

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

1-27-1881

Title to Certain Public Grounds

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 795, 46th Cong., 3rd Sess. (1881)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1881.—Ordered to be printed.

Mr. EDMUNDS, from the Committee on the Judiciary, submitted the following

VIEWS OF THE MINORITY:

[To accompany bill S. 1935.]

Views of Mr. Edmunds, a minority of the Committee on the Judiciary, in respect of its report recommending the passage of said bill.

Prior to June, 1837, the United States was the owner, in its political character, as a part of the cession of the Northwest Territory, of a tract of land at Chicago known as the Fort Dearborn Reservation, bounded north by the Chicago River and east by Lake Michigan; the southern and western boundaries being upon public lands that had before been disposed of in the usual way. In that year, under the authority of law, the Secretary of War proceeded to lay off into lots and sell several blocks of land to private purchasers, with streets intersecting, and leaving unsold the northerly point of the reservation at the junction of the Chicago River with Lake Michigan, and a quantity of land lying along the lake shore near the southern part of the reservation. On the official plan of the reservation, showing the lots to be sold, this last-named unsold land is left not laid out, and on the plan at that point were entered the words, "Public ground, forever to remain vacant of buildings." In the year 1849 the Supreme Court of the United States, in a case with the city of Chicago, decided that the United States did not stand in the attitude of a mere private owner of the property, and that the public authority of the city of Chicago had not acquired the right to open streets over the unsold portions.

Afterwards certain railway companies, acting, it is said, with the permission of the State of Illinois and the city of Chicago, built a railway track in the shoal water in front of this reservation, and erected freight buildings, &c., outside of the shore-line. It is a fact conceded on all sides that the keeping open of the part marked public ground any longer will be of no benefit to the adjoining proprietors nor to the general public, but that the adjoining property will be increased in value by the erection, on a part of this reserved land, of a railway passenger depot. The railway companies have offered, or are willing to pay, the sum of about \$800,000 for that part of this ground so marked as to remain without buildings, and some adjacent ground in which the United States has no proprietary interest, it is said; but, it is believed, this sum is far below the actual value of the land. This adjacent part, in which the United States has no interest, constitutes only one-third of the ground proposed to be used for this purpose, so that the property of which the United States confessedly owns the fee is worth at least

\$533,000. Over this land of the United States, under the implied covenant not to build upon it, arising from the entry on the plan before referred to, the people of the city of Chicago have, at most, a right of passage, and the abutting proprietors the right of view. The city of Chicago wishes to surrender its right of passage to the railway company, and the abutting proprietors desire it to be done, as a benefit to their property, and by this bill the United States is to sell all its right in the land, being the absolute ownership of it, subject to the easement of passage and view before mentioned, and allow the city of Chicago to take the whole purchase money. It appears to me that this is simply giving away the property of the United States to a party who has, at most, an easement of passage on it, in order that he may sell it for more than half a million of dollars.

I am unable to see the justice of this; the United States might, with more propriety, ask the reverse. It may be true that the value of the property subject to the easement of passage and view is practically nothing; but it is equally true that the value of the easement is nothing as the subject of sale for any purpose, if, indeed, such a right could be a subject of sale except as appurtenant to the adjoining property. In this state of the case the most that can be claimed for the city is, that it and the abutters and the United States stand on equal ground, neither owns anything in the land of any salable value, but each of the three parties are willing that the easements shall be surrendered and the lots sold for business purposes, connected, it is true (as it is in most cases of business transactions), with the promotion of local public interest. How can it be right, then, in such a case, that the owners of the easement shall take the whole of the purchase money, and deprive the owner of the fee of any share of it? I think, then, that the United States ought not to be called upon to convey this land without being paid a fair proportion of the purchase money, and that to do so would be to give several hundred thousand dollars, justly belonging to the Treasury of the United States, to the treasury of the city of Chicago. I am not able, therefore, to agree to the passage of the bill. Aside from this main question, the bill is so framed as, I fear, to expose to danger the rights of the United States in other parts of the Fort Dearborn Reservation than that I have especially referred to, to injury, and, possibly, to the loss of control over the lot marked number one on the plan referred to, and the street on the south and west of it, as well as to its watered front.

Respectfully submitted.

GEO. F. EDMUNDS.