

NATIONAL PARKS OF SEQUOIA GIGANTEA, IN CALIFORNIA.

JANUARY 25, 1904.—Committed to the Committee of the Whole House on the state
of the Union and ordered to be printed.

Mr. NEEDHAM, from the Committee on the Public Lands, submitted
the following

REPORT.

[To accompany H. R. 3581.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3581) providing the means of acquiring title to two groves of *Sequoia gigantea* in the State of California with a view to making national parks thereof, beg leave to submit the following report and recommend that said bill do pass, with an amendment as follows:

On page 2 strike out the last word "and" in line 7 and the first word "fifty" in line 8.

By act of Congress approved March 8, 1900, the honorable Secretary of the Interior was authorized to negotiate for and bond the properties the subject of this bill. His report of proceedings thereunder are fully set forth in House Document No. 626, Fifty-sixth Congress, first session. After reciting at length the correspondence had, it is therein stated:

From this correspondence it will be seen (1) that an effort was made to obtain from Mr. Sperry a statement respecting the lands owned by him and his willingness to bond the same for purchase by the United States at an agreed price, and that he finally replied that he had sold the property to Mr. Whiteside, to whom I was referred; (2) that an effort was made to obtain from Mr. Whiteside a statement respecting his interests in the lands and his willingness to bond the same for purchase by the United States at an agreed price, but that he declined to put a price upon the lands and insisted that a rate per thousand feet for the timber thereon must first be agreed upon, in which event he would permit an examination of the lands and allow reasonable time to consummate the negotiations.

Mr. Whiteside's telegrams do not indicate a willingness to enter into negotiations respecting the sale of these lands to the United States upon any practicable plan, but show an inclination to stand upon his rights and to avoid coming to any definite statement or negotiation.

While the amount, character, and value of the timber upon these lands may properly constitute an element in fixing the value of the lands themselves, yet, considering that Mr. Whiteside has but recently purchased or agreed to purchase the lands, one is constrained to believe that, so far as these matters affect the question of value or price, they are already known to him, so that there is no reason why he can not

give to them the consideration to which they are entitled and state a price at which he is willing to sell. He does not need the assistance or investigation of any representative of this Department to enable him to state a selling price. Upon the other hand, I do not understand that the Government contemplates purchasing these lands with a view to a mercantile disposition of the timber which may be obtained therefrom, and this Department is now in possession of sufficient information respecting the lands, the timber thereon, and other matters pertaining thereto to enable it to judge, in a general way, of the reasonableness of any price Mr. Whiteside may place upon the lands.

It is pretty well understood that the price at which Mr. Whiteside has recently purchased or agreed to purchase the lands is \$100,000. I am constrained to believe that if Mr. Whiteside were willing to sell the lands for their reasonable value, or at a reasonable profit upon his recent purchase, he would have no serious difficulty in stating a price, and for this reason it has seemed to me to be useless to pursue the negotiations further. If it is desired to obtain the title to these lands, and to perpetuate the mammoth trees and other natural curiosities thereon, it will have to be done through the means of the exercise of the power of eminent domain. Believing that the General Government should acquire these lands and make public parks thereof, I herewith transmit the proposed bill, which, if it meets the approval of and is enacted by Congress, will assure the accomplishment of that purpose.

The bill is supported by the reasons fully set forth in the report accompanying the resolution adopted by Congress March 8, 1900, a part of which is as follows:

The "Mammoth Tree Grove" and "South Park Grove" of trees, *Sequoia gigantea*, located in Calaveras and Tuolumne counties, Cal., constitute the most easily accessible, most compact groves and finest specimens of these trees in the world. These groves were the first discovered of these trees.

The north Calaveras, a mammoth grove located at Bigtrees post-office, near the eastern border of Calaveras County, Cal., comprises 50 acres of virgin forest. It contains about 100 big trees. Ten are not less than 30 feet in diameter; 70 are from 15 to 32 feet in diameter. The common height is from 250 to 325 feet.

The south Calaveras grove is located about 6 miles southeast of said post-office, near the west border of and within Tuolumne County. This grove covers about 1,000 acres and contains 1,380 big trees. The average height is 250 feet and diameter 15 feet. The largest range from 300 to 380 feet in height and from 25 to 41 feet in diameter.

These trees constitute the only living relics of prehistoric times, and are estimated to be, the oldest of them, 4,000 years of age. They have attracted the attention and presence of the scientific world, and are regarded thereby as the finest of modern natural wonders. They are of great interest and attractiveness to the tourists of the world.

The area necessary for the holding and proper protection of these groves in one body is estimated at about 3,800 acres. They and this tract of land are held in private ownership, and are in immediate danger of sale and destruction for timber and lumber purposes. The movement for their acquisition, inaugurated by the warning given by the California Club, a San Francisco association of prominent and patriotic Pacific coast ladies, has given warning to the scientific, botanical, and wonder-admiring world of the impending menace, and aroused a uniform demand therefrom coming from every State for the acquisition by and ownership of these groves by the Federal Government in the form of petitions representing over 200,000 persons.

This legislation has been urged now for four years and ought not to be further postponed. The State of California should not be asked to preserve these groves, as that State has done more perhaps than any other State to preserve the natural wonders and curiosities within its borders.

It accepted from the National Government, in trust, grants of the Yosemite Valley and the Mariposa big-tree grove, and has appropriated thousands of dollars in their care and maintenance. The State of California only recently spent \$250,000 in the purchase for a State park of the big basin in Santa Cruz County, which contains probably the finest specimens of redwoods (*sempervirens*) in the world.

The President of the United States says, in his message in transmitting to Congress a petition signed by 1,437,260 citizens praying for this legislation:

The Calaveras big-tree grove is not only a Californian but a national inheritance, and all that can be done by the Government to insure its preservation should be done. (See S. Doc. 93, 58th Cong., 2d sess.)

Your committee recommend that the bill do pass as amended.

Attached hereto is a legal opinion from the Interior Department as to the authority of the United States to condemn lands within a State for national parks.

DEPARTMENT OF THE INTERIOR,
Washington, May 7, 1900.

SIR: I transmit herewith a memorandum bearing upon the question of the authority of the United States to condemn for public park purposes the lands in the State of California upon which are found the mammoth trees known as *Sequoia gigantea*.

Very respectfully,

E. A. HITCHCOCK, *Secretary*.

HON. JOHN F. LACEY.

House of Representatives.

Memorandum bearing upon the authority of the United States to condemn lands within a State as proposed in the bill (H. R. 11105) providing a means of acquiring title to two groves of Sequoia gigantea in the State of California, with a view to making national parks thereof.

In *Kohl et al. v. United States* (91 U. S., 367, 371), the court said:

"The powers vested by the Constitution in the General Government demand for their exercise the acquisition of lands in all the States. These are needed for forts, armories and arsenals, for navy-yards and light-houses, for custom-houses, post-offices, and court-houses, and for other public uses. If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell, or by the action of a State prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the Government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen. This can not be."

In *Shoemaker v. United States* (147 U. S., 282, 297, 298), in passing upon the legislation providing for the establishment of Rock Creek Park, in the District of Columbia, and the condemnation of the lands therein, the court said:

"It is said in Johnson's *Cyclopedia* that the Central Park of New York was the first place deliberately provided for the inhabitants of any city or town in the United States for exclusive use as a pleasure ground, for rest and exercise in the open air. However that may be, there is now scarcely a city of any considerable size in the entire country that does not have, or has not projected, such parks.

"The validity of the legislative acts erecting such parks and providing for their cost has been uniformly upheld. It will be sufficient to cite a few of the cases: *Brooklyn Park Commissioners v. Armstrong* (45 N. Y., 234); *In re Commissioners of the Central Park* (63 Barb., 282); *Owners of Ground v. Mayor of Albany* (15 Wend., 374); *Holt v. Somerville* (127 Mass., 408); *Foster v. Boston Park Commissioners* (131 Mass., 225; also 133 Mass., 321); *St. Louis County Court v. Griswold* (58 Mo., 175); *Cook v. South Park Commissioners* (61 Ill., 115); *Kerr v. South Park Commissioners* (117 U. S., 379). In these and many other cases it was, either directly or in effect, held that land taken in a city for public parks and squares, by authority of law, whether advantageous to the public for recreation, health, or business, is taken for a public use.

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"A distinction, however, is attempted in behalf of the plaintiffs in error between the constitutional powers of a State and those of the United States in respect to the exercise of the power of eminent domain, and this distinction is supposed to be found in a restriction of such power in the United States to purposes of political adminis-

tration; that it must be limited in its exercise to such objects as fall within the delegated and expressed enumerated powers conferred by the Constitution upon the United States, such as are exemplified by the case of post-offices, custom-houses, court-houses, forts, dockyards, etc.

"We are not called upon by the duties of this investigation to consider whether the alleged restriction on the power of eminent domain in the General Government, when exercised within the territory of a State, does really exist, or the extent of such restriction, for we are here dealing with an exercise of the power within the District of Columbia, over whose territory the United States possess not merely the political authority that belongs to them as respects the States of the Union, but likewise the power 'to exercise exclusive legislation in all cases whatsoever over such District.'—(Constitution, Art. I, sec. 8, par. 17.)"

In *United States v. Gettysburg Electric Railway Co.* (160 U. S., 668, 680, 681, 683), in passing upon the legislation providing for preserving and monumenting the site of the battle of Gettysburg and condemning lands embraced therein, the court said:

"In examining an act of Congress it has been frequently said that every intendment is in favor of its constitutionality. Such act is presumed to be valid unless its invalidity is plain and apparent; no presumption of invalidity can be indulged in; it must be shown clearly and unmistakably. This rule has been stated and followed by this court from the foundation of the Government.

"Upon the question whether the proposed use of this land is a public one we think there can be no well-founded doubt. And also, in our judgment, the Government has the constitutional power to condemn the land for the proposed use. It is, of course, not necessary that the power of condemnation for such purpose be expressly given by the Constitution. The right to condemn at all is not so given. It results from the powers that are given, and it is implied because of its necessity or because it is appropriate in exercising those powers. Congress has power to declare war and to create and equip armies and navies. It has the great power of taxation, to be exercised for the common defense and general welfare. Having such powers, it has other and implied ones as are necessary and appropriate for the purpose of carrying the powers expressly given into effect. Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by [to] Congress must be valid. This proposed use comes within such description.

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"No narrow view of the character of this proposed use should be taken. Its national character and importance, we think, are plain. The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of these powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred."

Congress has provided for the exercise of the power of eminent domain in establishing national cemeteries (act of February 22, 1867, 14 Stat., 399), and in preserving and monumenting the battlefield of Chickamauga (act of August 19, 1890, 26 Stat., 333), battlefield of Antietam (act of August 5, 1892, 27 Stat., 377), battlefield of Shiloh (act of December 27, 1894, 28 Stat., 597), and battlefield of Gettysburg (act of March 3, 1893, 27 Stat., 599; act of August 18, 1894, 28 Stat., 405; joint resolution June 5, 1894, 28 Stat., 584; act of February 11, 1895, 28 Stat., 651).

None of the decisions cited and none of the Congressional precedents named cover a case identical with that under consideration; nor is there any decision which denies the power of Congress in a case parallel with that under consideration.

Congress has established and is maintaining national parks like those here proposed—witness the Yellowstone, the General Grant, the Yosemite, the Sequoia, the Mount Rainier, and the Arkansas Hot Springs. These are established and maintained by the National Government, at great expense, for the general good of the people of the nation. Is it within the power of the National Government to do this and yet not within its competency to do that which is necessary to make the power effective, viz, to acquire sites for such parks by condemnation where they can not be otherwise obtained?

Is it within the power of the National Government to establish and maintain a great Executive Department, "the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants," and yet not within its competency to make this power

effective by the condemnation, where necessary, of sites for agricultural experiment stations in the several States? Does not the power to establish and maintain such a department necessarily carry with it whatever is necessary to an efficient exercise of the power? Is not the preservation of the scientific data afforded by these remnants of prehistoric forests, which have attracted the attention of the world's most eminent men of science, but another exercise of the power under which the Agricultural Department is maintained?

California is under no obligation to preserve these trees for the benefit and instruction of the people of the United States, nor ought she to bear the burden of doing so.

Considering the great object to be accomplished, ought not the National Government, in the absence of judicial decisions to the contrary, to make an effort to preserve for the benefit and instruction of the people of the United States these natural wonders, leaving any question of power to the judicial tribunal? In *Shoemaker v. United States*, supra, Justice Shiras, speaking of city parks, says:

"In the memory of men now living a proposition to take private property without the consent of its owner for a public park, and to assess a proportionate part of the cost upon real estate benefited thereby, would have been regarded as a novel exercise of legislative power."

May not this growth in the conception of governmental powers extend to national parks?

The bill proposed by the Secretary of the Interior is in such form that if adopted any question of power will arise in the appropriate Federal court at the threshold. If the power is sustained, the parks can be established and the trees saved. If the power is denied, an important question will be settled. In either event something will be gained and nothing lost.

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