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Title to Certain Public Grounds

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IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1881.—Ordered to be printed.

Mr. DAVIS, of Illinois, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill S. 1935.]

The Committee on the Judiciary, to whom was referred the bill (S. 1935) entitled "A bill to confirm to the city of Chicago the title to certain public grounds," have had the same under consideration, and have directed me to make the following report :

The public grounds referred to in the bill are situated in that part of the city of Chicago known as "Fort Dearborn Addition." It appears that this addition is a subdivision of the fractional southwest quarter of section 10, in township 39 north, of range 14 east of the third principal meridian, containing, according to the official government survey made in 1821, 57.32 acres. It is bounded on the north by the Chicago River and on the east by Lake Michigan.

For many years, commencing as early as 1804, the tract was occupied by the government as a military post and Indian agency, and in the year 1824, at the request of the Secretary of War, was formally reserved from sale for military purposes. In the year 1839, Mr. Poinsett, Secretary of War, under the direction of the President, appointed Matthew Birchard, Solicitor of the General Land Office, as the agent of the War Department for the purpose of selling such portion of the reservation as was no longer required for military purposes, or for the use of the light-house which had been erected upon the land near the mouth of the river. The agent was directed to subdivide the land into town lots, and to procure and execute the necessary survey and plat thereof. After recording the plat he was instructed to make an estimate of the value of each lot, availing himself for this purpose of the best information he could obtain at Chicago, and then to advertise the lots for sale to the highest bidders, reserving, however, from sale the light-house and buildings connected with it, and such quantity of land as he should think necessary to retain for the use of the light-house. Should the bids offered for the lots be considered inadequate, he was authorized to decline them.

Acting under this authority, Mr. Birchard proceeded to Chicago, and, after a conference with a committee appointed by the common council of the city, adopted a plan for the proposed subdivision. In conformity to the provisions of the State statute then in force, providing for the making and recording of town plats, he caused the land to be surveyed by the county surveyor, and a map or plat of the survey to be made, on which the entire tract was subdivided into blocks, lots, streets, a

and public grounds. The plat, duly certified by the county surveyor and acknowledged by Mr. Birchard, was recorded in the county registry of deeds; and for more than 40 years it has been recognized by the executive department of the government as a lawful and duly authorized subdivision of the land thereon described. It has also received the express recognition of Congress in disposing of some of the lots not sold in 1839 (see act for the relief of Jean Baptiste Beaubien, 10 Statutes at Large, p. 805). The plat was styled "Fort Dearborn addition to Chicago." Sales were made by Mr. Birchard of most of the property, and the government is reported to have received more than \$280,000 for the lots sold. The sales were confirmed by the Secretary of War; and no suggestion has ever been made that the property did not bring its full value at the time, or that the plan adopted for selling it was not advantageous to the government.

The lots having been sold as delineated upon the recorded plat, the purchasers acquired an interest in the streets and public grounds on which their lots abutted; and it is manifest that the government could not after the sale make any disposition of those streets or public grounds inconsistent with the use to which they had been dedicated. The attempt to do so, if it had the power, without the consent of the lot-owners interested, or making adequate provision for their compensation, would be a flagrant act of bad faith.

The statute of the State, with the provisions of which the agent evidently intended to comply in making and recording the plat, provided that the land intended to be used for streets, commons, or other public uses, and noted as such on the plat, should vest in fee simple in the town or city where they were situated, to be held in the corporate name thereof for the uses and purposes thus expressed or intended. By virtue of that and subsequent statutes of a similar character, the legal title to the streets and other public grounds in the different towns and cities of Illinois, with rare exceptions, is vested in the local municipality, the simple acknowledgment and recording of the plat on which they are laid down operating as a sufficient conveyance from the donor and as a general warranty against him and his heirs to the donee, for the uses and purposes thus indicated.

It appears, however, from a decision made a few years since by the United States circuit court at Chicago, that the presiding judge was of opinion that although the streets and public grounds in Fort Dearborn addition to Chicago had been lawfully dedicated with the consent of the government, through its authorized agent, to public use, yet in consequence of certain technical informalities in making the plat, the dedication operated as a common-law dedication, and not under the statute, and, therefore, that the legal title to the streets and public grounds was still in the United States, subject to the public use, which had been affixed to them—the United States, however, having no control over them inconsistent with the purpose for which they had been dedicated. The bill proposes that this mere naked legal title shall be relinquished to the city of Chicago; and your committee are of opinion that the general government has no interest in retaining that title, after having parted with all beneficial interest in the property forty years ago for ample consideration.

The bill further proposes that the consent of Congress shall be granted to the sale and conveyance by the city of Chicago of a portion of the ground dedicated to public use upon the plat of this addition, for the erection thereon of a railway passenger station-house, which, it appears, is intended for the joint use and accommodation of several important

railway lines entering the city upon the tracks and right of way of the Illinois Central Railroad Company which lie immediately adjacent.

The facts relating to this feature of the bill appear to be substantially as follows: The eastern boundary of Fort Dearborn addition is Lake Michigan, and the southern boundary is Madison street. Randolph street lies two blocks north of Madison street and runs parallel with it to the lake. Between these two streets, a small piece of ground irregular in shape, lying east of blocks 12 and 15 and between them and the lake, is delineated on the plat, across which were written the words, "Public ground, forever to remain vacant of buildings," and in an explanatory statement written on the margin of the plat and signed by Mr. Birchard, as agent of the Secretary of War, there is this declaration: "The public ground between Randolph and Madison streets, and fronting on Lake Michigan, is not to be occupied with buildings of any description." A street ninety feet wide, called Michigan Avenue, was extended many years ago in a direct line through this public ground from Randolph street on the north to Madison street on the south. The ground lying east of this avenue and between Randolph street and Madison street was, at the time of the subdivision in 1839, a narrow strip of land on the margin of the lake, nearly 800 feet long, and varying in width from about 50 feet at Randolph street to about 100 feet at Madison street. In 1852 the width of the strip had been reduced by gradual abrasion, caused by the action of the lake, to 22½ feet at Randolph street, and at Madison street the entire surface of the strip had worn away and completely disappeared beneath the waters of the lake. This process of erosion had then been going on for many years along the whole city front upon the lake shore. During that year the Illinois Central Railroad was constructed. By virtue of its charter, and an ordinance of the city passed pursuant to the provisions of the charter, the railroad company was authorized to occupy for its right of way a space 300 feet wide in front of fractional sections 10 and 15, in the open waters of the lake, upon the condition, which was complied with, that the company should construct a break-water along the east line of its right of way sufficient to protect the shore from further encroachments by the lake. The inner line of the right of way was established at a distance of 400 feet east of the west line of Michigan avenue. The tracks of the company along this part of its line were originally laid upon piles driven into the bed of the lake, but the entire space included within its right of way was subsequently filled with earth and converted into firm ground. Inside of this right of way there remained for many years in front of the strip of public ground above described, and of the shore for a considerable distance south, a basin of smooth water, which has been filled up by the city within a few years past, and a part of it improved as a public park. In this way the space between the natural shore and the roadway of the railway company has been reclaimed from the lake, and the ground east of Michigan avenue, now desired for a passenger station-house, has a uniform width of 310 feet. To that portion of the ground rescued in this artificial manner from the lake, at the expense of the city, it would seem that the general government has no color of title, it being the settled doctrine of the Supreme Court, laid down in several well-considered cases, that the title to the bed of the great navigable waters of the country is vested in the States respectively and not in the United States. The government grants and surveys along our great inland lakes and rivers have for this reason never been extended below the limits of high-water.

As to that part of the ground which formed the natural shore, while it has been held that the legal title is still in the general government, yet it is also clear that it is a bare legal title, divested of any beneficial or equitable interest. The ground has been effectually dedicated to public use, and the government cannot divert it from that use. In effect, it holds the technical legal title in trust, for the use and benefit of the public and the adjacent property owners.

It further appears that the parties beneficially interested in the use, namely the State of Illinois, as representing the general public, and all the property owners, with perhaps a single exception, have given their consent to the sale of the ground by the city for the purposes mentioned in the bill. The city of Chicago, as the representative of that portion of the public more immediately concerned, by the unanimous vote of its city council, has asked for this legislation; and no one has appeared before your committee to oppose it. The bill does not interfere with private rights, all such rights being carefully guarded. It proposes merely to grant the consent of Congress to a change from one public use of the property to another, which, in the judgment of those directly interested, has been rendered necessary by the increase of population and business and other circumstances affecting the interests of the public in that quarter of the city.

Your committee are of opinion that the desired consent should be granted. Why should Congress refuse it? If it does refuse, the ground will still remain subject to the use to which it was originally dedicated. The government can neither sell the land, nor lease it, nor use it. Nor is there any reason to think that it will derive the slightest profit or advantage from maintaining the original dedication. In the price obtained for the adjacent lots it has received pay for the property once, at its full value; and your committee are, therefore, of opinion that the consent asked for should be granted gratuitously, and without imposing any onerous conditions.

Your committee report the bill, with amendments, and recommend its passage.