HEARINGS BEFORE THE SUBCOMMITTEE ON JUDICIARY OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA OF THE UNITED STATES SENATE ON THE BILL S. 10136

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649320226

Hearings Before the Subcommittee on Judiciary of the Committee on the District of Columbia of the United States Senate on the Bill S. 10136 by Various

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

VARIOUS

HEARINGS BEFORE THE SUBCOMMITTEE ON JUDICIARY OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA OF THE UNITED STATES SENATE ON THE BILL S. 10136

Trieste

2

HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUDICIARY

OF THE

COMMITTEE ON THE DISTRICT OF COLUMBIA

OF THE UNITED STATES SENATE

ON THE BILL

S. 10136

PROVIDING FOR THE PROTECTION OF THE INTERESTS OF THE UNITED STATES IN LANDS AND WATERS COMPRISING ANY PART OF THE ANACOSTIA RIVER, OR EASTERN BRANCH, AND LANDS ADJACENT THERETO, AND FOR OTHER PURPOSES

Printed for the use of the Committee on District of Columbia

WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

FRIDAY, FEBRUARY 10, 1911.

COMMITTEE ON THE DISTRICT OF COLUMBIA,

February 10, 1911.

The committee met at 11 o'clock a. m.

Present: Senators Burkett, acting chairman of the subcommittee, Dillingham, and Gamble; also Senators Gallinger, Scott, Carter, and Smith of Maryland.

Also Mr. Stuart McNamara, special counsel, Department of Justice; Mr. H. C. Gauss, special assistant to the Attorney General; Mr. R. T. Strickland, attorney in charge of titles, Department of Justice; and Mr. W. H. Arnold.

Senator BURKETT. I think I will first put into the record a copy of a letter from the Acting Attorney General, J. A. Fowler, with reference to this bill, and also a copy of a letter written to the Attorney General by the secretary of the commission appointed to take up this matter. Those letters give a brief explanation of the matter.

(The letters are as follows:)

DEPARTMENT OF JUSTICE,
Washington, January 19, 1911.

SIR: In connection with Senate bill No. 10136, Sixty-first Congress, third session, introduced by Senator Scott on January 10, 1911, providing for the protection of the interests of the United States in lands and waters comprising any part of the Anacostia River, or Eastern Branch, and lands adjacent to, and for other purposes, I send herewith a copy of a report to me, made by the secretary of the commission, created under section 26 of the act of May 30, 1908 (35 Stat. L., pt. 1, p. 543), to investigate the title of the United States in and to all lands in the District of Columbia, wherein are fully set forth the necessity and reasons why said bill should be enacted by Congress.

Said report is in regard to sections 1 to 7, inclusive, and does not cover section 8 of the proposed act.

As to section 8, you are advised that heretofore proceedings for condemnation of lands in the District of Columbia have been carried on under the act of August 30, 1890 (26 Stat. L., 412-413), making provision for the acquisition of land for the enlargement of the Government Printing Office in this city.

It is intended that section 8 of the proposed act will to some extent simplify the procedure for condemnation.

Under the act of August 30, 1890, in making provision for the payment of awards it is provided that—

"In case any of such persons are under disability, or can not be found, or neglect to receive payment, the money to be paid to any of them shall be deposited in the Treasury to their credit."

Under said act of August 30, 1890, if the name of the owner or ownership of the property can not be positively ascertained, a deposit or payment could not be made, which might cause delay and possibly defeat the acquisition of land should any question be raised on this point.

Respectfully,

J. A. FOWLER,
Acting Attorney General.

Hon. JACOB H. GALLINGER,
United States Senate, Washington, D. C.

DEPARTMENT OF JUSTICE, *January 18, 1911.*

SIR: My attention having been called to Senate bill No. 10136, providing for the protection of the interests of the United States in lands and waters in the District of Columbia, I have the honor to make the following report on so much of the said bill as affects the subjects which have been under investigation by the commission to investigate the title of the United States to lands in the District of Columbia.

The historical facts indicate, and the Supreme Court has decided, that it was the intention, when the city of Washington was laid out, that the entire water front should be preserved for the use of the people of the city in general. After protracted litigation, the claims of private persons to control a very large proportion of the Potomac River water front were denied and the title held to be in the United States. A portion of the Potomac River front west of Twenty-seventh Street from C Street to I Street and of the Rock Creek front west of Twenty-eighth Street between I and K Streets is now in a similar condition as to title as was the whole of the Potomac River front prior to the decision of the Potomac Flats case.

By section 1 of Senate bill No. 10136 the method of procedure followed in the Potomac Flats case is authorized with reference to the remainder of the water front of the city of Washington, and sections 3, 4, 5, and 7 are identical with the sections in the act approved August 5, 1886 (24 Stats., 335), conferring equitable jurisdiction on the supreme court of the District of Columbia and prescribing the details of procedure in the suits to be brought under the authority of section 1. The questions affecting the portions of the river and creek front hereinbefore described are almost identical with those settled in the Potomac Flats case, and the value of the land affected as a means of connection between the Potomac Park system and the Rock Creek Park system is so great that no right of the United States could be allowed to lapse or be jeopardized without expensive results. While within this portion of the city it may be found that certain private rights have accrued, the underlying property rights of the United States are such that the procedure recommended seems to be not only that best calculated to determine the respective rights of the United States and private parties, but that which seems absolutely essential for the proper protection of the interests of the United States.

The question of title on the Anacostia River front from the southern terminus of the land affected by the Potomac Flats case to the northern limit of the original city of Washington has been debated for many years and the property is in a condition as to title which is almost chaotic. There seems to be no doubt that the original commissioners intended, as previously stated, to reserve the water front for the general use. They apparently found, however, that the pressure from persons of influence was too great to enable them to carry out their intentions inflexibly, and, partly with the consent, actual or tacit, of the original commissioners, and partly by the unopposed irregular action of individuals, certain structures have been built on the soil of the Eastern Branch, its shores and adjoining land, and certain claims of ownership have been and continue to be made which, according to the facts as they now appear, and in the light of the Potomac Flats case, seem to be encroachments on and denials of the property rights of the United States.

In particular, one square (803), which is assessed to the United States and which appears always to have been its property, is adversely occupied by private parties claiming under a chain of title which runs back for a great many years, but which apparently has no basis in any valid grant from the United States. In addition to this, the proposed location of a branch track from the United States. In addition to this, the proposed location of a branch track from the Pennsylvania Railroad to the navy yard has raised questions of title affecting land extending for about one-quarter of the distance of the entire water front of the city on the Anacostia River. These questions apparently can not be satisfactorily settled except through proceedings contemplated by section 1 of this bill. The improvement of the Anacostia River has probably been obstructed during the whole history of the city of Washington by the unsettled condition of the titles along its banks within the limits of the original city of Washington, and the clearing of such titles seems to be a necessary preliminary to the serious consideration of this instrument.

The property on the Potomac River, Anacostia River, and Rock Creek affected by section 1 of this bill is of very great importance, and seems likely ultimately and in any event to be acquired by the United States for public improvements. The property on the Potomac River and Rock Creek is directly in the line of a

proposed extension between the Potomac Park system and the Rock Creek Park system, and the property on the Anacostia River would have to be acquired by the United States in order to carry out any comprehensive plan of improvement of the shores and lowlands of that river.

The questions of title involved are so complicated that under usual procedure they could not be settled for many years, if, indeed, they could be settled at all. But by giving the supreme court of the District of Columbia equitable jurisdiction a means seems to be provided to secure a speedy and final settlement of all questions to be met.

The lands affected by section 2 of the bill constitute four classes.

One class is that of the small amount of land in the original city of Washington which was not divided, so far as the records show, between the original proprietors and the public in accordance with the deeds of trust given by the said proprietors in order to carry out the purpose they had in mind of securing the location of the Federal city within the limits given in the said deed of trust. Any other method of completing the records of division than that proposed would present serious difficulties from the questions which would be raised as to the person or persons who would have power to take action under the deeds of trust at the present time. The method proposed would provide against all possible outstanding claims, and while the amount of land affected is not large, some action of this character seems necessary in order that certain rights of the United States based upon this division under the deeds of trust may be properly asserted.

A second class of lands affected by this bill consists of lots in the original city of Washington to which the mere naked legal title seems now to be outstanding in the United States. This condition seems to have been brought about by the fact that up to 1838 the law of the District of Columbia required that conveyances of land must be recorded within six months in order to have legal effect. While it has been questioned whether this provision applied to certificates of sale issued by the original commissioners, the general construction and the course of dealing with such matters seems to indicate that if these certificates were not recorded within six months they failed to convey the legal estate. A considerable number of original lots in the city of Washington, including some which are now improved by valuable buildings, are affected by this condition, and while there is no actual financial interest of the United States in the property in these cases the record title appears to be in the United States. Any other method of attempting to clear title than the equity proceedings proposed in the bill, or an act of Congress in each case, seems to raise questions of considerable difficulty, and the equity proceedings seem to be preferable in view of all the circumstances.

By section 2 of the act the court is given power, if it finds the outstanding title to be a naked legal title merely, to make such decree as may be necessary to vest the legal title in the person equitably entitled thereto, thus offering a speedy remedy for technical defects which are the basis of the only interest of the United States in this class of lands.

A third class of lands includes those lots in the city of Washington for which the United States has apparently never been paid and which are in the adverse possession of private persons. This property includes the whole of one square, nearly the whole of another, and isolated lots in different squares throughout the city. The persons who are now in possession probably acquired their interests without positive knowledge that they were infringing upon rights of the United States. The United States apparently has let its rights with relation to these lots lie dormant for a great many years, and while this fact has no bearing as a matter of law, it appears from the experience that has already been had, that it would be difficult to secure recoveries by proceedings in ejectment, which proceedings seem to be the only method available, except the method provided in this bill.

One such case has already been tried—that relating to a piece of land located in the vicinity of Fifteenth Street, Florida Avenue, and New Hampshire Avenue, known as "Fox's Discovery." This proceeding was brought in ejectment, and there is reason to believe that notwithstanding the instructions of the court that lapse of time or length of possession was not to be considered as affecting the rights of the United States the jury did take such facts into consideration, and there is reason to suppose that they were influenced in their verdict for the defendants by the view that the United States was practically in no different position from a private person after having allowed its rights to lie dormant for so many years.

It would appear to be a hardship to require of the present occupants of such lands the full present value thereof, especially where the occupants appear to have been purchasers for value and under the impression which has obtained in real-estate dealings in the city of Washington that the rights of the United States, having been allowed to slumber for so many years, would not be revived.

Even if proceedings in ejectment could be undertaken by the United States without the difficulty as to the view of a jury which has been suggested, there would be no alternative but to seek to recover the land at its full present value, and to include a count for use and occupation. Otherwise a claim for improvements under the terms of the code of the District of Columbia might require a payment by the United States to the occupant. In case of success also the United States, after a proceeding at law, would have the difficult question of realizing on its verdict, while in case of a verdict for the defendant the result would be not merely negative as to the enforcement of the claim of the United States, but positive in its affirmation of title in the occupant and the exclusion of the United States from further assertion of its rights.

The proposed bill has been framed to avoid the hardship suggested and at the same time to secure the desirable result that valid rights shall not be divested from the United States without due payment, and the court, in section 6, is given the power to make a valuation of the rights of the United States in any such land according to the equity and good conscience which should be exercised by the United States, taking all the circumstances of each case into consideration.

It seems especially important that the titles referred to as in the second and third classes should be completely cleared up at this time. The uncertainty of real-estate titles in the city of Washington has been the subject of comment for many years. It has been the custom to pass titles as good, notwithstanding that the interest, title, or right of the United States had not been completely divested. Under certain constructions of law which seem rather ingenious than sound, or in consequence of a general assumption that the United States would continue to allow its interest to lie dormant, these titles have been passed as a matter of convenience and to avoid the delays which would result from an effort to secure congressional action to cure the defects. At the same time the condition could not fail to create comment and, in some cases, criticism when called to the attention of persons previously unfamiliar therewith, and there have been, including the present investigation, at least four distinct general investigations as to these titles, as a result of which attention has been called to various outstanding interests, but no method has been proposed until the present bill for making a comprehensive settlement of questions involved. The reports of Robert Ould, William Cave, and John Stewart, respectively, indicate that a very large amount of time was expended in these researches. Aided by the researches of the former investigators, the present commission is or will be able to state positively the nature of the various defects in title arising out of dealings by the United States in building lots in the city of Washington, and the present bill is proposed as a definite means of terminating the difficulties and of rendering it unnecessary to make a further investigation at a later date, when the details of the present work shall have been somewhat obscured by time, as have been the details of the work of the previous investigators.

If action is taken now, as suggested, and the means afforded to perfect these titles, it will then be possible to issue an official publication, stating the basis of all real-estate title in the original city of Washington and giving a sound foundation for the abstracts of title which are essential to the assurance of persons who may invest in real estate. If the matter is allowed to lapse, as it has been allowed previously to lapse, except for the gifts of rights of the United States authorized by the act of March 3, 1899, and acts of Congress relating to individual cases, there is every reason to suppose that at least a portion of the work now being done will have to be done over again by a future generation, while in the meantime the danger of expense or loss to private individuals arising out of imperfect real-estate titles will continue in an increasing degree as the lapse of time disposes of evidence and prevents easy ascertainment of the actual facts with regard to the original transactions.

The fourth class of cases is largely presumptive, but the inclusion of such cases in the legislation proposed will complete the means available to the United States for asserting all its rights to lands and waters within the District of Columbia. There was, of course, no vacant land left in the original city of Washington after the metes and bounds of the said city were laid out, but there was some account of such land elsewhere in the District of Columbia,

some of which has been patented. There is always a possibility that between the lines of old patents a minute scrutiny would disclose portions of land not included within the lines of any patent, and the rights of the United States to such lands should be safeguarded by a provision for the determination of any question which may arise on further investigation as to vacant lands outside of the city of Washington in the District of Columbia. The provision in section 2 relating to vacant lands was included to provide for such contingencies. While it is possible that no proceeding will be brought under this provision, there is a possibility of a situation in which such a provision would be of considerable value to the United States.

This bill does not involve any expenditure on the part of the United States beyond the amount named in the bill, or commit the United States to the acquisition of any private titles. The valuation of private rights which may be found to exist is to be reported to Congress for its consideration and action, while, except as to naked legal titles, the valuation of any right of the United States will be similarly reported, and Congress can then take such further action with relation to the rights of the United States as it may deem advisable, either by directing the disposition to be made in each case or by giving general powers to some administrative officer, presumably the Secretary of War, who is the immediate superior of the Chief of Engineers, who seems to be the successor of the original commissioners of the city of Washington.

Very respectfully,

H. C. GAUSS, *Secretary.*

THE ATTORNEY GENERAL.

Senator BURKETT. I suppose those who have drawn this bill, as representing the commission, should be first heard to explain it. Will you speak first, Mr. Gauss?

Mr. GAUSS. Mr. McNamara is here.

Senator DILLINGHAM. I have had placed in my hands a letter from Joseph I. Weller, relating to this bill, inclosing a letter from the committee on municipal legislation of the Chamber of Commerce, requesting unfavorable action on the bill. I ask to have those letters also put into the record.

(The letters are as follows:)

WASHINGTON, D. C., *February 10, 1911.*

MY DEAR SENATOR GALLINGER: On January 20, when I requested that I be granted a hearing on Senate bill No. 10136, providing for the protection of interests of the United States to certain lands in the District of Columbia, etc., the bill had not been considered by the Washington Chamber of Commerce, but since my request said body, of which I am a member, has considered this bill, and I therefore take the liberty of inclosing you a letter from the committee on municipal legislation of the chamber, requesting unfavorable action on this bill.

Yours, very respectfully, JOSEPH I. WELLER.

Hon. JACOB H. GALLINGER,
Chairman Committee on the District of Columbia,
United States Senate, Washington, D. C.

WASHINGTON CHAMBER OF COMMERCE,
COMMITTEE ON MUNICIPAL LEGISLATION,
February 10, 1911.

Hon. JACOB H. GALLINGER,
Chairman Committee on the District of Columbia,
United States Senate.

SIR: The committee on municipal legislation of the Washington Chamber of Commerce having given consideration to the Senate bill No. 10136, respectfully requests unfavorable action on said bill for the following reasons, namely:

Chapter 15 of the Code of Laws of the District of Columbia entitled "Condemnation of land for public use," being sections 483 up to and including section 491 M, being the law as passed by Congress with the amendments thereto,

gives to the Government of the United States and the District of Columbia all the powers needed for the condemnation of land for the United States and the District of Columbia, and the successful operation of condemnation proceedings both by commission and jury under this chapter and various sections of the code has been very successful, and under said sections large tracts of land have been acquired and title vested in the United States and the District of Columbia.

The various sections have been tested by the appellate court and sustained. At present these sections of the code are clearly understood and is the law governing the condemnation of land for public use, and it would appear that there is no requirement for the proposed measure.

Section 1 of the bill is unnecessary, as the Government has the same authority under an ejectment proceeding that could be maintained in its behalf under said section, and in the said ejectment proceeding the title could be ascertained to the same extent as by the proposed bill. Recently the United States, in a case in the supreme court of the District of Columbia, brought such a suit, the title being U. S. A. v. A. E. T. Hausmann (Law No. 48883), and U. S. A. v. Wm. H. Lewis (Law No. 48884), commonly known as the Fox Discovery case; wherein the entire matter was considered as completely as the Government could do under section 1 of the proposed bill.

Section 2. The extraordinary power attempted to be vested in the Attorney General by this section would unsettle and disturb all existing titles to land in the District of Columbia and a proposed purchaser of any property in good faith might become the subject of this proceeding, even though there has been no question as to "the fair and equitable division between the public and the original proprietors of the land."

In other words, the law is well settled that when for many years the title to property is not questioned, it would be unfair, when the Government has permitted owners to purchase and convey land, at the expiration of over 100 years, to raise the question whether the original division was fairly and equitably made, or whether the lands have been fairly and equitably divided between the public and the original proprietors of the land. An attack of this kind after so many years would be not only inequitable, but would be outrageous, the Government having acquiesced in the division for these many years. If, however, there has been any unfair or inequitable divisions which have been notorious and known as such, and the title taken by persons cognizant of this fact, a different condition would arise. To say, however, that whenever deemed warranted by the Attorney General, that he could arbitrarily disturb existing titles because he or those who advise him, believe the land had not been fairly or equitably divided between the public and the original proprietors of the land raises a condition of affairs that should not be tolerated in this or any other community. It is certain of belief that Congress would not permit the owners of the land in this District to suffer this hardship and place a cloud on every parcel of ground in the District; because at no time could the owner tell when, for some reason or other, the question might arise as to whether his land had been fairly and equitably divided or not, or whether his land came within the purview of this unfair section.

If, however, the Government has any rights by reason of land being held by individuals that is the property of the Government, it has at the present time a legal and equitable remedy, and in the past the Government has not hesitated by appropriate proceedings to obtain the possession as well as the property it claims.

Section 3. The Government now has the right to maintain suit in equity without the necessity of passing this bill or section 3 thereof.

Section 4. This section is unnecessary, as all the authority required is now reached in an equity court or in a court at law by appropriate proceedings, and the drastic measure proposed in this section, that all parties who shall fail to appear shall be forever barred from setting up or maintaining any right, title, interest, or claim in the said premises, does not consider the rights of infants or lunatics. Further, this section should not be as drastic as to determine every right, title, or interest arising in the premises and to vacate, annul, set aside, or confirm any claim of any character arising or set forth in the premises;" for the reason that any caim that the Government might have should be set forth in a bill in equity or in an ejectment proceeding that can be filed at the present time so that the same can be fairly met by the defendant; and the court should not have any other power or jurisdiction than is prayed for in the bill of complaint filed by the Government.