres for the promotion of internal improvements, to which the State was entitled under a previous law, and

[1] Until 1818 it had formed a part of Illinois, but was detached therefrom and joined to Michigan, when Illinois became a State.

[2] 5 U. S. Stat., 10.

[3] *Supra*, 18.

[4] 5 U. S. Stat., 244.

[5] 9 U. S. Stat., 56.

the five per cent. of the proceeds of the public lands should form a permanent school fund.[1] This proposed use of the internal-improvement lands and the five-per-cent. fund, differed from that designated by Congress. The change proposed by the State could become operative only with the consent of the United States. The experience of Michigan showed the difficulties in obtaining the favorable action of Congress in such matters. However, the convention urged upon the National Legislature the advantages likely to result from the change. In 1848 Congress consented to the provisions of the constitution.[2] Wisconsin thus started out with a school endowment far greater in proportion to the area of the State than that of any of its older sisters. Had the wisdom and care subsequently shown in managing the grant been equal to the zeal displayed in obtaining it, the State would to-day be surpassed by no other in the amount of its educational funds.

The seventy-two sections of salt-spring lands included in these grants were never selected. In their stead Congress, in 1854, authorized the selection of an equal amount from any public lands in the State "for the benefit and aid of the State University."[3] This provision doubled the land endowment of the State University, which had received the benefit of the original seminary funds.

[1] Constitution, Art. X., Sec. 2. [2] 9 U. S. Stat., 233. [3] 10 U. S. Stat., 597.

due the State from these lands. The United States Supreme Court has recently denied the petition, and decided that lands located with bounty warrants are not within the scope of the act granting the three per cent.[1]

(*d*) MICHIGAN.

While the legislative power in the Territory of Michigan remained, in accordance with the provisions of the ordinance of 1787, in the governor and judges, no care was given to the subject of the school lands.[2] In 1824 the people of the territory elected their first local Legislature. In his message to that body the Governor of the territory called attention to the school reservation, and suggested "its immediate preservation and ultimate application in conformity with a well-digested system." He intimated, however, that it was a question whether—without the express sanction of Congress—the territorial Legislature had authority to do any thing more than protect the lands from waste.[3] In consequence of this suggestion the legislative council addressed a memorial to Congress asking for authority "to take the charge and management of the said lots."[4] In 1828 Congress granted the prayer of the memorial, and authorized the Governor and council to lease them for any period not exceeding four years[5] in such manner as to render them productive and most conducive to the object for which they were designed.[6]

[1] 16 Chicago Legal News, 214. The volume of official reports containing this decision is not yet issued.

[2] No surveys of the territory had been made until after the War of 1812, and until then even the location of sections sixteen was not known.

[3] Journal Legislative Council, First Sess., First Council, 12.

[4] *Ibid.*, 88.

[5] The reasons for this short period are given in the report of a committee in Congress as follows: "Strong doubts are entertained of the propriety of authorizing a territorial Legislature to grant leases for a term of time beyond [that for] which the territorial government will probably exist. And in conferring the authority asked for upon the Legislative Council of Michigan, it is believed that it should be done with a limitation to a short period of time."—State Papers, 4 Public Lands, 762.

[6] 4 U. S. Stat., 314.

In the same year a territorial law was adopted empowering each township having twenty electors to elect trustees, who should lease the school section for not more than three years, the proceeds to be applied "towards the pay of school teachers in said township."[1] It is worthy of note that this earliest law of Michigan contained the wise provision not found in the laws of the other States, that no resident upon or lessee of any school section should be eligible to the office of trustee. In the next year more definite provision was made for the distribution of the proceeds of rents, and the Governor was authorized to appoint a Superintendent of Common Schools to take charge of the school lands in all townships where trustees had not been elected. His authority was confined to protecting them from waste and injury. All trustees were to report to him annually the condition of their school lands, rents, etc., and he was to report to the council.[2] No Superintendent was appointed, but the law is noteworthy as the first in the whole Northwest Territory providing for one central authority to manage all the school lands. It foreshadowed the eventual departure from the system in vogue in the three oldest States of the territory—a change from local to central management. In 1832 the duties of the township trustees were transferred to the township commissioner of schools, thus doing away with one needless set of officers.[3]

In the general revision of the laws in 1833 the powers of the commissioners remained unaltered. The provision for a Superintendent of Common Schools was revived, and he was given the power to lease school lands in any township where no commissioners were elected.[4] Still the Governor did not appoint any one to the office, perhaps because the salary (twenty-five dollars a year and official expenses) was not sufficient inducement to any one to accept the position.

[1] 2 Territorial Laws, 695.

[2] *Ibid.*, 774, 775.

[3] 3 Territorial Laws, 950. In addition to the former provisions for leases, these commissioners were by this law authorized "to lease . . . or to manage and conduct the same in any other way they shall consider best calculated to enhance the value thereof,"—that is, to give improvement leases.

[4] *Ibid.*, 1012–1020.

During these years many of the school lands were leased by the township authorities and produced small incomes.

The movement toward a State government began in 1832, and finally culminated in 1835, in advance of any authority from Congress, in the meeting of a convention and the adoption of a State constitution. An account of the subsequent negotiations and the action of Congress, so far as concerns the question of education, has already been given.[1] It is only necessary to repeat here that the sixteenth sections were granted in 1837 "to the State for the use of schools." This change from the terms of the ordinance of 1785 and the act of 1804 enabled the Legislature to assume the entire management of the lands and funds, without the intervention of any local authorities. It also obviated the necessity of keeping separate the fund of each township, and permitted the whole of the proceeds to be consolidated into one State fund. It removed all occasion for a numerous crowd of local officials, greatly simplified the management of the trust, and lessened expenses. The question of the right of Congress thus to make a change which deprived the inhabitants of the individual townships of the exclusive avails of their own school section was often debated in the early days of the State, but is hardly worth discussion now.[2]

The constitution of 1835 provided that "The proceeds of all lands granted by the United States to this State for the support of schools, which shall hereafter be sold or disposed of, shall remain a perpetual fund, the interest of which, together with the rents of all such unsold lands shall be inviolably appropriated to the support of schools throughout the State."[3] It also provided for the appointment by the Governor of a Superintendent of Public Instruction whose duties should be defined by the Legislature.[4] The first Legislature passed an act under which the Superintendent was given immediate charge of all lands in townships where no commissioner had been elected.[5] He was also instructed to draw up and report to the next Legislature (1) a system for the organization and establishment of common schools

[1] *Supra*, 38. [2] See Shearman, 15. [3] Article X., Sec. 2.
[4] Article X., Sec. 1. [5] Mich. Laws, 1835–6, 49.

and a university; (2) an inventory of all educational lands and property, their condition and location; and (3) his views relative to the further disposition of the lands. On the same day that this act was passed the Governor nominated to the office Rev. John D. Pierce, to whom more than to any other man is due the excellent school system of Michigan.

In pursuance of his instructions the Superintendent in January, 1837, submitted an elaborate and comprehensive report covering all the subjects referred to him. So much of the report as touches upon the management of the land grant demands attention. He recommended that the charge of all the lands and the investment of the moneys arising from them should be given to the Superintendent, subject to legislative direction. Starting with the assertion that "that disposition of the school and seminary lands will be the wisest and best which will ultimately yield to the State for the support of public schools the greatest amount of revenue," he discussed the relative advantages of leasing and selling.[1] His conclusion was that the lands should be sold "gradually as the wants of the country and a sound discretion may seem to warrant." If by this it was also meant that unsold lands should be leased, as far as practicable, on short leases, the general theory of the Superintendent was wise. Its weak point lay in the fact that the "sound discretion" presupposed is too rare a quality to afford any absolute security that it will be exercised when needed.

Whether the immediate sale of any portion of the lands was expedient rests upon practical considerations. The country was then in a period of speculation. Immigration was large, prices were high, and real estate was selling rapidly. These facts undoubtedly influenced the views of the Superintendent. Then too, in some of the more thickly settled portions of the State the school lands had under previous leases received some degree of cultivation, and under the existing demand were sure to command high prices. On the whole it was perhaps wise to dispose of a limited amount of the lands, and to lease the remainder until they should reach a value at which sound wisdom would advise their sale.

[1] Senate Journal, 1837, Appendix, Document 7.

The detailed plan presented by the Superintendent seemed likely, if adopted, to produce a large ultimate fund. He proposed that a minimum price of five dollars per acre be placed upon the land and that only a limited amount be put upon the market at that time.[1] He would invest the proceeds by loaning them to such of the counties as desired to borrow, in sums of five or ten thousand dollars at seven per cent. interest, any surplus above the needs of the counties to be loaned to individuals on mortgages.[2]

The Legislature studied this report with great care, and approved the main features of the plan proposed. In March, 1837, a law was adopted covering the whole subject. The Superintendent of Public Instruction was authorized to take charge of all educational lands in the State and to make sales to the amount of one and a half million dollars, at public auction for not less than eight dollars per acre.[3] Loans of the proceeds were to be made as suggested by the Superintendent, and any unsold lands were to be leased for not more than three years. The income was to be distributed among the townships of the State in proportion to the number of children between five and seventeen years of age.[4] The law also required the Superintendent to make in each annual report a statement of the condition of the university and school funds.[5] During the next nine months over thirty-four thousand acres were sold at an average price of a little less than twelve dollars per acre.[6]

[1] *Ibid.*, 70.

[2] His estimate of the amount and value of the lands is interesting for purposes of comparison. Of the 1,148,160 [1,067,397] acres he considered one fourth as waste land. The remainder in the lower peninsula he graded into several classes, worth from four to fifteen dollars per acre respectively, while those in the upper peninsula "will bring one million dollars." The total estimated value was $4,850,000. He cautiously added: "Much must depend on the adoption of wise councils [*sic*] and good management."—*Ibid.*, 71–73.

[3] Purchasers were to pay one fourth in cash and the remainder at stated periods, with interest. As amended three months later one tenth only was to be paid in cash and the balance in nine annual payments with interest. Security was to be taken for future payments when it was deemed necessary.—Mich. Laws, 1837, 316. [4] *Ibid.*, 209. [5] *Ibid.*, 213.

[6] Senate Docs., 1838, 43, 44. The Superintendent's "safe estimate" this year was that the ultimate fund would be $5,983,264.

This auspicious beginning afforded no premonition of the disappointment in store for those who believed that a happy and permanent solution of the land problem had been found. The law had not been in force a year before the first attempt was made at its overthrow. A petition was presented to the Legislature in 1838 from the inhabitants of one township in the State praying for a reduction of the price of lands in that township. The ground of the plea was simply that at the established price the lands would not sell immediately, whereas their speedy sale and occupation was a matter of material interest to the township. No mention was made of what might be for the advantage of the schools! No such minor matter was thought of by the good people who signed the petition. The Legislature declined to inaugurate a system of special laws for the benefit of particular localities, and refused to grant the petition.[1] At this session the Legislature repealed the law authorizing loans to individuals in the evident expectation that the counties would desire to borrow the whole.[2]

Troubles far more serious soon arose. The sales decreased during the next two years, and the average price received was not far above the minimum established by law.[3] Many of the earliest purchasers also failed to pay the instalments of purchase money and interest due under their contracts.[4] A single cause was responsible for all these things. The financial embarrassment following the crisis of 1837 was general throughout the country. Prices had fallen and every one had difficulty in meeting his obligations. The Legislature in 1839, at the suggestion of the Governor, extended the time for the payment of instalments of purchase money due under previous contracts.[5] This act, suggested by good motives, was the beginning of a long line of relief

[1] The reasons given in the Legislature for denying the petition were that though those particular lands might not then command the legal minimum, they soon would, and that the township must "submit to a temporary inconvenience which will ultimately be productive of the general good."—House Documents, 1838, No. 21. [2] Mich. Laws, 1838, 233.

[3] Senate Documents, 1839, 232; 1840, I., 22, 23.

[4] Senate Documents, 1839, 230. [5] Mich. Laws, 1839, 13.

legislation which ended in dire disaster to the school funds. In the next year the Legislature supplemented it by extending the time for the payment of interest then due on the land contracts, thereby declaring that purchasers should not yet forfeit their lands even though they made no payments for a time.[1]

The other disappointment—the striking decrease in the sales—was a direct result of the financial depression, but was considered by a few members of the Legislature in 1839 as affording ground for a reduction in the established price. Though the project was urged by numerous petitions, it found little favor in the Legislature.[2] A year later the matter again came up. Another instalment of petitions was forwarded to the Legislature. This time, however, the question was of a reduction in the price not only of unsold lands, but also of those which had been sold and on which partial payments had been made. It is needless to say that this last scheme was vigorously urged by the purchasers. The committee to whom the projects and petitions were referred, acknowledged that there had been a great depreciation in the value of land, but thought it inexpedient to reduce the price of any unsold land. With reference to the lands already sold under contract they denied that it was properly within the power of the Legislature to afford relief to those who had voluntarily though perhaps unwisely purchased at high prices.[3] The entire project failed for the time, though its advocates were many.

In 1840 no lands were sold for more than the minimum price, and it appeared that nearly one third of those previously sold had been forfeited for non-payment of the instalments

[1] Mich. Laws, 1840, 138.

[2] From the report of a committee I find that the eminently sound reasons for making no reduction were that in the settled parts of the State even the poorer lands were selling for more than the minimum price, that those unsold would soon be worth that price, and that a reduction under such circumstances would be an injustice to the schools. Still the committee took the ground only that a reduction "at present" would be unadvisable, a position which boded evil in the future.—House Documents, 1839, 188.

[3] House Documents, 1840, II., 529, 530.

due.[1] The Superintendent of Public Instruction now recommended that the price of unsold lands be reduced to five dollars per acre.[2] If immediate sale was the only object to be attained, the price was undoubtedly too high. The Superintendent had, however, several years before correctly stated that the true policy was that which would ultimately produce the greatest amount of revenue. The low price and the small demand for real estate from 1838 to 1841 was mainly a temporary result of the panic of 1837. When the depression had passed, prices again rose. Was this reduction then either necessary or expedient? The Superintendent went even further in his suggestions. While he did not openly advocate relief to those who had already purchased, he expressed his opinion "that a reduction in many cases would be both equitable and just."[3] Assuming that some such relief measure was likely to be adopted, he contented himself with suggesting points to be covered by it, instead of showing that it was no part of the duty of the Legislature to relieve the embarrassments of purchasers at the expense of a trust fund.

With these recommendations before them, reinforced by numerous petitions, the Legislature lost its firmness. The minimum price of unsold lands was reduced to five dollars.[4] For the relief of past purchasers they enacted that any one who by the end of the next year should have paid twenty per cent. of the purchase money under his contract and all interest then due should not be required to pay any further instalment of principal, but simply annual interest on the unpaid balance.[5] By suspending the payments of principal it was hoped that the interest would be paid without trouble or delay. These hopes were destined never to be realized. The purchasers having gained ground at nearly every move,

[1] Senate Documents, 1841, I., 322, 375, 389.

[2] "That the minimum price of unsold lands is too high there can scarcely remain a doubt. Time, which corrects opinion, has shown that five dollars per acre for school lands is as high as they can be expected to sell."—Senate Documents, 1841, I., 320. [3] *Ibid.*, 321. [4] Mich. Laws, 1841, 157.

[5] *Ibid.* To all future purchasers the same privilege was extended, save that they must pay twenty-five per cent. of the purchase money and interest on the balance.

were determined to accept nothing but a complete surrender to their demands.

In 1841 a new Superintendent of Public Instruction was appointed. His first report showed painful arrears in the payment of both principal and interest, and developed the fact that many who, under the terms of their contracts, had long since forfeited their lands, were still in undisturbed possession of them, though according to the Superintendent they never intended "to pay another dollar either of interest or principal."[1] In view of all these facts and the precedent established by relief measures already noted, he urged either a rigid enforcement of the implied intention of the relief law of the previous year by declaring forfeited all lands on which twenty per cent. should not have been paid by the date fixed in that law, or that the Legislature should adopt a system of graduated reduction of prices on all lands already sold.[2]

The prayers for relief again poured in, and the time had finally come when this trust fund was to be sacrificed to the clamors of interested parties, on the sole and untenable ground that "the State had driven a hard bargain with the parents of its wards,"[3] which it would be "legal extortion" to enforce.[4] A law was enacted in 1842 providing that the associate judges should, on application of the purchaser, examine any school land purchased at eight dollars an acre or over, and appraise its value in its actual condition at the time when it was first bought. The difference between this appraised value and the contract price was to be credited to the purchaser.[5] The only proviso was, that the reduction should not be more than forty per cent. of the price originally named in the contract. This remarkable law permitted every one who had purchased school lands between 1837 and 1841 to obtain his title by paying a lower price than he had voluntarily offered. Under its provisions the school fund was lessened over one hundred and seventy-five thousand dollars. The Legislature was, indeed, generous. The law reminds one of the provisions in Ohio by which lessees were

[1] Joint Documents, 1842, 293. [2] *Ibid.*, 294. [3] Smith, 18.
[4] Gregory, 7. [5] Mich. Laws, 1842, 44.

permitted to purchase lands at old and low valuations. All that the most tender-hearted and weak-headed sympathy could demand would have been yielded by permitting past contracts to be modified according to the true value of the land at the time of appraisement.[1]

The victorious purchasers hastened to take advantage of this munificent gift, and many of them boasted openly of the bargains they had made at the expense of the schools.[2] In the first year alone 26,117 acres, or one third of the amount sold up to that time, which had originally brought an average of over eleven dollars per acre, were reduced about thirty-six per cent. in price, and purchasers were credited over one hundred thousand dollars by virtue of the reduction.[3] By January, 1843, the amounts originally contracted to be paid had been reduced by forfeitures and relief legislation from $711,000 to $474,000,[4] and the hopes entertained in past years were fast vanishing.[5] A rigid provision for forfeiture in cases of non-fulfilment of contracts, adopted in 1842, brought prompter and fuller payments of principal and interest. The harm had, however, been done, and, dismayed by the results of the "retrospective" reduction of prices, the friends of education indulged in vain regrets. Too late did the evils attendant upon all relief legislation make themselves known.[6] In later years this page

[1] The law also permitted any previous purchaser to surrender any portion of the land he had bought, and retain the balance at the original price per acre. All previous payments were to be applied only in the part retained. This of course threw back upon the State only the poorest lands, and enabled the purchasers to pick out choice pieces which, taken by themselves, were unquestionably worth more than the contract price.

[2] Joint Documents, 1843, 220. [3] *Ibid.*, 211. [4] *Ibid.*, 219.

[5] "The seventy-eight thousand acres of school lands, once sold at an average price of nine dollars per acre, . . . have dwindled to sixty-nine thousand at an average price of less than seven dollars."—*Ibid.*

[6] "The too high prices of other years, sad reverses of fortune, and the consequent failure to fulfil contracts, encouraged, too, beyond any doubt, by hopes of annual relief, have placed our educational funds in their present condition. The first relief-precedent has occasioned all the mischief; for subsequent legislation has grown out of that. If the condition of forfeiture wisely put in the contract had been rigidly enforced, the consequences to individuals would have been less disastrous, and public disappointment less tantalizing. Certainly the forfeiture would at least have ensured prompt settlements."—*Ibid.*, 220.

from the history of the school fund has been screened from close observation, and the matter so glossed over that the whole transaction is made to appear a simple act of justice, the omission of which would have been a blot upon the honor of the State.[1]

Another cloud now loomed up. On some of the loans made to counties and to individuals, no interest had been paid for some time, and it began to appear that the little fund left from the sacrifice was destined to further diminution.[2] There was also found an apparent deficiency in the funds, owing to the looseness with which the accounts had been kept.[3] No charge of dishonesty was made, nor could any such accusation have been maintained for a moment. But the past losses, and the probability that others would occur, drew attention to this phase of the trust-fund problem.

From the organization of the State the Superintendent of Public Instruction had been given charge of two distinct kinds of work. Appointed for his ability as an educator to look after the workings of the schools, he was also obliged to assume the management of a vast body of lands, to recommend laws, to sell lands, and to invest funds,—a work requiring the experience and constant care of a thorough business man. To attend to either of these two duties would have taxed any man; to fulfil both properly was impossible. In the very first year after the office was created, the Governor had suggested the separation of the two lines of labor, and every succeeding Governor in every annual message had advocated the same change. The suggestion had been made at first on the ground simply that the duties imposed on the Superintendent were too arduous, but in 1843 the tone was changed, and the intimation was plainly given that the fund would be managed more carefully if entrusted to other hands.[4] Minor evils undoubtedly existed, for which neither

[1] See, for example, the elaborate defence of the measure in Gregory, School Laws of Michigan, 1859, 6, 7.

[2] "A part of the money already received, it is feared, has been loaned upon insufficient security, and losses from other causes are apprehended."—Governor's Message, Joint Documents, 1843, 12.

[3] *Ibid.*, 216.

[4] "It is believed that the condition both of the common school fund and the university fund might be improved, and their productiveness increased by committing their care to some other officer than the Superintendent of Public Instruction. . . . The interests of the State are not sufficiently protected by existing enactments in relation to the fiscal duties of the Superintendent. . . . The Superintendent makes important sales, and from time to time receives large sums of money, as well of principal as of interest, while no documents exist accessible to other State officers by which the condition of his accounts can be ascertained. Years and years may elapse before even his successor can know his defaults."—Joint Documents, 1843, 14–15.

the Superintendent nor the system were directly responsible,[1] but the chief cause of much that had gone wrong was the law imposing upon the Superintendent, whose entire attention was needed in setting in motion an excellent school system, an additional task for which he was not expected to have special qualifications, and certainly had little time.

The Legislature finally recognized this, and in 1843 created the office of Commissioner of Lands, to whom was entrusted the management of the school, university, and other State lands. The books of the Superintendent of Public Instruction were turned over to him, and he was to conduct all sales of lands. Payments of principal and interest on the school or university fund were thereafter to be made to the State Treasurer.[2] A system of accounting between the Auditor, Treasurer, and Commissioner was adopted, which served as a mutual check and preventive of error.

The Commissioner devoted himself arduously to his work. The accounts were straightened out as far as possible, and the records of past transactions put in proper form. The condition of the unsold lands was also inquired into and the discovery made that many of them had been occupied for years by "squatters" who paid no rent. Few, if any, lands had been leased by the Superintendents. In view of these facts the Legislature authorized the Commissioner to instruct the supervisors of the different townships to lease any unsold, improved lands from year to year.[3] In order better to protect the State in case of forfeitures of contracts, all future purchasers were required to pay one fourth of the purchase price at the time of purchase, instead of one tenth as had

[1] *Ibid.*, 223, 224. [2] Mich. Laws, 1843, 44–52. [3] Mich. Laws, 1844, 86, 87.

been required before. The improvements on any unsold lands were thereafter to be appraised by the township supervisors, and the minimum price of such lands was to be increased accordingly.[1]

In 1843, and again in 1844, numerous petitions were presented asking for a further reduction of the price of all unsold educational lands. The project was urged in a most plausible form, but the Legislature did not yet permit itself to make another move in this direction. Many of the members were determined that no rash step should be taken to hasten sales when by a little delay the lands would be rapidly taken at the existing prices. They looked upon the rights and privileges of succeeding ages as equally sacred with those of their generation.[2] How soon were these correct but unpopular notions overridden!

In 1845 the Commissioner recommended that the State internal-improvement warrants be received in payment for school lands.[3] As these warrants bore interest the adoption of the suggestion would have enabled the State to redeem its outstanding obligations while it ensured to the schools an income on the fund. This scheme was not formally adopted, but the Treasurer was authorized to pay seven per cent. annual interest on certain treasury notes and scrip taken in payment for school lands.[4] The arrangement was designed to be only temporary,[5] but through it the State drifted into the policy of borrowing the school funds for its own use, and paying annual interest from the treasury upon the loans. At about this time further loans to the counties were suspended.[6]

[1] *Ibid.*

[2] "It would be far better to hold the lands and thus secure increased value to the fund than to sell them now though we might derive [a greater] amount of interest. In one case we have the increase as a permanent fund for all future time. In the other it is received as interest and distributed throughout the State as fast as received. . . . While we look out well for to-day we must take care that we do not endanger the rights and privileges of those who are to follow us."—From the Report of the Committee on School Lands. House Documents, 1844, No. 10.

[3] Joint Documents, 1846, No. 3.

[4] Mich. Laws, 1845, 148.

[5] Senate Documents, 1846, No. 6.

[6] Of the early loans made to individuals about twelve thousand dollars were never repaid, nor was the interest met. Though the State held mortgages as

By 1850 the State had borrowed the entire primary-school fund and in the new constitution adopted in that year, this procedure was formally accepted as a permanent policy, and the specific taxes levied by the State were applied to the payment of the interest.[1] Whether it is a wise policy for a State which does not need to borrow, to adopt this method of investing its school fund, thereby necessitating perpetual taxation to meet the interest, is a question well worthy of consideration.

In 1846 the minimum price of school lands was reduced to four dollars per acre[2] in the face of a direct showing that the sales at the existing price were increasing each month.[3] The motive for this act is locked in the breasts of those who passed it. There were no new petitions asking for it, and in the following year, before the act came into effect, the Commissioner of the Land Office, whose opinion was based on practical knowledge of the subject, declared that if the price were again raised to five dollars the interests of the fund would be essentially promoted.[4] This protest of the Commissioner was of no avail and the law went into effect.

Since that time only slight changes have been made in the law, though attempts to effect a reduction in price have not been wanting. In 1846 all mineral lands belonging to the schools were reserved from sale,[5] and were offered on three-year leases.[6] In 1863 they were placed on sale at a valuation made by the Governor and State Treasurer.[7] Since 1873 one half the purchase money has, in every sale of school lands, been required at the time of purchase, and for any timber land the Commissioner may require full cash payment at the time of sale. Sales have increased steadily since 1846 with few interruptions, and about two thirds of the lands have been disposed of. As they have all been offered at public auction those still held by the State are, under the

security for the loans, no steps were taken to foreclose them. With the exception of one or two, cancelled by order of the Legislature, the mortgages stand to-day uncancelled on the records.—Smith, 18.

[1] Constitution, 1850, Article XIV., Sec. 1.

[2] Revised Statutes, 1846, 239.

[3] Senate Documents, 1846, No. 23.

[4] Joint Documents, 1847, No. 3.

[5] Mich. Laws, 1846, 92.

[6] *Ibid.*, 274.

[7] Mich. Laws, 1863, 277.

law, subject to private entry at four dollars per acre. The good features of the management of the school sections in Michigan must be obvious; the instances of bad laws and of lax enforcement of good laws have been sufficiently indicated. If the ultimate fund is likely to be much smaller than it should be, the people of Michigan may console themselves with the reflection that many of the older States have fared even worse.

When the swamp lands were granted in 1850 the authorities of Michigan did not consider them valuable or anticipate any revenue from them above the expense of drainage. Accordingly a law was adopted providing for their sale at seventy-five cents an acre, the proceeds of each sale to be used in reclaiming additional lands.[1] As the nature and amount of the grant became better known, it was seen that a large sum of money ought to be realized from it. For several years the successive Governors urged the Legislature to change the law of 1851, raise the price of the lands, and apply some portion of the proceeds to educational uses.[2] These suggestions bore no fruit for several years, but finally in 1857 the previous law was repealed and the lands were ordered sold at a minimum price of five dollars per acre, the purchaser to assume the task of drainage. Of the net proceeds, seventy-five per cent. was to "constitute a part of the primary school fund of the State," while the remainder was to be used as a fund for reclaiming unsold lands. The portion given to the school fund was to be borrowed by the State at seven per cent. interest, for the purpose of paying off other State indebtedness.[3] Why these "wet and overflowed" lands should have been considered worth five dollars an acre, and the school lands valued at but four, is past comprehension.

The educational provision met with hearty approval

[1] Mich. Laws, 1851, 322.

[2] The Agricultural College, the Normal School, and the primary schools were all suggested as proper beneficiaries of the fund. Governor Bingham sought to avoid the co-educational problem by proposing the endowment of a college for the education of young ladies.—Joint Documents, 1856, No. 1.

[3] Mich. Laws, 1857, 234.

throughout the State, but defects were found in the law which prevented the Land Commissioner from making any sales under it.[1] The Commissioner argued that the price had been fixed too high,[2] and the Governor suggested that the proceeds be given to the infant Agricultural College, instead of the primary schools.[3] The law was amended in 1858 and the price reduced to one dollar and a quarter per acre, while only fifty per cent. of the moneys received from sales was to go to the school fund, and this the State was to borrow at five per cent. interest.[4] Though these provisions were far less generous than those of the year before, a large fund would have resulted had this law remained unmodified. From the six million acres the schools would have received about three million dollars, after deducting expenses. Thus far the share of the schools has amounted to about three hundred and sixty-five thousand dollars,[5] and ninety-five per cent. of the lands have been disposed of.[6]

The causes for this enormous shrinkage from the original estimate are simple. The law of 1858 provided that one half the proceeds of cash sales should be used as a school fund. Very few of the lands, however, have been sold for cash, while enormous quantities have been disposed of in such ways that no moneys have entered into the transaction, and in consequence no benefit accrued to the school fund. The schools had no prior or irrevocable claim to the benefit of the grant. No constitutional provision or act of Congress secured any portion of it to the cause of education. It was entirely within the power of the State, by a simple repeal of the law, to use the lands for other purposes not inconsistent with the terms of the grant. So long, however, as the law remained on the statute-book, its spirit as well as letter should have been observed. If the lands not sold for cash had been made to contribute to the material welfare of the State in any degree commensurate with their value, there would be no ground for

[1] Joint Documents, 1857, No. 4, pp. 9, 10. [2] *Ibid.* [3] *Ibid.*, No. 1, p. 3.

[4] This fund is known as the Primary School five per cent. Fund to distinguish it from that derived from the sixteenth sections.

[5] Report Supt. of Pub. Instruction, 1881, xviii.

[6] Circular No. 1, State Land Office, 1883.

complaint. It is, however, a notorious fact that thousands of acres have been practically thrown away. Some of the lands have been used to pay for various needed works of internal improvement, some have been disposed of under a State homestead law, but from a great part of them speculators and private parties have derived more benefit than the State. The method by which this has been accomplished is as simple as it has been disastrous. Wagon roads and ditches were needed in many parts of the State, and the Legislature devised the scheme of paying for them with swamp lands. The construction of a road would be authorized, to be paid for in scrip redeemable in swamp lands at one dollar and a quarter per acre. The recipient could either locate land with the scrip, or could sell the latter to persons who desired to purchase lands. As the land thus located was not a cash sale on the part of the State the school fund under the law derived no benefit from the transaction. Further, as time progressed, so many of these roads were constructed and so much scrip was thrown upon the market, that its value depreciated, often falling to seventy, sixty, and fifty cents on the dollar, and at no time for many years past selling at par, since the supply has always been in excess of the demand. The result has been that when any one has desired to purchase a tract of swamp land, instead of paying cash to the State at the established price per acre, he has bought scrip from some broker at the current price, and with it located his land. In this way he has been enabled to obtain good land at from sixty-five cents to one dollar an acre. Hardly one tenth of the entire grant has been sold at cash sale by the State, so that the school fund has in reality received the proceeds of only about one twentieth of the swamp lands.

As already stated, if Michigan had received benefits in the shape of roads and other improvements equal to the value of the land disposed of, the mere fact that the schools have received so little aid would be no cause for complaint. But the actual state of the case is far otherwise. While some of these improvements have been needed and have been honestly constructed, it is not safe to investigate the majority of

them lest symptoms of jobbery be detected. Dozens of roads have been ordered constructed where there was not at the time, and might not be for a decade or two, any need for them. Then when it came to the construction high prices have been paid for miserably built roads, some of which were in ruins almost before the scrip was located which was issued to pay for them. There can be no question that there has never existed in Michigan another such fertile field for the speculator to labor in, and the opportunity has not been neglected.[1] Let no one infer that the Legislature has been corrupted. At the worst it has only been hoodwinked. The fault lies with the system which permitted lands to be disposed of by such methods. Further, the land was worth far more than one dollar and a quarter an acre. Much of it was pine land worth to-day in the original state as many dollars per acre as it cost the purchaser cents.[2]

In 1869 certain bodies of swamp land, then just patented to the State, were offered for sale at eight dollars an acre. The price of such of these as remained unsold was reduced two dollars at the end of each six months until it reached two dollars an acre, which was fixed as the permanent price.[3] All other unsold swamp lands are offered at one dollar and a quarter per acre.[4]

(*e*) WISCONSIN.

From 1818 until 1836 the region of country now known

[1] The following is a simple illustration of the methods employed. A and B desire to earn an easy penny—perhaps two. A discovers a route where he thinks a new road can be built, and he interests himself in getting the people of the locality to petition the Legislature to order it built. The act is passed. B steps in, gets the contract, builds a poor road, receives pay for a good one, and A and B divide the scrip. Perhaps they even seek for an opportunity to repeat the operation.

[2] A gentleman who is perhaps as familiar with the subject as any one in Michigan informed the writer not long since that, in his opinion, the State might have derived fifty million dollars from the grant.

[3] Mich. Laws, 1869, 164.

[4] *Ibid.* Compare the excellent record of Wisconsin in handling her swamp lands.—*Infra*, 114. For the history of the saline lands of Michigan see page 154, note.

under the name of Wisconsin formed a part of the Territory of Michigan. All laws adopted by the territorial authorities, between those dates, were applicable to the entire country between the Detroit River and Lake Huron on the east, and the Mississippi River on the west. Such of these as pertain to the school lands have already been mentioned.[1] In 1836 the separate Territory of Wisconsin was created, but all previous laws were to remain in force until changed by the legislative authority of the new Territory.[2] In the first territorial Legislature of Wisconsin a resolution was offered asking Congress to give to the Territory, in place of the sixteenth sections, their cash value at the government price of land. Fortunately the wisdom of the Legislature prevented the passage of this foolish proposition. In 1837 provision was made for the election of township commissioners of schools, who in addition to other duties were to lease the school lands. In 1839 a law was enacted "to establish common schools," providing among other things for the election of school inspectors in each township or school district, whose business it should be "to lease the school lands in their respective towns or districts for a term not exceeding three years," the rents to be applied toward the support of local schools.[3] In the following year the powers of the inspectors over school lands were again transferred to the township school commissioners,[4] and the period of the leases was cut down to two years,[5] only to be extended to four years in 1842.[6] In all these cases the rents were to be applied to the support of schools in the townships in which they accrued. Under this law lands were leased until the admission of the Territory as a State in 1848.

By the constitution of the State and the subsequent agreement of the United States[7] the common schools received as an endowment, in addition to sections sixteen, five hundred thousand acres of land,[8] and five per cent. of the net proceeds of all public lands in the State, sold after its admission. The proceeds arising from these and a few other sources were to constitute a perpetual fund of which only the income was to be used for the purposes specified.[1]

[1] *Supra*, 87. [2] 5 U. S. Stat., 10. [3] Wis. Stat., 1839, 137.
[4] Compare Mich. Laws, 1832; *supra*, 87. [5] Territorial Laws, 1840, 80.
[6] Territorial Laws, 1842, 45. [7] *Supra*, 40.
[8] In most other States these had been granted for internal improvements.

The people of Wisconsin did not repeat the error committed in Michigan of imposing upon the Superintendent of Public Instruction the care and management of the lands and funds. Leaving to that officer the supervision of educational matters, the constitution entrusted the sale of the school and university lands and the investment of the proceeds to a board of commissioners consisting of the Secretary of State, Treasurer, and Attorney-General.[2] The discussion of the perplexing question of leases and sales was also avoided by a constitutional provision that the lands should be sold after their value had been appraised.[3] Thus Wisconsin sought by constitutional restrictions and directions to avoid some of the troubles which other States had experienced from the vacillating policy of uncontrolled and unrestrained legislation.

At the first session of the Legislature steps were taken to locate the five hundred thousand acres,[4] and for the appointment of appraisers in every county to appraise the value of the sixteenth sections and the university lands.[5] Upon the receipt of the report of the appraisers the Legislature ordered the lands to be sold at auction for not less than the appraised value. The land commissioners were authorized to loan the proceeds to individuals, in amounts not exceeding five hundred dollars, for not longer than five years, at seven per cent. interest.[6] In the following year provision was made for the appraisal and sale of the five hundred thousand acres which had been located in 1849. In this law it was provided that any actual settler upon the lands at the time

[1] Constitution, Art. X., Sec. 2. [2] *Ibid.*, Art. X., Sec. 7. [3] *Ibid.*, Art. X., Sec. 8.
[4] Wis. Laws, 1848, 42.
[5] *Ibid.*, 123. It was roughly estimated by a Senate committee in this year that the lands situated in the surveyed portion of the State were worth three dollars per acre, but the appraisers in their report give the average value at $3.66 per acre.—Assembly Journal, 1850, 499, 500. Superintendent Root in 1850 estimated that the fund would eventually amount to about five million and a half dollars.—Whitford, 39.
[6] Wis. Laws, 1849, 149.

they were located for the State should have the right to purchase at one dollar and a quarter per acre.[1] This recognition of "squatters" was perhaps no more than equitable when applied to those whose "claim" to the lands was older than that of the State itself, for the latter with proper care might have avoided selecting such lands.

In the following year, however, this right of preëmption was extended to any actual settler on the lands.[2] Whatever moral obligation rested on the State was fully removed by the law granting to previous occupants the right to purchase at the United States Government price regardless of the actual value of the lands. The reasons for throwing the lands open at that price to all who should choose to settle on them are not based on any claims of justice, but on a peculiar State policy. The wisdom of the policy remains to be considered. The whole history of Wisconsin discloses a solicitude on the part of the State to attract immigrants.[3] This disposition, natural in any State, is praiseworthy, provided no other trusts and interests are thereby prejudiced. When, however, a State, for the purpose of increasing her population deliberately parts with lands given to her for other special and important objects, at a price below their actual value, she certainly violates, if not the letter, at least the spirit, of the trust imposed on her. Wisconsin sought and obtained an enormous grant for school purposes, and after obtaining it, by so administering it as to assist in promoting an entirely different object, confessedly sacrificed the interests of the schools.[4]

In 1852 the minimum price of the five hundred thousand acres was fixed at one dollar and twenty-five cents per acre, except where the appraised value was higher. After having been offered for sale at public auction they were to be open to private entry.[5] In the same year certain unappraised

[1] Wis. Laws, 1850, 193. [2] Wis. Laws, 1851, 26. [3] See *infra*, 148, note 6.

[4] Governor Fairchild said in 1871: "The educational funds have suffered this loss in order to hasten the settlement of the localities in which the lands were situated. This is not right. They were held in trust by the State to be disposed of honestly and judiciously for the benefit of the educational funds." —Governor's Message, 1871, 6.

[5] Wis. Laws, 1852, 12.

school lands were ordered to be appraised at not less than one dollar and twenty-five cents per acre.[1] By these various measures the Legislature threw into the market far in advance of the needs of the schools the greater part of the school lands in the State, at a day when many of them were in the woods, perhaps miles from any settlement.[2] The only limitation imposed by the State was that the lands should not be appraised at less than the price of government lands. It was not to be expected that the appraisers going into the back country would appraise a school section at a higher value than that at which all the surrounding land could be purchased from the national government, and in most instances they did not.[3] Though, in some instances lands appraised at this low valuation brought at public auction prices far above that valuation, much of the land was offered at auction without being sold. This would seem at first thought, to imply that it was not worth the valuation. But the matter is presented in a different light when it is considered that all lands once offered at auction and not sold are thereafter subject to private sale at the appraised or minimum price.[4] Speculators desiring to purchase blocks of land had simply to ascertain what lands had been offered at auction, and to select from these at the appraised value.

[1] *Ibid.*, 211.

[2] "Great loss has been sustained through the haste with which the school lands have been brought into the market. The lands generally having been situated in the new and unimproved parts of the State," etc.—Report of "Joint Select Committee to Investigate the Offices of the Land Commissioners." Senate Jour., 1856, II., Appendix, 31.

[3] "The lands . . . have seldom been appraised higher than ten shillings per acre—the government price. They have been brought into market at low appraisements and rapidly sold on account of the credit given, whilst the lands of the government remain undisposed of."—*Ibid.*

"Past experience is discouraging of the practicability of obtaining an appraisement regarding singly the increase of the funds to be derived from the sales of these lands."—Report of Land Commissioners, 1860, 38.

[4] "The lands once offered at public auction are by law subject to private entry and the amount to be sold to any one person is not limited . . . since the more rapidly sales can be effected so much sooner will these funds realize the benefit of the endowment. . . . And, if in the end only the appraised value is to be obtained, the sooner the lands are sold the better."—Report of Land Commissioners, 1854, 9.

This state of affairs instead of occasioning the thought that the school fund was being sacrificed, caused alarm lest the lands should be bought by those who would not settle on them, and the population of the State would not increase as was desired.[1]

In 1855 the Legislature decided to check this vast speculation. There were two methods of accomplishing this. The price of the lands might be raised, or a limit might be placed on the amount to be sold to any one purchaser. The former method would stop speculation by making it no longer profitable; the latter, by making it impossible on any large scale. One method would make the ultimate school fund larger; the other would not affect the final fund, while, by retarding the sales, it would make the immediate income smaller. The Legislature in its wisdom chose the latter, and, leaving the price as it stood, permitted sales thereafter to actual settlers only, and to these but a limited quantity might be sold.[2] Again the promotion of immigration had triumphed over the claims of education.

Soon, however, the opinion was expressed that the difficulty had been attacked at the wrong end. Rumors also became rife that the Land Commissioners had not labored entirely in the interests of the fund. The Legislature of 1856, heeding these rumors, appointed a committee to investigate the condition of the lands and funds, the system of laws in force, and the administration of those laws. The committee made a careful investigation, found much to condemn and little to approve in the system itself, and disclosed some "peculiar" transactions in the administration of the affairs of the office.[3] They found that speculators had bought up large quantities in order to reap the profit which should have accrued to the benefit of the fund, thus showing that the policy of offering lands at low prices in order to

[1] "It is for the Legislature to consider whether there are *reasons relative to the promotion of other interests* than those of the school fund, and the system of common schools relying upon it for support, sufficient to induce the adoption of a policy limiting and restricting the sales of these lands."—*Ibid.*

[2] Wis. Laws, 1855, 23.

[3] See the Report in Senate Jour., 1856, II., Appendix.

induce purchasers had not accomplished its object, while it had ruinously reduced the ultimate school revenue.[1] The discovery was also made that State officers and employés of the Land Department, whose official duties gave them an intimate knowledge of the subject, had, previous to the law of 1855, bought up hundreds of acres of these lands, knowing that in a very few years they would be worth twice or thrice the purchase price.[2] Could any better proof that the price was too low be desired? The committee urged that the whole policy of the State be changed, and that, as the schools needed no immediate increase of the fund, the unsold lands be withdrawn from the market until the government lands in their vicinity should have been sold, "and until the further withholding of them would be a serious obstruction to the settlement of the country." They accordingly reported a bill repealing all laws for the sale of school and university lands. Even with this plain statement of facts before them, the Legislature refused to pass the measure, and the sales continued on the old terms.

In April, 1863, the limit on the amount of land which might be bought by a single purchaser was revoked,[3] and on the very next day a law came into force reducing the price of all unsold lands which had once been offered for sale thirty-three per cent., provided the reduction did not carry the price below seventy-five cents per acre.[4] If the lands still unsold had been of a decidedly inferior quality, these two laws would demand no comment. Since, however, there were many good pieces among them, the striking change in policy inaugurated by these provisions gives rise to the suspicion that some other interest than that of the schools was being consulted. Such laws certainly do not bear on their face any evidence that the Legislature had in mind the prime—nay, the sole—object for which these lands

[1] "The facts to be derived from our experience under the present system . . . show that the school lands have not fallen into the hands of those who want them for occupation, but are held by speculators in large quantities, ranging from five to seventy-five thousand acres, thus more effectually retarding their settlement than if held by the State."—*Ibid.*, 31, 32.

[2] *Ibid.*, *passim.* [3] Wis. Laws, 1863, 359. [4] *Ibid.*, 431.

were given. Perhaps, however, the State was merely indicating its desire to get rid of the remaining lands, and have done with the business. There were still a few lands in the remote parts of the State which had not been put upon the market. In 1864 the Legislature fixed the price of these at one dollar and twenty-five cents per acre.[1] Since that day few changes have been made in the terms of sale or in the prices, though the Legislature has more than once been urged to increase the latter and abandon the policy which has taken from the schools a large portion of the value of the grant.[2] The prices in 1872 ranged from a dollar and a quarter to a dollar and a half per acre, but by the statute of 1878 they were fixed at one dollar and one dollar and a quarter per acre,[3] at which point they have since remained.[4] In 1878, and again in 1882, several thousand acres of these lands were withdrawn from the market and devoted to the State Public Park and other purposes.[5] These enactments seem to be clear and unconstitutional diversions of the lands "from the original purposes for which they were granted."[6] But one hundred and sixty-five thousand acres, or about eleven per cent. of the lands, remain unsold.[7]

The money derived from the five per cent. of the proceeds of public land sales in Wisconsin, which, by the State constitution, was made a part of the school fund, has been received from time to time by the proper State officials and incorporated with the proceeds of the land grant. Accord-

[1] Wis. Laws, 1864, 514.

[2] "Heretofore these lands have been sold at too low a price per acre. This is not right. The State should be as prudent in selling these lands as is the individual proprietor, who desires to make the most of them. . . . They are being purchased mainly by speculators, and the actual settlers, when they buy them, will have to pay the dealer a large profit which the funds ought to realize. The fact that speculators are eager to buy plainly shows that the lands are selling for less than their value. Every dollar that they are worth to the settler ought to enure to the funds. I therefore recommend that all these lands be immediately withdrawn from the market, and that they be carefully appraised before any further sales are made."—Governor's Message, 1871, 6.

[3] Revised Statutes, 1878, Ch. 15, Sec. 202–206.

[4] Report of Commissioner of Pub. Lands, Wis., 1882, 4.

[5] Report of Com. of Pub. Lands, 1880, 22, 23.

[6] *Ibid.*

[7] Report, Secretary of State, 1882, 8.

ing to the books of the State, this five per cent. has amounted to $309,035.28.[1] The total school fund of Wisconsin is $2,813,045.58.[2] Deducting the five per cent. fund and $75,000, as a near estimate of the payments to the school fund from fines and escheats,[3] the proceeds of the school lands amount to $2,429,010.30, which gives one dollar and eighty-seven cents as the average price received per acre.

Having thus traced the history of the disposition of the lands, it remains for us to see how the proceeds have been guarded. The law of 1849 provided that the moneys arising from sales should be loaned to individuals in limited sums. This method of investing the funds, while theoretically good for both the State and the borrowers, demands great care and much labor. In Indiana and Illinois such loans are made by local officials, who can know from personal investigation the character of the security, and are held responsible for losses. In Wisconsin, the business was in the hands of a central board, who could not examine every piece of land offered as security, but must rely upon information derived at second-hand. As early as 1852, the Governor intimated that loans had been made upon insufficient security, and expressed his disapproval of the system as apt to result in frequent losses, which, though small in themselves, would, in the aggregate, amount to a large sum.[4] No attention was given to the suggestion and the system continued. The school lands sold rapidly at the low prices, and hundreds of thousands of dollars were loaned by the commissioners to individuals in all parts of the State. Only partial payments were required on the lands sold, and mortgages were taken to secure the balance. For several years no further question was raised concerning these loans, and it was not until 1856 that a definite idea of the condition of the funds was obtained by any one except the com-

[1] Letter of Secretary of State, May 16, 1884. The books of the United States Treasury give the amount as $455,253.73. How the discrepancy arose, and which statement is right, I have been unable to learn. See Document A, 238.

[2] Report, Secretary of State, 1882, 9, 10.

[3] See Appendix, Table A.

[4] Governor's Message, 1852, 21.

missioners. In that year, the special committee to which reference has already been made,[1] in the course of their investigations, found that many losses had occurred, and that not only had many loans been made upon insufficient security, but in some cases this had been done with the connivance of the commissioners themselves.[2] This report did not bring about any change. In 1860 a new set of commissioners came into office and soon called attention to the subject.[3] By this time the losses had amounted to twenty-five per cent. of the loans.[4] The opinion was general that loans on mortgages were unsafe, even when all due precaution was exercised, and that the carelessness and connivance of the commissioners had only increased the losses.[5] It seems inexplicable that a system should have been permitted to remain so long in force which authorized the Commissioners to loan money to strangers upon securities of whose value they had no evidence but the opinion of other strangers.[6] Such investment of capital would never be made by any individual, nor is it conceivable that any trustee of a private estate would be upheld by the courts in such a procedure.[7]

In 1862, on the recommendation of the Commissioners, it was ordered that the school funds be invested in State bonds in preference to all other investments.[8] As Wisconsin, like

[1] *Supra*, 108.

[2] Tens of thousands of dollars of this fund have been embezzled and hundreds of thousands lost or squandered."—Senate Journal, 1856, II., Appendix, 34.

[3] Report of Commissioners of School and University Lands, 1860, 58.

[4] House Journal, 1861, 570. President Whitford says, somewhat ambiguously: "The loss to this fund, during the first ten years of our State administration, was a large part of $732,340."—Whitford, 30.

[5] House Journal, 1861, 570. Also, Report of Commissioners of School and University Lands, 1861, 3.

[6] "Would any prudent capitalist invest his own money in loans to men he did not know—taking security upon lands he never saw, with no better evidence of their value than the appraisement of two men of whom he knew nothing?" —*Ibid.*

[7] "That system of management of a trust fund is radically defective, if not criminally wrong, which provides for investing it in any manner that exposes the fund to inevitable loss without any possibility of restoring it."—*Ibid.*

[8] Wis. Laws, 1862, 53.

nearly all the States, was compelled to borrow large sums at that time for war purposes, all moneys flowing into the school fund were readily invested in these State bonds. Under the circumstances, this was unquestionably the wisest investment possible, and guaranteed the school fund against loss. But the State, soon after the war, ceased borrowing money, and it was possible to obtain State bonds only by buying them at a premium.

So far as practicable this was done, but the school funds soon exceeded the total amount of State indebtedness. The Legislature in 1866 made that portion of its indebtedness which was owned by the school fund a permanent irreducible debt,[1] but wisely declined to borrow the money subsequently flowing into the school and other educational funds, and thereby impose upon the people a perpetual burden of taxation to meet the interest. Accordingly, as some other form of investment must be found, the Commissioners were authorized in 1868 to purchase United States bonds,[2] and in 1871 were further empowered to loan funds to school districts for the purpose of erecting school buildings.[3] This latter method was found to involve some of the same difficulties and delays in payment as had been experienced in the case of individual loans,[4] and has not been extensively employed. In 1872 authority was given to invest in Milwaukee City bonds.[5] This act has been followed by many similar ones, authorizing loans in large sums to various cities and counties in the State.[6] While the laws authorizing loans to individuals were never repealed, few such loans, if any, have been made during the past twenty years. About three fifths of the school fund is loaned to the State itself,—a permanent loan,—and the remainder is invested in United States, city, county, and school bonds, while a few loans to individuals are yet outstanding.[7] This plan of investing in municipal and other public bonds seems to present fewer objections than any other. The time can hardly come when

[1] Wis. Laws, 1866, Chap. 25.
[2] Wis. Laws, 1868, Chap. 111.
[3] Wis. Laws, 1871, Chap. 42.
[4] Report of Com. of Pub. Lands, 1872, 6.
[5] Wis. Laws, 1872, Chap. 118.
[6] See Reports of Land Com., 1873–1883.
[7] Report, Com. of Public Lands, 1883, 23.

good public securities cannot be found and purchased. Such bonds while often bearing low rates of interest are almost absolutely safe and require no care or labor on the part of the State.

Since 1862 the funds have been carefully and safely invested, and had equal wisdom been displayed in the management of the lands, the course of the State during the past twenty years would merit the fullest approbation. Of the period from 1848 to 1862 a far different opinion must be held, and in so far as any comment is required, the words of the Commissioners fully cover the case. "The State is bound for the preservation and application of this trust by every sentiment of gratitude and honor, and moreover by the promptings of interest and of duty to the people of the State themselves and to their posterity. Truth compels the confession that the trust has been most unfaithfully administered. The best of the school lands have been disposed of with eager haste and in disregard of the interest of the funds for which they were dedicated. Then the system adopted for the investment of the capital which has been realized to the funds from the sale of these lands subjects this capital to waste and loss to a fearful extent." [1]

The constitution of the State provided that the moneys arising from all grants whose purpose was not specified should be added to the school fund.[2] Accordingly, when the grant of swamp lands was made it was understood that the surplus proceeds should be so used. In 1856 the minimum price of these lands was fixed at five dollars per acre, except to previous settlers who were permitted to purchase one hundred and sixty acres at one dollar and twenty-five cents per acre. All others could purchase at public auction not to exceed three hundred and twenty acres each. Seventy-five per cent. of the net proceeds was to be placed in the school fund, and twenty-five per cent. was to constitute a drainage fund.[3] The establishment of so high a price and the limitation of the amount purchasable by a single individual is to be attributed to the report of the committee, already alluded to, which so strongly condemned the policy of low prices and unlimited sales of school lands. This law did not long remain in force. The Commissioners of Lands argued with great plausibility that such high prices were unwise as the lands would not sell, and urged that competition at public auction would easily determine and produce the proper price of each parcel.[1] Notwithstanding that the past unhappy experience had shown that competition did not produce sales at the true value, and that the commissioners were not always disinterested in their advice, the Legislature reduced the minimum price to one dollar and twenty-five cents per acre. All lands were still to be offered at public auction, but any settler might preëmpt at the minimum price.[2]

[1] Joint Documents, 1862; Report of Land Commissioners, 3.
[2] Art X., Sec. 2. [3] Wis. Laws, 1856, 112.

Two days later, under a provision of the constitution never before carried into effect,[3] the income of twenty-five per cent. of the gross proceeds of the sales was diverted from the common schools and directed to be apportioned "to normal institutes and academies," and to be distributed to such academies and union or high schools as should maintain a normal department or institute.[4] In the following year it was provided that the normal-school fund should consist of twenty-five per cent. of the net proceeds of the lands.[5] At the same time the drainage fund having proved too small another twenty-five per cent. was devoted to that project.[6] This left twenty-five per cent. of the proceeds applicable to the school fund and twenty-five per cent. to the normal-school fund.

[1] "We are clearly of the opinion that by offering the lands at a public sale where a fair and just competition may be reasonably expected among the purchasers, all the tracts will sell for what they are really worth."—Report of Land Commissioners, 1856, 29. [2] Act of March 5, 1857.
[3] The constitution provided that the income of the school fund should be "exclusively applied to the following objects, to wit: 1. To the support and maintenance of common schools. . . . 2. The residue shall be appropriated to the support and maintenance of academies and normal schools." Until this time there had been no "residue" beyond the needs of the common schools, and as a matter of fact the income has never yet been sufficient to "support and maintain" them.
[4] Wis. Laws, 1857, 93. [5] Wis. Laws, 1858, 194. [6] *Ibid.*, 68.

Sales were conducted in pursuance of this arrangement until 1865, when a radical change was made. Before considering this it must be mentioned that in 1863 the price of all swamp lands once offered for sale at auction and unsold was reduced to seventy-five cents per acre,[1] and in the next year all swamp lands which had not hitherto been exposed to sale were offered at auction at one dollar and twenty-five cents per acre,[2] while the limit on the amount purchasable by a single individual was swept away.[3] The effect of these laws was to hasten the sales and also to throw the lands into the hands of speculators who reaped profits which might have been derived by the State. A greater danger to the fund proceeded, however, from another cause—the appropriation of lands for the building of roads. This system was in vogue in Michigan, where it was flourishing most vigorously. The bills authorizing the construction of these roads were special acts and were often passed at the instigation of the "lobby" and in the interest of private parties.[4]

The Legislature in 1865 devoted itself to the task of making a permanent disposition of the lands, in such a way as to remove the danger of their being squandered and thrown away.[5] As the law stood only the proceeds of sales were pledged to the cause of education. The lands might be given away, or paid out for labor as in Michigan, without conflicting with any of the provisions for the school or normal fund. Now, however, the lands themselves and the proceeds of past sales, including all sums hitherto received in any way for the lands included in the grant, were divided into two equal parts, one of which was to constitute the normal-school fund and the other the drainage fund.[6] Detailed directions were given for the partition of the lands and moneys between the two funds, and it was provided that the lands belonging to the normal-school fund should be sold and the proceeds invested in the same manner as that pro-

[1] Wis. Laws, 1863, 284. Wis. Laws, 1864, 180. [3] Wis. Laws, 1863, 359.

[4] "Local 'grabs' and 'steals' were being continually worked up against the swamp-land fund. One favorite method of attack was the building of State roads, etc., these measures being often only the sharp schemes of private parties."—Salisbury, 44. [5] *Ibid.* [6] Wis. Laws, 1865, 643.

vided for the sale and investment of the school fund. This measure effectually prevented any future inroads upon the lands devoted to education, and afforded an almost certain prospect that the ultimate fund would be large since the original grant was over three million acres.

As the result of the division the normal-school fund received about six hundred thousand dollars in cash and obligations on land contracts, and about five hundred thousand acres of land already on sale, "with other lands not yet in the market."[1] These last were swamp lands which the United States Government had not yet patented to the State, and comprised many thousand of acres. Many of these have since been turned over to the State authorities. In 1865 the prices ranged from seventy-five cents to one dollar and twenty-five cents per acre, and by numerous special acts passed since then, the prices in certain counties have been reduced to fifty cents per acre, presumably because of the inferior quality of the lands. In 1882 there remained unsold about four hundred and seventy-five thousand acres,[2] while the fund realized from lands sold amounted to $1,147,071.58,[3] invested in State certificates, United States, and city bonds, and loans to counties and individuals. The management of this fund has been excellent and presents a striking contrast to that of the other educational funds of the State. The prices at which the lands are held to-day are, however, too low, and should be raised. Many of them are rapidly increasing in value, and the benefit of the increase should certainly accrue to the fund.[4]

B.—SEMINARY OR UNIVERSITY LANDS.

(*a*) OHIO.

The two townships stipulated for in the contract between the United States and the Ohio Company[5] in 1787 "for the support of a literary institution" were located in 1795.[6] By the

[1] Salisbury, 48. [2] Report, Land Commissioners, 1882, 6. [3] *Ibid.*, 24.

[4] See the suggestions of the Land Commissioners in their report for 1882, 28, 29. [5] *Supra*, 17.

[6] Walker, 311. The lands selected were the present townships of Athens and Alexander in Athens County, Ohio.

It has been shown that the interest accumulating between 1835 and 1857 on the fund derived from the seminary lands was never repaid by the State or the school fund. The interest on the "one half per cent." fund the State has returned.[1] A portion of this back interest has been used in erecting buildings, while about thirty-four thousand dollars have been added to the principal. The fund now amounts to $156,613.32, affording an annual income of $9,396.80. Since 1877 the income of both funds has been equally divided between the two normal schools of the State.[2]

(*d*) MICHIGAN.

By the act of Congress in 1804, already frequently alluded to, one township in the Detroit land district was reserved for a seminary of learning in the territory now under the jurisdiction of the State of Michigan. By a treaty concluded at Fort Meigs, in September, 1817, between the United States and various Indian tribes, three sections of land were granted to "the corporation of the college at Detroit," and full powers given to the corporation to sell them.[3] The "college at Detroit" was not then in existence, but was established in the following month,[4] under the authority and as a branch of the "Catholepistemiad, or University of Michigania," a corporation chartered by the territorial authorities in August, 1817.[5] In 1821, before any of the lands were located, the authorities chartered the University of Michigan.[6] The management and control of the seminary township given to the trustees was limited to the power of leasing the lands for seven years. The university was also made the legal successor of the Catholepistemiad, and as such acquired the title to the three sections of land belonging to the college at Detroit.

[1] See Illinois Laws, 1861, 147. [2] Pillsbury, cxxxv. [3] 7 U. S. Stat., 166.
[4] Its establishment was announced in the *Detroit Gazette*, October 24, 1817. —Ten Brook, 100.
[5] 2 Territorial Laws, Mich., 104. The charter of this institution, besprinkled with strange provisions in stranger language, is a literary and legal curiosity.
[6] 1 Territorial Laws, Mich., 879.

Steps were immediately taken to have the lands located. The three sections were selected and patents were issued for them in 1824.[1] When the location of the seminary township came under consideration an unexpected difficulty arose. The law required the land to be selected from that to which the Indian title had been extinguished previous to 1804.[2] No good complete township which met the requirement could be found. When this became known, the trustees petitioned Congress to take such action as would remove all obstacles in the way of a location of the lands.[3] In 1826 Congress authorized them to select from any public lands in Michigan an amount equal to twice the first reservation, in tracts of not less than a section each.[4] Thus, by the delay in locating the township, Michigan secured better lands, and, like the other States, twice the original amount.

The trustees of the university at once appointed a committee "to examine the country and to report fully their opinion in regard to the location of these lands."[5] As a result of their investigations two sections were located in 1827 and reserved by the proper authorities at Washington.[6] These two sections lay along the bank of the Maumee River, and are now in the heart of the city of Toledo, in the State of Ohio, this region being then a part of the Territory of Michigan. The lands were exceedingly valuable even at that early day, and many attempts to purchase them were soon made by speculators. In 1831 the trustees, under authority of Congress,[7] exchanged the most valuable half of them for a somewhat larger quantity of less desirable lands in the same vicinity. These latter were in 1836, by permission of Congress,[8] sold back for five thousand dollars to the party from whom they had been originally received.[9] At the time of this last transaction the original selection, exclusive of improvements, was worth half a million dollars.[10] The university, by parting with it six years too soon, received the paltry sum of five thousand dollars. The motives which

[1] Ten Brook, 106.
[2] 2 U. S. Stat., 277, Secs. 2 and 5.
[3] Jour. Territorial Council, 1824, 89.
[4] 4 U. S. Stat., 180. [5] Adams, 2.
[6] Ten Brook, 107.
[7] 6 U. S. Stat., 402.
[8] *Ibid.*, 628. [9] Gregory, 60. [10] *Ibid.*, 61.

led the trustees to dispose of these lands, worth more even then than all the rest of the grant, are difficult to understand, and especially so in view of the fact that special action of Congress authorizing the transfer and sale had to be obtained. The transaction has been and always will be regretted by all interested in the prosperity of the university. For the sake of presenting the whole history of the Toledo lands at once, we may look forward a few years. After the State of Ohio assumed jurisdiction over that region it seemed unadvisable for the university to retain the lands subject to taxation by Ohio. Accordingly the remainder of them were sold between 1849 and 1855 at an average price of nineteen dollars per acre. For all the university lands about Toledo, worth in 1859 two or three millions, but seventeen thousand dollars were realized by the institution.[1] This sale of the Toledo lands and that of the three sections reserved by the Fort Meigs treaty for about the same sum were the only ones made before Michigan became a State. The trustees, however, located twenty-three sections of the lands previous to 1836.[2]

After the establishment of the State government the university was reorganized. The property and funds of the old board of trustees were turned over to the new regents of the institution. This property consisted of a lot and academy building in Detroit, purchased with the proceeds of the Fort Meigs lands and private subscriptions. The fund, as already stated, amounted to five thousand dollars. The university lands were vested in the Legislature by act of Congress in 1837.[3] The constitution declared that the proceeds should be and remain a permanent fund for the support of the university, and enjoined it upon the Legislature to provide for the improvement and permanent security of this fund.[4] As in the case of the school lands, so here, the first State Legislature directed the Superintendent of Public Instruction to make an inventory of the lands, to suggest methods of disposing of them, and to report a system for the organization of a university.[1] The general policy advocated by the Superintendent with reference to all educational lands in the State[2] has already been discussed. He estimated the university lands as worth certainly fifteen and probably twenty dollars per acre.[3] Having decided in favor of selling the lands, he urged that a limited quantity be offered at auction at a minimum price of at least fifteen dollars per acre.[4] The Legislature, after considering this report, placed the management and care of the fund in the hands of the Superintendent, and authorized him to sell at auction, at a minimum price of twenty dollars per acre, so much of the land as should amount to half a million dollars.[5] The proceeds of the sales were to be loaned on the same terms as were provided for the school funds.[6] During the year 1837, over one seventh of the entire grant was sold, at an average price of twenty-two dollars and eighty-five cents per acre, and the prospects seemed excellent for the speedy realization of the million dollars estimated as the value of the grant.[7] The effects of the crisis of 1837 soon blighted these hopes.

The history of the university fund during the next few years shows the same troubles and disasters which were encountered by the school fund. The sales fell off, many lands already sold under contract were forfeited by the purchasers, and the interest on many others was in arrears. The Legislature was urged to reduce the price of unsold lands, and to

[1] For a complete history of these transactions, see Gregory, 59–64, or Ten Brook, 107–109.

[2] Ten Brook, 109. [3] *Supra*, 39. [4] Constitution, Art. X., Sec. 5.

[1] Mich. Laws, 1835–6, 49. [2] *Supra*, 89 *et seq.*

[3] "It is not apprehended that the amount can, in any event, fall short of the lower estimate, while it is believed, judging from the decisions of the past and the indications of the future, that it will exceed the higher computation."—Senate Jour., 1837, Appendix, 71.

[4] "Let the lands in the more settled parts of the State be thrown into market and sold to the highest bidder. What remains unsold might still be kept in market to be sold as occasion should offer."—*Ibid.*, 70.

[5] Mich. Laws, 1837, 209.

[6] *Supra*, 90. The purchaser was required to pay one fourth of the price in cash, and the remainder in instalments. This was subsequently changed to one tenth cash.—Mich. Laws, 1837, 316.

[7] Report of Supt. of Public Instruction, 1837, 71.

adopt measures for the "relief" of those who had already purchased. The history of the legislation on the subject from 1840 is almost identical with that pertaining to the school lands. The prices of both were reduced simultaneously; similar relief was given to purchasers, and the same general mischief was wrought by ill-advised law-making. Whatever was praiseworthy in the one case is equally so in the other, while in both the same criticisms must be offered.

Before any general reduction of prices was made the university became involved in a contest with squatters who had settled upon lands in the western part of the State, which had been selected for the university in 1836,[1] and confirmed to the State for that purpose in 1837. The first threatenings of the struggle were manifested after the lands were located, but before the selections were confirmed. A petition was forwarded to the Governor and the Legislature, remonstrating against the selection of these lands on the ground that many of them had been occupied previously by settlers in the hope that Congress would pass a law giving all such settlers on public lands preëmption rights.[2] By the petitioners' own showing there was not then in existence a letter of law giving them a claim to the land. At the next session of the Legislature, the lands having in the meantime been confirmed to the State, the settlers insisted that their claims should be recognized, because they had settled on the lands before they had been selected for the university; that the selections were not valuable, and that the interests of the university would not suffer by granting the settlers their rights. A legislative committee, after investigating the subject was unable to say that the settlers had a shadow of legal claim, but, accepting the statement of interested parties, decided that the lands were not so valuable as many others in the State [3] which might be selected in their place. On the recommendation of this committee the Legislature passed an act to release the title of the university to sixteen sections

[1] Ten Brook (p. 117) and Adams (p. 4) give this date erroneously as 1830. See preamble of Act of March 30, 1838, Mich. Laws, 1838, 115.

[2] Senate Jour., 1837, Document No. 15.

[3] Mich. Senate Docs., 1838, No. 37, and House Docs., 1838, No. 35.

of the land, provided Congress at its then present session would give the State authority to select other lands in their stead.[1]

It does not seem probable that the university would have lost any thing had this exchange of lands taken place. Congress, however, did not give its assent to the proposition, and the claimants again returned to the attack. In 1839 a bill was introduced to authorize the sale, at one dollar and twenty-five cents per acre, of any university lands which could be shown to have been occupied previous to their location by the State. The regents of the university remonstrated against the passage of the bill, showing that the lands were worth at least twenty dollars per acre; that the claims of the occupants were not only without legal foundation, but actually fraudulent, and that the bill would open the door to a host of equally fraudulent claims in the future.[2] The remonstrance had no effect upon the Legislature, and the bill was passed. Governor Mason refused his assent to it, pointing out that such a disposition of the lands was a violation of the terms of the trust, and that the bill had been pushed through "by a wholesale species of propagandism in search of adventurers to claim the public lands." [3] This defeat of the settlers did not end the struggle.

One more attack was made upon the Legislature, and in 1840 an act was passed authorizing the appointment of three commissioners to examine each claim, and if it appeared that the claimant had actually settled upon the land before it was selected for the university, to appraise the value of the property exclusive of improvements. The claimant was then

[1] Mich. Laws, 1838, 115.

[2] Senate Docs., 1839, No. 32.

[3] House Docs., 1839, 828. "The Congress of the United States 'have granted and conveyed these lands to the State, to be appropriated solely to the *use* and *support* of the University of Michigan.' The State has accepted these lands, and the constitution enjoins 'that the Legislature shall take measures for their *protection* and *improvement*, and also provide means for the *permanent security* of the funds of the institution.' These are the solemn conditions by which the State holds this sacred trust; and yet, by one single enactment, you place all the lands thus held in trust in market at $1.25 per acre, no matter what their value, when located, or how claimed. . . . Can this be a faithful administration of the trust committed to us?"

permitted to purchase the land at this appraised value.[1] This law was purely a compromise in a matter where the legal right was entirely on the side of the State. By its operations over four thousand acres were sold at an average price of six dollars and twenty-one cents, at a time when other university lands sold for over twenty-four dollars an acre. The general impression has always existed that the greater part of the claims were utterly fraudulent, but after this interval of time it is impossible to determine the truth in the matter.

As already stated, the same policy of reduction of price observed in the case of the school lands, was adopted for the university grant. In 1841 the minimum price of unsold lands was reduced to fifteen dollars,[2] and in the next year to twelve dollars per acre.[3] This last law also provided that the associate judges should examine any lands already sold at twenty dollars per acre or over—that is, all lands sold previous to 1841—and appraise their value in their actual condition at the time of sale. The difference between this valuation and the contract price was, as in the case of the school lands, to be credited to the purchaser. The reduction might be any amount not exceeding forty per cent. of the contract price. Under this law thirty-four thousand dollars were credited back to the purchasers in one year, the reduction being nearly forty per cent. in every case.[4] Up to the 1st of January, 1843, by various relief measures and reductions of price, the amount contracted to be paid had shrunk from two hundred and twenty thousand to one hundred and thirty-seven thousand dollars.[5] If such measures were unwise and unnecessary when applied to the school lands, they were doubly so in this case. There was not the same necessity for a university, as for common schools, in the young State. If the lands would have sold at the higher prices by holding them a few years, and every thing indicates that they would, the true policy was to keep the price up. A delay of a decade in the organization of a university cannot be of such moment

[1] Mich. Laws, 1840, 101.
[2] Mich. Laws, 1841, 157.
[3] Mich. Laws, 1842, 45.
[4] Joint Docs., 1843, 210.
[5] "The 13,000 acres of university lands, once sold for nearly $17 an acre, have dwindled down to 10,500, at an average price of less than $12.50."—*Ibid.*, 219.

as to offset a difference of half a million dollars in its permanent endowment.

In 1838 the regents applied to the Legislature for a loan of one hundred thousand dollars for the purpose of erecting buildings for the university. The application was successful, and the money was loaned to the university at six per cent. interest. Both principal and interest were to be repaid from the income of the university fund.[1] At that time it was expected that the lands would sell rapidly, and that the income of the university would soon reach sixty or seventy thousand dollars, from which the loan could easily be repaid. From causes already noted the sales progressed, and the income increased, far more slowly than had been anticipated. The payment of the interest on the loan absorbed the greater part of the annual income of the institution. In 1844 the Legislature relieved the embarrassments of the infant university by adopting a measure which accelerated the sales of land without any reduction in the price. This was accomplished by authorizing the receipt of certain outstanding State warrants in payment for lands. As these warrants could be bought in the market for about fifty cents on the dollar, the actual cost of the land to the purchaser would be but half the legal price. As the State accepted these warrants at par in such cases, and credited the full amount to the university fund, the latter suffered no loss. This law, however, indirectly authorized the eventual payment of the loan from the principal of the university fund.[2] This use of the fund was unconstitutional, as well as contrary to the terms of the grant. However, no objection was made to the provision, and in 1850 the State repaid itself the one hundred thousand dollars by deducting that amount from the fund of the university in its possession.[3]

Had the proceedings stopped here there would be no doubt that the university was relieved from all further obligation in the matter, as there could be none that the last

[1] The State did not have the money in its treasury, and twenty-year bonds were issued to the amount required.—Mich. Laws, 1838, 248.
[2] Mich. Laws, 1844, 18, 117.
[3] Joint Docs., 1850, No. 2, pp. 11, 36; *Ibid.*, 1851, No. 2, pp. 7, 32.

action of the State was unconstitutional. In 1853, however, for reasons not necessary to note here, the Legislature ordered the proper State officers to pay to the university, at stated intervals, "the entire amount of interest that may hereafter accrue upon the whole amount of university lands sold or that may be hereafter sold."[1] That is, the State was to pay interest not only upon the amount of the fund then upon the books, and which the State in accordance with its established policy had borrowed, but also on the hundred thousand dollars deducted in 1850 in payment of the loan. So far as the university was concerned, this latter amount was thus made a part of the fund so long as the act remained in force. This arrangement continued until 1877,[2] when, by authority of the Legislature,[3] one hundred thousand dollars were transferred back to the fund on the books of the State. Thus the fund to-day represents the actual proceeds of all the sales. Evidently the loan has not been paid out of the principal of the fund, and the records show no such payment from the income. It is not probable, however, that the State, which has always been generous with its university, will ever demand repayment of the loan.

When the land-office was established in 1842, the management of the university lands passed into the hands of the Commissioner. Since then the sales have continued uninterruptedly. Many attempts have been made to reduce the price, but fortunately all have failed. The lands are all sold except two hundred and eighty-seven acres, and the fund amounts to $543,317.66.[4] The average price received per acre for the entire quantity sold is eleven dollars and eighty-seven cents,[5] or more than twice that received for any other educational grant in the Northwest Territory.

[1] Mich. Laws, 1853, 85. [2] See Mich. Laws, 1855, 139; 1857, 154; 1859, 397.

[3] Mich. Laws, 1877, 290. This was a general law authorizing transfers between different accounts on the books of the State preparatory to the adoption of a new system of keeping the accounts. No mention is made of this particular transfer, and the law is no evidence of an intention to give the one hundred thousand dollars to the university.

[4] Report, Supt. of Pub. Instruction, 1882, 18.

[5] Excluding the Toledo lands sold during the territorial days, the average is slightly over twelve dollars.

(*e*) WISCONSIN.

Congress made no reservation for a seminary in Wisconsin until 1838, when in response to a petition of the territory the usual seventy-two sections were set aside.[1] On the same day that the petition was framed by the territorial Legislature a law was passed establishing the "University of the Territory of Wisconsin."[2] This law made no reference to any prospective land grant, nor were the lands applied to the benefit of the institution before Wisconsin became a State. Two thirds of the lands were located by special commissioners appointed by the Legislature in 1840,[3] and the remainder by similar officers appointed in 1846.[4] During the territorial days the trustees of the university organized as a board, but took no measures to establish and open the institution.

The State constitution adopted in 1848 provided for the establishment of a State university "at or near the seat of government," and declared that the lands granted for a university should constitute a perpetual fund, the income of which should be given to the support of this institution.[5] The first State Legislature repealed or amended the law establishing the territorial university, and formally chartered the "University of Wisconsin at Madison."[6] In the same year an appraisal of the lands, together with all improvements made by occupants or claimants, was ordered.[7] About seven eighths of the grant was thus appraised. The values ranged from one dollar and thirteen cents to seven dollars and six cents per acre, the average being two dollars and eighty-seven cents.[8] The report of the appraisers was presented to the Legislature, and in 1849 a law was passed providing for the sale of the lands at auction. The valuation set by the appraisers was established as the minimum price receivable, and previous settlers were given preëmption

[1] *Supra*, 40.

[2] Butterfield, 9. Institutions of the same name had been chartered in 1836 and 1837, but no attempt at organization was made in either case.

[3] Wis. Stat., 1839, 158.

[4] Wis. Laws, 1846, 99.

[5] Constitution, Art. X., Sec. 6.

[6] Wis. Laws, 1848, 37. [7] *Ibid.*, 123.

[8] Butterfield, 50. Assembly Jour., 1850, 499, 500.

rights at this price.[1] The proceeds, as in the case of the school lands, were loaned to individuals on real-estate mortgages.

It is needless to enter again into the question of the best policy to be observed by a State in managing lands held in trust for higher education. If it is decided that the lands should be sold as soon as possible, no measure can be fairer than one which offers them at their appraised value, provided a fair appraisal can be obtained. There is reason to believe that the appraisal in Wisconsin was not entirely honest,[2] though in some cases the prices fixed were high enough.[3] Many lands were sold during the first year, but the next Legislature held the sound opinion that it was better to accumulate a large fund, even though the sales were less rapid, than to sacrifice the lands for the sake of an immediate fund. The minimum price was accordingly raised to ten dollars per acre.[4] The sale of more than a thousand acres in the next twelve months at an average of over ten dollars showed the wisdom of the step.

But the policy of the State had become firmly settled in favor of using trust lands to attract immigrants. These slow sales were contrary to that policy, and strong pressure was brought to bear on the Legislature to reduce the price again. The prominent argument used was, of course, that the interests of the university would be advanced by faster sales at lower prices and the more speedy accumulation of the fund.[5] The committee of the State Senate did not, however, favor a reduction, preferring to hold the lands until they should be worth the established price, as they must be sooner or later.[6] The Legislature differed with the committee, and reduced the price to seven dollars per acre, except where the land had been appraised at a higher value in 1848. Occupants were given preëmption rights to purchase at the appraised value in all cases. All preëmptors who had purchased lands at more than the appraised value were credited back all excess over that value.[1] "The effect of this legislation was to secure the university lands to preëmptors at prices, on the average, far below the minimum price as fixed by the law of 1850, or even that of 1851. Immigration was thus encouraged, but at the expense of the vital interests of the university."[2]

The mania for selling the lands had by this time taken such hold upon the State that any law which did not succeed in attracting purchasers at once was deemed a failure. The next Legislature, urged by various petitions and the advice of a committee,[3] adopted a new measure for hastening sales. The Governor was authorized to appoint commissioners to re-appraise the unsold lands. None were to be appraised at less than three dollars per acre, and the value as estimated by the commissioners was to be the minimum price.[4] Under these provisions the lands were appraised, the greater part of them being valued by the commissioners, in pursuance of the hint given in the law, at three dollars per acre. At these prices they were in great demand[5] and were soon sold. The proceeds of the forty-six thousand acres amounted to about one hundred and fifty thousand dollars.

While passing laws for selling the lands at low prices the Legislature, realizing the effect which such sales would have on the ultimate fund, petitioned Congress for seventy-two sections more for the university in lieu of the saline lands granted to the State in 1848 but never located.[6] As already stated,[7] Congress complied with this petition in

[1] Wis. Laws, 1849, 149.

[2] This is shown by the fact that the average appraised value of the sixteenth section school lands was $3.66, while that of the university lands, which were selected lands and hence more valuable, was but $2.87 per acre.

[3] See letter of Stoddard Judd in Assembly Jour., 1850, 999.

[4] Wis. Laws, 1850, 144.

[5] The letter of Stoddard Judd, already cited, says: "I have no hesitation in giving it as my opinion that every interest of the State University . . . would be both now as well as hereafter promoted by an entire and total repeal of the law," fixing the minimum price at ten dollars per acre.

[6] Senate Jour., 1851, 468.

[1] Wis. Laws, 1851, 419.

[2] Butterfield, 56.

[3] The committee concluded their report with the following opinion: "To ensure the sale of any considerable portion of the university lands a further reduction in the price is necessary. As the law now stands none can be sold except on preemption for less than seven dollars per acre, which *at present* operates nearly as a prohibition of sales."—Appendix to Journals, 1852, 202.

[4] Wis. Laws, 1852, 769.

[5] Governor's Message, 1854, 9.

[6] Wis. Laws, 1851, 438.

[7] *Supra*, 41.

1854. The Legislature now had an opportunity to atone for the errors by which the former grant had been sacrificed. But the policy of the State had become fixed, and many of the lands were appraised and offered for sale on the terms established by the law of 1852. In 1859 the clauses providing for appraisal were repealed, leaving the minimum price of all unsold appraised lands at three dollars.[1] In 1863 the price of all lands once offered for sale without finding a purchaser was reduced one third,[2] and in 1864 the price of all lands which had never been appraised was fixed at three dollars per acre.[3]

No voice seems to have been raised against these laws until it was too late to correct the evil. In 1871 the opinion was ventured that the State, and not the university, had received "whatever benefit may have been derived from such sales."[4] In 1872 the Governor arraigned the policy which had prevailed, and asserted that nine tenths of the value of the fund had been sacrificed by hasty sales at low prices.[5] In the same year, the Legislature, in the preamble of an act making an appropriation for the university, formally condemned the whole policy hitherto pursued, and confessed that it was too late to effect any benefit by a change.[6]

[1] Wis. Laws, 1859, 226. [2] Wis. Laws, 1863, 431.

[3] Wis. Laws, 1864, 514. The constitution required an appraisal of all lands before they were offered for sale. It is difficult to see how this law and the constitution can be reconciled.

[4] Report, Supt. of Pub. Instruction, 1871, 22. [5] Governor's Message, 1872, 17.

[6] The preamble reads:

Whereas, It has hitherto been the settled policy of the State of Wisconsin to offer for sale and dispose of its lands, granted by Congress for educational purposes, at such a low price per acre as would induce immigration and location thereon by actual settlers; and

Whereas, Such policy, although resulting in a general benefit to the whole State, has prevented such an increase of the productive funds for which such grants were made as would have been realized if the same policy had been pursued which is usually pursued by individuals or corporations holding large tracts of lands; and

Whereas, The university fund has suffered serious loss and impairment by such sales of its lands, so that its income is not at present sufficient to supply its wants, and cannot be made so by any present change of policy, inasmuch as the most valuable lands have already been sold, therefore," etc.—Wis. Laws, 1872, 114. See also Report of Regents, in Wis. School Reports, 1874, 85, 86.

Finally, in 1876, the Legislature, in voting a permanent tax for the support of the university, put on record another lasting condemnation of its earlier policy, by declaring that this tax should be deemed "a full compensation for all deficiencies arising from the disposition of the lands donated to the State by Congress in trust for the benefit" of the university.[1] Thus the mismanagement of earlier days has entailed on the present and all succeeding generations a burden of taxation to compensate for early prodigality.

But the fund was impaired in another way, and for several years the result of the impairment promised to be permanent. In 1862 the Legislature authorized the regents to use the principal of the fund to pay off indebtedness incurred in the erection of buildings.[2] In accordance with this act $104,339.42 was taken from the fund.[3] This act was clearly in violation of the conditions of the grant, and of the provisions of the constitution, by both of which the proceeds of the land were to form a permanent fund for the support of the university.[4] In 1867 the Legislature authorized the annual payment by the State of seven per cent. on the amount thus wrongfully taken from the fund,[5] and this sum has, since 1876, been included in the permanent tax levied for the benefit of the university. About twenty-two hundred acres are still unsold,[6] and the fund is $228,438.83,[7] which is invested in government and municipal bonds, and in loans to various counties. Including the money used for the erection of buildings, the proceeds of the sales are $333,778.25, or an average of three dollars and seventy-one cents per acre.

C.—AGRICULTURAL COLLEGE GRANT.

(*a*) OHIO.

When Congress passed the Agricultural College bill all the public lands in Ohio had been sold, hence the State received scrip for the six hundred and thirty thousand acres to which

[1] *Apud* Whitford, 71.

[2] Wis. Laws, 1862, 168.

[3] Whitford, 69.

[4] See Governor Washburne's Message, 1872, 17.

[5] Whitford, 70.

[6] Report, Com. of Pub. Lands, 1882, 6.

[7] Report, Sec'y of State, 1882, 12.

(*c*) ILLINOIS.

Illinois received the four hundred and eighty thousand acres of land to which she was entitled, in the form of scrip. In 1867 the Legislature created the Illinois Industrial University, and transferred the land scrip to the trustees as an endowment fund for the new institution. Under the act of Congress making the grant, these trustees had the right to locate the scrip. Had the trustees sold half the grant, the income would have been sufficient for the immediate needs of the college. Then by judiciously locating the rest, and selling the lands gradually as they increased in value, a vast fund might have been produced. This plan seems to have been favored at the outset, and twenty-five thousand acres were located in Minnesota and Nebraska.[1] Then, for some reason, the trustees adopted the other plan, and sold the rest of the scrip at seventy cents an acre, realizing from the sales $319,178.87,[2] which was invested in State and county bonds.

The university was located in Champaign County, and received from the county about four hundred thousand dollars in farms, buildings, and money for the construction of other buildings.[3] The Minnesota and Nebraska lands have not been sold and are rapidly increasing in value. It is not improbable that, though they constitute but one twentieth of the original grant, they will produce over one third as much as was derived from the entire amount of scrip sold.

(*d*) MICHIGAN.

In Michigan the establishment of an agricultural college preceded by several years the grant of lands by Congress. The constitution of 1850 required the Legislature to provide for such an institution as soon as practicable,[4] and at the session of 1853 a bill to organize the college passed one branch, but failed to reach consideration in the other. In 1855 an act was passed establishing the college, and appro-

[1] Pillsbury, cxliii.
[2] *Ibid.*
[3] Illinois School Report, 1877–8, 171.
[4] Constitution, Art. XIII., Sec. 11.

priating twenty-two sections of the saline lands for the purchase of a site and the erection of buildings.[1] The proceeds of the lands amounted under existing laws to nearly sixty thousand dollars. With this and forty thousand dollars appropriated by the Legislature the college was organized and equipped. From this time until the grant was received from Congress and rendered available, the institution was supported by legislative appropriations. The State was urged to give to the college a considerable portion of the proceeds of the swamp lands, but contented itself with granting those situated in the four townships adjoining the college. These amounted to six thousand nine hundred and sixty-one acres,[2] and were subsequently sold for $42,396.87,[3] and the proceeds used for various needs of the college.

When the Congressional grant was made the Legislature placed the selection and disposal of the lands in the hands of a board known as the Agricultural Land Grant Board, and put a minimum price of two dollars and fifty cents per acre upon them.[4] Commissioners were sent out by the board to examine the eligible public lands in Northern Michigan. For some reason, possibly upon the supposition that lands selected for the endowment of an agricultural college should be farming lands, the board carefully abstained from locating any tracts of pine, which are now the most valuable lands in that part of the State.[5] Those chosen

[1] Mich. Laws, 1855, 279. There were seventy-two sections of saline lands belonging to the State. In 1846 a minimum price of four dollars an acre had been placed upon them. (Revised Stat., 1846, chap. 60.) The proceeds of twenty-five sections were used in erecting buildings for the asylum for the deaf, dumb, and blind. (Mich. Laws, 1848, 246; 1849, 137; 1850, 334.) Twenty-five sections were given to the Normal School as an endowment fund. The proceeds of these last, with the exception of eight thousand dollars used for the erection of a building, were to be borrowed by the State at six per cent. interest. (Mich. Laws, 1849, 157, 221; 1850, 127.) The last of these sections was sold in 1868, and the total fund of the school is $69,126.04. (Report, Supt. of Pub. Instruction, 1882, 19.) The remainder of the original grant is accounted for above.

[2] Joint Docs., 1858, No. 7, 33.

[3] Governor's Message, 1883.

[4] Mich. Laws, 1863, 201.

[5] It is related that when the commissioners were on the eve of starting out to search for eligible lands, one of the members of the board suggested the propriety of their seeking only agricultural lands, as the grant was for an agricultural college, *but that if they saw any good pieces of pine they might make a minute of their situation*. Upon the return of the commissioners with a long list from which the board might select, the farming lands were chosen for the college, while the member of the board who had offered the advice at the outset shortly afterward became a large purchaser of pine lands, which have since become extremely valuable. The State in one of its latest advertisements of the lands says "they were carefully selected for farming lands."

were, however, of good quality. The patents were obtained for them in 1868, and the board raised the minimum price to five dollars an acre.[1] Very few were sold during the first year, and the Legislature, leaving the price of timber land at five dollars, reduced that of all others to three dollars an acre.[2] A considerable quantity was sold at these prices. In 1880, upon the suggestion of the Commissioner of the State Land Office, the board raised the price to five dollars per acre.[3]

By the law of 1863 it was provided that the proceeds of the sales should be invested in stocks yielding not less than five per cent. interest.[4] This was a mere compliance with the conditions under which the grant was held. In 1871 it was ordered that the receipts be placed in the treasury, and that the State pay seven per cent. interest thereon.[5] Of the two hundred and forty thousand acres which the State received, one hundred and thirty-four thousand, or considerably more than half, are yet unsold.[6] The average price received for those sold is three dollars and forty-seven cents an acre, and the fund is $367,117.24.[7] The remaining land is of good quality, and if the minimum price now established is adhered to, as it should be, the ultimate fund cannot fall short of a million dollars.

(*e*) WISCONSIN.

In 1863 the Governor of Wisconsin was authorized by the Legislature to appoint commissioners to select the two hundred and forty thousand acres of land to which the State

[1] Smith, 79.

[2] Mich. Laws, 1869, 51.

[3] Report, Commissioner of Land Office, 1882, 6.

[4] Mich. Laws, 1863, 201.

[5] Mich. Laws, 1871, 87. Slightly amended in 1875.

[6] January 1, 1883, the State still owned 134,249 acres. 4,337 acres of the grant are not yet located.

[7] Report, Supt. of Pub. Instruction, 1882, 18.

was entitled.[1] The commissioners located the lands in seven of the newer counties of the State,[2] and the selections were approved by the Secretary of the Interior. In 1866 the University of Wisconsin was re-organized, and a college of arts, embracing instruction in agriculture, mechanics, engineering, and kindred industrial arts, was established in connection with it. The income arising from the Agricultural College grant was pledged to the university as an endowment in addition to that which she already had from the seminary lands.[3] At the same time it was ordered that the lands be immediately offered for sale at public auction at a minimum price of one dollar and twenty-five cents per acre.[4] Once offered at auction and not sold, they were subject to private entry. Since then the price has remained unchanged, and the greater part of the lands has been sold at the legal rate.

Thus again the Wisconsin policy manifested itself. After selecting the best lands which the commissioners could find, the State might reasonably have placed a higher price upon them than was asked by the United States for lands. Instead of doing so she offered them for sale on better terms for the purchaser than those given by the United States, for while the latter sold all lands for cash, the State disposed of hers at the same price on credit. She could hardly have done less in execution of the trust without violating it; she ought to have done far more.

While Wisconsin has been selling her lands for a beggarly dollar and a quarter per acre, Michigan has been receiving three and five dollars per acre for lands obtained under the same grant. Starting with the same number of acres, Michigan, as already stated, has a fund of $367,000, and 134,249 acres still on hand, valued at five dollars an acre; Wisconsin has accumulated a fund of $279,689.84,[5] and has sold all but 19,889 acres,[6] which are held at one dollar and

[1] Wis. Laws, 1863, 408.
[2] Butterfield, 106.
[3] Wis. Laws, 1866, 153.
[4] *Ibid.*
[5] Report of Commissioners of Public Lands, 1882, 21, 24. This, like the other educational funds of Wisconsin, is invested in United States and municipal bonds and in loans to various counties.
[6] *Ibid.*, 20.

twenty-five cents an acre. Michigan's ultimate fund will be a million dollars, while Wisconsin's will not much exceed three hundred thousand, and can by no possibility become as large as the fund which Michigan has derived from less than one half of her grant. Since the two States received, at the same time, the same amount of land of a similar quality, the above comparisons afford a most striking illustration of the results of the two ways of managing lands granted for educational purposes.

D.—CONCLUSION.

Thus far the chief object has been to present the raw material of historical facts, and to that end I have traced the origin, management, and disposition of every grant made to the States of the Northwest Territory for the purpose of fostering education. Occasional criticisms have been passed, and, in a few instances, the good or bad features of a single measure or a particular policy have been indicated. It remains to take a general survey of the subject, to decide whether the cause of education has derived the utmost possible good from the federal aid, to indicate the leading causes of trouble encountered, and to draw a few conclusions from the experience of the five States.

Viewed from the standpoint of the existing tangible funds, there can be no question that a greater amount of money might have been realized from the grants. It is needless, after the facts presented in the foregoing pages, to enter into any proof of this. When good lands have been sold for from fifty cents to one dollar and a quarter an acre; when portions of the proceeds have been lost by poor investments or by embezzlement; when speculators have jumped at the opportunity of purchasing at the prices fixed, and have made fortunes by reselling the lands shortly afterwards at greatly increased prices, that might have been obtained by the State itself, few will deny that the funds might have been made larger. But we must not fall into the error of assuming that a wise or unwise management of an educational grant is to be determined solely by