

RELATING TO CERTAIN PUBLIC GROUNDS AT CHICAGO, ILL.

MAY 20, 1884.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 260.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 260) relating to certain public grounds at Chicago, Ill., beg leave to report that they have carefully considered the same, and report as follows:*

The lot of ground to which the provisions of the bill apply is known as "Dearborn Park," and is situated in that part of the city of Chicago, Ill., called the "Fort Dearborn addition to Chicago." It is bounded by Randolph street upon the north, by Michigan avenue upon the east, by Washington street upon the south, and by an alley upon the west, and contains about 62,500 square feet.

The United States, forty-five years ago, sold in lots, at a fair valuation, a tract called the "Fort Dearborn Reservation," which included the lot above described, and the money received for the same, more than \$280,000, was covered into the Treasury. Dearborn Park was designated on the plat of sale as "public ground, forever to remain vacant of buildings."

The city of Chicago since that date has grown from a town of 4,200 inhabitants to a metropolis of more than 600,000 inhabitants, and all the original conditions which made it desirable that the property should remain vacant of buildings have changed, and have become a positive detriment to the public and to the adjacent land-owners whom they were intended to benefit.

The land has become useless as a public park, and now lies waste and a nuisance, where the *débris* of the vicinity, which is wholly occupied by large wholesale warehouses, collects. It is also incumbered with such conditions in its dedication to the public that it cannot be built upon or used for any useful purpose.

From a decision given in 1869, in the United States court at Chicago (2 Bissell, p. 174), it appears that the United States has a naked legal title, without any salable value, in the streets, alleys, and public grounds of the tract which was once the "Fort Dearborn Reservation," and which it has sold to private purchasers. This legal title it retains in consequence of certain technical informalities and errors made by its authorized agent in drafting and recording the plat, by which the dedication to the public became a common-law dedication, and not one under the statutes of Illinois, which provided that 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.

The agent evidently intended to make and record the plat and to conduct the sale in all respects according to the laws of Illinois, and except for these informalities, which were not discovered till thirty years later, the fee of the streets and public ground now under consideration would have vested in the city of Chicago, subject to the public use which had been affixed to them. It is not the policy of the United States to derive pecuniary advantage from the errors of its agents.

A brief outline of the history of the "Fort Dearborn Reservation" will make clearer some points which are covered in this bill.

In the year 1803, a military post, with an Indian agency, was established at the mouth of the Chicago River by direction of the President, under authority of an act of Congress approved May 3, 1793, and Fort Dearborn, named in honor of General Henry Dearborn, Secretary of War, was built, the territory then and for some years later being wholly unsettled by the English race. In the year 1824, Mr. Calhoun, he then being Secretary of War, caused a military reservation of about 57 acres, including and surrounding Fort Dearborn, to be made, and the same withheld from entry by settlers, who were beginning to turn their attention to this locality.

In the year 1839, the Indians having removed from the western shore of Lake Michigan, and there being no further public use for the military reservation, the Government of the United States took steps to dispose of it at public sale. Mr. Poinsett, then Secretary of War, acting under authority of "An act authorizing the sale of certain military sites," approved March 3, 1819, instructed Matthew Birchard, solicitor of the General Land Office, to proceed to Chicago, to cause a resurvey to be made of the Fort Dearborn Reservation, to subdivide it into blocks, lots, streets, and alleys, and to sell the lots to the highest bidders for cash.

Mr. Birchard was also instructed to avail himself of the most reliable information he could get in Chicago as to the best manner of subdividing the tract and laying out the streets and blocks, with a view to the land bringing the highest price at the public sale. The town two years before, having then 4,100 inhabitants, had adopted the form of a city government, and its common council was composed of men of character and business capacity. Thinking they could give him the most reliable information as to the needs and future development of the infant city, Mr. Birchard applied to the city council for advice, which was freely given, and, as it appears, with excellent judgment; for the land brought a larger sum than was expected, and every detail of business connected with the sale was promptly confirmed by the Government.

In Mr. Birchard's official report to the Secretary of War, dated November 21, 1840, he explains why he did not lay out Dearborn Park in lots and sell it with the other property. He says:

In the mean time the common council of the city appointed a committee to make known its wishes, and to advise with me as to the proper manner of subdividing the tract and laying out the streets and alleys. This committee having examined the ground, presented the lithographic plat inclosed (which plat is now on file in the War Department), and requested me to continue the principal streets of the city through the tract of the same width given to them in the surveys of the adjoining portion of the city; to give to State street the width originally designed; to reserve the public square at the foot of Randolph street, and to leave vacant at that point the margin of the lake. Concurring in the propriety of their views, the plan, as will be seen by the plat, was adopted.

Across the plat over the space reserved for a public square at the foot of Randolph street was written, "Public ground, forever to remain

vacant of buildings." As the property around it was sold for private residences, and as the vacant space gave a delightful outlook upon the lake, it was a valuable easement attached to every adjoining lot, and each of the lots sold for a higher price than lots which did not have such an easement. The Government therefore received the full value in money for the whole tract, at the rate of \$5,000 per acre on the average, and has never claimed that it had any salable title remaining in the vacant land.

The legend on the plat was doubtless inserted at the suggestion of, if not by, the committee of the common council, as a protection of the easement of outlook acquired by the purchasers, and with the statute of the State of Illinois in view, which vested the fee-simple title to these public grounds in the city of Chicago. The value of the easement of outlook long since disappeared in consequence of the occupation of the lake shore by the tracks, passenger and freight station, of the Illinois Central Railroad, which covers nearly 100 acres of ground with its buildings and trains of freight-cars directly in front of Dearborn Park, the land having been made by filling in the lake.

In the great fire of 1871 all the residences about Dearborn Park were burned, and in the reconstruction of the city the whole tract, which was formerly the "Fort Dearborn Reservation," except Dearborn Park and land which has been taken by the city for the extension of Michigan avenue, was devoted to business purposes.

The plat, as prepared by Mr. Birchard with the advice of the committee of the common council of Chicago, was duly recorded in the registry of deeds for Cook County, Illinois, and the sale of the whole tract, except section 1, which was, by instruction of the Secretary of War, reserved for light-house purposes, was made to private individuals on the basis of the conditions therein stated, and in supposed conformity to the laws of the State. The sale was confirmed by the War Department, the cash was paid by the buyers, and deeds were issued to them bearing the seal of the United States.

During the past forty-five years the plat has been recognized by the Executive Departments of the Government as a lawful and authorized subdivision of the land therein described. Congress has also recognized the validity of the plat and of the sale in disposing of some of the lots in section 1, which were not sold in 1839 (Statutes at Large, p. 805). At the time of the sale it was understood by the United States Government, the purchasers, and the public at large that the United States had no further salable interest in the Dearborn Park property.

The purpose of this bill is to allow Dearborn Park to be used for a beneficent and public purpose in the erection upon it of a building for the Chicago Public Library. This is an institution established and maintained by the city of Chicago, under the laws of the State of Illinois, for the free use and benefit of all the inhabitants of the city, and for the purpose of study and consultation of books in its reading-rooms by all persons who apply, wherever their legal residence may be. This library, which was established only ten years ago, has a collection of 105,000 volumes, 4,000 daily visitors and readers, and, for the want of a suitable lot for the erection of a building, is now occupying the third and fourth stories of a mercantile block, with twenty other tenants, and is liable to burn up at any moment. No other lot in the central portion of the city than Dearborn Park is available for the use of the public library. It is the largest library in the Northwestern States, and is growing rapidly. The annual appropriation made by the city for the support of the library this year is \$68,100.

If this bill be passed by Congress the city will erect, with the help of the willing contributions of citizens, an elegant fire-proof structure, which will be a great benefit to the public.

As a bill concerning the "Lake front" property in Chicago was before Congress some years ago, the committee beg leave to state that the present bill covers only Dearborn Park, which is a lot by itself on the west side of Michigan avenue. The "Lake front" tract is on the east side of Michigan avenue, bordering Lake Michigan. Concerning Dearborn Park there are no rival contestants, no scrip claims, no riparian rights, and no railroad franchises to be considered.

This bill, moreover, does not adjudicate upon or change the title, but simply permits the city of Chicago to use the land for a public purpose in the erection upon it of a building for the Chicago Public Library, and for no other purpose.

Your committee therefore recommend the passage of the bill.

