

1-20-1885

## Confirming Land Titles in Certain Cases

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IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1885.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 2509.]

*The Committee on Public Lands, to whom was referred the bill (S. 2509) to confirm titles to lands in certain cases, having considered the same, respectfully report:*

The object of the bill is to confirm titles to lands which have been purchased at private entry for cash, warrants, or scrip, and for which certificates or patents have been issued through the inadvertence or mistake of the officers of the general or local land offices when such lands were not subject to private entry, in cases where there are no conflicting claims thereto.

Your committee herewith submits, as a part of their report, certain letters from the Secretary of the Interior and the Commissioner of the General Land Office, from which the necessity of the proposed legislation will appear.

Your committee recommend that the bill be amended by inserting after the word "purchased," in line 10, the words "in good faith," and by striking out in lines 15 and 16 the words "at the date of the approval of this act," and inserting "on the 25th of January, 1885," and that the bill, when so amended, do pass.

DEPARTMENT OF THE INTERIOR,  
*Washington, July 14, 1885.*

SIR: Senate bill 2509, "To confirm titles to lands in certain cases," was received by your reference of the 9th instant, and referred to the Commissioner of the General Land Office. I have the honor to inclose herewith copy of his report on the subject of this date, and to state that I concur in the views therein set forth.

Very respectfully,

M. L. JOSLYN,  
*Acting Secretary.*

Hon. P. B. PLUMB,  
*Chairman Committee on Public Lands, United States Senate.*

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., January 14, 1885.*

SIR: I am in receipt, by your reference, of a letter from Hon. P. B. Plumb, chairman Committee on Public Lands, United States Senate, transmitting a copy of Senate bill No. 2509 "To confirm titles to lands in certain cases," and requesting the views of your Department thereon.

The bill, though general in its nature, applies particularly to certain lands in the Upper Peninsula of Michigan, which were once offered at public sale and afterwards withdrawn from private entry by reason of railroad grants, and then relieved from the withdrawal, or were reduced in price by act of Congress, but were not again offered at public sale at the reduced price nor restored to private entry by public notice, but which were nevertheless entered as lands subject to private entry, contrary to decisions of the courts and the decisions and instructions of this Department. I am not informed that this state of facts exists elsewhere than in the locality referred to. Many of such entries in that locality have been patented, and such patents have not been attacked. It is held that patented lands have passed beyond the jurisdiction of the land department. Many other private cash or equivalent entries upon such lands remain of record, some of which have been held for cancellation for illegality, and all of which are liable to be so held when reached for action. These unpatented entries which are deemed illegal embrace a probable aggregate of between 100,000 and 200,000 acres.

Settlers have gone upon some of these lands with a view of claiming title thereto under the homestead or pre-emption laws as soon as their entries may be admitted, and applications to make filings or entries have been received and are awaiting action in several hundred cases.

The bill confirms titles which have passed by patent, and confirms all unpatented entries where there are no adverse claims. So far as the question is one between the United States and the private entryman, the United States by this bill waives the illegality in the entries and makes them valid. So far as any settlement, claim, or other conflicting right has accrued up to the date of the approval of the act, the entries are not validated. The confirmation proposed is that which does not affect the rights or claims of third parties, and does not propose to adjudicate nor make rules for adjudication in cases of conflicting claims, but leaves the respective claimants in such cases to the operation and remedies of existing laws. I perceive no objection to the legislation proposed. The only point which occurs to me as rendering the act open to any doubt in respect to its construction is the phrase where there are "no conflicting claims," in line 16. While this language seems broad enough to cover all cases of adverse rights or claims, its meaning might perhaps be rendered more certain if the words "settlements or applications" were also added, so that the paragraph should read (lines 15 and 16) "and when, at the date of the approval of this act there are no conflicting claims thereto, or settlements on such lands, or applications to enter the same," &c.

I return herewith Senator Plumb's letter, and copy of Senate bill No. 2509.

Very respectfully,

N. C. MCFARLAND,  
*Commissioner.*

Hon H. M. TELLER,  
*Secretary of the Interior.*

DEPARTMENT OF THE INTERIOR,  
*Washington, January 16, 1885.*

SIR: Your letter of the 16th ultimo, calling for information as to the usage of the Department in regard to public lands once withdrawn and afterwards restored, was received and referred to the Commissioner of the General Land Office. I have the honor to inclose herewith copy of the report of the assistant commissioner on the subject, under date of the 12th instant, with the accompanying "General Notice," issued in 1854, "for restoring lands to market on certain proposed railroads."

Very respectfully,

M. L. JOSLYN,  
*Acting Secretary.*

Hon. PHILETUS SAWYER, *United States Senate.*

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., January 12, 1885.*

SIR: I am in receipt, through reference by the Acting Secretary on the 17th ultimo for report, of a letter dated the 16th ultimo, from Hon. Philetus Sawyer, United States Senate, asking to be furnished with answers to the following questions:

Q. 1. "Where offered public lands have been withdrawn from market by reason of grants made by Congress in aid of railroad construction, or other works of internal improvement, what has been the practice of the Land Department in restoring such

lands to market again on the termination of such withdrawals? Have the lands been restored by a simple notice that on a certain day they would be subject to sale at private entry, or have they been first proclaimed and offered at public auction?"

2. "In what States and Territories have offered lands been withdrawn and again restored?"

3. "Along what lines of road, and by reason of what grants for railroads, or other purposes, have such withdrawals and restorations taken place?"

4. "Have there been such withdrawals in anticipation of grants which were not made? If so, inform me in what States or Territories, and how the land so withdrawn was again restored to market."

5. "Can you not give me an approximate statement of the quantity of offered lands which have been withdrawn by reason of, or in anticipation of, grants and again restored to market without notice, without the formality of a proclamation and public offering?"

In reply, I have the honor to report as follows:

1. In the adjustment of the grants to the several States to aid in the construction of railroads, the practice of this office was, immediately upon the passage of the granting act, to withdraw from market the lands in both the odd and even numbered sections in specified townships within the probable limits of the grants, or, in other words, the lands within a certain distance of a direct line between the termini of the road mentioned in the granting act. Upon the definite location of the road the practice was to restore the lands in both the odd and even numbered sections outside the limits of the grant, and in the alternate sections retained by the United States between the "granted" and "indemnity" limits of the grant.

Such restorations were made by public notice, in which it was stated that the vacant offered lands in certain townships therein mentioned, theretofore withdrawn from market for the benefit of the grant to aid in the construction of a certain railroad or railroads, not required in the adjustment of said grant, or legally claimed by pre-emption, and which were subject to private entry at the date of withdrawal, would, on a given date, be restored to private entry at the ordinary minimum price of \$1.25 per acre, or at the prices to which they might have been graduated by the act of August 4, 1854.

An exception to this practice occurred in Michigan, where certain offered lands which had been temporarily withdrawn for Indian purposes were restored by public notice, wherein it was stated that the lands in question would on a certain day be restored to market by public outcry and sold to the highest bidder, and after that date the lands remaining unsold would be subject to private entry.

The lands along the routes of the Pacific roads, and within the limits of the temporary withdrawals therefor, which upon the definite location of the roads fell outside the permanent limits of the respective grants, were in most instances restored to homestead and pre-emption entry only, the greater portion of such lands having never been offered.

In but few instances were any such lands restored to private entry. In such cases the lands had been offered prior to their withdrawal.

Respecting the alternate reserved sections within the "granted" limits, increased by law to the double minimum price of \$2.50 per acre, the practice was upon the definite location of the road to proclaim and offer such lands at not less than the double minimum price, and thereafter to hold such as were not disposed of as subject to private entry at \$2.50 per acre.

If, for any reason, lands were reduced to \$1.25 per acre after having been proclaimed and offered first at \$1.25, and afterwards at \$2.50 per acre, it does not appear to have been the practice to reoffer the same at the reduced price.

An instance of this kind occurred in the Upper Peninsula of Michigan, where certain lands in the even-numbered sections within the six-mile limits of the grant to said State by act of June 3, 1856, to aid in the construction of the Bay de Noquet and Marquette Railroad, after having been proclaimed and offered at \$2.50 per acre, were again withdrawn with the lands granted to said State by act of June 3, 1856, and joint resolution of July 5, 1862, for the benefit of the road now known as the Chicago and Northwestern Railway, and falling between the 6 "granted" and 15-mile "indemnity" limits of said grant were restored to private entry by public notice.

In the case of the even-numbered sections within the six-mile limits of the grant to the State of Wisconsin by act of June 3, 1856, for the benefit of the Chicago, Saint Paul and Fond du Lac Railroad, such of said sections as had once been offered at \$1.25 per acre and subsequently at \$2.50, were reduced to \$1.25 per acre (joint resolution of April 25, 1862), but held subject to homestead and pre-emption entry only. In that case, however, the lands were upon the market at the increased price at the date of their reduction, and the only notice issued respecting the same, was a simple order to the local officers to reduce them in price and hold them subject to entry as above indicated.

Such of said sections, however, as had in the first instance been offered at \$2.50 per acre were subsequently reoffered at the reduced price.

The even-numbered sections within the six-mile limits of the originally located line of road from Marquette, Mich., to the Wisconsin State line which, after having been offered at \$2.50, were reduced to \$1.25 per acre by the joint resolution of July 5, 1862, were never reoffered at the reduced price, nor can I find that any order advising the local officers of their reduction was ever issued. The local officers at Marquette, Mich., however, admitted a number of entries, covering a considerable quantity of said lands, at private entry at the reduced price, some of which have been carried into patent.

A similar case occurred in the State of Wisconsin, where certain lands in the even sections within the granted limits of the grant by act of June 3, 1856, for the La Crosse and Milwaukee Railroad, but which fell within the indemnity limits of the grant upon the relocation of the road under the act of May 5, 1864, were sold at private entry at the reduced price without being reoffered at that price.

In passing upon certain of the entries of the Michigan lands above mentioned, you held in the cases of *Sipchen v. Ross* (9 Copp's L. O., 181) and *Weimer et al. v. Ross* (11 *id.*, 222) that as the lands in question were not reoffered at the reduced price after their reduction by the joint resolution of 1862, they were not subject to private entry, and that such entries of the same were illegal.

It has not been the general practice to proclaim and offer at the double minimum price the even-numbered sections reserved to the United States within the limits of the grants to the Pacific roads, and thus render them subject to private entry, but to hold them subject to entry under the settlement laws only, at the increased price.

In reducing to the minimum price any lands of this class which had been increased to the double minimum price by reason of being within the temporary limits of the grant, but which, upon the definite location of the grant were thrown outside the permanent granted limits, and thus reduced in price, the practice has been to restore the same to homestead and pre-emption entry only.

Of late years it has been the invariable rule in reducing the price of lands which had been increased in price by reason of a railroad grant, and subsequently reduced for any reason, to instruct the local officers to hold the same as subject to homestead and pre-emption only.

From the foregoing it appears that, briefly stated, the practice of this office has been:

(1.) In the earlier grants to the States to restore to private entry by a simple public notice such lands as had once been offered.

(2.) In the grants to the Pacific railroads, where the lands were mostly unoffered, to restore to homestead and pre-emption entry.

(3.) In the earlier grants to proclaim and offer at the double minimum price the lands in the alternate sections reserved to the United States. If for any reason lands which had once been offered at \$1.25, and afterward at \$2.50, were reduced to \$1.25 per acre, a second offering at that price does not appear, until of late years, to have been considered necessary in order to render them subject to private entry.

(4.) To hold the reserved even-numbered sections within the granted limits of the Pacific Railroads subject to homestead and pre-emption entry only.

2 and 3. Offered lands have been withdrawn and restored to private entry by public notice in the manner first herein described, in the following States and along the lines of the following roads:

State.	Date of granting act.	Name of railroad.
Florida .....	May 17, 1856 .....	Florida and Alabama.
Do .....	May 17, 1856 .....	Pensacola and Georgia.
Do .....	May 17, 1856 .....	Florida, Atlantic and Gulf Central.
Do .....	May 17, 1856 .....	Atlantic, Gulf and West India Transit.
Alabama .....	September 20, 1850 .....	Mobile and Ohio.
Do .....	May 17, 1856 .....	Alabama and Florida.
Do .....	June 3, 1856 .....	Memphis and Charleston.
Do .....	June 3, 1856 .....	Selma, Rome and Dalton.
Do .....	June 3, 1856 .....	Mobile and Girard.
Do .....	June 3, 1856 .....	Alabama and Chattanooga.
Do .....	June 3, 1856 .....	Coosa and Tennessee.
Do .....	June 3, 1856 .....	Coosa and Chattanooga.
Do .....	March 3, 1857 .....	Savannah and Albany.
Mississippi .....	September 20, 1850 .....	Mobile and Ohio.
Do .....	August 11, 1856 .....	Vicksburg and Meridian.
Louisiana .....	June 3, 1856 .....	New Orleans, Opelousas and Great Western.
Do .....	June 3, 1856 .....	Vicksburg, Shreveport and Texas.
Do .....	June 3, 1856 .....	Road from New Orleans to Mississippi State line.
Arkansas .....	February 9, 1853 .....	Cairo and Fulton.
Do .....	February 9, 1853 .....	Memphis and Little Rock.
Do .....	February 9, 1853 .....	Little Rock and Fort Smith.
Missouri .....	June 10, 1852 .....	Hannibal and Saint Joseph.

State.	Date of granting act.	Name of railroad.
Missouri	June 10, 1852	Southwest Pacific.
Do	February 9, 1853	Cairo and Fulton.
Illinois	September 20, 1850.	Illinois Central.
Michigan	June 3, 1856	Flint and Pere Marquette.
Do	June 3, 1856	Grand Rapids and Indiana.
Do	June 3, 1856	Detroit and Milwaukee.
Do	June 3, 1856	Port Huron and Milwaukee.
Do	June 3, 1856	Amboy, Lansing, and Traverse Bay.
Do	June 3, 1856	Bay de Nouquet and Marquette.
Do	June 3, 1856	Marquette and Ontonagon.
Do	June 3, 1856	Ontonagon and State Line.
Michigan	June 3, 1856	Marquette and State Line.
Do	June 3, 1856	Chicago and Northwestern.
Do	July 5, 1862	
Wisconsin	June 3, 1856	Chicago, Saint Paul and Fond du Lac.
Do	June 3, 1856	La Crosse and Milwaukee.
Do	June 3, 1856	Saint Croix and Lake Superior.
Iowa	May 15, 1856	Burlington and Missouri River.
Do	May 15, 1856	Chicago, Rock Island and Pacific.
Do	May 15, 1856	Dubuque and Pacific.
Do	May 15, 1856	Cedar Rapids and Missouri River.
Nebraska	July 2, 1864	Burlington and Missouri River.
California	July 1, 1862	Western Pacific.
Do	July 2, 1864	

In addition to the foregoing the lands within the limits of the following reservations and withdrawals were restored to private entry by a simple public notice, to wit, the Palatka military reservation in Florida; an Indian reservation in townships 17 and 18 N., ranges 3, 4, and 5, E., Michigan; the lands withdrawn for the Portage Lake and Lake Superior, and the Lac La Belle Ship-Canals, Michigan, and for the improvement of the Fox and Wisconsin Rivers, Wisconsin, under act of August 8, 1846.

4. During the years 1853 and 1854, a number of withdrawals from sale and entry, except for valid pre-emption claims, were made by direction of the President, at the instance of many members of Congress, in anticipation of grants to aid in the construction of certain proposed railroads, to wit:

August 19, 1853, the lands within 15 miles on either side of an air line between Brandon, Miss., and Montgomery, Ala.

December 17, 1853, the lands within 15 miles on either side of a line from Vicksburg, Miss., to Shreveport, La.

January 5, 1854, the lands within 15 miles on each side of the proposed road from Gaines' Landing, on the Mississippi River, via Camden, to the Texas boundary and its branches at Camden.

January 24, 1854, the lands in Alabama along the route of the proposed road from Chattanooga, Tenn., to the Mobile and Ohio Railroad, in Mississippi, and the branch from Elyton to Beard's Bluff, Ala.

February 23, 1854, the lands in Alabama, Mississippi, and Louisiana along the routes of the following proposed roads: From Mobile to Girard, Ala.; from Selma to Gunter's Landing, Ala., and for the continuation of the road from Savannah, Ga., via Mobile, Ala., to New Orleans, La., and the branch thereof from Albany, Ga., via Eufaula, to Montgomery, Ala.

March 28, 1854, the lands along the route of the proposed "North Missouri Railroad," from Saint Louis, via Saint Charles, to the northern boundary of Missouri, in Schuyler County.

March 30, 1854, the lands along the routes of the proposed railroads from Pensacola, Fla., to Montgomery, Ala., and from the last-named place, via Wetumpka, Elyton, Decatur, and Athens, to the Tennessee line.

May 16, 1854, the lands along the routes of the Oakland and Ottawa, and other proposed railroads in Michigan and Wisconsin.

June 8, 1854, the lands along the route of the Iron Mountain and Mississippi River Railroad, in Missouri.

July 15, 1854, the lands within about 15 miles on each side of the route of the railroad from Dubuque, Iowa, via Saint Paul, Minn., to the mouth of Left Hand River, at Fond du Lac, Wis. A portion of this withdrawal was not "in anticipation," a grant having been made to the Territory of Minnesota by act of June 29, 1854 (10 Stat., 302), in aid of the construction of a road from the southern boundary of said Territory, via Saint Paul, to the eastern boundary of the Territory, in the direction of Lake Superior. Said grant was, however, repealed by act of August 4, 1854. (10 Stat., 575 and 823.)

Congress having failed to make the grants for the roads for which these withdrawals were made, the Secretary of the Interior, on August 29, 1854, with the approbation of

the President, instructed this office to restore the lands thus withdrawn, and to decline in the future to withdrawn lands until the necessary grant had actually been made.

The lands in question (except those pre-empted during the withdrawal) were accordingly restored to market "precisely on the same terms and conditions as though the same had not been withdrawn from sale." The restorations were made by public notice, wherein it was set forth that, on a given day, the lands which were subject to private entry previous to their withdrawal (and not since pre-empted) would again be subject to private entry, and that the townships advertised for sale previous to withdrawal would be proclaimed for sale at some future date.

For Mr. Sawyer's information, I inclose a printed copy of the public notice (Notice No. 522), by which the most of the lands included in this class of withdrawals were restored.

5. The time which would be required to give the number of acres restored to market, by reason of falling outside the permanent limits of the various grants, without the formality of a proclamation and public offering, cannot be spared from the current duties of the office.

To furnish such information would necessitate an extended examination of the records in order to ascertain the quantity of vacant land within the townships or limits covered by a large number of restorations, at the date of such restorations.

The withdrawals "in anticipation," however, are referred to in the annual report of this office for the fiscal year ending June 30, 1854. The amount so withdrawn and restored is stated in said report to be about 31,000,000 acres.

Mr. Sawyer's letter is herewith returned.

I am, sir, very respectfully, your obedient servant,

L. HARRISON,  
*Assistant Commissioner.*

Hon. H. M. TELLER,  
*Secretary of the Interior.*

[No. 522.]

GENERAL NOTICE FOR RESTORING LANDS TO MARKET ON CERTAIN PROPOSED RAILROADS.

Whereas certain lands situated in the States hereinafter mentioned were withdrawn from sale or entry (except for pre-emption claims) by order of the President of the United States, issued on the representations and at the urgent solicitations of members of both houses of Congress, in anticipation of grants being made to aid in the construction of proposed railroads, and Congress not having made grants therefor, the President has directed that all the lands heretofore thus withdrawn, until further orders, which were subject to entry at the date of withdrawal (except those since entered by pre-emption), shall be restored to market precisely on the same terms and conditions as though the same had not been withdrawn from sale.

Notice is therefore hereby given that, on and after Monday, the 9th day of October next, all the lands which were subject to private entry previous to withdrawal (except those since pre-empted) situated in the following States, Territory, and land districts, and particularly described in the notices of withdrawal enumerated below, will again be subject to private entry and location; and that those townships advertised for sale previous to withdrawal, the reservation of which has also been rescinded, will be reproclaimed for sale hereafter, to wit:

Lands described in public notice of withdrawal No. 494, August 19, 1853, for the railroad from Brandon, Miss., to Montgomery, Ala.: In the districts of lands subject to sale at Jackson, Miss.; Augusta, Miss.; Demopolis, Ala.; Cahaba, Ala.

No. 496, January 5, 1854, for the railroad from Gaines's Landing, on the Mississippi River, Arkansas, via Camden, and near Fulton, to the Texan boundary line, and its branches at Camden: In the districts of lands subject to sale at Helena, Ark.; Champagnole, Ark.; Little Rock, Ark.; Washington, Ark.

No. 498, January 24, 1854, for the railroad to connect the Chattanooga (Tennessee) with the Central Railroad of Mississippi, at the Mobile and Ohio road, and the branch from a point near Elyton to Beard's Bluff, at the southern bend of the Tennessee River, Alabama: In the districts of lands subject to sale at Demopolis, Ala.; Cahaba, Ala.; Tuscaloosa, Ala.; Huntsville, Ala.; Lebanon, Ala.

No. 500, February 28, 1854, for the railroad from Mobile to Girard, Ala., from Selma, to Gunter's Landing, on the Tennessee River, Alabama, and the continuation of the road from Savannah, Ga., via Mobile, Ala., to New Orleans, La., and the branch

thereof from Albany, Ga., via Eufaula, to Montgomery, Ala. : In the districts of lands subject to sale at Saint Stephens, Ala. ; Sparta, Ala. ; Cahaba, Ala. ; Montgomery, Ala. ; Tuscaloosa, Ala. ; Huntsville, Ala. ; Lebanon, Ala. ; Augusta, Miss. ; Greensburg, La. ; New Orleans, La.

No. 504, March 28, 1854, for the North Missouri Railroad: In the districts of lands subject to sale at Saint Louis, Mo. ; Palmyra, Mo. ; Milan, Mo. ; Fayette, Mo.

No. 505, March 30, 1854, for railroads from Pensacola, Fla., to Montgomery, Ala., and from the last-mentioned place, via Wetumpka, Elyton, Decatur, and Athens, to the Tennessee line: In the districts of lands subject to sale at Cahaba, Ala. ; Tuscaloosa, Ala. ; Huntsville, Ala. ; Montgomery, Ala. ; Tallahassee, Fla.

No. 507, May 16, 1854, for the Oakland and Ottawa, and other proposed railroads, and not released by notice No. 518, June 31, 1854 : In the districts of lands subject to sale at Ionia, Mich. ; Genessee, Mich. ; Detroit, Mich. ; Duncan, Mich. ; Sault St. Marie, Mich. ; Menasha, Wis.

No. 515, June 8, 1854, for the Iron Mountain and Mississippi River Railroad : In the districts of lands subject to sale at Saint Louis, Mo. ; Jackson, Mo.

No. 519, July 15, 1854, for the railroad from Dubuque, Iowa, via Saint Paul, Minn., to Left Hand River, at Fond du Lac, Lake Superior, Wisconsin (except the lands in Wisconsin heretofore restored by notice No. 520) : In the districts of lands subject to sale at Dubuque, Iowa ; Stillwater, Minn. ; Brownsville, Minn. ; Winona, Minn. ; Red Wing, Minn. ; Minneapolis, Minn.

That the lands withdrawn in the districts of lands subject to sale at Monroe and Natchitoches, La., by notice No. 495, December 17, 1853, for the railroad from Shreveport to Vicksburg, in said State, and of which the reservation was extended by notice No. 516, will be subject to entry again on the 7th of December, 1854, the time fixed in said notice ; and that the respective registers and receivers of the several land offices above named will carry this notice into effect *without awaiting further instructions from this office.*

Given under my hand at the General Land Office, at the city of Washington, this 5th day of September, A. D. 1854.

By order of the President :

JOHN WILSON,  
*Commissioner.*