AN ACT TO DISPOSE OF THE SOUTHWEST PACIFIC RAILROAD, ITS LANDS, FRANCHISES, ROLLING STOCK AND OTHER PROPERTY BELONGING TO IT; SECURING THE EARLY COMPLETION OF SAID ROAD.


APPROVED BY THE GOVERNOR,
March 17, 1868.

108367
ST. LOUIS:
MISSOURI DEMOCRAT BOOK AND JOB PRINTING HOUSE, COR. FOURTH AND PINE STS.
1868.
AN ACT

To dispose of the Southwest Pacific Railroad and other property belonging thereto, and to secure the early completion of said road.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That the Southwest Pacific Railroad, with all the appurtenances, real estate, rolling stock, cars, engines, depots, machine shops, and other property, real and personal, and all rights and franchises thereto attached or in any wise belonging, together with the lands granted by the United States to the State of Missouri by an act of Congress entitled "An act granting the right of way to the State of Missouri, and a portion of the public lands, to aid in the construction of certain railroads in said State," approved June 10th, 1852, which was heretofore sold by said State to John C. Fremont, in pursuance of an act of the General Assembly, approved February 19, 1866, having been forfeited by said Fremont, his associates and assigns, by a failure on their part to comply with the conditions of said sale, and the act under which it was made, and now being in the possession of the State, be and the same is hereby declared forfeited to, and the title thereof vested in, the State of Missouri; and the State hereby resumes the said forfeited railroad, its franchises, and all the other property, as herein
described, to the use of the State, discharged and free from all liens, obligations, and incumbrances placed on the same by said Fremont, his associates or assigns.

Sec. 2. That the said railroad, its franchises and all other property hereinbefore described, be and the same is hereby granted to A. C. Kingsland & Son, G. D. Cragin, Freeman Clark, A. S. Diven, Ben. Holladay, E. H. Greene, N. Randall, W. H. Coffin, Lewis Seyle, A. C. Wilder, T. C. Bates, J. B. Gray, G. V. Fox, C. B. Fisk, D. A. January, J. J. O'Fallon, C. M. Elleard, C. P. Chouteau, Jas. Harrison, Erastus Wells, E. S. Rowse, M. D. Reese, Andrew Peirce, Jr., J. J. Dixwell, Thomas W. Peirce, Dwight Durkee, Louis G. Fisher, and James B. Hodgskin, their associates and assigns, in fee simple, upon the condition and reservation hereinafter mentioned, in trust for the company hereinafter provided for; which said grant shall take effect when the company to be formed, as hereinafter mentioned, shall file their written acceptance of this grant, and make the deposit hereinafter required.

Sec. 3. The said grantees and their associates shall, without delay, form themselves into a body politic and corporate under the laws of this State authorizing the incorporation of such companies. Said company, when so formed, shall be known and designated as the "South Pacific Railroad Company," and said road shall be known as the "South Pacific Railroad," and shall commence at or near the intersection of Washington and Grand avenues, in the city of St. Louis, and terminate at the western boundary of the State, passing through or near
Springfield and Neosho; and the title to the property hereinbefore granted shall vest in said company when so formed. The said South Pacific Railroad Company shall be subject to the provisions of the general laws of the State now in force, or hereinafter to be enacted, classifying freights and fixing the regulations, rates, and charges for the transportation of freights and passengers by the railroads in this State: Provided, that the provisions of this section, subjecting the South Pacific Railroad to future legislation, shall not take effect for ten years after the passage of this act.

Sec. 4. The above-named company shall expend, in good faith, in the construction of the extension of said railroad, beginning at its present terminus, not less than five hundred thousand dollars ($500,000) within one year after they shall have filed with the Secretary of State a written acceptance of said grant, in the manner hereinafter mentioned, and shall complete said road to the town of Lebanon, in Laclede county, within two years, to the city of Springfield, in Greene county, within three years and six months after filing the said acceptance, and to the western boundary of the State, in Newton county, by the 10th day of June, 1872: Provided, that if Congress shall extend said grant for one year or more, then said company shall have five years after the filing of their acceptance to complete the road to the western boundary line of the State, in Newton county.

Sec. 5. Within ninety days after the passage of this act the said company shall file in the office of the Secretary of State a written acceptance of the
grant aforesaid, with the conditions herein contained, and shall deposit with some responsible bank or banks, in New York, Boston, or St. Louis, to be approved by the Governor, to the credit of the Treasurer of the State of Missouri, as a special fund for the purposes herein named, not less than one million five hundred thousand dollars ($1,500,000) in money, or in bonds of the United States or of the State of Missouri, at their market value, to be expended by them in the construction and equipment of said road beyond its present terminus; which deposit shall be drawn in sums not exceeding one hundred thousand dollars at a time, upon the requisition of said company; and no installment of such money shall be paid over by the Treasurer of the State, as aforesaid, after the first installment, until proof is made to the satisfaction of the Governor, by the affidavit of the acting President, Treasurer, and Chief Engineer, that the preceding installment has been expended in good faith in the manner aforesaid: Provided, however, that of said deposit the sum of two hundred and fifty thousand dollars shall be retained, to be expended in the manner aforesaid west of the city of Springfield; provided, that in case said company shall deposit bonds of the United States or of the State of Missouri, it shall have the right at any time to withdraw said bonds and substitute therefor current funds to the amount of such bonds, with the interest due thereon, when the same was so deposited at their value when deposited.

Sec 6. The said company shall have the privilege and they are hereby authorized to borrow such sums
of money for the completion of said road as contemplated by this act, not exceeding seven millions two hundred and fifty thousand dollars ($7,250,000), on such terms and at such rate of interest, not exceeding eight per cent. as they may deem expedient; and for that purpose they may issue construction bonds in denominations of five hundred or one thousand dollars, as they may think proper, with semi-annual interest coupons; and to secure the payment of which they may execute a mortgage on said road, appurtenances, and other property herein granted, or any part thereof, the lien of which shall not be divested by any forfeiture of said road and other property to the State, by reason of any non-compliance with the conditions of this act. Said bonds shall be due and payable twenty years from the time they are registered in the office of the Secretary of State, as provided for in section seven of this act; and no foreclosure of the mortgage by which the same are secured shall take place on account of the non-payment of the interest on said bonds prior to the expiration of three years from the time they are issued, except by the consent of the General Assembly of this State: Provided, that if said company shall forfeit said road and other property hereinafter provided, the part of said road, finished at the time of such forfeiture, shall be considered and established as the first division, and the lien of the mortgage aforesaid shall be limited to said division, and the lands lying east of the western terminus of said division.

Sec. 7. Said bonds shall be prepared by said company, and on the back thereof shall be printed 1*
or indorsed a certificate which shall be signed by the Governor, and countersigned by the Secretary of State, under the seal of the State, to the effect that such bond is issued by the authority of this act, and secured by a mortgage on the road, appurtenances, and lands aforesaid; but such indorsement shall in no wise be construed into any liability on the part of the State for the payment of said bonds, or any part thereof. Said bonds shall be numbered and registered in the office of the Secretary of State, and be delivered to said company as follows: As soon as the sum of one million and five hundred thousand dollars is deposited by said company, as herein provided, the Governor shall cause eighteen hundred and seventy-five thousand dollars in amount of said bonds, to be indorsed and delivered to said company, who shall receipt to the Secretary of State therefor. After the sum of one million and two hundred and fifty thousand dollars deposited by said company shall have been expended by them in pursuance of the fifth section of this act, the Governor shall cause one hundred [and] twenty-five thousand dollars in amount of additional bonds to be indorsed and delivered to said company, whenever an additional sum of one hundred thousand dollars, exclusive of the two hundred and fifty thousand dollars retained to be expended west of Springfield shall have been expended in good faith in the work of extending and equipping said road, and all moneys received from the sale of lands up to date of such demand for bonds have been applied as provided in the ninth section of this act, and the fact of such expenditure shall have been established
and proved to the satisfaction of the Governor, by the affidavit of the acting President, Treasurer, and Chief Engineer of said company. Such affidavit shall specify the amount received for lands, and which has been so expended since the last preceding application for bonds. No bond to be delivered to said company as herein provided shall be valid and binding upon said company without a certificate on the same, signed by the President or Treasurer of said company, to the effect that such bond is registered in the books of the company and issued after receipt thereof from the Secretary of State. Said bonds may be delivered in larger amounts at any single application: Provided, the expenditures in cash on which the application is based bears the same ratio to the bonds issued as is established above: Provided, further, that if at any time the acting President or Treasurer of said company shall apply, in writing, to the Governor of the State for that purpose, he may cause any number of said bonds, not exceeding one million in amount, to be duly certified and delivered to some responsible bank in Boston, New York, or St. Louis, to the credit of the Treasurer of the State of Missouri; and whenever the said company shall, through its officers, cause money to the amount of at least eighty per cent. on the face of said bonds, or any number of said bonds, to be deposited to the credit of the Treasurer of the State of Missouri in such bank, then said bank shall deliver to said company or its officers an amount of said bonds equal to one hundred dollars on the face of said bonds for every eighty dollars so deposited. The money so deposited
shall be for the same purpose, and shall be delivered
to said company, its successors, or assigns, in the
same manner and upon the same terms and con-
ditions, or forfeited in the same manner as the sums
deposited under the provisions of the fifth section
of this act. Whenever the first million of bonds so
deposited may be exhausted, the Governor may,
under like circumstances, and upon like terms and
conditions, cause another million or less amount to
be deposited in the same manner, and used for the
same purpose, and in the same way, and so on till
all the bonds authorized to be issued under this act
have been exhausted.

Sec. 8. The act approved March 2, 1861, entitled
"an act concerning the bonds of the Pacific Railroad
guaranteed by the State," shall remain in force;
and the State hereby assumes the full payment of
such guaranteed bonds not exchanged as provided
for in said act, and will hold the aforesaid company
harmless on account of said outstanding bonds.

Sec. 9. The said company shall have the power
to sell any of the lands above granted, to which the
title has or may become perfect, according to the
provisions of the fifth section of an act of Con-
gress entitled "an act granting the right of way to
the State of Missouri, and a portion of the public
lands, to aid in the construction of certain railroads
in said State," approved June 10, 1852; Proposed,
that the proceeds of the sale of so much of said
lands as may be sold prior to the completion of said
road shall be applied exclusively to the construc-
tion of the road: Provided, that the proceeds of the
sale of all lands being west of the section of twenty
miles in which the city of Springfield is situated shall be applied to the construction and equipment of the road west of Springfield: Provided, that if any person purchase on credit, said company shall give said purchaser a certificate of purchase, properly acknowledged, which, when recorded in the recorder's office of the proper county, shall impart notice to all persons.

Sec. 10. Nothing in this act shall be construed so as to impair in any manner the rights of any person to a pre-emption on any of the lands above granted, acquired under former or existing laws; provided, that said company shall have a right to retain a right of way of not exceeding two hundred feet in width along the line of said railroad, through any of the lands that may have been pre-empted as aforesaid.

Sec. 11. The company aforesaid shall cause the lands so granted to them to be graduated and appraised at their true value, as near as may be, without unnecessary delay, and shall permit such persons as may actually settle upon and make permanent improvements on the same to purchase, by legal subdivisions, a quantity not exceeding one hundred and sixty acres at such graduated price; and such person so settling upon such land shall make proof thereof, by an affidavit under oath, made by himself and two disinterested persons, if required so to do by the the company aforesaid, and to pay said company the appraised value thereof as soon as said company can make to such person a good title therefor, at which time said company shall convey such land to said settler. Such payment shall be made in either
cash or in instalments, at the option of the purchaser, as follows: One-fourth in cash, when the conveyance is made, and the balance in three equal instalments, payable in one, two, and three years thereafter, such deferred payments to bear interest at the rate of ten per cent. per annum, to be secured by notes and deed of trust in the usual form; provided, that if any person or persons shall settle upon any mineral or coal lands, he or they shall, before taking any mineral or coal from the same, enter into a bond equal to the appraised value of the land, with security to the satisfaction of said company to secure the payment of the purchase money as before provided; provided, that all lands required by said company for depot ground, stations, buildings, and for the purpose of construction and convenient operation of said road are expressly excepted from the foregoing provisions.

Sec. 12. That as soon as the company aforesaid shall have filed their written acceptance of the grant, and have deposited one million five hundred thousand dollar, ($1,500,000) as required by the fifth section of this act, the Governor shall turn over to said company the said railroad and all other property herein granted.

Sec. 13. Any failure on behalf of said company to expend the sum of money which by the terms of this act is required to be expended in the work of extending and completing said road, in the time herein mentioned, and any failure to complete said road to the town of Lebanon within two years, or to the city of Springfield within three years and six months from the time of filing the written acceptance re-
quired by the terms of this act, or to the western boundary of the State, in Newton county, by the 10th day of June, 1872, shall work a forfeiture of said road, its franchises, rolling stock, appurtenances, and other property, both real and personal, together with the fifteen hundred thousand dollars, ($1,500,000) deposited as required by section five of this act, or any part thereof remaining in the treasury, to the State of Missouri, subject to the mortgage hereinbefore provided for; and in such event the General Assembly may direct the Governor to take possession of the same without the aid of any writ or process of law, if in their opinion it would be to the interest of the State to do so; and the possession, when so taken, shall have the effect to vest the title to said road, franchises, and other property in the State of Missouri, subject to the mortgage lien aforesaid, without any proceeding to declare the same forfeited, or to foreclose any pretended lien on the same, or any part thereof, and may dispose of the same for the purpose of securing the completion of said road; provided, that if Congress shall extend said grant for one year or more, then said company shall have five years after the filing of their acceptance to complete their road to the western boundary of the State, in Newton county.

Sec. 14. When said company shall have constructed and in running order the first twenty miles of said road extending on their line west of Rolla, and shall exhibit satisfactory proof thereof to the Governor of the State, in order that said company may be enabled to make a title to such lands as
they are authorized to sell, it is hereby made the
duty of the Governor to issue the necessary certifi-
cate to the Secretary of the Interior, as provided for
in section five of the act of Congress, entitled "An
act granting the right of way to the State of Mis-
souri, and a portion of the public lands, to aid in the
construction of certain railroads in said State," ap-
proved June 10, 1852; and the above and like pro-
visions of this section shall apply to each succeeding
twenty miles of said road completed by said com-
pany.

Sec. 15. Said company shall have full power, as
soon as organized, to survey, mark, locate and con-
struct a railroad commencing at or near the inter-
section of Washington and Grand avenues, in the
city of St. Louis, and run westwardly through the
county of St. Louis, crossing the Pacific railroad, at
the town of Pacific City, connecting with the
eastern terminus of said "South Pacific railroad,"
which shall be a part of said last-mentioned road
when completed.

Sec. 16. All the lands sold to bona fide purchas-
ers, or donated for school purposes, by John C. Fre-
mont or his assigns, on or before the 14th day of
June, 1867, and all lands which he or they, on or
before said 14th day of June, 1867, have, by written
agreement or without, signed by the proper agent
of the Southwest Pacific Railroad Company, or At-
lantic and Pacific Railroad Company, agreed to sell,
and have received a part or all of the purchase
money therefor (said lands not to exceed eighteen
thousand four hundred and seventy-nine acres in
all), and which lands are embraced in the grant of
lands set apart by the Legislature by an act of December 25, A. D. 1852, and which lie west of the line which divides sections four and five of the townships in range two, west of the fifth principal meridian and east of a point one hundred, by the line of the Southwest Pacific road from the town of Franklin, are reserved, and are not included in this grant to the company named in this act. And a commissioner shall be appointed by the Governor to examine and pass upon the claims of purchasers of any such land as are mentioned in this section. Said commissioner shall give notice of his appointment in some newspaper published in Phelps county, Missouri, for thirty days, and shall, at the town of Rolla, hear and determine all claims authorized to be acted upon by him. He shall certify to the Register of Lands of the State the amount he may find due on any such purchase, if anything, and transmit his certificate, together with the contract, agreement, or other written evidence of the original purchase or donation for school purposes, to the Register of Lands, who shall, when paid within the time specified in the contract, and upon the production to him of the receipts of the State Treasurer for any balance due on said purchase, make out a patent for the lands so sold, which shall be signed by the Governor and State Treasurer as trustee, and countersigned, sealed by the Register of Lands, and recorded in his office before delivery; and the money so received, after deducting actual expenses of collecting, shall be paid over by the State Treasurer, upon a warrant of the Auditor for this purpose, to the company, who shall become the
owners of the Southwest Pacific Railroad under this act; and in consideration of this money the granters herein mentioned shall pay all claims due and unpaid for work done and material furnished, other than iron, in the construction of said road west of Rolla, while under the contract of John C. Fremont, or his assigns, not to exceed in amount sixty thousand dollars; and the money, when so paid, shall be allowed the purchasers herein, the certificate of the commissioners hereinafter provided for, as money expended under provisions of section seven of this act in extending the road; and Clinton B. Fisk and two others, one to be appointed by the Governor and one by the grantees herein, are hereby constituted a commission to examine and allow said unpaid claims, and such claims, when so allowed and examined by said commission, shall be deemed just and binding upon the purchasers (grantees) under this act, and by them paid; and whenever the said commissioners are satisfied that the same have been paid as herein provided for, they shall certify this fact to the Governor, who shall cause bonds to be issued, as provided for in section seven of this act, for money expended in the extension of said road; and if said company shall fail or refuse to pay any claims so allowed, the Governor and Treasurer, upon notice thereof, shall retain double their amount out of the money deposited, and report the fact to the next general assembly for action. The said commissioners shall each be allowed five dollars per day for each day actually engaged in investigating and examining such claims, not to exceed twenty days each, to be paid by the company; they shall meet and
transact their business, after thirty days notice in one newspaper in Rolla, Phelps county, and one in St. Louis county, in Rolla aforesaid, within seventy days after the passage of this act, and a majority of them shall constitute a quorum to do business.

Sec. 17. That the said South Pacific Railroad Company shall pay to the State of Missouri the sum of three hundred thousand dollars—one hundred thousand dollars to be paid on or before the first day of June, 1874, and the sum of one hundred thousand dollars on or before the first day of June, 1875, and one hundred thousand dollars on or before the first day of June, 1876—which shall be in addition to the other conditions imposed by this act, and which sum shall be secured to be paid to the State of Missouri by the bond of said company, with approved security, and which bond shall be given before said company takes possession of said road. When said sum shall be paid into the State Treasury, the same shall be paid into the State Interest Fund.

Sec. 18. That before said grant, mentioned in section two of this act, shall vest in said company, the said grantees shall execute and deliver to the State of Missouri a bond in the sum of one million dollars, with securities to be approved by the Governor of the State, conditioned that the said company will faithfully apply and expend any and all proceeds arising from the sale of the bonds issued by the authority of this act, as well as all funds realized from the sale of the lands granted to aid in the construction thereof, in the completion of the Southwest Pacific Railroad to the western
boundary of the State, and the equipment and operation thereof until the same be completed; and conditioned, further, that they will complete said railroad to the western boundary of the State within the time prescribed in this act. The said bond, when approved by the Governor, shall be filed in the office of the Secretary of State. If there shall be any forfeiture of said road, under the provisions of this act, the State of Missouri may bring suit thereon against the said company and their securities, and recover the amount of such bond.

Sec. 19. In case the grantees named in this act, their successors, associates, or assigns, shall fail to make the deposit, as provided in section five of this act, or shall fail to accept the grant contained in this act in accordance with the terms and conditions hereinbefore set forth, then and in such case the Governor shall immediately advertise the said Southwest Pacific Railroad and all its appurtenances, and all the lands thereto belonging, for sale at public auction, for sixty days, in such papers as he may deem proper; and on the day of sale the Governor shall proceed to sell the road, its appurtenances, lands, and the interest of the State in said road to the highest bidder, subject to all the conditions and terms contained in this act: Provided, that the amount of deposit to be made shall not be less and the amount of bonds to be issued shall not be greater than the amounts specified in this act. And at such sale the property and interest thus advertised shall be sold to the person, persons, or corporation that shall offer to deposit, within sixty days after such sale, the highest sum of money or bonds, as pro-
vided in section five of this act, to secure the completion of said road. And upon such sale and deposit being made, and upon the acceptance of the conditions and reservations herein contained, the Governor shall execute a deed to the purchaser or purchasers, conveying to him or them all right, title, interest, and estate, of the State of Missouri in said Southwest Pacific Railroad, its appurtenances, lands, and other property, subject to the conditions and reservations hereinbefore set forth: Provided, further, that no bid shall be accepted at the public sale provided for in this section unless the person or persons making such bid shall deposit at once the sum of ten thousand dollars with the State Treasurer, who shall attend said sale; and said sum of ten thousand dollars shall be forfeited to the State absolutely in case the bidder fails to make good his bid, in accordance with the provisions of this section.

Sec. 20. G. V. Fox, C. B. Fisk, and Andrew Pierce, Jr., are hereby authorized to designate the time and place for the meeting of the grantees herein named, to organize the company authorized by the third section of this act, and they shall give each of said grantees at least ten days' notice thereof. If any of said grantees fail or refuse to join in such organization, or to accept the aforesaid grant, with the conditions and limitations in this act contained, the remaining grantees, with such persons as they may associate with them, may organize such company. The first meeting held by grantees, for the purpose of organization under this
act, shall be held at the city of St. Louis, in the State of Missouri.

Sec. 21. As soon as said company shall have completed the road to the western line of the State, the officers and agents of the State shall deliver to said company all moneys, evidences of debt, and other property in their possession, or under their control, and belonging to said company.

Sec 22. Whenever the word "company" is used in this act, it shall be construed to embrace the words "their associates and assigns," as if the words had been properly added thereto.

Sec. 23. This act shall take effect and be in force from and after its passage.

Approved March 17, 1868.

(Signed,)

THOMAS C. FLETCHER,
Governor.