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Message from the President of the United States, transmitting a communication from the Secretary of the Interior, of the 27th ultimo, with accompanying papers, on the subject of the confirmation of the homestead entries of certain lands in the Marquette District, Michigan, made by Hugh Foster and John Waishkey, Jr.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A communication from the Secretary of the Interior, of the 27th ultimo, with accompanying papers, on the subject of the confirmation of the homestead entries of certain lands in the Marquette district, Michigan, made by Hugh Foster and John Waishkey, jr.

FEBRUARY 3, 1882.—Read, referred to the Committee on Public Lands, and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith, for the consideration of Congress, a communication of the Secretary of the Interior of the 27th ultimo, with accompanying papers, on the subject of the confirmation of the homestead entries of lands in the Marquette district, Michigan, made by Hugh Foster and John Waishkey, jr.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, February 3, 1882.

DEPARTMENT OF THE INTERIOR,
Washington, January 27, 1882.

SIR: I have the honor to submit herewith, in duplicate, for the consideration of Congress, draft of a bill, with accompanying papers, for the confirmation of homestead entry No. 1790, made at the United States land-office at Marquette, Mich., on the 22d March, 1879, by Hugh Foster. This entry was made under instructions inadvertently issued by the Commissioner of the General Land Office, when the land was in a state of reservation under the act of March 3, 1875 (18 Stat., 516), and before it had been restored to market.

I also submit, in duplicate, draft of a bill for confirmation of homestead entry No. 1828, made May 8, 1879, at the same office, by John Waishkey, jr., under like circumstances.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

The PRESIDENT.

HOMESTEAD ENTRIES.

A BILL to confirm the homestead entry of Hugh Foster.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That homestead entry numbered one thousand seven hundred and ninety, made at the United States land-office at Marquette, Michigan, March twenty-second, eighteen hundred and seventy-nine, by Hugh Foster, upon the south half of the northeast quarter and north half of the southeast quarter of section ten, in township forty-seven north, of range two east, under authority of the instructions of the Commissioner of the General Land Office to the local officers, dated July second, eighteen hundred and seventy-eight, and recommended for confirmation by special act of Congress by the Secretary of the Interior in a decision on the case rendered November eighteenth, eighteen hundred and eighty-one, be, and the same is hereby, confirmed, as of the day of the date of said entry: *Provided, however,* That due proof of compliance with the provision of the homestead law shall be made in the usual manner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 13, 1881.

SIR: In compliance with the request contained in your letter of November 18, 1881, deciding on appeal that homestead entry No. 1790, made by Hugh Foster at the Marquette, Mich., land office, March 22, 1879, under instructions to the local officers from this office dated July 2, 1878, was invalid by reason that the land which was reserved under the 2d section, act of March 3, 1875, had not been restored to the public domain as therein provided for at the date of said entry, I have the honor to inclose herewith for transmission to Congress the draft of a bill confirming said homestead entry, together with accompanying papers, viz:

Copy of Commissioner's letter to local officers authorizing certain entries, July 2, 1878.

Copy of Commissioner's decision holding the homestead entry of Hugh Foster for cancellation, May 3, 1879.

Copy of Secretary's decision, November 18, 1881.

Very respectfully, your obedient servant,

N. C. MCFARLAND,
Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 2, 1878.

GENTLEMEN: I am in receipt of a letter from Guy H. Carleton, esq., dated at Sault Ste. Marie, Mich., the 21st ultimo, requesting me to advise you as to whether or not the south half of northeast quarter and northeast quarter of southeast quarter of section 10, township 47 north, range 2 east, are subject to homestead entry.

In compliance with the request of Mr. Carleton, I have to state that I am in receipt of a letter under date of February 20, 1878, from the Acting Commissioner of Indian Affairs, stating that there is no Indian claim to the above-described land. If upon examination of your records you find no interfering claim to said lands, they will be subject to homestead or pre-emption entry by the first legal applicant.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

REGISTER and RECEIVER,
Marquette, Mich.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 3, 1879.

GENTLEMEN: Homestead entry No. 1790, March 22, 1879, in the name of Hugh Foster, for the north half of southeast quarter and south half of northeast quarter, section 10, township 47 north, range 2 east, is this day held for cancellation for the reason that the land embraced therein is not subject to entry.

On the section in question, although not embraced in the reservation, certain Indians had made selections of land, and sec. 2 of the act approved March 3, 1875, provides as follows:

"That all Indians who have settled upon and made improvements on section ten, in township forty-seven north, range two east, and section twenty-four, in township forty-seven north, range three west, Michigan, shall be permitted to enter not exceeding eighty acres each, at the minimum price of land, upon making proof of such settlement and improvement before the register of the land-office at Marquette, Michigan; and when said entries shall have been completed in accordance herewith, the remaining lands embraced within the limits of said sections shall be restored to market."

In the office circular of March 18, 1875, promulgating the act above referred to, the local officers were instructed to treat the land embraced in the two sections as *reserved from any other disposal* than that for which the act provides, and at the expiration of one year from its passage—which was considered ample time for the Indians to avail themselves of the provisions thereof—the register and receiver were directed to report any vacant tracts remaining in said sections ten and twenty-four for restoration to market.

No report appears to have been made by the local officers, and the lands have not been restored to market.

You will inform Mr. Foster of the above decision, and allow him sixty days within which to appeal, and in the event of the cancellation of his entry he will be allowed to make a new one, with credit for fee and commissions already paid.

You will make an investigation, first notifying the United States Indian agent for the tribe to which said Indians belong, in order to ascertain whether any Indian claims exist upon said lands, as contemplated by the act, and report result of such investigation to this office, in order that any vacant lands remaining may be restored to market.

Very respectfully,

J. M. ARMSTRONG,
Acting Commissioner.

REGISTER and RECEIVER,
Marquette, Mich.

DEPARTMENT OF THE INTERIOR,
Washington, November 18, 1881.

SIR: I have considered the appeal of Hugh Foster from your decision of May 3, 1879, holding for cancellation his homestead entry of March 22, 1879, upon the north half of the southeast quarter and the south half of the northeast quarter of section 10, township 47 north, range 2 east, Marquette, Mich., because at the date of said entry said lands were reserved from any other disposal than that provided by the second section of the act of March 3, 1875 (18 Stats., 516), which provides that all Indians who have settled upon and made improvements on said section 10, and other sections therein named shall be permitted to enter not exceeding 80 acres each, upon making due proof therefor, "and when said entries shall have been completed in accordance herewith, the remaining lands embraced within the limits of said sections shall be restored to market."

Your circular of March 18, 1875, under this act, required the local officers, at the expiration of one year from its passage, to report any tracts which might then be vacant, that they might be restored to market. If such report has been made, said lands have not yet been restored.

It appears, however, that on July 2, 1878, your office advised the local office that if no interfering claim to the lands named in said section 2 appeared on their records, they would be subject to filing and entry, under the pre-emption and homestead laws, by the first legal applicant therefor. These instructions, as you state in your letter of May 3, 1879, were not intended to change the rule in respect to the restoration of lands to market, but were inadvertently issued. They were, nevertheless, in force at the date of Foster's entry, who appears to have made the same by virtue thereof. It does not appear to what extent, if any, he has improved the tract; but whether much or little, he should not suffer in his rights or property from the inadvertency of your office.

I am neither disposed to waive the general rule respecting the restoration of lands to market, which has been in force for many years, nor to spare suitable action for relief of Mr. Foster. I therefore request you to prepare a bill for submission to Congress, which may secure his rights and validate his entry as of the day of the date thereof.

The papers transmitted with your letter of July 19, 1881, are herewith returned.

Very respectfully,

S. J. KIRKWOOD.

Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 16, 1881.

SIR: I have the honor to inclose herewith, for transmission to Congress, the draft of a bill confirming homestead entry No. 1828, for the south half of the southeast quarter and south half of the southwest quarter of section 10, township 47 north, range 2 east, Michigan, made May 8, 1879, by John Waishkey, jr., for reasons set forth in my letter C, of the 14th instant, to you on said subject.

Very respectfully, your obedient servant,

N. C. MCFARLAND,

Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

A BILL to confirm the homestead entry of John Waishkey, jr.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That homestead entry numbered one thousand eight hundred and twenty-eight, made at the United States land-office at Marquette, Michigan, May eight, eighteen hundred and seventy-nine, by John Waishkey, jr., upon the south half of the southeast quarter and south half of the southwest quarter of section ten, in township forty-seven north, of range two east, under authority of the instructions of the Commissioner of the General Land Office, dated July second, eighteen hundred and seventy-eight, be, and the same is hereby, confirmed as of the day of the date of said entry: *Provided, however,* That due proof of compliance with the provisions of the homestead law shall be made in the usual manner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 14, 1881.

SIR: I have the honor to hereby recommend that homestead entry No. 1828, for the south half of the southeast quarter and south half of the southwest quarter of section 10, township 47 north, of range 2 east, made by John Waishkey, jr., at the Marquette, Mich., district land-office, May 8, 1879, and held for cancellation September 16, 1879, on the same ground that homestead entry No. 1790 was so held, be incorporated in the bill confirming homestead entry No. 1790, the draft of which bill was inclosed in my letter C to you of the 13th instant, for transmission to Congress. The land covered by said entry No. 1828 lies in the same section, township, and range as that covered by homestead entry No. 1790, and I think Mr. Waishkey is entitled to the same relief that is sought in behalf of Mr. Foster by the bill before mentioned.

I inclose herewith a copy of the letter of September 16, 1879, holding entry No. 1828 for cancellation.

Very respectfully, your obedient servant,

N. C. MCFARLAND,

Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 16, 1879.

GENTLEMEN: Referring to my letter of May 3, 1879, holding for cancellation homestead entry No. 1790, in the name of Hugh Foster, covering the north half of the south-east quarter and south half of the northeast quarter of section 10, township 47 north, range 2 east, for reason therein stated, I am in receipt of your letter of the 13th ultimo, inclosing one from Foster's attorney relative thereto.

You cite as your authority for allowing said entry a letter from this office of July 2, 1878, stating that the tracts above mentioned were subject to homestead entry, &c. The letter referred to was inadvertently written of the tenor that it was, as the tracts were not subject to such entry under the law.

Section 2 of the act of March 3, 1875, quoted in my letter of May 3 last, is specific in its provisions, and the land embraced in section 10, township 47 north, range 2 east, and section 24, township 47 north, range 3 west, is not subject to entry or location, except by Indians, as therein provided for, until the same shall have been *restored to market*. The subsequent act of May 23, 1876, has reference only to lands formerly within the Indian reservation, and does not apply to the sections mentioned above.

Homestead entry No. 1828, covering the south half of the southeast quarter and south half of the southwest quarter of section 10, township 47, range 2 east, in the name of John Waishkey, jr., is similarly situated in this respect with that of Hugh Foster, and is also this day held for cancellation for reasons stated at length in my letter of May 3, 1879, with regard to the latter.

You will inform the parties to the entries above, allow the usual time for appeal, and report action in the premises to this office.

You will carry out the instructions contained in the last paragraph of my letter of May 3 last, relative to investigating whether any Indian claims exist in said sections, in order, that, if so, they may be adjusted, and thereafter the remaining lands restored to market, as contemplated in the act of March 3, 1875.

In case you find that your predecessors have made any report bearing on the matter, communicate the fact to this office, giving the date of such report.

Very respectfully,

J. M. ARMSTRONG,
Acting Commissioner.

REGISTER and RECEIVER,
Marquette, Mich.

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