BELONGS TO THE CITY

Omaha's Claim to a Million Dollars' Worth of Valuable Land.

THE RAILROAD INTERESTS INVOLVED

Property Originally Given as a Bonus to the Union Pacific.

VALIDITY OF THE ACTION QUESTIONED

Chief Condition of the Deal Rendered Inoperative By the Supreme Court.

THE MISSOURI WORKING FOR OMAHA

By the Law of Accretions the City Now Has an Indisputable Claim to Eighty Acres of Valuable Trackage and Manufacturing Property.

While the public spirited citizens of Omaha are engaged in solving the problem of how the interests of the city may be best advanced; how union depots may be constructed; how factories may be secured and how additional railroad lines may be brought into the metropolis of the west, few, if any, realize that at the present time there is within the city limits more than $1,500,000 worth of real estate that is claimed by other parties, which in reality belongs to the city.

Early Town Site Lines.

As early as 1853 the Council Bluffs and Nebraska Ferry company was organized under the laws of Iowa, its charter to continue for the period of twenty years. Enos Lowe was elected president of the company and a boat was put upon the river to ply between Council Bluffs and the Nebraska shore.

The old town site, of 320 acres, extending up and down the river for a mile or more and west to Saunders street, was squatted upon by residents of the city and parties who were in the employ of the ferry company.

The following year congress passed an act organizing the territory of Nebraska. During the month of July, 1855, the town site containing 320 acres was platted. Four years later, in 1859, the land was put upon the market, entered and deeded to David D. Belden, mayor, in trust for the citizens of Omaha. By a resolution of the city council, adopted July 13, Belden as mayor was instructed to deed to actual residents the lots which they then occupied, and to offer all remaining lots at public sale. The sale was made in conformity with the resolution and deeds passed to the highest bidders. A neat sum was realized and passed into the city treasury.

Reserved Certain Blocks.

Prior to this time, blocks L to Q inclusive, as shown upon the accompanying map, had been reserved. They had not been offered to the public, nor had they been claimed by any of the parties who had squatted upon the lands in and about the city.

At that early date the Missouri river flowed through what is now known as Saratoga bend, through Cut-Off lake and almost due south past the high bluff in the rear of the Omaha Milling company's building at the east end of Clark street. Then it ran almost due south, the west bank being 400 to 500 feet east of the blocks of land mentioned. The same condition of the river is shown by the maps of the government surveys of 1856 and 1858.

What the Early Surveys Showed.

The A. D. Jones map of Omaha, made in 1854, shows that the river intersected these blocks at Nicholas street, cut out a portion of block P and then flowed southeast without touching block Q.

The Poppleton & Byers' map, made and copyrighted in 1857, and which was adopted as the official map of the city, shows the west bank of the river to have been from 400 to 500 feet east of the blocks heretofore mentioned. It shows the river to have intersected Grace street at or about on the line of Sixth street, extended. From that point it flowed southeast, leaving a wide levee in front of all the town site to a point as far south as Pacific street. In all of the council proceedings of the '50s the strip of land is referred to as "the levee," and is reserved for the use of steamboats and for the landing of the boats of the Council Bluffs and Nebraska Ferry company.

In the changes that took place along the river during the years from 1856 to 1870, the ferry reserve from Webster street to a point as far south as Jackson street was entirely washed away, but above Izard street, instead of being eaten up by the river, it widened out constantly and gradually, adding more and to the levee or river front.

During all of those years the strip of land was used by the ferry and the steamboats operating between St. Louis and the upper waters of the Missouri. It was a landing for all of the boats and was one of the busiest places in the city between the months of April and November each year.

First Union Pacific Bonus.

Late in the '50s the Union Pacific Railroad company conceived the idea of building a railroad from Omaha to the Pacific coast. Omaha was made the eastern terminus of the proposed road. Before active operations were commenced, officers of the company importuned the city for aid. Among other things, the company wanted a bonus in the way of lands and city lots. Proposition after proposition was submitted, until at last the city agreed to donate a certain number of blocks of city property, among them being the blocks referred to in the accompanying map and known as L, M, N, O, P and Q. The deed was a conditional one, as a copy of the record found in Deed book P, page 181, will show.

The Deed and Its Conditions.

The deed is as follows:

This indenture, made the 7th day of December, A. D., 1863, between the city of Omaha, party of the first part, and the Union Pacific Railroad company, party of the second part; witnesseth that,

Whereas, The city council of the city of Omaha has this day passed and approved a resolution in the words following, to wit:

Resolved, By the city council of the city of Omaha that the mayor of said city be, and he is hereby authorized, empowered and required to make, execute and acknowledge and deliver to the Union Pacific Railroad company a deed of conveyance in fee simple of the following described pieces, or parcels of land, situate in the county of Douglas, and territory of Nebraska, to wit:

Blocks L, M, N, O, P and Q, in said city of Omaha, as designated on the lithographed map thereof, made and published by Poppleton & Byers, said conveyance to contain a proviso that in case the eastern terminus of the Union Pacific Railroad company, on the Missouri river shall not be located and continued within one and one-fourth miles of Farnam street, in said city of Omaha, then and in that case the premises hereby conveyed shall revert and become reinvested in the said city.

Therefore, in consideration of the premises and the sum of $1, to the said party of the first part, in hand paid by the said party of the second part, the receipt whereof is acknowledged, the said party of the first part hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns forever, all those certain pieces or parcels of land, situated in the county of Douglas and territory of Nebraska, and described as follows, to wit:

Blocks L, M, N, O, P and Q, in said city of Omaha, as designated on the lithographed map made thereof, made and published by Poppleton & Byers, together with the appurtenances, unto the said party of the second part, its successors and assigns forever. And the said party of the first part doth hereby covenant and agree with the said party of the second part, its successors and assigns, that it is lawfully seized of said premises; that it has good right and lawful authority to sell the same and that it will warrant and defend the title to the same, against all persons claiming by, through or under it.

Provided, however, that in case the eastern terminus of the Union Pacific railroad on the Missouri river shall not be located and continued within one and one-fourth miles of Farnam street, in said city of Omaha, then in that case, the premises as hereby conveyed shall revert to and become reinvested in the said city.

In witness whereof, the mayor of the city of Omaha, the party of the first part, has hereunto set his hand and caused the same to be attested by the city clerk of said city with its corporate seal.

B. E. B. KENNEDY,
Mayor of the City of Omaha.

Attest: BYRON REED, City Clerk.
In presence of William E. Harvey.
United States internal revenue stamp.
[SEAL.]

Deed to the Right-of-Way.

The deed of right-of-way over the levee is equally interesting, and is as follows:

This indenture made the 7th day of December, in the year of our Lord one thousand eight hundred and sixty-three, between the city of Omaha, in the territory of Nebraska, of the first part, and the Union Pacific railroad company of the second part:

Witnesseth as follows, namely: That whereas, at a meeting of the city council of said city held this day, the following resolution was passed and adopted by said council, towit:

Whereas, The Union Pacific Railroad company is desirous of obtaining the right-of-way over all that certain piece or parcel of land situated in the city of Omaha, in the territory of Nebraska, lying along the bank of the Missouri river, and designated on the lithographed plat of said city, made and published by Poppleton & Byers, as levee, for the purpose of constructing and maintaining and operating three or more tracks of said railroad over the same, with the requisite side-tracks, turnouts, switches, water stations, warehouses and appurtenances, and whatever else may be requisite and necessary to the operation, maintenance and security of said railroad, its property and business; and

Whereas, The grant of such rights and privileges to said company will be of great benefit and advantage to said city, so long as the same shall be used by said company; therefore,

Resolved, By the city council of the city of Omaha, that the mayor of said city be and he is hereby authorized, empowered and required to make, execute and deliver to the said Union Pacific Railroad company, their successors, assignees and grantees, in accordance with the charter of said city, and the ordinances thereof, in such cases made and provided a deed of grant of said city and the corporate authority thereof, of the right-of-way over, upon and through the said premises, with the free and uninterrupted liberty and privilege of laying out, locating and constructing, maintaining, operating, furnishing and enjoying three or more tracks of said railroad over the same, with the requisite side tracks, switches, water stations, warehouses, wharves and appurtenances and whatsoever else may be requisite and necessary for the location, construction, operation, maintenance, enjoyment and security of said railroad and its appurtenances and business, with free ingress, egress and regress upon, through and over the same, to and for the said company, its successors, assignees, grantees, tenants, servants, occupees and possessors, its property, trains, passenger and freight, so long as the same shall be used and occupied and enjoyed for that purpose by the said company, its grantees, successors and assignees. And further,

Resolved, that the rights and privileges hereby granted shall not be so construed as to conflict with or impair any privilege heretofore granted to any person or persons, or bodies politic or corporate, whatsoever, in or to the aforesaid grounds; that suitable crossings shall be made and provided by said company at all public streets crossed by any of the said railroad tracks which is necessary for the public to use to enable it to reach the steamboat and ferry landings, so as not to obstruct travel to or from the ferry or steamboat landings, and that the right of the public to travel over and enjoy the said ground shall be unimpaired only so far as the reasonable exercise of the privileges hereby granted shall abridge the same, and that the substance of this last resolution be incorporated in said grant by way of limitation of the privileges of said company.

Now, therefore, in consideration of the premises and the sum of $1, lawful money of the United States, unto the said party of the first part, well and truly made by the said party of the second part, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, the said party of the first part hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said party of the second part, its grantees, successors and assigns the right-of-way over, upon and through all that certain piece or parcel of land situate in the city of Omaha and territory of Nebraska, lying along the bank of the Missouri river and designated on the lithographed plat of said city, and published by Poppleton & Byers as levee, from the northern to the southern corporate limits of said city, with the free and uninterrupted liberty and privilege of laying out, locating, constructing, maintaining, operating, furnishing and enjoying three or more tracks of said railroad, over and upon the same, with the requisite side-tracks, switches, water stations, warehouses, wharves and appurtenances, and whatever else may be requisite and necessary for the location, construction, operation, maintenance, enjoyment and security of said railroad and its business, with free ingress, egress and regress upon, through and over the same, to and for the said party of the second part, its grantees, successors and assigns, tenants, servants, occupees and possessors, its property, trains, passengers and freight. To have and to hold all and singular the said rights and privileges aforesaid, unto the said party of the second part, its grantees, successors and assigns, so long as the same shall be used, occupied and enjoyed for the purposes aforesaid, by the said party of the second part, its grantees, successors and assigns. Provided, however, that the rights and privileges hereby granted shall not be so construed as to conflict with, or impair any privileges heretofore granted to any person or persons or bodies politic, or coporate whatever, in or to the said ground; and;

Provided further, that suitable crossings shall be provided by the said party of the second part at all public streets crossed by any of the said railroad tracks which it is necessary for the public to use to enable it to reach the ferry and steamboat landings, and;

Provided further, that the right of the public to travel over and enjoy the said premises shall be impaired only so far as the reasonable exercise of the privileges hereby granted shall abridge the same.

In witness whereof the mayor of said city of Omaha, the said party of the first part, has hereunto set his hand as such mayor and caused the same to be attested by the city clerk of the city with its corporate seal.

B. E. B. KENNEDY,
Mayor of the city of Omaha.

Attest BYRON REED, City Clerk.
In presence of George B. Lake. [SEAL.]
United States revenue stamp $5.

How the Title Was Obtained.

The manner in which the Union Pacific railroad company obtained from the city its alleged title to blocks L, M, N, O, P and Q, and the right of way over the levee is best explained by the council journal of November and December, 1863.

At that time the council was composed of six members, George B. Lake, S. J. Goodrich, D. C. Sutphen, Henry Grebe, John Campbell and John H. Kellom, with B. E. B. Kennedy mayor and presiding officer.

At the session held November 30, 1863, Mayor Kennedy, Aldermen Campbell, Goodrich, Lake and Kellom were present.

By permission Messrs. Dye, Hanscom, McCormick, Mills, Taylor and Kountze were allowed to address the meeting upon the question of deeding to the Union Pacific railroad company the right-of-way over the levee and the blocks of land heretofore mentioned. After a lengthy discussion the matter was referred to the judiciary committee, of which Judge Lake was chairman, with instructions to report at the next regular meeting to be held December 2, 1863.

At the next meeting there was not a quorum of the aldermen present and the council adjourned to meet December 7. When the adjourned meeting was held, it was attended by Messrs. Campbell, Goodrich, Lake, Kellom and Mayor Kennedy.

Alderman Lake, chairman of the committee on judiciary, reported back two resolutions, which are embodied in the deeds to the Union Pacific Railroad company, copies of which are published in another place in this article.

Alderman Goodrich moved the adoption of the resolutions, and upon roll-call all of the members voted "aye."

Went Through with a Rush.

Just what influences were brought to bear upon the council to induce its members to act with such great haste is not known at the present time. Twenty-nine years have passed away, dimming the recollections of the men who attended the council meeting. The meeting, however, was one at which business was not allowed to lag or linger by the wayside.

At that meeting, held on the evening of December 7, 1863, the report of the committee on judiciary was received and adopted. The deeds to the land before referred to were executed, sealed and signed, to at once be turned over to the keeping of the railroad company.

The records show all of this, and they also show that the business was transacted at one sitting of the council, at a meeting that was held pursuant to an adjournment taken at a time when less than a quorum of the members were present to vote upon the proposition to adjourn.

Claim the Action was Illegal.

Parties who have looked into the matter stake their reputation that all of the business transacted at the meeting of the city council held on the evening of December 7, 1863, was illegal and void. They hold that there never was a rule adopted by which less than a quorum of a legislative body could adjourn to a stated date.

The records of the city show the facts. They show them approved by the president and attested by the clerk. They show that the committee on judiciary was instructed to report upon a certain matter at a stated time; that when that time came, which was a regular meeting of the city council, less than a quorum of the members were in attendance. Nothwithstanding that fact the council was called to order and the body adjourned to a stated time. Not a word appears in the records to show that a call for a special meeting was issued. It was simply a motion to adjourn. At that adjourned meeting the business was transacted.

Acting under the authority granted by the deeds which were ordered at the illegal meeting of the Omaha city council, the Union Pacific Railroad company took possession of the whole river front, but did it live up to the terms of the deed?

Violated Terms of the Deed.

The deed provided in clear and unmistakable terms that when the railroad company failed to maintain its eastern terminus within one and one-fourth miles of Farnam street, then the property, especially blocks L, M, N, O, P and Q should revert to and become the property of the city of Omaha. To cut a long story short, the eastern terminus of the road did not remain at the point agreed upon, but went to the Transfer, at or near Spoon Lake, Iowa, and three miles from the eastern terminus of Farnam street. The location was settled by a decision of the United States supreme court.

Decision of the Supreme Court.

The decision in that case concludes as follows:

"It has been argued, however, that the bridge is not a part of section 10, east of and opposite to which, on the western boundary of Iowa, the president fixed the terminus. It is, however, the only bridge that the company has extending its road to the western boundary of Iowa; and clearly it has no authority to build any other. True, it is not opposite section 10; but the company has taken up its road from that section, and now it comes to the river where the bridge is actually constructed. Having abandoned its road, so far as it extended above that point; having commenced its bridge where it is; having applied to congress for power to mortgage it and for special power to levy tolls and charges for the use of it; and having obtained these powers it is not at liberty now to assert that it has located its bridge at the wrong place.

"To hold that the bridge is not a part of the road would defeat the plain object congress had in view in 1862 and in 1864—a continuous line for connections with Iowa roads. It would be allowing the connection to be made in Nebraska instead of in the western boundary of Iowa, when the act of 1871 expressly declared that nothing therein should be construed as to change the eastern terminus of the Union Pacific railroad from the place where it was then fixed by existing laws.

"Holding then, as we do, that the legal terminus of the railroad is fixed by law on the Iowa shore of the river, and that the bridge is a part of the railroad, there can be no doubt that the company is under obligations to operate and run the whole road, including the bridge, as one connected and continuous line.

"What this means is not difficult to understand. It is a requisition made for the convenience of the public. An arrangement such as the company has made, by which freight and passengers destined for or beyond the eastern terminus are stopped two or three miles from it and transferred to another train, and again transferred at the terminus, or by which freight and passengers going west from the eastern end of the line must be transferred at Omaha, breaks the road into two lines and plainly is inconsistent with continuous operation of it as a whole. The mandamus awarded in this case, therefore, imposes no duty beyond what the law requires.

"For these reasons we think the circuit court did not err in holding that Hall and Morse were competent to apply for the writ in this case.

"The decree of the circuit court is affirmed."

Removed the Eastern Terminus.

Following closely upon the heels of this decision of the supreme court came a notice from the president of the United States ordering a removal of the eastern terminus of the Union Pacific railroad to the Iowa side of the river.

The officials complied with the terms of the order, and even went beyond the instructions therein contained. Instead of removing the terminal point simply to the Iowa side of the river, they located it inland nearly two miles at a point now known as the "Transfer." There it has remained up to the present date, but during all of the years that have intervened the Union Pacific company has retained possession of the blocks of city property, L to Q inclusive, notwithstanding that the deed of conveyance expressly stated that whenever the eastern terminus of the railroad was maintained at a point more than one and one-fourth miles from Farnam street, then the property should revert to the city.

Not only has the company held possession of these five blocks, containing eight lots each, which at a low estimate are worth on the aggregate, $120,000, but it also failed to pay the taxes, or a portion of them which have accrued during the past twenty-nine years.

Sold Part of the Property.

Aside from this, it has sold and disposed of one of the blocks, the one known as block Q. On September 7, 18[illegible]2, Sidney Dillon, then president of the Union Pacific company, and Henry McFarland, its secretary and treasurer, sold the whole block to the Omaha City Water Works company, which has since become the American Water Works company. The deed which is recorded in Deed book 43, on page 283, shows the consideration to have been $1,200, but at that time it is probable that Mr. Dillon had but little confidence in the title that his company held to this block and the others L, M, N, O and P, as the records show the deed to have been a carefully worded instrument.

Instead of being a straight conveyance, after the usual granting clause, there are inserted in the deed the following words:

"And the Union Pacific railroad company does hereby covenant with the City Water Works company that it has done nothing whereby the title to said premises can be annulled."

Used for Water Works Purposes.

This deed of conveyance was accepted by the water works company and the work of establishing its down town pumping station was commenced. The pumping house was located upon the levee which was owned by the city and over which the Union Pacific had the right-of-way. Two settling basins were placed upon the block purchased from the railroads. As the city grew, their capacity became too small to meet the public demand for water and another basin was located, this one on Cuming street between Seventh and Eighth.

The real estate boom of the early '80s followed and again the water works company found itself unable to supply the public, owing to the lack of reservoir capacity. The company could not get down onto block 328, the one directly south of the basin located in Cuming street. In casting about for more ground it attempted to purchase block P, but that was not for sale. However, it was for rent. A bargain was soon struck with the railroad company, by which the block was leased to the water works company for a long term of years at an annual rental of $590.

Upon the execution of the lease covering block P, the water works company commenced excavating and soon had the whole of the block, together with Nicholas and Izard streets, between Seventh and Eighth, covered with settling basins.

Took Big Rentals from the Property.

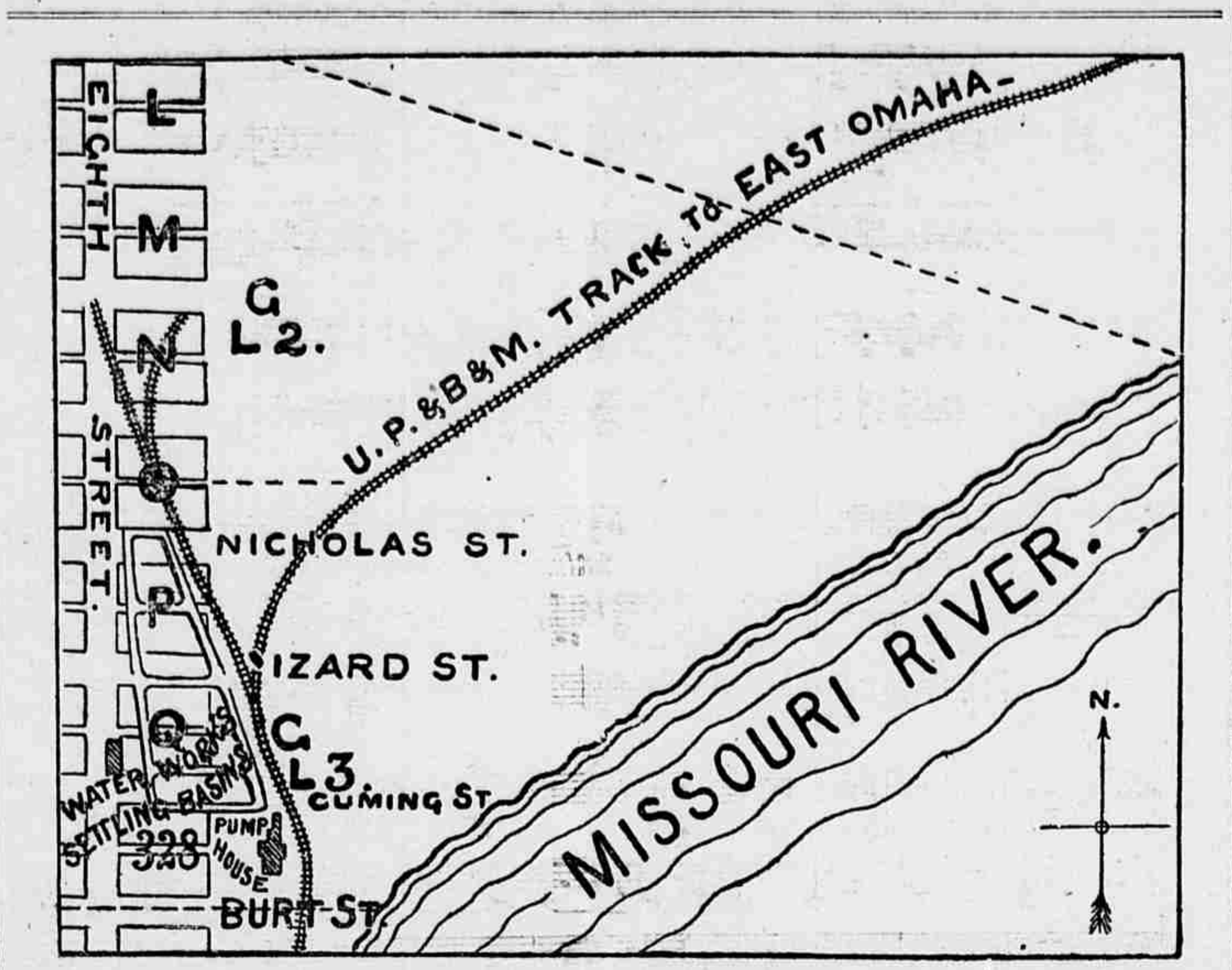
For ten years the water works company has occupied the block, together with the streets, and during that time it has paid into the treasury of the Union Pacific company as rental, the sum of $59,000, which, under the reversion clause in the deed originally made to the Union Pacific road by Mayor Kennedy, should have been paid into the city treasury of the city of Omaha.

Terms of the Right-of-Way Deed.

The question has been asked, "Did the Union Pacific railroad company comply with the terms of the right-of-way deed executed by Mayor Kennedy on December 7, 1863?" That deed provided that the railroad company should construct and maintain three or more side tracks upon the tract or strip of land known as levee, in front of the blocks L, M, N, O, P, and Q.

Up to this date the company has done nothing of the kind, although it claims possession of the ground, and refuses to allow other roads to enter thereon. One single track enters upon the levee at the intersection of Cuming street. It runs almost due north, past the settling basins of the water works company to a point opposite Nicholas street. There the track enters upon block O and runs in a northwesterly direction to the center of block N, where a switch has been placed. From the switch two tracks branch out, one running to the northeast, and the other to the northwest, both reaching sand pits in the street between blocks N and M.

There is another track however, that the railroad company claims helps it to comply with the terms of the right-of-way deed. This intersects the track that runs north upon the levee, at a point opposite Izard street. From there it extends in a northeasterly direction, entering the possessions of the East Omaha Land company and extending to the factories in that manufacturing suburb. This track, however, is not owned entirely by the Union Pacific company, but was put down by that company and the Burlington road a couple of years ago and is known as a partnership affair.



Should the City Take Possession?

With this condition of affairs existing, in connection with blocks L, M, N, O, P, and Q, what is there to prevent the city of Omaha from declaring the deal between the city and the Union Pacific at an end and stepping in and taking possession of the property under the provisions of the reversion clause contained in the deed executed December 7, 1863?

There are some parties who assert that the statutes of limitation have run and that the city has lost the opportunity of declaring its rights in the premises. The law books, however, view the subject in a different light. Any number of supreme court decisions are right in point with this case, and all of them show that the statutes of limitation never run against a municipal corporation any more than they do against a minor. They show that a municipal corporation stands in the same position as a minor. The officers of the municipality are always elected at stated intervals and for stated terms, which always keeps it in its minority, so far as being barred by the statutes of limitation are concerned.

If this law is good, and all the writers of text books agree that it is, there is nothing to permit the city from stepping into court any day for the purpose of declaring the old deed void and of no force and effect.

The Land and Its Value.

While there are, no doubt, many people in Omaha who have not seen this land, a word regarding its contour might not be out of place.

All of the blocks and the levee are high and dry, and well adapted for trackage or the erection of warehouses and factories. They lie some twenty feet above the river at low water mark and are not only protected by a heavy clay bank, but also by the system of government rip rap that was put in two years ago.

Eighty Acres in This Deal.

Another question of much greater interest to the city, is whether or not it will take possession of the eighty acres of bottom land that lies directly east of and adjoining the blocks of land heretofore described and the strip of land known as the levee.

In 1850 according to the government survey, the river flowed in the shape of an immense horse-shoe, coming down through its present channel against the high bluffs on the Iowa side, north of Council Bluffs. At a point south of the Carter White lead works it turned and flowed north, thence west through Cut-Off lake and thence south along the Nebraska bluffs from a point opposite Commercial street to about where Clark now intersects Tenth street. From that point it flowed in a southeasterly direction to a point opposite Grace street. Then the curve changed to a direction that was a trifle west, and the flow was directly south, the channel hugging the Nebraska shore along the levee from the northern limits of the city to a point opposite the foot of Farnam street.

Made by the River's Changes.

At this time the neck of the horse shoe was fully two miles in width. In 1851, when the next survey was made the river had slowly crept in, cutting off a portion of the neck of the horse shoe, and adding a narrow strip of land to the levee or river front opposite the city of Omaha.

Another survey was made in 1856, showing that the levee had increased to some extent, so much so that that portion of section fourteen, township fifteen, range thirteen, lying between blocks L, M, N and O was platted as government lot two, containing thirty-two acres. That portion of the section lying between the meander line of the river and blocks P, Q and 328 was known as government lot three and contained 34.20 acres.

Subsequent surveys were made in 1868 and 1875 and the plats and field notes of each show that the neck of the great horseshoe had gradually become narrower until at its lower end it had a width of less than 100 feet.

The Property Grew Rapidly.

All of the time that had intervened between the years 1851 and 1877 accretions had been forming along the river front opposite the north end of the city, until there was a high dry bar nearly three-quarters of a mile in width, covered with a growth of willows and underbrush.

During the high water of 1877 the river cut through the lower end of the the neck of the horseshoe and dropped into the channel that it now occupies. This change left a valuable tract of land between the old river bed and the corporate limits of the city, but it was carefully watched, and instead of being taken posession of by the city of Omaha, under the provisions of the laws of accretion, it was squatted upon by parties who were interested in the old Council Bluffs and Nebraska Ferry company, which was incorporated in 1853 and authorized to exist for the term of twenty years from that date.

Took Possession of the Accretions.

William Brown, who for many years was the owner of the Lone Tree ferry, and afterwards a stockholder in the Council Bluffs and Nebraska Ferry company, took possession of lot 1 in Iowa and lot 3 on the Nebraska shore, together with all of the accretions. Andrew McCown, another of the parties in the old ferry company, took possession of lot 3 with the accretions thereto. Under squatters' titles these parties held possession of the lands until death, after which their heirs held possession until they passed into the hands of J. M. Woolworth, trustee for the Council Bluffs and Nebraska Ferry company, which held a charter that expired in 1873.

Recent Deals With the Property.

The records in Council Bluffs show that for the sum of $5,000, on April 10, 1891, Frank C. and John A. McCown, executors of the estate of Andrew McCown, deceased, conveyed the whole of lot 3, together with the accretions to Theodore Miller, who is an employe of the East Omaha land company.

Prior to this, and on December 15, 1888, for the sum of $300, the records show that John H. C. Brown conveyed the same property to J. M. Woolworth, trustee. Again, on May 20, 1889, Emma McKenzie, Alexander McKenzie, Mary R. Sorenson, Alfred Sorenson, Helen Van Camp, heirs of W. D. Brown, deceased, James Jackson and wife conveyed the same property to J. M. Woolworth, trustee. Later on, and on December 28, 1889, C. H. Downs, who was a ferry company squatter, conveyed the same property to Woolworth, as trustee, the consideration being $100.

Each deed was carefully drawn and great care was used to see that they contained a clause as follows: "Extending to the low water mark of the said Missouri river on the Nebraska shore, as shown by the survey of 1856, with all accretions hereto formed to the same, and also any and all accretions formed to any of the above described property."

The Title Lacks Completeness.

The chain of title is far from being complete, as there is nothing on the records of either Douglas county, Nebraska, or Pottawattamie county, Iowa, showing that Andrew McCown, W. D. Brown, C. H. Downs or any of the other parties who appear as grantors ever obtained title to any of the lots or lands from United States or any other person. The records show that the ferry company had a tract of land, which was platted as Ferry addition to Council Bluffs. But this tract, according to all of the surveys, was always on the Iowa side of the river.

Will Be Deeded as Needed.

While there is nothing that appears of record, there is an understanding between the Union Pacific Railroad company, the East Omaha Land company and the old ferry company, that these lands will be deeded back and forth, as any one of the parties may demand.

This statement has been made by an official of one of the companies, and to prove that it is true a deed which is now executed, but not filed for record, bears evidence. Not long ago the old ferry company deeded to the East Omaha Land company north half of lot 3, and in return the East Omaha Land company deeded to the Council Bluffs and Nebraska Ferry company the south half of the same lot. Both deeds, like those taken by Woolworth contained the clause, "Extending to the low water mark of the said Missouri river on the Nebraska shore, as shown by the survey of 1856, with all accretions hereafter formed to the same, and also any and all accretions formed to any of the above described property."

This evidently means but one thing, and that is, that the three companies lay claim to all of the river front that belongs to the city of Omaha.

How the Land Was Formed.

To show conclusively that the land along the levee front and adjoining blocks L, M, N, O, P and Q were formed by accretion and not by any sudden change in the channel of the Missouri river, it is only necessary to peruse the testimony taken in the East Omaha case which is now before the supreme court of the United States, and known as the State of Nebraska against the State of Iowa, brought to settle the boundary line between the two states.

The testimony was taken at Omaha last summer, and occupied several weeks of time.

The point at issue was whether the land had been formed by accretion, or whether it had been added in large tracts.

The testimony of C. B. Rustin, John A. Smiley, George Smith, J. A. Swobe, W. W. Marsh, Thomas Tostevin, John McPherson, A. D. Jones, Eugene L. Ware, C. F. Potter and Theodore Miller, all men who had resided in Omaha from twenty-five to thirty-five years, was taken. All of the witnesses agreed upon the point that the cutting of the river along the Nebraska shore had been slow and imperceptible.

The testimony of County Surveyor George Smith is given.

Surveyor Smith's Statement.

George Smith, aged 56 years, called and sworn. He testified that he had resided in Omaha since 1856 and by occupation was a surveyor and civil engineer. He had made a great many surveys of Douglas county, Neb. The river between Omaha and Council Bluffs had been under his observation during the period of his residence in Omaha and he was familiar with its traversings and location. The changes in the river from 1856 to 1877 were all brought about by abrasion and accretion. It worked itself into the shape of an immense crook or loop, four miles around from the fair straight channel in which it ran from 1851 to 1856. In 1856 witness subdivided into lots the whole of section 14 in Iowa and found about eight rods washed away from the line of the original survey made in 1851. On the abrasion side of the river the shore was usually perpendicular from ten to fifteen feet high, owing to the stage of the water. Accumulations and accretions were going on opposite to where the abrading was occurring. The accumulations and abrasions differed in different years, but there was a constant wearing off on the current side and a filling in on the other side. The whole character of the change was slow and gradual as distinguished from a sudden change or cut-off. The river had not made any sudden changes of its channel outside of banks or cut off any portions of land except by abrasions. The filling was made up of a deposit of the silt and sand that floated in the river and settled when it got outside of the rapid course of the channel.

Witness had made surveys of the land formed against the Nebraska shore for the purpose of determining the available timber, and between 1856 and 1832 he had noticed that there had been a great deal of accretion. Since 1863 almost every year he had been upon the bottoms and had seen the land form, although he made no special measurements to determine the fact. The cutting away on one shore was cotemporaneous with the accretions on the opposite shore.

What Mr. Smiley Knows.

John A. Smiley had resided in Omaha since 1856. He was familiar with the Missouri river in the vicinity of Council Bluffs and Omaha. It was the rule that the Missouri river cut on one side and filled at a proportionate rate on the other. That was true in relation to the great bend and had been for more than thirty years. The river had cut the horseshoe down to a narrow neck and then cut through in 1887. The change in the course of the river from where it ran in 1856 to where it ran in 1877 was not a sudden one, but was slow and gradual, every year cutting some on one side and filling up on the opposite side. Some years the river would not cut more than ten feet, but in nineteen years it went from a mile to a mile and a half in some places. Witness was on the new land once or twice each year, and from observations that he made was willing to state that the accretion was gradual and imperceptible without measurement, but not imperceptible to engineers who measured the ground.

Law of Accretions.

Taking it for granted that the witnesses in the Nebraska-Iowa case were correct in their version of the wearing away of the land in the neck of the horseshoe, the land extending to the water line on the west bank of the river, where it flowed in 1877 prior to the cut-off, would belong to others than the old ferry company, as originally it held no land between the levee and the west shore of the river. Then the question of who was the owner of the accretions naturally follows. The general law on accretion is as follows: "Accretion is the increase of real estate by the addition of portions of soil by gradual depositions through the operation of natural causes, to that already in possession of an owner.

"The owner of land on a stream has a right to all accretions thereto, caused by the deposition of alluvium thereon, without regard to the question of whether such accretions were formed solely by natural causes, or by such causes influenced by the artificial works of others, and without regard to the question of whether or not such stream is navigable."

Omaha Owns the Land in Question.

There can be no question but that the title to the original levee remains in the city of Omaha, notwithstanding the right-of-way deed held by the Union Pacific company. Again, with the reversion clause that the deeds to the blocks L, M, N, O, P and Q contained, it is more than probable that that property also belongs to the city. Such being the case, the question of how the city shall measure its river front naturally arises. The river has receded and a large tract of land has been formed by accretion between the old levee and the present west bank of the stream.

If the law of accretion is good, then this property still belongs to the city of Omaha.

In measuring and ascertaining the new river frontage, the law upon the subject reads as follows:

"When a new shore is formed by the wearing away of the stream, the land of the new shore is to be divided between the owners entitled to it, according to the following rule: Give to each owner a share of the new shore line in proportion to what they held in the old shore line and complete the division of the land by running a line from boundry between the portions on the old shore to the point thus ascertained on the new."

Precedent for Omaha's Claims.

This question arose in the case of Kehr vs Snyder, reported in the 144 Illinois, page 313. The case went to the supreme court, where the decision of the lower court was sustained.

In handing down his opinion the court said: "A tract of land bordering on this Mississippi was divided into subdivisions or lots, and extending to the river. These lots became the property of various owners. Subsequently there were accretions along the river front and in adjusting the matter of such accretions among the riparian owners, it was held that the proper mode was to measure the entire river front as it was found to be when the lots were laid out and then note the aggregate number of feet frontage, as well as that of each lot; then measure a line as nearly as may be with the middle thread of so much of a stream as lies opposite the line so measured; then divide the thread line into as many equal parts as there are lineal feet in the shore line, giving to each property owner as many of these parts as his property measured in the shore line; and then complete the division by drawing lines between the points."

Parallel Case in Iowa.

Another case in point is that of Cook vs the City of Burlington, reported in the 30 Iowa, page 94. Cook attempted to take possession of a portion of the levee under a right-of-way deed from a railroad company. The court held as follows: "Accretions to a strip of land in a city, along the river bank which is reserved for a public highway and other public purposes, partakes of the same relation as the original reservation; and the city holds title to it subject to the same uses and conditions. The city has no rights, however, to make any unqualified disposition of it to a railroad company, to be held and used as private property, but may grant the right-of-way over it to such railroad company."

Value of the City's Property.

Taking the Omaha possessions into consideration to get the exact area of the land formed by accretion, and which under the general law would become the property of the city of Omaha, it is necessary to find the river frontage that the city originally held. From the south side of Cuming street, between blocks Q and 328, the distance to the north line of block L is about 2,700 feet. Run a thread line up the channel of the river the same distance and a triangle is formed as shown in the accompanying map. Then beginning with block L and bringing the lines down to the river will form a tract of land of a trifle more than eighty acres. A large portion of this land is within the one mile limit and if placed upon the market would be worth $8,000 to $12,000 per acre for warehouse and business purposes.

The alleged owners who are trying to hold on and claim possession declare that the statutes of limitation have run and that the city has lost all power of securing relief. In this the courts differ with the alleged owners, as time and again cases have been decided, proving conclusively that the statutes never run against municipal corporations.

How the Property Could Be Used.

Should the city decide to reclaim this land together with the original levee and the blocks L, M, N, O, P and Q, which in the aggregate would equal 100 acres, the next question that arises is, of what use could it be put to be of a benefit in the upbuilding of Omaha.

Every acre of the vast tract is as level as a floor, high above the water of the river and unequalled for depot grounds, trackage or warehouse purposes.

With the bridge built over the river at East Omaha, this city would be in a position to extend a hand of welcome to all the eastern roads without asking any favors of the Union Pacific or the Burlington company. The city could not only afford to donate freight and passenger depot grounds, but it could give half a dozen companies ample grounds for trackage and terminal facilities besides having acres left to donate to factories and manufacturing enterprises seeking a western location.

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