



*Nebraska History* posts materials online for your personal use. Please remember that the contents of *Nebraska History* are copyrighted by the Nebraska State Historical Society (except for materials credited to other institutions). The NSHS retains its copyrights even to materials it posts on the web.

For permission to re-use materials or for photo ordering information, please see:

<http://www.nebraskahistory.org/magazine/permission.htm>

Nebraska State Historical Society members receive four issues of *Nebraska History* and four issues of *Nebraska History News* annually. For membership information, see:

<http://nebraskahistory.org/admin/members/index.htm>

Article Title: Burlington Tax Controversy in Nebraska Over the Federal Land Grants

Full Citation: Ray H Mattison, "Burlington Tax Controversy in Nebraska Over the Federal Land Grants," *Nebraska History* 28 (1947): 110-131

URL of article: <http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1947BurlingtonTax.pdf>

Date: 5/26/2017

Article Summary: Settlers contested the right of the Burlington and Missouri River Railroad to hold direct land grants without paying tax on the land. Anti-railroad sentiment grew, but it proved impossible to force payment of back taxes or to recover public domain lands that the railroads had sold before the court cases were settled.

***Scroll Down for complete article.***

Cataloging Information:

Names: H H Hunnewell, A E Touzalin

Keywords: Burlington and Missouri River Railroad, Union Pacific, right-of-way grants, deficiency grants, indemnity grant, Forfeiture Act of 1887, patents, Prescott case (Kansas Pacific v. Prescott), Cass County case (Hunnewell v. Cass County), McShane case (McShane v. Union Pacific)

# The Burlington Tax Controversy in Nebraska Over the Federal Land Grants

*Ray H. Mattison*

The question of the right to tax lands given as direct grants by the federal government to aid in the construction of the great transcontinental systems was a serious one in the regions through which those railroads passed. This problem originated in the 1860's and has lasted down into the present century. In many cases, these controversies were due to the vagueness of the grants themselves which had "loopholes" through which the railroads could escape taxation. In others, they may be attributed to the peculiar nature of railway development in the West.

In Nebraska, the Burlington and Missouri River Railroad was involved in a series of conflicts over the taxation of its federal grants which were located in twenty-eight of the counties of the eastern and central parts of the state. Thousands of dollars of the taxpayers' money were spent in litigation. These controversies began in the early Seventies and lasted until the early Nineties.

By the charter given the Union Pacific in 1864, the Burlington and Missouri River Railroad of Iowa was given ten alternate sections per mile on each side of the road by the federal government for a line which was to extend from the Missouri River to some point on the Union Pacific in central Nebraska.<sup>1</sup> The state of Nebraska also assisted

---

<sup>1</sup>The charter of 1862 (*U. S. Stats.*, 12:489) gave the Hannibal and St. Joseph Company of Missouri the right to connect with the Union Pacific not west of the 100th Meridian. It was given the same land grant as the Union Pacific. By the amendatory charter of 1864 (*U. S. Stats.*, 13:356) these rights were to be transferred to the Burlington and Missouri River Railroad of Iowa and the land subsidy was enlarged. The law required that the latter company file

by a donation of 50,104 acres.<sup>2</sup> Counties and municipalities gave liberal financial support by bonding themselves to aid in the building of the road. After incorporating under Nebraska laws, the company began the construction of the right-of-way at Plattsmouth in February, 1870. By September, 1872 it had completed its line to Kearney—a distance of 194.01 miles.<sup>3</sup>

Difficulties arose over the interpretation of the Burlington's land grant. In 1866 the Secretary of the Interior reserved the alternate sections on each side of the right-of-way for a distance of twenty miles for the railway.<sup>4</sup> The company made selections within these limits in Otoe, Gage, Cass, Lancaster, Seward, Butler, Saunders, York, Clay, Hamilton, Fillmore, Adams and Kearney counties. Since the line of the road ran close to that of the Union Pacific, a large part of the Burlington's grant overlapped with that set apart earlier for the Pacific company.<sup>5</sup> It was discovered by the Nebraska corporation that after lands had been reserved within the twenty mile limits, there was a deficiency of over 1,200,000 acres.<sup>6</sup> The railroad in 1866 applied to the Interior Department for additional lands. Secretary Browning refused to accede on the ground that the grant was restricted to the twenty mile limits. In 1871 the com-

---

an acceptance within a year and the line was to be completed within 10 years. No government bonds were to be issued to aid in the construction of this road.

<sup>2</sup>Message of Governor Furnas to the Legislative Assembly of Nebraska, 1875. From *Collections and Messages of Governors of Nebraska, 1857-91*, State Historical Society, Lincoln. This grant was made out of the federal grant to Nebraska to aid public improvements.

<sup>3</sup>*Corporate History of the Chicago, Burlington, and Quincy* (Chicago, 1917), 318-321.

<sup>4</sup>*Decisions of the Department of the Interior* (1888), 6:589 ff. The law (*U. S. Stats.*, 13:356) required that the railroad file a map of definite location of its road within a year, after which the land was to be reserved by the Secretary of the Interior to the railroad.

<sup>5</sup>The grants overlapped in Douglas, Cass, Saunders, Lancaster, Hamilton, Clay, Hall, Adams, Buffalo, and Kearney counties.

<sup>6</sup>*United States v. the Burlington and Missouri River Railroad Company in Nebraska*, 98 U. S. 334. This deficiency was due both to the overlapping grant with the Union Pacific and lands preempted or homesteaded along the line of the Burlington prior to the making of the grant.

pany again asked for lands outside that area. Secretary Delano complied.<sup>7</sup> Hence, south of the right-of-way the government permitted the Burlington to make selections in the following amounts:<sup>8</sup>

Webster County	111,247.75 acres
Franklin county	122,152.51

North of the line of the road and outside of the twenty mile limits lieu lands were given as follows:<sup>9</sup>

Howard county	91,375.38 acres
Greeley county	181,511.96
Dakota county	5,781.79
Dixon county	10,740.82
Cedar county	11,500.82
Wayne county	22,729.63
Pierce county	14,062.20
Stanton county	3,178.91
Madison county	87,979.15
Platte county	28,269.41
Antelope county	58,352.64
Buffalo county	2,430.67
Sherman county	131,853.53
Boone county	184,147.52
Valley county	158,395.72

A total of 2,370.653.16 acres of land was patented to the Burlington railroad in Nebraska in grants made by the federal government.<sup>10</sup>

Like most of the western roads, the Burlington in Nebraska was built in advance of the needs of the country which it traversed and before there was sufficient traffic to justify its existence. The pioneers were willing to bond their counties at high rates of interest to encourage the building of railroads. They were equally eager, if possible, to shift the burden of taxation on the rolling stock and

<sup>7</sup>*Decisions of the Department of the Interior* (1888), 6:589 ff.

<sup>8</sup>Exhibits of the Government in *United States v. the Burlington and Missouri River Railroad in Nebraska* (1875), Case 113 C, U. S. Circuit Court Records, Omaha.

<sup>9</sup>*Idem.*

<sup>10</sup>*Land Office Reports*, 1888, 247-249.

lands of the railways to pay for their new courthouses, schools, bridges, and roads as well as to make payments on their bonded indebtedness. The railroads, on the other hand did not believe their lands should be taxed until they were disposed of to actual settlers.<sup>11</sup> A conflict between the two interests was therefore inevitable.

The early controversy between the railroads and the counties was over the question of the taxable title of the railroad grants. Neither the state nor the counties could tax the land as long as the title remained in the hands of the federal government. Hence the question in dispute was, "When does a taxable title to the railroad grants pass from the government to the railroad company?" The railroads maintained in the early Seventies that it had not passed to them until the patents were complete and were conveyed to them by the federal government. The counties and local governments, on the other hand, contended that the lands could be taxed when the companies were eligible to receive patents to them.

Decisions of the courts in this period indicate that legal opinion was divided on this question. Earlier conclusions implied that taxable title was transmitted to the grantee when the lands had been set apart and definitely identified as belonging to him even though a patent had not been granted by the government.<sup>12</sup> The Supreme Court's ruling in the Prescott case in 1873 had superseded these.<sup>13</sup> In this decision, the tribunal maintained that the federal grants were not subject to taxation until the costs of surveying, selecting and conveying them (which usually amounted to a few cents an acre) had been paid by the

---

<sup>11</sup>Leavitt Burnham, Land Commissioner of the Union Pacific, 1878-86. *Testimony Taken by the Union Pacific Railway Commission*, 3:1237 ff. Cf. C. J. Ernst, Burlington Land Commissioner, "Early Railroad Development in Nebraska," *Nebraska History*, VII, 16-22.

<sup>12</sup>Federal Cases No. 596 (1842) Cf. *Witherspoon v. Duncan*, 71 U. S. 210 (1866); *Stockale v. Webster Co.*, 12 Iowa 536 (1861); *Iowa Homestead Co. v. Webster Co.*, 21 Iowa 221 (1866).

<sup>13</sup>*Kansas Pacific v. Prescott*, *Kansas Pacific v. Culp*, 83 U. S. 603.

railroad company.<sup>14</sup> This interpretation of the law permitted the Union Pacific and other roads operating under its grant to sell millions of acres of land on which no taxable title existed.<sup>15</sup>

A short time after the Burlington had constructed its road it received titles for its grants. The company could not, therefore, evade taxation on them on the same grounds as the Union Pacific and other roads—by failing to apply for patents. Its lands were consequently subject to taxation at an early date. Lancaster county placed them on the tax roll in 1871. The railroad company contested the legality of the levy contending that it did not have a taxable title when the assessments were made. When the matter was appealed to it in 1877, the state Supreme Court sustained the position of the railroad.<sup>16</sup>

Early in 1872 the Burlington took steps to comply with the technicalities of the grant.<sup>17</sup> Officials in Otoe, Gage, Lancaster, Saunders, Saline, Seward, Fillmore, York, Clay, Hamilton, and Cass counties appraised and assessed the company's lands.<sup>18</sup> The State Board of Equalization approved the assessments and the county boards proceeded to levy taxes against them.<sup>19</sup> In a short time a non-resident stockholder, Mr. H. H. Hunnewell, brought the matter

---

<sup>14</sup>*U. S. Stats.*, 13:365. The terms of the Union Pacific Act of July 2, 1864 provided that before the government should transfer any lands under the terms of the grant the costs of surveying, selecting, and conveying them should be paid by the railroad company. This provision was later applied to the Northern Pacific and all other railroad grants.

<sup>15</sup>Report of the Committee on Public Lands, April 17, 1874. *House Reports No. 474*, 43rd Congress, 1st Session, Vol. 3.

<sup>16</sup>*White v. The Burlington and Missouri River Railroad*, 5 Nebr. 393. The court held that since the commissioners, who according to law were to be appointed by the President for the purpose of approving the completion of the road, were not selected until July, 1871, and their report of the completion of the road was not filed until November of that year, the company did not have taxable title to the lands in 1871.

<sup>17</sup>*Hunnewell v. Cass Co., et al.*, 89 U. S., 464. Costs of surveying were paid on the 7th of March 1872, while the fees of the Register and Receiver of the Land Office were paid on April 19th and 20 of that year.

<sup>18</sup>*World Herald in Beatrice Express*, Nebraska State Historical Society Files, Lincoln, April 4, 1875.

<sup>19</sup>*Hunnewell v. Cass County et al.*, 89 U. S. 464.

before the United States Circuit Court in Omaha. He asked for injunctions to prevent the company from paying the taxes on the ground that it did not have a taxable title to the lands when the assessments were made.<sup>20</sup> In a scathing editorial, the *Beatrice Express* condemned this action of the Burlington as well as that of the Union Pacific as an attempt to evade its taxes.<sup>21</sup>

The angry taxpayers brought about a concerted movement on the part of the counties. Commissioners representing Gage, Hamilton, Clay, Fillmore, York, Saline, Kearney, Lancaster, Seward, and Butler counties convened at Lincoln in August of 1873 to take joint action against the railroad. They selected a committee of some of the best legal talent of the state to champion their cause.<sup>22</sup> They also adopted resolutions in which they aired their grievances against the Burlington.

Whereas, the Burlington and Missouri River Railroad Company in Nebraska having by some means become possessed of millions of acres of land . . .

Whereas, the said railroad company now seeks to delay, or avoid the payment of taxes assessed against the lands of said company for the year 1872, notwithstanding that said company have actually sold and disposed of thousands of acres of the very land they now seek to delay the collection of the same rate of taxation from that every resident of said counties along the line of said road is compelled to pay and the lands sold and disposed of as aforesaid after the assessment of said lands for taxation for the year 1872, therefore be it

---

<sup>20</sup>*Idem*. The case was brought before the federal court because the railroad company thought probably it would receive more favorable consideration there than in the popularly-elected state courts. Mr. Hunnewell was a resident of Boston, Massachusetts.

<sup>21</sup>August 14, 1873. The *Express* charged the two companies with ". . . a bold premeditated attempt . . . to rob the property holders of the State of a vast amount of taxes yearly and to establish the theory that the Government may take its lands out of the market and put them in the hands of corporations who, while they may sell and exercise all the rights of ownership in such lands, shall be declared exempt for an indefinite time from paying taxes thereon."

<sup>22</sup>*Beatrice Express*, August 14, 1873. This committee was composed of Judge Mason, Seth Robinson, and Judge Briggs.

Resolved . . . That for the purpose of collecting said taxes and of testing the liability of the railroad company to pay said taxes . . . we employ counsel to assist us in the defense of the action instituted against the counties by the said railroad companies and to act in our behalf . . . <sup>23</sup>

In July of 1874 the Omaha federal court tried the cases. Here the cause of the counties was upheld.<sup>24</sup>

After losing its suit in the lower tribunal, the company immediately appealed to the United States Supreme Court. That judicial body, at this time, was reviewing the suit of the counties along the line of the Union Pacific in Nebraska to tax that company's grant. In January of 1875, it sustained the lower court's opinion that the taxes levied on the Burlington lands were legal.<sup>26</sup>

The decision of the court met with the approval of the debt-burdened counties along the line of the Burlington. As a result, they collected at once sums totalling over \$101,000.<sup>27</sup> The court retained, however, on account of attorney fees and taxes in dispute almost \$65,000.<sup>28</sup>

<sup>23</sup>*Idem.*

<sup>24</sup>*State Journal*, Lincoln, July 3, 1874. The counties were represented as follows: Lancaster, Seth Robinson; Cass, Sam Chapman; Gage, N. K. Griggs; Clay, E. E. Brown; Saunders, Judge Sprague and Clinton Briggs; Seward, D. C. McKillip; Saline, Mr. Hastings and Mr. McGintie.

<sup>25</sup>*Beatrice Express, The Burtonian*, Tekamah, July 9, 1874. The court held that all the Burlington lands east of Range 7 of approximately 140 miles were taxable.

<sup>26</sup>*Hunnewell v. Cass Co. et al.*, 89 U. S. 464. In brief, the court held that, ". . . where all dues to the United States have been paid before the final action of the State Board of Equalization, and patents have been issued for all of them before this suit was brought, and at the time of the filing of the bill, the United States had no interest in the lands which would prevent their being taxed" J. M. Woolworth was attorney for the railroad company while Clinton Briggs, E. E. Brown and England represented the counties.

<sup>27</sup>Excerpt from the *World Herald* in the *Beatrice Express*, April 15, 1875. Amounts by counties: Otoe, \$3,024.73; Gage \$3,566; Lancaster, \$37,484.92; Saunders, \$2,480.36; Saline, \$16,418.25; Seward, \$15,297.47; Fillmore, \$21,258.60; York, \$14,296.30; Polk, \$315.62; Clay, \$9,381.42; Hamilton, \$2,935.88; Cass, \$4,769.13; Total, \$101,228.68.

<sup>28</sup>*Idem.* Amounts by counties: Otoe, \$2,011.98; Gage, \$1,130.83; Lancaster, \$13,271.69; Saunders, \$1,887.02; Saline, \$7,307.07; Seward, \$7,647.32; Fillmore, \$12,771.81; York, \$10,268.13; Polk, \$132.67; Clay, \$4,673.29; Hamilton, \$1,286.67; Cass, \$2,475.02. Total, \$64,863.50.



For those counties situated along the Union Pacific grant, the victory was not so complete. The court declared in their test case that a taxable title to the company's land had not passed to the railroad unless the cost of surveying the lands and conveying them had been paid to the government.<sup>29</sup> This permitted the railroad to continue to hold and sell millions of acres of surveyed, unpatented, and un-taxable lands by withholding the surveying and conveying fees.<sup>30</sup> It was not until 1886 that Congress adopted remedial legislation for this situation.<sup>31</sup>

Some friction, however, continued among the counties along the Burlington right-of-way over the taxation of the railroad's lands. In Gage, the company failed to pay its taxes for 1873 which amounted to about \$3,000. After notifying the Burlington officials to pay them, the county treasurer threatened to seize the company's personal property and then the rolling stock if it failed. The taxes were immediately paid.<sup>32</sup> To this action of the Gage treasurer, the *Seward Reporter* voiced its approval and advised its officials to follow the example of its neighbor.<sup>33</sup> In 1874 the court issued temporary injunctions against York, Seward, and Hamilton counties until it should determine whether or not the assessments of 1873 were legal.<sup>34</sup>

The decisions of the Supreme Court in 1875 in the Cass county and McShane cases, mentioned above, solved quite generally the problem of the taxability of the Burlington's lands in the right-of-way grants. Settlers were

---

<sup>29</sup>*McShane v. Union Pacific*, 89 U. S. 444. See Footnote No. 14.

<sup>30</sup>*Senate Report* No. 990, 47th Congress, 1st Session, Vol. 2.

<sup>31</sup>*U. S. Stats.*, 24:143.

<sup>32</sup>*Beatrice Express*, July 16, 1874.

<sup>33</sup>Published at Seward. Files in Nebraska State Historical Society, Lincoln. After describing what had occurred in Gage county and after outlining the financial condition of Seward county, the *Reporter* continued; ". . . Now the credit of our county would be greatly enhanced by having these amounts paid into our treasury, and if the company do not pay the same as other people, why use the same measures and serve them as individuals, by advertising and selling their property."

<sup>34</sup>*Hunnewell v. Seward Co.*, Case 80 C; *Hunnewell v. York Co.*, Case 82 C; *Hunnewell v. Hamilton Co.*, Case 85 C. U. S. Court Records, Omaha.

filling these counties and within a few years most of the railroad lands were sold. Threatened by seizure and sale of personal property for failure to pay taxes, the company usually found it to its interest to remit them without quibbling.

After 1875 the Burlington tax controversy shifted to the deficiency grants where the company had over 1,200,000 acres of lands. The Supreme Court had never rendered an opinion on the legality of these. Railroad and government officials as well as the public were skeptical of the validity of the company's patents to them. County officers could not proceed against the railroad there as those were able to do along the right-of-way to compel the company to pay its taxes. As a result, the controversy dragged over a long period and the counties were generally able to collect only a small portion of the amounts levied.

Early in 1873 the officials in Boone, Cedar, Pierce, Wayne, Howard, Greeley, Webster, Dixon, Sherman, Dakota, Franklin, Stanton, Madison, Valley, Platte, and Antelope counties placed the lands of the railroad company on their assessment rolls and made levies against them. The company ignored these actions. In the following year, as a result, Sherman, Valley, Antelope, Boone, Greeley, Madison, Webster, Franklin, and Pierce counties advertised that the lands would be sold at public auction in September for delinquent taxes according to the state law. Mr. H. H. Hunnewell, mentioned above, then applied for injunctions in the federal court at Omaha to prevent the sales. He charged in his petition on behalf of the Burlington that, in general, certain legal technicalities had not been complied with in the assessing of the lands and making the levies; also that the company was being unjustly discriminated against. Temporary injunctions were granted.<sup>35</sup> In the following year, the court likewise enjoined

---

<sup>35</sup>*Hunnewell v. Sherman Co.*, Case 73 C; *Hunnewell v. Antelope Co.*, Case 75 C; *Hunnewell v. Boone Co.*, Case 76 C; *Hunnewell v. Greeley Co.*, Case 77 C; *Hunnewell v. Madison Co.*, Case 78 C; *Hunnewell v. Webster Co.*, Case 79 C; *Hunnewell v. Franklin Co.*, Case 81 C; *Hunnewell v. Pierce Co.*, Case 86 C. U. S. Court Records. Omaha.

Howard, Dixon, Wayne, Dakota, Platte, Cedar, and Stanton counties when they took steps to hold tax sales.<sup>36</sup> It dissolved the temporary injunctions in 1875 in Sherman, Valley, Antelope, Boone, Greeley, Franklin and Pierce counties.<sup>37</sup> All of the counties in the deficiency area, in spite of these actions, proceeded to make levies against the Burlington lands in 1874, 1875, 1876, and 1877.<sup>38</sup> Their efforts, however, seemed in vain. By 1877 they had collected no taxes whatever on them. They had held tax sales but no land had been sold at them for want of bidders. Since the matter was in the hands of the federal courts, neither the state nor local governments could do anything with the problem. In his message to the legislature in 1875, Governor Furnas called attention to the seriousness of the situation:

In the matter of taxation of lands donated by the General Government to aid in the construction of railroads, you are no doubt familiar with the difficulties surrounding and encountered. Thus far, adjustments and decisions have been in the higher or Federal Courts and consequently beyond our reach, or State jurisdiction.<sup>39</sup>

Some of the counties made futile attempts to secure congressional aid. The following petition to Congress expresses their dilemma:

We the undersigned memorialists, citizens, and taxpayers of the counties of Boone, Greeley, Howard, Madison, Platte, Dixon, Cedar, Dakota, Wayne, Pierce, Sherman, and Valley in the State of Nebraska do respectfully represent to your honorable body that we labor under serious grievances and heavy pecuniary burdens in the form of taxes resulting from the

---

<sup>36</sup>*Hunnewell v. Howard Co.*, Case 183 C; *Hunnewell v. Dixon Co.* Case 185 C; *Hunnewell v. Wayne Co.*, Case 186 C; *Hunnewell v. Dakota Co.*, Case 187 C; *Hunnewell v. Platte Co.*, Case 188 C; *Hunnewell v. Cedar Co.*, Case 189 C; *Hunnewell v. Stanton Co.*, Case 190 C; U. S. Court Records, Omaha.

<sup>37</sup>*Seward Reporter*, February 11, 1875.

<sup>38</sup>*Vide infra*, Footnote 47.

<sup>39</sup>Message of Governor Furnas to the Legislative Assembly of Nebraska, 1875, 22. From *Collections and Messages of Governors of Nebraska*, 1857-91.

fact that hundreds of thousands of acres in the above counties have been patented to the Burlington and Missouri River Railroad Company . . . and the lands owned by the Burlington and Missouri River Railroad Company within the limits of the aforesaid counties are distant from any road operated by said company from 60 to 200 miles; hence county treasurers under existing tax law can make no seizure of road bed or rolling stock belonging to said company for the liquidation of taxes, and as the bulk of these taxes when offered at tax sale cannot be sold for want of bidders, and further, as improvements have been made, based upon the realization of taxes of these lands, and embarrassing indebtedness, bonded and floating have been incurred, we . . . ask your honored body to take such action . . . as shall bring speedy relief to your memorialists by compelling said company to pay its delinquent taxes or by dispossessing said company of all the lands claimed by it in above named counties, and throw these lands open to actual settlers by homestead and preemption . . .<sup>40</sup>

It has been maintained by some historians that the nature of the patents of the homesteads and those of the railroads tended to shift the burden of taxation on the latter. The titles to the lands of the railroad companies were complete and subject to taxation as soon as they had paid their fees on the patents. Those of the homesteaders were not taxable until they had "proved up" on their lands and were eligible to receive patents—a process which took at least five years. During that five year period the lands of the railroads were taxed while those of the homesteaders were not, it is argued. This permitted the homesteaders to escape taxation and enabled them to place heavy burdens on the railroad companies' property for their public improvements. Such assumption tends to over-simplify the problem. Neither does it fully explain the situation. It may be admitted that in some instances, such as in the case of the Burlington's right-of-way grants, this would be

---

<sup>40</sup>*Boone County Argus*, February 23, 1877. Files in the office of *Albion Argus*, Albion.

possible. In that company's deficiency grant, it will be seen, peculiarities existed which complicated the collection of their taxes. A thorough study of the history of the land grant tax controversy will show that it is doubtful whether the railroad companies, on the whole, bore their proportionate share of taxes on their lands. It was the policy of the Union Pacific and other large companies to patent the lands in their grants little or no faster than they sold them to actual settlers; hence, they paid few taxes on them.<sup>41</sup>

The evidence presented in justification of the position of the railroad for contesting the payment of its taxes during this period on its indemnity lands is partially although not wholly convincing. Mr. A. E. Touzalin, at that time Land Commissioner of the Burlington, maintained that this default of his company was not on account of the alleged illegality of the assessments. It was due to the fact, he claimed, that the validity of the deficiency grants had not been yet determined.<sup>42</sup> In February, 1875 the government had brought suit to set aside the titles to the 1,200,000 acres given the company in 1872 because they were outside the statutory limits of twenty miles from the right-of-way<sup>43</sup> The railroad company argued in its applications for injunctions in 1875 that it should not be compelled to pay taxes on real estate on which the patents were being questioned by the government in the courts.<sup>44</sup> There is little doubt but what the Attorney General's action also handicapped and impeded the sale and settlement of these lands during this period. One Nebraska newspaper reported:

---

<sup>41</sup>Leavitt Burnham, *loc cit.* From *Testimony Taken by U. P. Ry Commission*, 1453 are figures which show that from the 22 years from 1865 to 1886 inclusive, the Union Pacific paid on the average of \$50,933 per year on its lands. It had a land grant of over 12,000,000 acres. The Kansas Pacific, which had a land grant of over 6,600,000 acres, paid an average annual tax of \$12,927.60 on its lands over the 13 year period from 1874 to 1886 inclusive. *Ibid.*, 4383. The Central Pacific which had a grant of over 7,486,000 acres, paid an average tax of \$24,137 for the 19 year period from 1868 to 1886 inclusive. *Ibid.*, 2451.

<sup>42</sup>*Pen and Plow*, June 1, 1878. Published at Oakdale. Files in Nebraska State Historical Society, Lincoln.

<sup>43</sup>*United States v. Burlington and Missouri River Railroad*, Case 113 C, U. S. Court Records, Omaha.

<sup>44</sup>See injunctions mentioned in Footnote No. 36.

We notice the B & M land commissioner is advertising in the *Omaha Herald*, lands for sale at the remarkable low price of 65, 70, 80 cents to \$1.25 per acre. These lands are situated in Greeley, Antelope and Northwestern counties, which are liable to revert to the government as soon as the suit is decided, which is now pending in the United States Courts. Offering lands below government price seems to indicate they are held in precarious condition, and therefore the company wishes to get them off their hands.<sup>45</sup>

County records of that time disclose that land sales were made conditional on the decision of the court.<sup>46</sup> The government's action was no doubt responsible for the suit instituted by the Burlington against the Union Pacific in 1875 to bring about a readjustment of the original grant for which the Nebraska corporation was permitted to make lieu selections.<sup>47</sup> That the government's suit influenced the land policies of the company during this period cannot be denied. It does excuse the railroad's failure to pay its taxes until the legality of the patents had been determined by the courts. It does not, however, justify the course of action taken by the Burlington in 1877 and the following years in seeking to have its delinquent taxes cancelled for a nominal sum.

There was in controversy for the years 1873 to 1877 inclusive taxes in default totalling \$468,612.43 in fifteen of the seventeen counties in the deficiency grant.<sup>48</sup> The

<sup>45</sup>*Seward Reporter*, April 15, 1875.

<sup>46</sup>Miscellaneous Records, Greeley County, Volume 1. Office of County Clerk, Greeley, Nebraska.

<sup>47</sup>*Burlington and Missouri River Railroad Company v. The Union Pacific*, Case 119 C, U. S. Circuit Court Records, Omaha.

<sup>48</sup>Amounts by counties:

Boone	\$68,667.19 <sup>a</sup>
Sherman	53,749.80 <sup>b</sup>
Webster	52,199.79 <sup>c</sup>
Franklin	48,909.02 <sup>d</sup>
Howard	42,267.35 <sup>e</sup>
Greeley	43,338.05 <sup>f</sup>
Madison	35,651.76 <sup>g</sup>
Valley	47,651.69 <sup>h</sup>
Cedar	3,778.08 <sup>i</sup>
Pierce	4,870.88 <sup>j</sup>
Wayne	5,280.16 <sup>k</sup>

situation was an awkward one for both the railroad company and the counties. It was difficult for the Burlington to sell the lands subject to tax liens and a questionable title. It appeared that litigation over the matter would bring no solution to the problem. Most of the best public lands in eastern and central Nebraska not granted to railroads had been homesteaded. Resentment against absentee ownership, always potent in American frontier communities, was strong. What the counties wanted was the railroad lands in the hands of actual settlers who would share a common interest in schools, roads and public improvements. Public opinion had not yet fully crystallized against railroads. The time now seemed an opportune one for the company to make a favorable settlement with the counties of its delinquent taxes.

Dixon	5,215.12 <sup>1</sup>
Dakota	3,844.89 <sup>m</sup>
Platte	10,000.00 <sup>n</sup>
Antelope	43,188.65 <sup>o</sup>
Buffalo	Records ambiguous <sup>p</sup>
Stanton	Not known <sup>q</sup>

<sup>a</sup>Amounts by years: 1873, \$15,663.03; 1874, \$11,958.05; 1875, \$10,417.58; 1876, \$15,628.53; 1877, \$15,000. *Hunnewell v. Boone Co.*, Case 210 D, U. S. Court Records, Omaha.

<sup>b</sup>Amounts by years: 1873, \$13,516.23; 1874, \$10,979.99; 1875, \$4,401.17; 1876, \$21,856.23; 1877, \$2,995.44; Court records ambiguous. *Hunnewell v. Sherman Co.*, Case 252 D, U. S. Court Records, Omaha.

<sup>c</sup>Amounts by years: 1873, \$19,687.13; 1874, \$11,066.40; 1875, \$7,935.11; 1876, \$6,511.15; 1877, \$7,000. Court Records ambiguous. *Hunnewell v. Webster Co.*, Case 253 D, U. S. Court Records, Omaha.

<sup>d</sup>Amounts by years: 1873, \$13,626.16; 1874, \$11,665.23; 1875, \$8,081.09; 1876, \$7,536.54; 1877, \$8,000. *Hunnewell v. Franklin Co.*, Case 254 D, U. S. Court Records, Omaha.

<sup>e</sup>Amounts by years: 1873, \$7,481.10; 1874, \$9,199.99; 1875, \$8,618.62; 1876, \$9,634.21; 1787, \$7,267.53. *Hunnewell v. Howard Co.*, Case 309 D, U. S. Court Records, Omaha.

<sup>f</sup>Amounts by years: 1873, \$6,659.67; 1874, \$9,199.89; 1875, \$9,112.78; 1876, \$12,484.95; 1877, \$4,714.31. *Hunnewell v. Greeley Co.*, Case 352 D, U. S. Court Records, Omaha.

<sup>g</sup>Amounts by years: 1873, \$7,442.36; 1874, 8,771.63; 1875, \$7,430.35; 1876, \$6,281.82; 1877, \$5,725.60. *Hunnewell v. Madison Co.*, Case 49 E, U. S. Court Records, Omaha.

<sup>h</sup>Amounts by years: 1873, \$8,337.83; 1874, \$7,065.54; 1875, \$13,581.48; 1876, \$10,046.40; 1877, \$8,620.44. *Hunnewell v. Valley Co.*, Case 111 E, U. S. Court Records, Omaha.

<sup>i</sup>Amounts by years: 1873, \$772.80; 1874, \$832.71; 1875,

Definite steps were taken by the Burlington in 1877 and in the following years toward a solution of the controversy by seeking to have its taxes cancelled for a nominal consideration. The company met an obstacle, however in the state constitution which prevented this being accomplished by any formal process.<sup>49</sup> It turned to the courts, therefore, to have them invalidated. Since no county would permit this voluntarily, it was first necessary to reach some sort of a compromise with its officials. Representatives of the railroad as well as other interested parties set about to probe sentiment toward eradication of the defaulted taxes. After an agreement was reached with the officers of a county, the Burlington then sought an injunction in the federal court on the grounds the levies were illegal. To this charge the county agreed or failed to defend itself. Judgment was then entered in the court records by the consent of both parties and the taxes were declared

---

\$844.02; 1876, \$722.22; 1877, \$606.32. *Hunnewell v. Cedar Co.*, Case 348 E, U. S. Court Records, Omaha.

<sup>1</sup>Amounts by years: 1873, \$1,276.95; 1874, \$1,091.13; 1875, \$871.23; 1876, \$806.43; 1877, \$825.14. *Hunnewell v. Pierce Co.*, Case 298 E, U. S. Court Records, Omaha.

<sup>2</sup>Amounts by years: 1873, \$613.78; 1874, \$1,325.14; 1875, \$1,337.11; 1876, \$948.14; 1877, \$1,055.69. *Hunnewell v. Wayne Co.*, Case 110 E, U. S. Court Records, Omaha.

<sup>3</sup>Amounts by years not given in court records. *Hunnewell v. Dixon Co.*, Case 85 F, U. S. Court Records, Omaha.

<sup>4</sup>Amounts by years: 1873, \$694.89; 1874, \$712.13; 1875, \$790.31; 1876, \$810.60; 1877, \$836.96. *Hunnewell v. Dakota Co.*, Case 86 bF, U. S. Court Records, Omaha.

<sup>5</sup>Unpublished contract between Adam Smith and the Burlington, July 28, 1877. In possession of Mr. Aubrey Smith, St. Edward, Nebraska.

<sup>6</sup>Includes taxes for 1878. *Antelope Co. v. Burlington and Missouri River Railroad Company*, Case 241 F, U. S. Court Records, Omaha.

<sup>7</sup>*Hunnewell v. Buffalo Co.*, Case 64 F, U. S. Court Records Omaha.

<sup>8</sup>Not in court records. A controversy is known to have existed between Stanton County and the Burlington. *Hunnewell v. Stanton Co.*, Case 190, U. S. Court Records, Omaha.

<sup>49</sup>Section 4, Article 9, of the Constitution of Nebraska (1875) provides, "The legislature shall have no power to release or discharge any county, city, or township or district, or the inhabitants thereof of its proportionate share of taxes levied for state purposes, or due to any municipal corporation, nor shall any commutation be made for any purpose whatever."



illegal and void. A permanent injunction was then issued by the court perpetually enjoining the county from ever collecting them.<sup>50</sup>

The influence of the railroads upon local and state politics of this period is a familiar story. That they had many alluring rewards to offer the local politicians and influential people for their support on a given proposal is generally known. In its efforts to secure the "wiping out" of the delinquent taxes, the inducements presented by the Burlington varied according to the particular needs and desires of the locality. Most of the counties were weary of expensive and seemingly futile litigation. The "solid" elements of most communities were willing to settle at any price. Some wanted, most of all, public improvements, so in some of the counties these were promised for the cancellation of the taxes. Others wanted funds for their impoverished treasuries and to these the company offered a fraction of the amount in dispute. Most of them wanted the land in the hands of the settlers themselves. To these the Burlington proposed to set to work its very efficient colonizing agencies which extended very alluring inducements to those seeking lands. In some cases these tax settlements were reached by the officials of the company itself while in others they were effected by third parties.

A detailed study was made by the writer of the solution of the controversy in Boone county. After the railroad had defaulted for five years, 1873 to 1877 inclusive, the taxes reached a total of \$68,667 exclusive of interest. Mr. Adam Smith, a banker of Chicago, who had conferred with the Burlington officials, made the following proposition to the county: first, that he would organize a company for the purpose of buying a large part of the railroad's lands to facilitate their settlement; second, that he would build a graded road from the county seat, Albion, to some point on the Union Pacific; third, that the county in return would take the necessary steps to eradicate the taxes levied

---

<sup>50</sup>In some cases these agreements or compromises were entered in the court records between the Burlington and the counties. In other cases they were not.

against the Burlington.<sup>51</sup> The commissioners accepted the proposal and Mr. Smith proceeded to carry out his agreement. He constructed the graded road at an estimated cost of from \$5,000 to \$7,500.<sup>52</sup> In order to bring about a cancellation of the taxes, the commissioners employed an attorney who was suggested by the company as its counsel.<sup>53</sup> They gave him a *carte blanche* with full powers to make any compromise he might see fit for the county and to remove all legal obstacles to their abrogation.<sup>54</sup> Mr. H. H. Hunnewell, who acted for the railroad, then asked for a permanent injunction from the court to prevent anyone from taking further steps to recover the taxes on the grounds that they were illegal. The county's attorney then issued a *pro confesso* bill and the injunction was granted.<sup>55</sup> For his efforts, the company agreed to compensate Mr. Smith with lands valued at \$7,500.<sup>56</sup> Much the same procedure seems to have been followed in most of the other counties in which settlements were made.

The company effected similar compromises in 1878 and secured injunctions from the court to prevent the following counties from ever collecting the delinquent taxes:

<i>County</i>	<i>Amount in Dispute</i>	<i>Settlement for</i>
Howard	\$42,267.35	\$3,500 and 1/4 section of of land <sup>56</sup>
Greeley	43,338.05	By stipulation <sup>57</sup>
Madison	35,651.76	\$6,000 <sup>58</sup>
Franklin	48,909.02	By stipulation <sup>59</sup>
Webster	52,199.79	\$4,000 <sup>60</sup>
Sherman	53,749.80	By stipulation <sup>61</sup>

<sup>51</sup>Original contract between the Burlington Railroad and Adam Smith, July 28, 1877. Unpublished papers in possession of Mr. Aubrey Smith, St. Edward, Nebr.

<sup>52</sup>*Boone Co. v. Burlington and Missouri River Railroad Company*, Case 30 H, U. S. Court Records, Omaha.

<sup>53</sup>*Idem.*

<sup>54</sup>Commissioners' Records, February 4, 1878, Office of County Clerk, Albion.

<sup>55</sup>Supplementary agreement between the Burlington and Adam Smith, July 28, 1877. Unpublished papers in possession of Mr. Aubrey Smith, St. Edward, Nebr.

<sup>56</sup>*Hunnewell v. Howard Co.*, Case 309 D, U. S. Court Records, Omaha. According to the *Boone County Argus*, August 17, 1878,

In March, 1879 the United States Supreme Court upheld the validity of the Burlington's title to the deficiency lands.<sup>62</sup> A short time afterwards the company's suit against the Union Pacific to bring about a readjustment of the overlapping grant was dismissed.<sup>63</sup> By this time the railroad had compromised the delinquent taxes on the greater bulk of its lands.

The Burlington officials, nevertheless, continued to seek settlements in the remaining counties in the indemnity areas. They met stronger opposition in the later adjustments and the counties secured a greater proportion of the amounts levied. In 1879 and the succeeding years, they made compromises in the following counties, which were restrained by the court from ever collecting the defaulted taxes:

Year	County	Amount in Dispute	Settlement
1879	Valley	\$47,651.69	\$12,500.00 <sup>64</sup>
1879	Wayne	5,280.16	1,500.00 <sup>65</sup>
1880	Pierce	4,870.88	1,217.72 and other consideration <sup>66</sup>
1880	Cedar	3,778.08*	1,000.00 <sup>67</sup>
1881	Dixon	5,215.12	1,303.78 <sup>68</sup>
1881	Dakota	4,443.29	2,221.70 <sup>69</sup>
1882	Buffalo		849.62* <sup>70</sup>

the county agreed to relinquish the Burlington's taxes for a quarter section of land to be used as the county poor farm, and to give \$3,500 for a courthouse. The company, furthermore, promised to settle 150 families on its lands in 1878 and 1879.

<sup>57</sup>*Hunnewell v. Greeley Co.*, Case 352 D, U. S. Court Records, Omaha. The settlement was not given in the court records or in the commissioners' records in that county.

<sup>58</sup>*Hunnewell v. Madison Co.*, Case 49 E, U. S. Court Records.

<sup>59</sup>*Hunnewell v. Franklin Co.*, Case 254 D, U. S. Court Records.

The amount of settlement is not given in the court records.

<sup>60</sup>*Hunnewell v. Webster Co.*, Case 253 D, U. S. Court Records.

<sup>61</sup>*Hunnewell v. Sherman Co.*, Case 252 D, U. S. Court Records.

The amount of settlement is not given in the court records.

<sup>62</sup>*United States v. Burlington and Missouri River Railroad Company*, U. S., 334.

<sup>63</sup>*Burlington and Missouri River Railroad Company v. Union Pacific Railroad Company*, Case 119 C, U. S. Court Records.

\*Delinquent taxes includes those for 1878. Otherwise the taxes were for the year 1873 to 1877 inclusive.

<sup>64</sup>*Hunnewell v. Valley Co.*, Case 111 E, U. S. Court Records, Omaha.

These figures show that the Burlington adjusted more than \$400,000 in delinquent taxes from 1877 to 1882 on its lands in northeastern and central Nebraska. In the eight of the nine counties in which the settlements were strictly for cash, it settled \$159,110.77 in controversy for \$29,743.20 or for approximately 18½ per cent of the amount involved. In Boone and Howard counties, it made public improvements valued at \$11,800 which averaged at comparatively 11 per cent of the total amount of \$110,-934.54 in dispute. The company also gave promises of early disposition of the lands in some counties. The court records do not indicate for what consideration agreements were made in Greeley, Franklin, and Sherman counties. They do, however, imply that the county officers and Burlington officials arrived at an understanding over the matter. In Platte and Stanton counties, the records do not disclose that settlement was made through the medium of the courts.

The anti-railroad sentiment, while not yet crystallized, was potent in central and eastern Nebraska during this period. County officials who had too readily supported the tax adjustments with the Burlington soon found themselves the objects of severe criticism. Many of the small taxpayers felt that they had been "sold out" to the "soulless corporation." Others maintained that if the railroad should have its taxes cancelled for a nominal sum, then the settlers should also. Local politicians and lawyers, who had not actively participated in the compromises, readily exploited the situation to further their own interests. In Franklin county the angry taxpayers called a meeting where they adopted resolutions and wound up by asking the com-

---

<sup>65</sup>*Hunnewell v. Wayne Co.*, Case 110 E, U. S. Court Records.

<sup>66</sup>*Hunnewell v. Pierce Co.*, Case 298 E, U. S. Court Records. The *Boone County News*, January 8, 1880, states that the railroad company agreed to pay one-fourth of its taxes up to 1878. It also agreed to make the state taxes good and to put 50 families in the county in the year 1880.

<sup>67</sup>*Hunnewell v. Cedar Co.*, Case 348 E, U. S. Court Records.

<sup>68</sup>*Hunnewell v. Dixon Co.*, Case 85 F, U. S. Court Records.

<sup>69</sup>*Hunnewell v. Dakota Co.*, Case 86 F, U. S. Court Records.

<sup>70</sup>*Hunnewell v. Buffalo Co.*, Case 64 F, U. S. Court Records.

missioners to resign.<sup>71</sup> Several mass meetings were held to protest the settlement in Boone county. Some of the citizens even made an unsuccessful attempt to have the injunction set aside on the grounds of fraud.<sup>72</sup> For some time then public resentment abated.

Several years after the adjustments had been made the anti-railroad movement solidified and the fight against the abuses of railways progressed on many fronts. The agrarian movement, which at that time had as one of its chief objects of attack the land grants, was a powerful factor in the politics of Nebraska as well as the other mid-western states. In some of the counties in the deficiency area, agitation was begun to recover the cancelled taxes. The movement gained momentum. Boone and Greeley counties in 1883 and Valley county in 1885 entered requests in the federal court asking that the injunctions be set aside on the ground they had been obtained by fraud. There the matter dragged for several years. Finally in 1890 the case of Greeley county against the Burlington was dismissed while that of Valley was set aside two years later.<sup>73</sup> Boone still fought stubbornly. After its suit had met the same fate as the other two counties, it appealed to the Supreme Court where it met defeat. The higher tribunal sustained the position of the lower court.<sup>74</sup>

Only one county in the indemnity grant refused to compromise its taxes with the railroad. That one was Antelope. The failure of the county to settle, however, cannot be attributed to a lack of effort on the part of the company. Mr. A. E. Touzalin, the Burlington's Land Commissioner,

---

<sup>71</sup>Boone County Argus, March 8, 1878.

<sup>72</sup>Clark et al. v. the Burlington and Missouri River Railroad, U. S. Court Records, Omaha, Case 84 E.

<sup>73</sup>U. S. Court Records, Omaha: Valley Co. v. The Burlington and Missouri River Railroad, Case 337 J; Greeley Co. v. The Burlington and Missouri River Railroad, Case 372 G; Boone Co. v. The Burlington and Missouri River Railroad, Case 30 H.

<sup>74</sup>Boone Co. v. The Burlington and Missouri River Railroad, 139 U. S. 684. The Supreme Court claimed that too great a period of time had elapsed from the time the alleged fraud had been discovered before suit had been begun to set aside the injunction of the court; therefore, the Statute of Limitations of Nebraska barred the case from the court.

offered in 1878 to settle the delinquent taxes (from 1873 to 1877 inclusive) for \$2,500 and to guarantee the payment of all sums levied in the future. He also offered to sell the railroad's lands which comprised almost 60,000 acres in the county to actual settlers as soon as possible on long terms and a low rate of interest. These proposals met strong opposition. Protest meetings were held and resolutions were adopted against compromising the taxes with the company.<sup>75</sup> At one time the county commissioners agreed to waive the taxes. Later they considered selling the tax certificates at 75 cents on the dollar to a syndicate to be formed for the purpose of buying the Burlington lands. Neither plan materialized.<sup>76</sup> Several years elapsed and no settlement was reached with the company. By the end of 1884, the railroad still held about 54,000 acres in the county and no taxes had been paid on them. At that time a decision was reached in the federal court. The county was awarded 70 percent of all the taxes levied plus interest for the years 1873 to 1878 inclusive and the amounts in full for the three succeeding years.<sup>77</sup> Thus Antelope County, by refusing to compromise its taxes, secured the best settlement of all the counties in the deficiency grants in the solution of the problem.

During the late Seventies and early Eighties there was a great influx of settlers into Nebraska. The Burlington was very active in promoting colonization and the solution of the tax controversies stimulated the settlement of the regions where the grants were located. To its credit, the company paid all its taxes in full with little quibbling after the adjustments were made. By the end of 1880 it had disposed of over 1,800,000 acres of its lands.<sup>78</sup> In that year the Nebraska corporation of the Burlington was

---

<sup>75</sup>*Pen and Plow*, May 4, 1878.

<sup>76</sup>*Neligh Republican*, November 26, 1884. Nebraska State Historical Society Files, Lincoln.

<sup>77</sup>*Antelope Co. v. The Burlington and Missouri River Railroad*, Case 241, U. S. Court Records, Omaha. The taxes awarded by the court for the years 1873 to 1878 inclusive was \$30,230.06. For the years 1879-1818 inclusive the delinquent taxes reached a total of \$12,925.12.

<sup>78</sup>*Poor's Manual of Railroads* (New York, 1881), p. 625.

formally absorbed by its parent company, the Chicago, Burlington and Quincy.<sup>79</sup>

The controversy between the railroad companies and the settlers over the taxation of the former's lands ultimately resulted in a strong resentment against the whole federal land grant policy. This was soon to be reflected in part in the Alliance and Populist programs of the Eighties and Nineties which proposed to cancel all railroad grants. While this goal was not reached, the agitation did result in the passage by Congress of the Forfeiture Act of 1887.<sup>80</sup> Under this act the Secretary of the Interior inaugurated a move to restore to the public domain over 200,000 acres of land which, according to the decision of the Supreme Court in 1879, had been illegally granted the Burlington.<sup>81</sup> There is not any record, however, to indicate that the Attorney General ever took action against the railroad in this matter. By this time the company had disposed of practically all of its lands. Eventually, the reformers were compelled to realize the futility of trying to recover to the public domain lands which their predecessors had given to the great corporations in their period of generosity.

---

<sup>79</sup>*Documentary History of the Chicago, Burlington and Quincy* (Chicago, 1918), III:44 ff.

<sup>80</sup>*U. S. Stats.*, XXIV, 556.

<sup>81</sup>*Decisions of the Department of the Interior*, 1888, VI, 589 ff. Under this act, the Secretary of Interior requested the Attorney General to bring action against the Burlington for the recovery to the public domain of 200,364.70 acres of land illegally granted to the company, according to the decision of the Supreme Court in 1879. The Secretary also charged that the railroad had enlarged the amount of land on one side of the road to make up the deficiency on the other. It was also complained that the Burlington had received 37,930.77 acres of land in excess of its full quota.