

BARNEY AND OTHERS *v.* WINONA & ST.  
PETER R. CO.

*Circuit Court, D. Minnesota.*      December 29, 1880.

1. GRANT OF LAND TO THE TERRITORY OF MINNESOTA TO AID IN THE CONSTRUCTION OF RAILROADS—INDEMNITY CLAUSE—Act OF MARCH 3, 1857—SELECTION OF INDEMNITY LANDS—Act OF MARCH 3, 1865—ACT OF JULY 13, 1866.

In Equity.

MILLER, C. J. 1. I am of opinion that, by the true construction of the act of congress of March 3, 1857, (11 St. at Large, 195,) granting lands to the territory of Minnesota, the indemnity clause was intended to include alternate sections within the prescribed limit which had been sold by the United States or lost by pre-emption prior to the date of the grant, as well as such as might be sold between that time and the location of the road. And, without further comment on the cases of, *L., L. ' G. R. v. U. S.* 92 U.S. 733, and *B. & M. R.R. Co. v. Same*, 98 U.S. 339, I do not believe the court in those cases intended to establish a different doctrine.

2. I am of opinion that, in the selection of these indemnity lands, there is no restriction to coterminous sections of 20 miles in length of the road except as that may have been affected by the short period between the passage of the act of March 3, 1865, which did appropriate the lands in place to the construction of coterminous road, and the passage of the act of July 13, 1866, which exempted from that rule lands selected in lieu of those deficient anywhere. If any of the lands now claimed were certified or patented to the company for work done during that period, they cannot be treated as patented in lieu of lands deficient in other sections of 10 or 20 miles.

I think the other questions were settled by Judge Dillon, and Judge Nelson can settle a decree accordingly.

NELSON, D. J. I concur.

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