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TITLE TO CERTAIN LANDS IN SAULT STE. MARIE, MICH.

JUNE 9, 1890.—Referred to the House Calendar and ordered to be printed.

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

REPORT:

[To accompany H. R. 9048.]

The Committee on the Public Lands, to whom was referred House bill 9048, having considered the same, would respectfully report:

The following are the facts touching the matter of the bill, which is entitled "A bill to confirm the title to certain lands in the city of Sault Sainte Marie, Michigan, and to release any reversionary right of the Government of the United States therein," and reasons submitted in behalf of favorable action on the bill.

The lot of land referred to in said bill (containing 2.65 acres which is now in the heart of the populated part of the city of Sault Ste. Marie) originally came into the possession of the United States along with and as a part of the public domain acquired under the cession of the great Northwest Territory in 1787. The Indian title thereto was extinguished in 1820. (Treaty, June 16, 1820, 7 Stat., 206.) The tract lay in the immediate vicinity of the rapids of St. Mary's River, and constituted, in part, what was for many years the site of a French trading post.

In 1822 the Government established, substantially on the same site, a military post known as Fort Brady. This fort soon brought around it a small settlement, which was known as the "Sault Ste. Marie," and which in the course of time grew into an extensive village, known as the village of Sault Ste. Marie.

Under this condition of things it became necessary, in order that the rights and interests of all concerned might be justly protected, that some special action be taken by Congress relative to the disposition of the Government lands settled upon, improved, and occupied by the inhabitants of the village. To meet the apparent exigency of the situation the act of September 26, 1850 (9 Stats., 469), was passed.

The first section of this act authorized the register and receiver of the local land office to examine and report upon claims to lots at the Sault Ste. Marie according to the provisions hereinafter to be given by the Commissioner of the General Land Office.

Section 2 provided that there should be furnished by said Commissioner a map on a large scale of the lines of the public surveys of the Sault Ste. Marie, upon which there should be designated by the proper military officer, under the direction of the Secretary of War, on the application of the register and receiver, "the position and the ex-

tent of lots necessary for military purposes, as also the position and the extent of any other lot or lots which may be required for other public purposes, and also the position and extent of the Indian agency tract and the Indian reserve."

Sections 3, 4, 5, and 6 provided for the presentation of all bona fide claims to lots in said village, by the settlers thereon or occupants thereof, and for the adjudication and classification of all such claims by the register and receiver, and that the number and location of each claim, and the name of the claimant, should be designated by said officers upon the map to be furnished as provided in the second section of the act, together with the estimated actual value of each claimant, the assessment thereon of the sum which, in their judgment, should be paid for the same to the Government.

By section 7, it was provided that upon the completion by the local officers of the work required of them under the preceding section, the surveyor-general of the State should dispatch a skillful deputy to the Sault Ste. Marie, who should proceed forthwith to lay off and survey the village "into town lots, streets, avenues, public squares, out-lots, having regard to the lots and streets already surveyed, existing, or established, and having regard also to the existing limit and extent of the lots also covered by the claims which shall have been adjudicated by the register and receiver."

It was further provided that after the completion of such survey said deputy should "prepare a plat exhibiting, in connection with the lines of the public surveys, the exterior lines of the whole village, also the squares, individual lots, and the public lots, and also the out-lots, designating the lots reserved for military or other public purposes, according to the extent and limits of the same, as fixed by the proper military officers pursuant to the requirements of the second section of this act." And further directions as to the preparation of the plat or map in the marking upon it of the assessed value of the lots, the size of the lots, etc., which map was then to be submitted to the register and receiver, and if found to be in accordance with the adjudications, they were to append their certificate to that effect, and the deputy was then to transmit said plat with field-notes to the surveyor-general of the State for his approval.

Section 8 provided that the surveyor general, upon approval of the work, should return the plat to the register and receiver, who were then to transmit the same with other papers and record of all testimony submitted, to the Commissioner of the General Land Office, who was given power to affirm, modify, or reverse the findings of the local officer, and whose decision was to be final and binding upon the parties and the Government.

Section 9 provided for the sale of all vacant lots, or lots claims to which might be rejected, and so on.

By section 10 it was made the duty of the proper accounting officers of the Treasury, after all the claims should have been adjudicated, surveyed, and the vacant lots sold, to ascertain the net amount of sales, after deducting all expenses incident to the execution of the act, which amount, it was provided, should be paid over by the Secretary of the Treasury to the trustees, or other constituted authorities of Sault Ste. Marie, to be expended by them in the improvement of streets and erection of public buildings.

The record and map now on file in the General Land Office show that the provisions of the act were properly carried out.

The register and receiver under the head in their report of "Streets and public squares," say:

We have not felt authorized to lay out new or widen old streets, or change the course of old or established streets, and so forth. One public square of respectable size has been reserved, and one public burying-ground, the location and extent of which will be seen on the plat.

The lot covered by the bill was, as far back as 1822, set apart and used by the settlers, as a place of burial; was so used at the time it was reserved by the register and receiver, and continued to be used as a burying-ground down to the year 1874, when one-half of the lot was sold or exchanged to one Thomas Ryon for 5½ acres of land on the outskirts of the village. The other half of the cemetery was in 1884 declared vacated as a place of burial by a decree of the local court at the instance of the citizens of the village acting through the council, the cemetery then being in the heart of the populated part of the village and being considered as a further place of burial a detriment to the health, and so forth, of the city. The one-half part of the lot sold to Mr. Ryon was built upon by a number of parties, and on the other half the city built a city hall and an engine-house at a cost for the first of \$10,000 and the latter of \$2,500 from the avails of sales of land, in accordance with said act of 1850, the estimated value of improvements on the said original lot being at this time named at \$100,000.

It should have been stated in the last paragraph that the bodies within the said lot or cemetery were removed to the 5½-acre piece given by Mr. Ryon in exchange for the half lot sold to him by the city. And such 5½-acre piece has been since and is now the cemetery used by the people of the city.

During the Forty-ninth Congress a bill was introduced to confirm the title to this land to the then village of Sault Ste. Marie; a favorable report was made thereon, but no action was taken in the House during that Congress. Within a month after the close of the Forty-ninth Congress one George H. Gamble applied at the local office, within which this land is, to locate the same with Porterfield scrip. His application was rejected by the register and receiver on the ground that the land was "appropriated," and therefore not a part of the public domain subject to location by such scrip (which scrip could only be located on "legally unappropriated" lands of the public domain). Gamble appealed to the Commissioner of the General Land Office, and that officer on July 27, 1888, affirmed the action of the local officers. Gamble then appealed to the Secretary of the Interior, and that officer, under date of March 31, 1890, affirmed the said decision of the Commissioner.

The gist of the decision of the Secretary is contained in the following quotation:

In the application of the authorities cited to the facts and circumstances of the present case, two questions arise:

First. Did the proceedings under the act of 1850 constitute a dedication of the lands in controversy by the United States in the village of Sault Ste. Marie for public use?

Second. If so, did such dedication have the effect to divest the United States of their title to the land?

I am of the opinion that both of these questions must be answered in the affirmative.

Quoting further from the Secretary's decision:

There could scarcely be a case, in my judgment, where a dedication of land to public use is more clearly established than this one. The map or plat of the village of Sault Ste. Marie was made under the express directions of Congress, and was returned to and made a part of the public records of the General Land Office. On this map or plat certain lots were designated for military and other public purposes, as fixed

by the proper military officer, in accordance with the provisions of the second section of the act, and as thus set apart were appropriated by the United States for specific purposes and for the most part directly connected with the use and powers of the General Government. There was also designated on the map or plat, in addition to the streets, avenues, etc., one lot marked "public square" and one public lot marked "village cemetery." This map or plat was made strictly in accordance with the provisions of the statute, which directed, among other things, that in connection with the lines of the public surveys, the extension lines of village, "also the squares, individual lots and public lots, and also the lots reserved for military and other public purposes" should be exhibited thereon, and as thus made, the same was approved by the Commissioner of the General Land Office.

The sale of the village lots provided for in the act was made in accordance with the plat and with reference to the streets, avenues, and public squares, and village cemetery as thereon exhibited.

The cemetery had been used as a place of burial by the inhabitants of the village for more than twenty years prior to the enactment of the statute of 1850, and was then being so used. It is to be presumed that Congress, at that time, had full knowledge of the existence and location thereof, and that of its long-continued use as a place of burial; and having provided for "public lots" in the laying off and platting of the village, as well as public squares, it would seem that ample authority is given in the statute and was intended to be given, to set apart the cemetery as one of the public lots for the future use of the village as a place of burial. The lot as set apart was in no sense "reserved to the United States." It was not designated on the plat by the military authorities, neither was the public square. The lots reserved to the United States were those designated by the military authorities for military and other public purposes connected with the General Government.

The public square and cemetery lot were set apart and marked on the map or plat by the register and receiver, in pursuance of the statute, as a part of the plan of the village and for the use of its inhabitants, and have, therefore, no connection with the lots required to be set apart for military or other public purposes by the second section of the act.

If these proceedings constituted a dedication to the village of the public square by the United States the same result must also have been wrought in reference to the cemetery. They both depend on the same statute and are surrounded by the same facts and circumstances. It will scarcely be claimed that there was no dedication in the case of the public square, such a claim could have no foundation in law and reason.

I am therefore of the opinion that the proceedings under the act of 1850, as herein set forth, did constitute a dedication, by the United States of the land in controversy to the use of the inhabitants of the village of Sault Ste. Marie as a place of burial for their dead. I am also of the opinion that by virtue of said act and the proceedings in conformity therewith, the dedication was, technically speaking, a statutory dedication, whereby the title to the land passed from the United States, and upon the incorporation of the village, vested in its municipal authorities, in trust for the purposes of the dedication; that the United States thereby parted with their title to, and jurisdiction and control over the cemetery lot just as effectually as by the same means they parted with the title to and control of the streets, avenues and public squares designated on the plat.

There could be no reversion in either case.

The tract in question thereupon ceased to be a part of the public domain, and the United States have since had no interest in or control of the same whatever. It was not therefore "public lands of the United States not otherwise appropriated" at the date when Gamble made his application to locate Porterfield scrip thereon.

In this view of the case it is not deemed necessary to consider any questions relative to the action of the village authorities in causing the cemetery to be vacated, inasmuch as whatever may be the legal effect of such action, as touching the public use to which the land was originally dedicated, or the rights of those interested therein, it can make no difference so far as the question here presented is concerned. It may be said, however, that in the exchange of part of the cemetery lot for a larger lot, more suitable for burial purposes, the village authorities seemed to have, in spirit at least, attempted to execute and carry into effect the original purpose of the dedication, at any rate as to the parties changed.

A full copy of the decision of the Secretary, embodying to a fuller extent a statement of the facts and circumstances of the case has been submitted for the consideration of the committee.

It will thus be seen that while the Secretary's decision plainly carries the title to this land to the now corporate authorities of the city of Sault Ste. Marie, yet inasmuch as the question of absolute right and title de-

sired to be had by the said corporate authorities, and the question of any possible reversionary right or interest still existing in the Government, may be an open one, the releasing of such possible reversionary interests by the Government to said authorities is most respectfully but earnestly asked for at the hands of Congress.

It will be noted that this lot has been in the possession of the people of the now city of Sault Ste. Marie for about sixty years; that there had been, up to the time of Gamble's application to locate Porterfield scrip thereon, no adverse claimant thereto; that at this time, Gamble's location being rejected finally by the highest executive officer to whom an appeal could be taken, there is now no possible adverse claimant to the lot in question unless, possibly, the United States, through Congress, might set up a claim thereto on account of any supposed reversionary interest therein.

It is, however, assumed with confidence that inasmuch as the United States Government passed a special act providing for the furtherance of the interests of the residents of Sault Ste. Marie, not only in the settlement of their private claims to lands of the United States, but to provide also for the good and general welfare of the community by the laying out of streets, avenues, public squares, etc., out of the said land of the United States, and also providing for the improvements of such streets, avenues, etc., and the erection of public buildings out of the avails of lands so sold, less the expense of settlement of claims, etc., that the United States will not at this late day and in view of the said decision of the Secretary of the Interior, make any claim to said lands either in the nature of a reversionary interest or in any other possible way, but that it will be willing to confer upon the proper authorities such possible remaining title as it may have in the premises in question.

It is submitted that this would be in exact furtherance of the spirit and intent of the act of 1850, not only for the reason that such act contemplated that the avails of all private claims settled as also the avails of all rejected claims and in-lots and out-lots so called, which were to be sold under the act, should go to the village, but that in the case of this particular lot if it had not been reserved for the special purpose it would have been sold for the benefit of the village, and it is fair to presume that if this lot, being vacated as a place of burial, had been left after such vacation as a vacant lot there might be authority under the intent of that act to sell the same to the now existing corporate authorities of the city under the provision that all vacant unappropriated lands there should be sold for the benefit of the inhabitants of said village and present city.

The Government under the act of 1850 has disposed of all public lands within the limits covered by that act and under the provisions of that act, except the lots reserved for military and other public purposes and the streets, avenues, public square, and cemetery lot now referred to.

By the bill the Government only sets at rest all possible questions of shadow of title which could be made the basis of possible speculative entry, to extort from the city.

We recommend the passage of the bill, with the slight amendments indicated on the accompanying bill.