

REPORT

FROM

THE COMMISSIONER OF THE GENERAL LAND OFFICE,

In compliance with a resolution of the Senate, on the subject of unconfirmed Land Claims in the State of Missouri.

JANUARY 3, 1832.

Read, and ordered to be printed.

GENERAL LAND OFFICE,
31st December, 1831.

SIR: In obedience to a resolution of the Senate of the United States, passed on the 22d inst. in the following words:

“Resolved, That the Commissioner of the General Land Office be requested to lay before the Senate, any information in his possession, showing the present state or condition of the unconfirmed private land claims in the State of Missouri, particularly, whether the said lands are now subject to sale, as lands of the United States; if so, have they been set for sale in pursuance of any order from said Commissioner; what quantities and tracts of said lands have been sold in obedience to said order, and by whom are such lands owned or claimed; under what law are said lands required to be sold, and further, what quantity remains unsold; what proceedings have taken place under the instructions of said Commissioner, requiring the sale of said lands.” I have the honor to report, that, from the time of the passage of the act of the 2d of March, 1805, entitled “An act for ascertaining and adjusting the titles and claims to lands within the territory of Orleans and the district of Louisiana,” until the 1st of January, 1814, when the act of the 3d March, 1813, entitled “An act allowing further time for delivering the evidence in support of claims to land in the territory of Missouri, and for regulating the donation grants therein,” expired, the claimants to lands in the present State of Missouri, could have produced their evidences of title, and other testimony in support of their claims, to the officers appointed for the purpose of investigating and reporting upon them; and that by the several laws fixing the periods in which the parties interested were required to file their notices of claim, it is expressly provided that all the claims for which notices were not filed, should be barred and forever considered as void, and not be received as evidence in any court of justice, against any title derived from the United States. From the reports made by the board of commissioners and the recorder of land titles, it appears, that of the claims stated to be founded on written evidence of title, or derived from settlements for which notices were filed, there are 1,438 yet unconfirmed,

embracing two millions two hundred and thirty-eight thousand seven hundred and ninety-seven acres. The number of unconfirmed claims, or their contents, for which notices were not filed with the commissioners or recorder, this office has no means of ascertaining. By the 9th section of the act of the 3d of March, 1811, "providing for the final adjustment of claims to lands, and for the sale of the public lands in the territories of Orleans and Louisiana, and to repeal the act passed for the same purpose, and approved February 15, 1811," the land office at St. Louis was established. The 10th section of this act directs the sale of all the lands in this district, with the exception of the school and seminary tracts, and of the salt springs and lead mines, and such adjacent tracts as the President might reserve, "provided, however, that till after the decision of Congress thereon, no tract of land shall be offered for sale, the claim to which, has been in due time, and according to law, presented to the recorder of land titles in the district of Louisiana, and filed in this office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the Territory of Louisiana." No method having been prescribed by law, by which the land offices were to ascertain the situation of the lands to be reserved under this law, they have been compelled, in designating them on the maps, to rely solely upon the information and evidence furnished by the claimants, without having the means of accurately ascertaining whether the lands designated by the claimants were those intended to be covered by the claims.

The 3d section of the act of the 17th of February, 1818, "making provision for the establishment of additional land offices in the Territory of Missouri," directs the sale of the lands in those districts, under the same reservations and restrictions as were made by the 10th section of the act of 3d March, 1811, above referred to.

Upon the 26th of May, 1824, an act was passed, "enabling the claimants to lands within the limits of the State of Missouri, and Territory of Arkansas, to institute proceedings to try the validity of their claims;" by the 5th section of which, it was enacted, "that any claim to lands, tenements, or hereditaments, within the purview of this act, which shall not be brought by petition before the said courts, within two years from the passing of this act, or which, after having been brought before the said courts, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within three years, shall be forever barred both in law and in equity, and no action at common law, or proceeding in equity, shall ever thereafter be sustained in any court whatever, in relation to said claims;"—and the 7th section of the same act provides, "that in each and every case in which any claim tried under the provisions of this act, shall be finally decided against the claimant; and in each and every case in which any claim cognizable, under the terms of this act, shall be barred by virtue of any of the provisions contained therein; the land specified in such claim shall, forthwith, be held and taken as part of the public lands of the United States, subject to the same disposition as any other public land in the same district." By subsequent legislation, the time for filing petitions was extended to the 26th of May, 1829, and for hearing and deciding thereon by the court, to the 26th of May, 1830.

From this view of the subject, it will be seen that the unconfirmed claims in Missouri may now be divided into the following classes:

1st. Those which have never been presented to the board of commission-

ers, to the recorder of land titles, or to the district court, for the purpose of being investigated.

2d. Those claims for which notices were filed in due time and according to law, with the recorder of land titles, but not subsequently brought before the district court by petition, under the act of the 26th of May, 1824.

3d. Those claims for which petitions were within due time presented to the district court, but which had not been prosecuted to a final decision.

With respect to the claims embraced in the first class, no provisions have at any time been made to exempt them from sale as public lands, and it is expressly declared that they shall not be admitted in any court of the United States, against any claim derived from the United States.

The claims in the second class, are effectually barred by the 5th section of the act of 26th May, 1824, and the 7th section of the same act, by declaring that the land specified in such claims, "shall, forthwith, be held and taken as part of the public lands of the United States, subject to the same disposition as any other public lands in the same district," must be considered as making the decision upon which the contingent reservation of them, under the acts the 3d March, 1811, and 17th February, 1818, was to terminate.

With regard to those claims, embraced by the 3d class, it was conceived that the failure of the parties in not prosecuting their claims to a decision, or by the withdrawal of their petitions from the court, under the 5th and 7th sections, forfeited their claims, and the lands embraced thereby forthwith became liable to be sold as any other public lands.

Entertaining these views respecting the unconfirmed claims in Missouri, and a proclamation having been issued on the 25th of March last, by the President of the United States, for sales at the several land offices, in that State, directing that, in addition to certain specified townships, there should "be exposed to public sale, without reserve, all sections or parts of sections subject to be sold by the United States, and situate within the respective limits of the aforesaid land districts, and within any township heretofore offered at public sale, which may not have been heretofore exposed at public sale;" I did, after mature consideration, issue the circular to the land officers in Missouri, directing the unconfirmed claims to be offered for sale, dated the 25th June, 1831, of which the paper annexed, marked A, is a copy; but, from the letters of those officers, of which the papers marked B, C, D, E, and F, are copies, it will be seen that none of them were exposed to public sale, or disposed of by the United States, under the proclamation of the President above referred to.

I have the honor to be,

Very respectfully, your obedient servant,

ELIJAH HAYWARD.

The PRESIDENT of the Senate
of the United States.

A.

Circular to the Land Officers at St. Louis, Franklin, Palmyra, Jackson and Lexington, Missouri.

GENERAL LAND OFFICE,
25th June, 1831.

GENTLEMEN: The question has been asked whether the unconfirmed private claims in Missouri, are subject to sale under the proclamation of the President dated 25th March last.

The proviso to the 10th section of the act of 3d March, 1811, (land laws, page 591,) is in the following words: "Provided, however, that till after the decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has, in due time, and according to law, been presented to the recorder of land titles in the district of Louisiana, and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the Territory of Louisiana."

The 5th section of the act of 26th May, 1824, (land laws, page 874) declares, that "any claim to lands, tenements or hereditaments, within the purview of this act, which shall not be brought by petition before the said courts, within two years from the passing of this act; or which, after being brought before the said courts, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within three years; shall be for ever barred, both in law and in equity; and no other action at common law, or proceeding in equity, shall ever thereafter be sustained in any court, whatever, in relation to said claims."

The act of 22d of May, 1826, merely extends the time for filing petitions under the act of 26th May, 1824, to the 26th May, 1828.

The act of 24th May, 1828 further extends the term for filing petitions in reference to claims in Missouri, to the 26th May, 1829.

Such unconfirmed claims, therefore, formerly reserved from sale under the act of 3d March, 1811, as have not been brought before the courts, or prosecuted to a final decision under any of the acts of the Congress above alluded to, are subject to be offered at public sale, and you are hereby directed to offer the same under the proclamation of the President of the United States above alluded to.

After the close of the sales, you will make a special report, specifying the unconfirmed claims which cover lands that have been offered at public sale, designating such sales as may have been made interfering with the unconfirmed claims, and also the interfering legal sub-divisions not sold.

Very respectfully,

Your obedient servant,

E. HAYWARD.

B.

Copy of a letter from the Register and Receiver of the Land Office at St. Louis, Missouri, to the Commissioner of the General Land Office, dated 12th July, 1831.

SIR: Your letter of the 25th of June last, authorizing us to offer at public sale, all the unconfirmed private claims within our district, has been received.

Having no information in our office as to what claims have been brought before the courts, or prosecuted to a final decision; and having no returns of surveys of many of those claims which are located on the township plats, without being sectioned; and not knowing the quantity in the fractional quarters, made such by the confirmation of the village commons; have induced us to withhold from sale all such claims until further instructions shall be received.

We are, very respectfully,

Sir, your obedient servants,

W. CHRISTY, *Register*,
B. PRATTE, *Receiver*.

C.

Extract of a letter from the Register of the Land Office at Franklin, Missouri, to the Commissioner of the General Land Office, dated 18th July, 1831.

"I have also received yours of the 25th ult., on the subject of the unconfirmed private claims in Missouri. I have written for information concerning them to the clerk of the district court of this district. If I am informed that they have not been prosecuted to a final decision according to law, I shall have them immediately added to the list already prepared, and sell as instructed."

D.

Copy of a letter from the Register of the Land Office at Franklin, Missouri, to the Commissioner of the General Land Office, dated August 8, 1831.

SIR: In order to comply with your instructions in relation to the unconfirmed private land claims in Missouri, I addressed a letter to the clerk of the United States' court for the district of Missouri, requesting him officially to certify to me whether certain claimants in my land district had prosecuted their claims to a final decision, as required by the act of Congress on that subject. Without this information, I conceived that I could not sell them; and you will perceive by the inclosed paper, (which the clerk sent me,) that he has failed to comply with my request, and that, at so late a day, that I am unable before the sale to obtain the information from any other source. His paper has neither date or signature.

I am, with great respect, &c.

H. L. BOON, *Register*.

Copy of the paper enclosed in the above letter.

"All the claims that were filed in the district court, under the law of Congress of 1824, were, by leave of the court, withdrawn without prejudice, immediately after the decree against Soulard's heirs. The heirs of Soulard appealed to the Supreme Court, where that case still remains un-

determined. Of the claims filed under the law of 1828, the court decreed against the heirs of Auguste Choteau for 1281 arpens, and for 7056 arpens against De Lassus, assignee of De Luzieres; against the heirs of Macky Wherry, and against the heirs of James Mackay. All the other claims were withdrawn, without prejudice, by leave of the court, except the claim of J. B. Placet, and one of John Mullanphy, assignee of La Pierre and Aubuchan, which were confirmed. In all the cases decreed against, appeals were taken, and are now waiting the decision of Soulard's claim."

E.

Extract of a letter from the Register and Receiver of the Land Office at Jackson, Missouri, to the Commissioner of the General Land Office, dated August 9, 1831.

"By your instruction of the 25th June, 1831, informing us what unconfirmed private claims are to be sold, under the proclamation of the President of the 25th of March last, we are directed to sell such unconfirmed claims, formerly reserved from sale, under the act of the 3d of March, 1811, as have not been brought before the court; or if brought, not prosecuted to a final decision, agreeably to law, under the acts of Congress of the 26th of May, 1824, 22d of May, 1826, and 24th of May, 1828. Under the proclamation of the President, we conceive it would have been our duty to offer for sale the land embraced in the proclamation, regardless of its being embraced in unconfirmed claims; but your instruction limits the generality of the proclamation, to those claims not presented to the court; or, if presented, not prosecuted agreeably to the acts of Congress aforesaid.

"We beg leave to inform you, that we have no official information of the claims presented to the court, nor of the failure to prosecute those presented; and therefore cannot determine on the claims subject to sale, under your instruction of the 25th of June last. Our private information is too vague and uncertain, and therefore ask your further instruction on the subject.

"If we are to sell the unconfirmed claims, notwithstanding any proceedings on them, under the acts of Congress aforesaid, then there is no difficulty on our part; but if we are to select the claims which are to be sold, as your instruction directs, we have no data by which to make the selection. We cannot suppose you intend the claims confirmed under the acts aforesaid, nor those still prosecuting by appeal, in the Supreme Court of the United States—and there are some of both descriptions to be sold, and we cannot discriminate between these, and those embraced in your instruction, for want of precise information."

F.

Extract of a letter from the Register and Receiver of the Land Office at Palmyra, Missouri, to the Commissioner of the General Land Office, dated 19th August, 1831.

"The instructions contained in your letter of the 25th June, in relation to the selling of the unconfirmed Spanish claims, were not complied with, for the following reason, which we hope will be sufficiently satisfactory to you, and exculpatory of our course in violating these instructions. We had no

evidence in this office by which we could tell which claims were embraced in your instructions; and the means of getting the evidence in time for the sales, was not furnished, and we know not where to obtain it. Under these circumstances, we hope, sir, that our course may meet your approbation; and we have no hesitation in expressing it as the firm conviction of our best judgment, that the interest of the Government will be promoted, and the convenience of the citizens increased, by the course we thought proper to pursue in relation to this subject."

THE SECRETARY OF THE TREASURY

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