

## III.

But even though the said acts of 1855 and 1857 had never been passed, and the question as to the right of the State to the said five per centum had not already been decided, I submit that the act of admission, fairly construed, is conclusive in favor of the claim of the State.

Section three of this act says:

"The following propositions are hereby offered to said people of Kansas for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the State of Kansas, to wit: First. That sections numbered 16 and 36 in every township of public lands in said State shall be granted to said State for the use of schools. \* \* \*

Fifth. That five per centum of the net proceeds of sales of all public lands, lying within said State, which shall be sold by Congress after the admission of the State into the Union, after deducting all expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements and for other purposes, as the Legislature may direct:

\* \* \* *Provided*, That the foregoing propositions herein offered are on the condition that the people of Kansas shall provide by an ordinance irrevokable, without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States or with any regulation Congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof, and that the said State shall never tax the lands or the property of the United States in said State." (12 Stats., 727.)

Now, the question is, What did Congress mean by this compact and agreement; what did Congress understand to be *public lands* at the date of the compact?

To determine these questions it is necessary, perhaps, to refer to the legislation of Congress relative to the disposition of lands within the State.

Section 12 of the act creating the office of Surveyor General in the Territory of Kansas and providing for the survey and sale of lands therein, says:

"That *all* the lands to which the Indian title has been or shall be extinguished within said Territory of Kansas shall be subject to the operations of the pre-emption act of September 4, 1841, and under the conditions, restrictions, and stipulations therein mentioned."