Chapter 11

The Public Domain under the Pre-emption Acts

The greatest excitement in land speculation in the first two decades of the nineteenth century came at the conclusion of the War of 1812. Then with the Indian menace under control and new lands being opened for sale veterans of the war and other farm makers and speculators swarmed westward to seek out good locations. As new ranges were surveyed and opened for settlement speculators found gainful purchases of favorable sites. But the law required that newly opened sections must first be offered at public auction, so that competitive bidding sometimes drove up the price of choice sites to a high level. Of course, there was opportunity for collusion and fraud under this system, which was aided by lax and inefficient administration of the General Land Office.

In practice, the auction system did not result in the disposal of much of the public domain, and most sales were made at the minimum price. The extension of credit to purchasers was a handicap in obtaining revenue from the sales. A large percentage of the purchasers would fail to make the required payments. Up to 1819 the receipts from the public land sales amounted to $46,341,000, but the actual payment received was less than half this amount.[1] Congress, from time to time, had to pass relief acts in favor of the land purchasers. All this created dissatisfaction with the system of disposing of the lands. One main political objection was that a "squatter" who settled on government land was unable to have a pre-emption right when it was offered for sale and thus lost the capital and labor he had applied to his holding.

[1]Benjamin H. Hibbard, *History of the Public Land Policies*, p. 100.

Though in this period actual sale of public lands was relatively small, the amount of the proceeds was sufficient to create political controversy. As the new states with considerable areas of the public domain were admitted to the Union, they sought to obtain the benefit of unsold lands within their boundaries—a privilege given the original and older states. From the unsold public lands the new states had neither revenue nor taxable resources. As noted on a previous page, Thomas Jefferson, in his second inaugural address, proposed a "repartition" of the public income among the states and recommended an amendment to the Constitution, that from the proceeds of sales internal improvements and educational facilities should be encouraged. But Congress never took any action on this matter.

In the meantime, however, efforts were made to improve the administration of the public domain. In 1812 the General Land Office was established as a unit of the Treasury Department. It exercised supervision over local land offices as well as other land-disposal activities. To the General Land Office were transferred the functions of land survey and administration of land sales which had previously been performed by the War and the Treasury Departments. However, until 1833 land patents were still signed by the President, in whose name the patents were issued. About this time a tremendous land boom throughout the nation was in progress and sales of public lands skyrocketed.

In the meantime the national land business became a national burden and was a strong factor in promoting political sectionalism of the nation. As Andrew Jackson pointed out to Congress in December 1833: "From the origin of the land system down to the 30th September, 1832, the amount expended [on the public domain] has . . . been about $49,701,280 and the amount received from the sales deducting payments on account of roads, etc., about $38,386,624. The revenue arising from the public lands, therefore, has not been sufficient to meet the general charges on the Treasury, which have grown out of them by about $11,314,656."[2]

[2]James D. Richardson, *A Compilation of the Messages and Papers of the Presidents,* Vol. III, p. 63.

But the tide changed soon after Jackson delivered this message. In the early 1830s a speculation fever raged throughout the country. At that time, government lands, as well as other property, could be purchased with "rag money" created by "wildcat" banks. Then the "land-office business"—a term still in use though its application is long out of date—began in earnest. The public land auctions were attended by veritable mobs. They were scenes of great excitement. Premiums were paid by bidders for seats near the auctioneers, and bribery and other forms of corruption were used in the process of receiving and registering the bids.

The irregularities in bidding at the public auctions were too numerous to be recounted. A common form of fraud was secret agreements among the bidders to withhold offers for a selected section. Another was to bid up choice sites to abnormally high figures to scare away competitors. The effect of this, wrote an official investigator in 1834, "would be to enable any one man . . . to monopolize the entire sales, bid off the lands at whatever price he might put down competition; of course the people attending the public sales will have dispersed in a few days after the sales have been closed. They have no idea but all things in regard to the transaction are not fair. A short time after the sales, the person thus purchasing by agreement, forfeits the land; the whole affair is cancelled; the receipts destroyed, and the land becomes subject to entry in the usual manner, and this being known only to a few privileged individuals, of course, they can then enter the land at the minimum price."[3]

Another kind of public land fraud was related to pre-emption claims, such as certificates entitling soldiers, settlers, and Indians to the pre-emption or selection of lands in a designated location. These were commonly called "floats," because anyone entitled to land under a pre-emption right was said to have a "floating" claim to it. Such claimants were required under the act of 1834 to be bona fide cultivators and occupiers of the land. Many individuals taking up land with "floats," however, were merely "fake" settlers and soon sold out to speculators.[4]

[3] *American State Papers,* "Public Lands," Vol. VII, p. 524.

[4] In 1835, Benjamin F. Linton, the United States district attorney of western

As already noted, because of the great excitement attending the national land-office sales during the speculation fever just prior to the Panic of 1837, "doing a land-office business" became a common expression denoting great commercial activity and merchandising success. The tremendous increase in the sales of public lands indicates the extent of the virulent speculation fever. In 1825 the receipts from sales amounted to only $1,216,090. They rose to $2,329,356 in 1830, then continued as follows:

Years	*Acres Sold*	*Receipts*
1831	2,777,857	$ 3,577,024
1832	2,462,342	3,115,376
1833	3,856,227	4,972,285
1834	4,658,219	6,099,981
1835	12,564,479	15,999,804
1836	20,074,871	25,167,833
1837	5,601,103	7,007,523

The Impact of the "Specie Circular"

Thus the big bulge occurred in 1835 and 1836. It created a troublesome surplus in the national Treasury. Andrew Jackson was not pleased with the heavy receipts from land sales, for he and his cabinet realized that the land was bought with bank notes, much of which were depreciated and could not be redeemed in specie. Accordingly, on July 11, 1836, he took a bold step. He issued his famous "Specie Circular." It simply ordered that the land offices should accept only gold or silver or "land scrip" (i.e., soldiers' warrants) in payment for public lands.

The impact of this document was tremendous. Certainly land speculators could not then get specie! There was in fact little specie circulating in the country. The banks had very little specie in their tills to back up their outstanding circulating notes, and they could not meet an onslaught of holders demanding redemption of the notes in specie. Hence there was an abrupt abatement in speculation in public lands. The land offices were left deserted. When the financial crack came the fol-

Louisiana, reported that in his district there was a "notorious" speculation in floats by one individual, whom, however, he did not name.

lowing year, the Treasury found that, instead of surplus cash arising from lands already sold, the "old cat" was returned to its doorstep. Congress, by a large majority, passed a bill annulling the "Specie Circular," but Jackson was firm in his "hard-money" policy. He permitted Congress to adjourn without signing the bill.

The "Specie Circular" created as great an uproar in Congress as Jackson's war on the Bank of the United States. Prominent congressmen had been watching the wild speculations in government lands but avoided taking measures to abate it. The famous Foote Resolution, which brought forth Daniel Webster's most outstanding flight of oratory in his career—his "Reply to Hayne"—called for a cessation of land sales. This the southern statesmen opposed. Webster appears not to have been in favor of the resolution, but he, along with other New England and eastern members of Congress, was accused by the Southerners of seeking to hinder the westward movement for the sake of maintaining northern political influence. Webster resented the accusation. He took a keen interest in the public lands for political as well as personal reasons, for he had borrowed money to invest in public lands and is reputed to have had at one time as much as $60,000 thus invested. This, however, is doubtful.[5]

As a true statesman, Webster traced the cause of the land speculation of the period. The government itself, he said, was largely responsible for it, because it did not raise the price of its lands when everything else was going up in price. But, in his estimation, land speculation was not necessarily an evil. With characteristic oratory he told the Senate on May 31, 1836:

> "In everything else, prices have run up. But here [i.e., public land] the price is chained down by statute. Goods, products of all kinds, and indeed all other lands may rise, and many of them have risen, some twenty-five and some forty and fifty per cent; but government lands remain at $1.25 per acre. . . . The government land, therefore, at the present prices . . . is the cheapest safe object of investment. The sagacity of capital has found this out, and it grasps the opportunity. Purchase, it is true, has gone

[5]See Claude F. Fuess, *Caleb Cushing,* Vol. I, pp. 230–32, and Vol. II, pp. 85–88.

> ahead of emigration; but emigration follows it, in near pursuit, and spreads its thousands and tens of thousands close on the heels of the surveyor and the land hunter. . . . Nor are we to overlook, in this survey of causes of the vast increase in the sale of lands, the effects, almost magical, of that great and beneficent agent of prosperity, wealth and power—*internal improvement.*"[6]

Henry Clay, like Webster, feared no evil from land grabbing. In defending the national land policy in the Senate in 1832, he pointed out that "to supply the constantly augmenting demand [for land], the policy has been highly liberal. . . . Large tracts, far surpassing the demand of purchasers, in every climate and situation, are brought into . . . market at moderate prices. . . . For $50 any poor man may purchase forty acres of first-rate lands."[7] Yet Clay admitted in another address that "a friend of mine . . . bought in Illinois last fall about two thousand acres of refuse land at the minimum price, for which he has lately refused $6.00 per acre. An officer of this body [the Senate], now in my eye, purchased a small tract of 160 acres at second or third hand, entered a few years ago, and which is now estimated at $1,900. *It* [land speculation] *is a business—a very profitable business,* at which fortunes are made in the new States—to purchase these refuse lands, and, without improving them, to sell at large advances."[8]

The Passage of the Pre-emption Acts

The outcry for "squatters' rights" won increasing support in Congress where earlier those opposed to squatting had been in control. In that earlier period unauthorized settlement on the public lands was prohibited and troops were despatched on more than one occasion to evict the settlers and burn their meager improvements. A number of special acts were passed giving squatters the right to purchase their claims of 160 acres at the minimum price. Then in 1830 Congress forgave all squatters who were illegally on the public lands and permitted them to purchase their tracts without competitive bidding. The pre-emption law

[6]Daniel Webster, *Works,* Vol. IV, p. 262.
[7]Colton, *et al., The Works of Henry Clay,* Vol. V, p. 429.
[8]*Ibid.,* Vol. V, pp. 429, 503.

of 1830 was re-enacted in 1832, 1834, 1838, and 1840, by which time it had become as regular as annual appropriation bills. All these measures were retrospective in that they forgave past intrusions.

On September 4, 1841, Congress passed a prospective pre-emption act that opened all surveyed public lands to squatting and in effect allowed a period of grace from settlement to purchase. By the fifties squatting was permitted on unsurveyed public land on which Indian rights had been surrendered. The essence of these acts was the right given an individual who complied with the requirements of actual settlement and cultivation to hold the land against others applying for it and at the end of a designated period to gain title by paying the customary price of $1.25 an acre.[8a] Regarding this legislation, Professor Paul Wallace Gates writes:

> After the passage of the general Pre-emption Act of 1841 the attitude of the federal government toward Western settlers had grown increasingly benevolent. It had become the practice, though not required by law, for the General Land Office to survey great tracts far out on the frontier and to delay advertising them at public auction for years. During that time squatters could settle upon them, erect a simple home and make such improvements as their means permitted. In effect they had the free use of the public land for a time, during which they could raise a number of crops and perhaps accumulate enough cash to buy their claims.[9]

The Swamp Land Acts

To appease the states in which there were large tracts of public land, Congress in 1849 and 1850 passed what is known as the Swamp Land Acts. This legislation permitted grants of land to states for drainage and reclamation purposes. It opened up, however, the opportunity for fraudulent practices as bold and as notorious as those under disposal of the land to private interests. The Swamp Land Act of 1850 provided that, to be classed as swamp land, each forty-acre tract must be overflowed, either at planting or harvest season, and that the proceeds from

[8a]Benjamin H. Hibbard, *History of the Public Land Policies,* pp. 144–69; Roy M. Robbins, *Our Landed Heritage,* pp. 30 ff.

[9]"The Struggle for Land and the 'Irrepressible Conflict,'" *Political Science Quarterly,* June 1951, Vol. LXVI, p. 251.

the sale of the lands by the states be applied exclusively to cost of reclaiming the lands. All that was generally necessary to obtain land under the acts was for some state or local official to swear that the lands were under water or in an undrained condition. The story is told that a state official once swore that he crossed certain lands in a boat, neglecting, however, to state that the boat was on a wagon which could readily cross over the dry land.[10]

Up until 1884 approximately 72,000,000 acres were selected by the states under the Swamp Land Act, of which about 58,000,000 acres were approved. Altogether, about 64,000,000 acres have been conveyed to states as swamp land, but about one third of this was granted to Florida. Much of this acreage was disposed of to private interests, without any action on the part of the states to drain or even improve it. George W. Julian, chairman of the House Committee on Public Lands in 1851, stated that under the Swamp Land Act some 30,000,000 acres of the most choice land had been granted to four Gulf states and Arkansas, which were sold to speculators or politicians at from ten to eighty cents per acre.[11] And in 1866 the land commissioner reported that more than 52,000,000 acres of agricultural lands in the same area, obtained by the states under the Swamp Land Act, were in the hands of speculators, both corporations and individuals, not engaged in agriculture.

Landlordism and Land Engrossment in the Pre-emption Period

Though the Pre-emption Act of 1841 was intended to forestall further engrossment of large public land acreage, this intention was, on the whole, never realized. Unlimited right of purchase was still permitted and capitalists in all parts of the country continued to buy in large quantities. Millowners and others purchased western lands, largely under the motive of obtaining a future rise in land values owing to the population growth of the region. They operated either with their own or borrowed capital and undertook the burden of meeting taxes, interest, fees, and other costs connected with landownership. If the anticipated

[10]Clawson, *op. cit.*, p. 72.
[11]Alfred N. Chandler, *op. cit.*, p. 498.

profits from sales did not materialize within the time they expected, "their taxes remained unpaid, tax titles of dubious value issued and patronage was thereby created for lawyers and the courts, and further financial aid given to the newspapers in . . . the much-fought-over 'tax delinquent list.' "[12]

The tremendous size of these tax-delinquent lists would give an impression that most holders of western lands, both resident and nonresident, were "land-poor" and made no money from their engrossments. However, as stated by Professor Gates, "In practically every town, large or small, the local squire, the bank president, the owner of numerous mortgages, the resident of the 'big house,' the man whose wife was the leader of 'society,' got his start—and a substantial start—as a result of the upward surge of land values in the nineteenth century."[13]

Because of inability to dispose of their holdings in a short time, a number of these absentee landlords resorted to the old colonial practice of seeking tenants for their lands. Thus Romulus Riggs of Philadelphia had acquired 256 quarter sections (40,000 acres) of land in the military tract of Illinois during the 1830s, which was partially covered with timber. He made agreement with squatters on the land whereby they undertook to prevent unauthorized cutting of timber in return for the right to use the land. He at first induced these squatters to pay the taxes, and later, when they had built a cabin and cultivated a few acres, he demanded a cash rent in excess of taxes. Thus was tenancy born on the frontier.[14]

According to Professor Gates, whose researches into western landownership have revealed a vast amount of unpublished factual material, frontier landlords and pioneer tenants were most numerous in central Illinois, where today the largest of the estates and the highest proportion of tenancy are still to be found. It was this region that in

[12]Paul Wallace Gates, *Frontier Landlords and Pioneer Tenants,* p. 2.

[13]*Ibid.,* p. 3.

[14]*Ibid.* Riggs, in partnership with William W. Corcoran, conducted a large banking business in Washington under the name of Corcoran and Riggs. This later developed into the largest banking institution in Washington, the Riggs National Bank.

the early 1830s began to attract speculators as well as settlers. The speculators, who were mostly absentee landlords, found that by making some improvements on their holdings they could attract tenants, and some of these resorted to tenancy on a crop-sharing as well as a cash basis. Among the large absentee landlords who resorted to this practice, in addition to Romulus Riggs, were Henry L. Ellsworth, John Grigg, Solomon Sturges, and William W. Corcoran. Despite difficulties and disappointments, they all reaped the advantage of the rising land values that followed the depression of 1837.

Commenting on the rise of absentee landlordism and tenancy in the West, Professor Gates states:

> The swift rise of tenancy is one of the most striking features of the history of the American prairies. Careful observers had no occasion to be shocked in 1880 at the publication of the first census statistics showing that this rise for tenancy dated almost from the very beginning of white settlement. A government land policy that permitted large-scale purchasing by speculators bears its responsibility for this early appearance and rapid growth of tenancy. The rise in land values that set in during and after the Civil War, and, of course, the increasing rents made it difficult for laborers and tenants to acquire ownership while the increasing capital demands of prairie agriculture and the unfavorable prices that produce brought in the seventies, and again in the early nineties, tended to depress many farm owners into the tenant class. . . . Nowhere in America at the end of the Century was tenancy more deeply rooted than in the prairies.[15]

Land Companies in Land Engrossment

During the period prior to the enactment of the Homestead Act in 1862, it became a common practice for speculators in public lands to organize themselves into companies. The process was, however, by no means new. It dates from the colonial period and was continued in the early post-Revolutionary period. Robert Morris, the most prominent land engrosser of this time, made use of this form of association, and it was followed by many others. At the height of the land boom, just pre-

[15] *Ibid.*, pp. 63–64.

ceding the Panic of 1837, a group of New York and New England capitalists, under the leadership of Charles Butler of New York, formed a company called the American Land Company. The authorized capital was $1,000,000—quite a large sum in those days. The specific object of the company was set down as "the purchase of land situated in the United States, particularly in the Western States and territories." It seems, however, that the object was to purchase cotton lands in the southwestern states, "at or near the government price." Anyway, about 70 per cent of the company's capital was applied to this purpose in the first year. To further purchases, the company went heavily into debt. It contracted to buy for $400,000 cotton lands in Mississippi "lately occupied by the Chickaw Indians," and title was to be obtained "directly from the Indians," to be approved by the President. But the most significant purchases of the American Land Company were made in town lots in Chicago, Toledo, and elsewhere. In Chicago the chief agent of the company was William B. Odgen, destined to become Chicago's first mayor and a leading real estate owner and railroad builder in that city.

In addition to the American Land Company, there were numerous other companies organized to operate on the same principles. They did not all originate on American soil. Several were owned and financed by British and Scottish capitalists. Thus George Smith, who later became a multimillionaire—not, however, through land speculation, but by issuing his "circulating notes"—came from Scotland to Chicago "as a prospector" in 1834. Impressed by the possibilities of gain in land speculation, he organized the Scottish Illinois Land Investment Company and acted as its agent. He also acted as agent for other British and Scottish companies and private bankers. Although he is reported to have returned to Scotland with enough dollars to purchase a kingdom, his Scottish Illinois Land Investment Company appears to have "gone by the boards."[16]

Despite the disappointments of some of these foreign speculators in American lands, the Scotch and the British continued to operate as individuals or in groups to buy, hold, and sell American soil. Several

[16]See Huston and Russell, *Banking in Illinois*, p. 107.

of the western states, fearing the effects of this absentee ownership, enacted laws to abate or discourage it.

Summary

Summing up the story of the disposal of the public domain in the period immediately preceding and following the passage of the Pre-emption Act, it can be said that this was an era in which there was the greatest political and economic confusion in the nation's land distribution. The whole question was tied up with the sectional disputes which then tormented the Republic, and because of the struggle between the southern interests, who wanted public lands sold as a source of national revenue, and the northern capitalists and western pioneers, who were experiencing difficulty in developing their holdings and gaining a livelihood, little or nothing was accomplished toward an orderly system of land distribution. The leading critic of public land policy in this period was Horace Greeley, who questioned the whole basis of the public-sale feature and the high price the government exacted for raw, unimproved land. He argued that for every dollar the government received from sales the actual settlers had to pay $2.50 or $3.00 in the form of usury, extra prices, sheriff's fees, and the cost of foreclosing. To penalize the settler by maintaining a system that entailed all these costs was a monstrous crime, in his estimation, and he used the pages of his prominent newspaper, the New York *Tribune,* to attack the land policies in both the East and the West. In this matter he was a potent factor in gaining support for the Republican party, which swept Lincoln into the presidency in 1860.[17]

[17]For an account of the political effects of the administration of the public land laws in this period, see Paul W. Gates, "The Struggle for Land and the 'Irrepressible Conflict,'" in *Political Science Quarterly,* June 1951, Vol. LXVI, pp. 248–54.