

ATTACHMENT K
PROPERTY OWNERSHIP DOCUMENTATION

ACT OF JULY 2, 1864

United States Statutes at Large
Volume 13, Pages 365 - 372

An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from Lake Superior to Puget's Sound, on the Pacific Coast, by the Northern Route.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Richard D. Rice, John A. Poore, Samuel P. Strickland, Samuel C. Fessenden, Charles P. Kimball, Augustine Haines, Edwin R. W. Wiggin, Anson P. Morrill, Samuel J. Anderson of Maine; Willard Sears, I. S. Withington, Josiah Perham, James M. Becket, A. W. Banfield, Abiel Abbott, John Newell, Austin L. Rogers, Nathaniel Greene, jr., Oliver Frost, John A. Bass, John O. Bresbrey, George Shiverick, Edward Tyler, Filander J. Forristall, Ivory H. Pope, of Massachusetts; George Opdyke, Fairley Holmes, John Huggins, Philander Reed, George Briggs, Chauncy Vibbard, John C. Fremont, of New York; Ephraim Marsh, John P. Jackson, Jr., of New Jersey; S. M. Felton, John Toy, O. J. Dickey, B. F. Archer, G. W. Cass, J. Edgar Thompson, John A. Green, of Pennsylvania; T. M. Allyn, Moses W. Wilson, Horace Whittaker, Ira Bliss, of Connecticut; Joseph A. Gilmore, Onslow Stearns, E. P. Emerson, Frederick Smyth, William E. Chandler, of New Hampshire; Cyrus Aldrich, H. M. Rice, John McKusick, H. C. Waite, Stephen Miller, of Minnesota; E. A. Chapin, John Gregory Smith, George Merrill, of Vermont; James Y. Smith, William S. Slater, Isaac H. Southwick, Earl P. Mason, of Rhode Island; Seth Fuller, William Kellogg, U. S. Grant, William B. Ogden, William G. Greene, Leonard Sweat, Henry W. Blodgett, Porter Sheldon, of Illinois; J. M. Winchell, Elsworth Cheesebrough, James S. Emery, of Kansas; Richard F. Perkins, Richard Chenery, Samuel Brannan, George Rowland, Henry Platt, of California; William F. Mercer, James W. Brownley, of Virginia; John H. B. Latrobe, W. Prescott Smith, of Maryland; Greenbury Slack, A. J. Boreman, of West Virginia; Thomas E. Bramlette, Frank Shorin, of Kentucky; John Brough, John A. Bingham, Oran Follett, John Gardner, S. S. L'Hommedieu, Harrison G. Blake, Philo Chamberlin, of Ohio; John A. Duncan, Samuel M. Harrington, of Delaware; Thomas A. Morris, Jesse L. Williams, of Indiana; Samuel L. Case, Henry L. Hall, David H. Jerome, Thomas D. Gilbert, C. A. Trowbridge, of Michigan; Edward H. Broadhead, Alexander Mitchell, Benjamin Ferguson, Levi Sterling, Marshal, of Wisconsin; J. C. Ainsworth, Orlando Humason, H.W. Corbett, Henry Failling, of Oregon; J. B. S. Todd, M. K. Armstrong, J. Shaw Gregory, J. Le Berge, of Dakota Territory; John Mullan, Anson G. Henry, S. D. Smith, Charles Terry, of Washington Territory; H. W. Starr, Platt Smith, Nixon Denton, William Leighton, B. F. Allen, Reuben Noble, John L. Davies, of Iowa; Willard P. Hall, George R. Smith, H. Gayle King, John C. Sargent, of Missouri; William H. Wallace of Idaho Territory; J. H. Lathrop, Henry D. Cooke, H. E. Merrick, of the District of Columbia, and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Northern Pacific Railroad Company," and by that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. And said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget's Sound, with a branch, via the valley of the Columbia River, to a point at or near Portland, in the State of Oregon, leaving the main trunk-line at the most suitable place not more than three hundred miles from its western terminus; and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said company shall consist of one million shares of one hundred dollars each, which shall in all respects be deemed personal property, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named are hereby appointed commissioners, and shall be called the board of commissioners of the "Northern

Pacific Railroad Company," and fifteen shall constitute a quorum for the transaction of business. The first meeting of said board of commissioners shall be held at the Melodion hall, in the city of Boston, at such time as any five commissioners herein named from Massachusetts shall appoint, not more than three months after the passage of this act, notice of which shall be given by them to the other commissioners by publishing said notice in at least one daily newspaper in the cities of Boston, New York, Philadelphia, Cincinnati, Milwaukee, and Chicago, once a week at least four weeks previous to the day of meeting. Said board shall organize by the choice from its number of a president, vice-president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. The secretary shall be sworn to the faithful performance of his duties, and such oath shall be entered upon the records of the company, signed by him, and the oath verified thereon. The president and secretary of said board shall in like manner call all other meetings, naming the time and place thereof. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities or other places in the United States, as they, or a quorum of them, shall determine, within six months after the passage of this act, to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as twenty thousand shares shall in good faith be subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each state in which subscription books have been opened, at least fifteen days previous to the day of meeting and such subscribers as shall attend the meeting so called, either in person or by lawful proxy, then and there shall elect by ballot thirteen directors for said corporation; and in such election each share of said capital stock shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners, and, in case of their absence or inability, any two of the officers of said board, shall act as inspectors of said election, and shall certify under their hands the names of the directors elected at said meeting; and the said commissioners, treasurer, and secretary, shall then deliver over to said directors all the properties, subscription books, and other books in their possession, and thereupon the duties of said commissioners, and the officers previously appointed by them, shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. Annual meetings of the stockholders of the said corporation for the choice of officers (when they are to be chosen) and for the transaction of business shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

Section 2. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said "Northern Pacific Railroad Company," its successors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power and authority is hereby given to said corporation to take from the public lands, adjacent to the line of said road, material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water-stations; and the right of way shall be exempt from taxation within the territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this act, and acquired in the donation to the road named in this bill.

Section 3. And be it further enacted, That there be, and hereby is, granted to the "Northern Pacific Railroad Company," its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public

land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the general land-office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, That if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided, further, That the railroad company receiving the previous grant of land may assign their interest to said "Northern Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: Provided, further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd numbered sections, nearest to the line of said road may be selected as above provided: And provided, further, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: And provided, further, That no money shall be drawn from the treasury of the United States to aid in the construction of the said "Northern Pacific Railroad."

Section 4. And be it further enacted, That whenever said "Northern Pacific Railroad Company" shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to, and coterminous with, said completed section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid: Provided, That not more than ten sections of land per mile, as said road shall be completed, shall be conveyed to said company for all that part of said railroad lying east of the western boundary of the State of Minnesota, until the whole of said railroad shall be finished and in good running order, as a first-class railroad, from the place of beginning on Lake Superior to the western boundary of Minnesota: Provided, also, That lands shall not be granted under the provisions of this act on account of any railroad, or part thereof, constructed at the date of the passage of this act.

Section 5. And be it further enacted, That said Northern Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turn-outs, stations, and watering places, and all other appurtenances, including furniture, and rolling stock, equal in all respects to railroads of the first class, when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be constructed a telegraph line, of the most substantial and approved description, to be operated along the entire line: Provided, That the said company shall not

charge the government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Northern Pacific Railroad Company to permit any other railroad which shall be authorized to be built by the United States, or by the legislature of any territory or state in which the same may be situated, to form running connections with it, on fair and equitable terms.

Section 6. And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or preemption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting preemption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall not be sold by the government at a price less than two dollars and fifty cents per acre, when offered for sale.

Section 7. And be it further enacted, That the said "Northern Pacific Railroad Company" be, and is hereby, authorized and empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width two hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-houses, or any other structures required in the construction and working of said road. And the said company shall have the right to cut and remove trees and other material that might, by falling, encumber its road-bed, though standing or being more than two hundred feet from the line of said road. And in case the owner of such lands or premises and the said company cannot agree as to the value of the premises taken, or to be taken, for the use of said road, the value thereof shall be determined by the appraisal of three disinterested commissioners, who may be appointed, upon application by either party, to any court of record in any of the territories in which the lands or premises to be taken lie; and said commissioners, in their assessment of damages, shall appraise such premises at what would have been the value thereof if the road had not been built. And upon return into court of such appraisement, and upon the payment into the same of the estimated value of the premises taken for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved at said appraisement may, within thirty days after the same has been returned into court, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary and proper in the construction of its road. And said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal; and in case the party appealing does not obtain a verdict, increasing or diminishing, as the case may be, the award of the commissioners, such party shall pay the whole cost incurred by the appellee, as well as his own, and the payment into court, for the use of the owner of said premises taken, of a sum equal to that finally awarded, shall be held to vest in said company the title of said land, and of the right to use and occupy the same for the construction, maintenance, and operation of said road. And in case any of the lands to be taken, as aforesaid, shall be held by any infant, femme covert, non compos, insane person, or persons residing without the territory within which the lands to be taken lie, or persons subjected to any legal liability, the court may appoint a guardian for any party under any disqualification, to appear in proper person, who shall give bonds, with sufficient surety or sureties, for the proper and faithful execution of his trust, and who may represent in court the person disqualified, as aforesaid, from appearing, when the same proceedings shall be had in reference to the appraisement of the premises to be taken for the use of

said company, and with the same effect as has been already described; and the title of the company to the lands taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case any party shall have a right or claim to any land for a term of years, or any interest therein, in possession, reversion, or remainder, the value of any such estate, less than a fee simple, shall be estimated and determined in the manner hereinbefore set forth. And in case it shall be necessary for the company to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purposes of said railroad, and may institute proceedings, in manner described for the purpose of ascertaining the value of, and of acquiring title to, the same; but the judge of the court hearing said suit shall determine the kind of notice to be served on such owner or owners, and he may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claims to damages against said company shall be barred.

Section 8. And be it further enacted, That each and every grant, right and privilege herein are so made and given to, and accepted by, said Northern Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-six.

Section 9. And be it further enacted, That the United States make the several conditioned grants herein, and that the said Northern Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States, by its congress, may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

Section 10. And be it further enacted, That all people of the United States shall have the right to subscribe to the stock of the Northern Pacific Railroad Company until the whole capital named in this act of incorporation is taken up, by complying with the terms of subscription; and no mortgage or construction bonds shall ever be issued by said company on said road, or mortgage, or lien made in any way, except by the consent of the congress of the United States.

Section 11. And be it further enacted, That said Northern Pacific Railroad, or any part thereof, shall be a post route and a military road, subject to the use of the United States, for postal, military, naval, and all other government service, and also subject to such regulations as congress may impose restricting the charges for such government transportation.

Section 12. And be it further enacted, That the acceptance of the terms, conditions, and impositions of this act by the said Northern Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be served on the President of the United States.

Section 13. And be it further enacted, That the directors of said company shall make an annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, and they shall, from time to time, fix, determine, and regulate the fares, tolls, and charges to be received and paid for transportation of persons and property on said road, or any part thereof.

Section 14. And be it further enacted, That the directors chosen in pursuance of the first section of this act shall, so soon as may be after their election, elect from their own number a president and vice-president; and said board of directors shall, from time to time, and so soon as may be after their election, choose a treasurer and secretary, who shall hold their offices at the will and pleasure of the board of directors. The treasurer and secretary shall give such bonds, with such security as the said board from time to time may require. The secretary shall, before entering upon his duty, be sworn to the faithful discharge thereof, and said oath shall be made a matter of record upon the books of said corporation. No person shall be a director of said company unless he shall be a stockholder, and qualified to vote for directors at the election at which he shall be chosen.

Section 15. And be it further enacted, That the president, vice-president, and directors shall hold their offices for the period indicated in the by-laws of said company, not exceeding three years, respectively, and until others are chosen in their place, and qualified. In case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, the corporation shall not for that excuse be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors. The directors, of whom seven, including the president, shall be a quorum for the transaction of business, shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate, and effects of the company, the transfer of shares, the duties and conduct of their officers and servants touching the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors may have full power to fill any vacancy or vacancies that may occur from any cause or causes from time to time in their said board. And the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of the company, and to do all acts and things touching the location and construction of said road.

Section 16. And be it further enacted, That it shall be lawful for the directors of said company to require payment of the sum of ten per centum cash assessment upon all subscriptions received of all subscribers, and the balance thereof at such times and in such proportions and on such conditions as they shall deem to be necessary to complete the said road and telegraph line within the time in this act prescribed. Sixty days' previous notice shall be given of the payments required, and of the time and place of payment, by publishing a notice once a week in one daily newspaper in each of the cities of Boston, New York, Philadelphia, and Chicago; and in case any stockholder shall neglect or refuse to pay, in pursuance of such notice, the stock held by such person shall be forfeited absolutely to the use of the company, and also any payment or payments that shall have been made on account thereof, subject to the condition that the board of directors may allow the redemption on such terms as they may prescribe.

Section 17. And be it further enacted, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted to, or conferred upon, said company by the congress of the United States, by the legislature of any state, or by any corporation, person, or persons; and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid, or assistance to its own use for the purpose aforesaid.

Section 18. And be it further enacted, That said Northern Pacific Railroad Company shall obtain the consent of the legislature of any state through which any portion of said railroad line may pass, previous to commencing the construction thereof; but said company may have the right to put on engineers and survey the route before obtaining the consent of the legislature.

Section 19. And be it further enacted, That unless said Northern Pacific Railroad Company shall obtain bona fide subscriptions to the stock of said company to the amount of two millions of dollars, with ten per centum paid within two years after the passage and approval of this act, it shall be null and void.

Section 20. And be it further enacted, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend, or repeal this act.

APPROVED, JULY 2, 1864.

RECORD OF TITLE TO RIGHT OF WAY ACQUIRED
BY ACTS OF CONGRESS AND DECISIONS APPROVING SAME

1. ACT OF CONGRESS APPROVED JULY 2, 1864 (13 U.S. Stats. 355)

Charter of Northern Pacific R.R. Co. - Land grant; also right of way grant of 400 ft. strip across vacant government lands from Lake Superior to Puget Sound.

1-A. Joint Resolution of April 10, 1869 (16 Stat. 57)
Similar to above - 400 ft. right of way for main line from Portland to Tacoma.
Note:- Railway Company never accepted the resolution.

1-B. Joint Resolution of May 31, 1870 (16 Stat. 378)
400 ft. right of way for main line from Portland to Tacoma.

2. RAILROAD COMPANY v. BALDWIN (105 U.S. 426) Decided in October 1880.

This was an action by Baldwin to recover of the St. Joseph and Denver City R.R. Co. damages for entering upon his land in Nebraska in the construction of its road, a strip 200 feet in width. The Company claimed a right of way over the land of that width under the Act of Congress on July 25, 1866, C. 212, entitled "An Act for a grant of lands to the State of Kansas to aid in the construction of the Northern Kansas Railroad and Telegraph." 14 Stat. 210.

When the grant was made by Congress the land claimed by Baldwin was vacant and unoccupied land of the United States. The line of road over it was not definitely located until October 1871. He acquired whatever rights he possessed in October 1869. The defendant railroad contended the plaintiff took the land subject to its right of way. Plaintiff contended that the grant of right of way took effect only from the date of filing the maps. The Court held that the Act was a present grant and that all persons acquiring any portion of the public lands after the passage of the Act in question took the same subject to the right of way conferred by it for the proposed road.

The syllabus reads as follows:

RAILROAD COMPANY v. BALDWIN (103 U.S. 426)

The grant which the act of July 23, 1866, c. 212 (14 Stat. 210), makes to the St. Joseph and Denver City Railroad Company, "to the extent of one hundred feet in width on each side of said road where it may pass through the public domain," is absolute and 'in praesenti', and a party subsequently acquiring a parcel of such lands takes it subject to that right.

2. NORTHERN PACIFIC RAILWAY v. TOWNSEND (190 U.S. 267) Decided May 4, 1903.

This action was brought by the Northern Pacific Railway Company against Townsend to recover possession of a portion of the 400 ft. right-of-way claimed under the Act of July 2, 1864, 15 Stat. 365, in the NW $\frac{1}{4}$ Section 24, Township 134 North, Range 35 West, 5th P.M.

In November, 1871, the line of road was definitely located and duly approved map was filed showing said definite location. This line crossed the land involved in this action. This was vacant public land at that time.

Homestead entries were initiated on said NW $\frac{1}{4}$ in 1873 and 1882, and patents issued in 1885 and 1889 to Abner Townsend and George H. Brown, which purported to convey the whole of each 40 acre subdivision. During the occupancy of the homesteaders they cultivated up to the ordinary snow fences of the railroad, respectively 50 and 100 feet from the center of the track, and such occupancy continued a sufficient length of time to constitute a title by adverse possession under the limitation statutes of Minnesota.

The Court held that the fee passed by the grant made in Sec. 2 of the Act of July 2, 1864, and was in effect the grant of a limited fee, made on an implied condition of reverter in the event that the Company ceased to use or retain the land for the purpose for which it was granted, and that no adverse possession title could be acquired by individuals under the State's statutes of Limitation.

Portion of the syllabus reads as follows:

Where the United States grants a right of way by statute to a railroad company which files a map of definite location, and the road is constructed, the land forming the right of way is taken

out of the category of public land subject to preemption and sale, and the land department is without authority to convey rights therein. Homesteaders filing entries thereafter can acquire no interest in land within the right of way on the ground that the grants to them were of full legal subdivisions the descriptions whereof include part of the right of way.

See Act of Congress of April 23, 1904, validating adverse possession claims and sales of outer 100 ft. charter right of way strips.

3. TOWNSEND CASE (190 U.S. 237) *See 2 Above*

U.S. Supreme Court held that no adverse possession title can ripen against the Railway Company on any portion of the 400 ft. charter right of way strip and that the title of the Railway Company is inalienable.

4. ACT OF CONGRESS APPROVED APRIL 23, 1904 (33 Stat. 538)

Validating all conveyances made by the Railroad prior to April 23, 1904, of any portion of the 400 ft. right of way lying outside of a line 100 ft. distant from the center of the main track as then existing.

5. ELY CASE (197 U.S. 1) *Decided Feb. 20, 1905*

U.S. Supreme Court construed Act of April 23, 1904, to confirm an adverse possession title that had ripened on any portion of the outer 100 ft. on either side of the 400 ft. charter right of way strip on April 23, 1904, ~~was confirmed by the Act of April 23, 1904.~~ By the Act of April 23, 1904 and the latter decision (Nos. 4 & 5) it will be observed that no adverse possession title can ripen on any part of the inner 200 ft. This Act and decision amends the decision in the Townsend case insofar as the outer 100 ft. right of way is concerned.

In Minnesota the law holds that we cannot eject occupants from the right of way where they can show they have located under some color of title without paying them the value of their improvements.

6. CONCANNON CASE (235 U.S. 382) *Decided December 20, 1915.*

U.S. Supreme Court decided that an adverse possession on the

outer 100 ft. strips of the charter right of way must have ripened on April 28, 1904; that is, adverse possession on the charter right of way would not run against the company since that date.

The syllabus reads as follows:

The Act of April 28, 1904, c.1782, 33 Stat.538, validating conveyances of land within the lines of the right of way of the Northern Pacific Railway related only to conveyances theretofore made, and did not confer on the Railway Company power in the future to dispose of the right of way nor on others the power to obtain possession of any part thereof by adverse possession. Northern Pacific Rwy. v. Ely, 197 U.S. 1, distinguished.

While title by adverse possession might have been obtained to portions of the right of way of the Northern Pacific Railway under the Act of April 28, 1904, if the adverse possession had ripened into title prior to the passage of the act, title cannot be obtained thereunder if any part of the period of adverse possession is subsequent thereto.

While a remedial statute should be construed so as to embrace remedies which it was intended to afford, its words should not be so extended as to destroy express limitations and cause it to accomplish purposes which its text shows it was not intended to reach.

In this case the judgment of the state court cannot be sustained as resting on a ground independent of the construction of the Federal statute involved.

While an issue remaining open on the remanding of the case may be one arising under state law which should primarily be disposed of by the state court, this court has the ultimate authority to review the decision on such question to the extent essential to the enforcement of Federal rights involved.

75 Washington 591, reversed.

7. ACT OF CONGRESS APPROVED MARCH 8, 1922 (42 U.S. Stats.414)

Act provides for disposition of abandoned portions of right of way granted railroad companies. Right of way the use of which has ceased, whether by forfeiture or by abandonment by the Railway Company declared or decreed by a court of competent jurisdiction or by Act of Congress, the title of the United States shall with certain exceptions for highways be vested in any person or the successor in title to whom title of the United States may have been granted, conveying the subdivision traversed by the railroad, except lands within a municipality which shall vest in such municipality.

8. ACT OF CONGRESS APPROVED MARCH 3, 1875 (18 U.S. Stats. 482)

An Act granting to railroads a 200 ft. right of way through the public lands of the United States. This Act differs from the Act of July 2, 1864 in that the Company's title dates from the date that its application for a right of way is filed and approved, instead of from the date of the Act of Congress. See C.F. 16568 and 9216-1.

See No 12

9. ACT OF CONGRESS APPROVED MARCH 2, 1899 (30 U.S. Stats. 930)

An Act relating to right of way across Indian Lands.

10. FORFEITURE ACTS - Act of June 26, 1906 (34 U.S. Stats. 482)

Act of February 25, 1909 (35 U.S. Stats. 647)

11. ROBERTS CASE - (158 U.S. 1) - (MURRAY CASE 87 FED. 643 WASH.)

Regarding subsequent vendee taking land subject to burden of railroad.

The syllabus reads in part as follows:

Where a railroad company, having the power of eminent domain, has entered into actual possession of lands necessary for its corporate purposes, whether with or without the consent of their owner, a subsequent vendee of the latter takes the land subject to the burthen of the railroad, and the right to payment from the railroad company, if it entered by virtue of an agreement to pay, or to damages if the entry was unauthorized, belongs to the owner at the time the railroad company took possession.

If a land owner, knowing that a railroad company has entered upon his land, and is engaged in constructing its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.

So far as it was within the power of the State of Wisconsin, through and by its legislature, to authorize the county of Douglas, in that State, to contract with the Northern Pacific Railroad Company for the construction of its road within that county on a designated line, and to establish a lake terminus within the same, and upon the fulfillment of those conditions to convey to it certain of its unsettled public lands, that power was conferred and the contract between the county and the railroad company in respect thereof was ratified by the act of March 23, 1865; and, if there was any want of regularity in the proceedings of the county, it was thereby waived and corrected.

Said grant was made on a valuable consideration, which was fully

performed when the railroad company had constructed its road and had established the lake terminus in the county as it had contracted to do; and the company then became entitled to a conveyance of the lands, and so far as the Supreme Court of Wisconsin can be regarded as having held to the contrary, the courts of the United States are not bound to follow its decision when applied to a corporation created by an act of Congress, for National purposes, and for interstate commerce.

12. RIO GRANDE WESTERN RAILWAY CO. vs. STRINGHAM (239 U.S. 44 decided Nov. 1, 1915.)

This was a suit to quiet the title to a strip of land claimed and used by the plaintiff as a railroad right of way under the Act of March 3, 1875 (18 Stat. 482).

With respect to the title acquired by a Railroad Company under this act the court said -

The right of way granted by this and similar acts is neither a mere easement, nor a fee simple absolute, but a limited fee, made on an implied condition of reverter in the event that the company ceases to use or retain the land for the purposes for which it is granted, and carries with it the incidents and remedies usually attending the fee. (*New Mexico v. U.S. Trust Co.* 172 U.S. 171,183; *Mor. Pac. Ry. v. Townsend* 190 U.S. 267,271; *U.S. v. Michigan*, 190 U.S. 379,398; *West. Un. Tel. Co. v. Pennsylvania R.R.* 195 U.S. 540,570.

It will be noted that the court in this case used the same language with respect to the nature of the title granted under the Act of March 3, 1875 as was used in the *Townsend Case* (190 U.S. 267 decided May 4, 1903) relating to charter right of way.

Chap. 197 Act authorizing certain R.R. Co's or their successors or interest, to convey for public-land purposes certain part of their R/W's.
Approved May 25, 1920 - 41 Stat. 621
46 Stat. 373 Act of May 21, 1920 regarding oil and gas leases on R/W's acquired under any law of the U.S.