

GENERAL CORRESPONDENCE

1876 JAN. 1-3

FOLDER NO.

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JAMES J. HILL PAPERS

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from 1873 to 1876

J. J. Hill

[From wooden box labeled, "Partnership Agreements etc.  
1866-1880"]

Before the Hon. Secretary of the Interior.

ON APPEAL FROM

Commissioner of the General Land Office.

JOHN J. JACKMAN, Appellant.

vs.

JOHN W. PLUMMER, et al., Respondents.

Contest as to Entry of S. W. 1-4 Section 32, Town  
139, Range 80, Bismarck Land Office,  
Dakota Territory.

APPELLANT'S ARGUMENT ON APPEAL.

JOHN B. SANBORN, AND  
OSCAR TAYLOR,

*Attorneys for Appellant.*

1876:  
TIMES PRINTING OFFICE.  
ST. CLOUD, MINN.



BEFORE THE  
HON. SECRETARY OF THE INTERIOR  
ON APPEAL  
From the Decision of the Hon. Commissioner of the  
General Land Office.

JOHN J. JACKMAN, Appellant,  
vs.  
JOHN W. PLUMMER, *et al.*, Respondents. } Contest for S. W. 1-4 S. 32,  
T. 139, R. 80.

This cause was duly brought to a hearing May, 1875, upon notice of Jackman, appellant, before the United States Land Office at Bismarck, D. T., at which time there appeared of record, as adverse claimants, to-wit: John W. Plummer as to N 1-2 and Samuel Bitting as to S 1-2 of the tract included in Jackman's D. S.

Upon the day of hearing, and without notice or other preliminary action, an application was received and filed, (subject to the objection then made by Jackman) from the "corporate authorities of Bismarck" to enter this tract, with others, as a "Town Site;" thus, and in that manner only, have the "corporate authorities" any relation as a *party* to this cause. The trial proceeded, and the evidence offered by Jackman, Plummer, Bitting and the "corporate authorities" was received, and waiving for this purpose, the error of permitting the "corporate authorities" to become a party thereto in the *manner* they were allowed to, (a proceeding without precedent,) we propose to examine the evidence received and *in the case*, tending to establish or rebut the claims of the respective parties, except Bitting, who, having declined to appeal from the decision of the Commissioner herein, is concluded thereby. The claim of the "corporate authorities" rests *wholly* upon an act of the Territorial Legislature, including the S 1-2 of this tract with other lands, in a law providing for a *municipal* form of Government for the inhabitants of the

land described in the act. We say it rests *wholly* upon this legislative act, because an examination of the evidence will show conclusively, that *no part of the tract was ever included in any survey* for "Town Site" purposes; that no part of the tract was ever *otherwise* claimed as a Town Site; that no part of the tract has ever been occupied for Town Site purposes, and that up to the very day of the trial before the Land Office it was *generally known and recognized* as "Jackman's pre-emption claim." We appeal with all confidence to the official record of the evidence, in support of these assertions, knowing that not *one* sentence of testimony can be found therein contradictory of these facts. This being true, how the Hon. Commissioner could find, as he does by his decision, that Jackman, upon his return, from a temporary absence "*found town improvements on his land*," surpasses our comprehension, for *no such fact appears anywhere in the entire case*.

On the contrary, the testimony is voluminous that *no town improvements* ever had been made or attempted upon Jackman's land, nor was even an offer or effort made *upon the trial* to rebut this testimony, and the *reason* for such finding and decision must be sought *outside of the case of record*, and of which we can have no knowledge.

The testimony of Turner, a civil engineer, and the person who made *all* the surveys for a "Town Site," claimed to have been made at all, will, upon examination, satisfy the Hon. Secretary that no line surveyed or run by him was located upon *any part* of S. 32, T. 139, R. 80. He testifies that the *exterior lines* of his survey commenced south of the N. W. 1-4 of N. W. 1-4 of S. 4, T. 138, R. 80; thence *south 700 feet*, which would carry the line to a point *more than one-half a mile south* of T. 139; thence west to Missouri River; thence *North one half mile*, which would not bring the survey to the South boundary of S. 32, T. 139, R. 80, by several chains; thence East 1-2 to 2 miles, &c., thus clearly showing that the highly moral association known as the "Lake Superior and Puget Sound Land Company" in whose interest this and *all* the surveys were made, did not contemplate including Jackman's claim within the boundaries of the territory it was so zealously seeking to guard from intrusion by actual settlers, other than its own paid and suborned hirelings. Whatever rights the "corporate authorities" may assert to any part of their "Town Site" by reason of a survey thereof, *must be as assignees or successors to the rights of the* "Lake Superior and Puget Sound Land

Company" for the survey of *that* for "Town Site" purposes as a "survey" as claimed by the "corporate authorities" to require what *rights* accrue to them by their assignor, or the person who believes that it will be seriously injured by the Town Site Law or any other law. "Lake Superior and Puget Sound Land Company" survey; for, as is disclosed by the official record of this survey was to exclude from the tract persons, except by permission of the Land Company of a sum of money, and a right of law, but in open and avowed violation of the Town Site Law, but as "*Pre-emption*" the superintendence of one Geo. H. Turner, agent, attorney, and convenient through whom *written contracts* were made by the Land Company to *pre-empt* the land so acquired, to said Company or its assigns, to defraud the Government, and to prove to be the *sole* object with the "corporate authorities" acquire the land by *survey* cannot be urged in support of the claim pretended upon Jackman's land, which was not.

How, then, could the Hon. Commissioner find that the S. 1-2 S. W. 1-4 S. 32, T. 139, R. 80, was a town site, and occupied by Jackman thereon? Most surely the very reverse is there explicitly shown.

Thus, we think, it is demonstrated that the "corporate authorities" to this tract, resting upon the authority of a law authorizing the formation of a town site, that this tract was not regarded as a "town site" by the "corporate authorities" themselves, and that it is included in the application for a Town Site. On an examination of the testimony



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Company" for the survey of that Company, is the *only* survey ever made for "Town Site" purposes as appears by the record. Admitting the "survey" as claimed by the "corporate authorities," it remains to inquire what *rights* accrue to them therefrom? Certainly none not possessed by their assignor, or the party making such survey, and we do not believe that it will be seriously contended that *any rights whatever*, under the Town Site Law or any other law, were, or could be acquired by the "Lake Superior and Puget Sound Land Company" by reason of Turner's survey; for, as is disclosed by the testimony, the very object and purpose of this survey was to exclude from the land embraced within its limits *all* persons, except by permission of the Company, and upon payment to the Company of a sum of money, and to acquire title thereto, not in *pursuance* of law, but in open and avowed violation of its plainest provision:—*not* as a "Town Site," but as "*Pre-emptions*" to be made and perfected under the superintendence of one Geo. W. Sweet, who appears of record as the agent, attorney, and convenient witness of said Company; and by and through whom *written contracts* were made with the employees of said Company to *pre-empt* the land so surveyed, and transfer the title *so* to be acquired, to said Company or its assigns, thus deliberately conspiring to defraud the Government, and to commit perjury to that end. Such is proven to be the *sole* object with which Turner's survey was made. Did the "corporate authorities" acquire *any rights* thereunder? If not, then the *survey* cannot be urged in support of their claims, even though it had *extended* upon Jackman's land, which is shown not to be the case.

How, then, could the Hon. Commissioner find, as he does in his decision, that the S. 1-2 S. W. 1-4 S. 32, T. 139, R. 80, had "been selected, surveyed as a town site, and occupied as such, prior to the settlement of Jackman thereon?" Most surely not from the evidence in the case, for the very reverse is there explicitly proven.

Thus, we think, it is demonstrated that the claim of the "corporate authorities" to this tract, rests *wholly* upon the Territorial legislation authorizing the formation of a local government, and it further appears that this tract was not regarded as a part of the "Town Site" by the "corporate authorities" themselves, as late as October, 1874, for no part of it is included in the application of Bowen, then made in their behalf. On an examination of the testimony in the case, it will be seen that the

only person who could be found to testify in this matter, in a manner tending to support the "Town Site" claim herein, was the attorney-witness, Sweet, who is unsupported by *any* other witness; who is contradicted by *many* other witnesses, among them Mr. Caufield, President of the L. S. & P. S. Land Company, in whose employ Sweet was; who, when volunteering his testimony in chief, would decline to answer pertinent cross-interrogatories, claiming his privilege as *attorney*! We think we may properly urge upon the attention of the Hon. Secretary, the fact that this witness Sweet, is the same person who is shown by the evidence to have conceived and prosecuted the conspiracy of pre-empting a portion of the lands embraced in the application of the "corporate authorities" by and through his employees, Samuel H. Lillie, Michael Tippie, Joseph Pennell and others; and is the same person who accompanied these parties to the Pembina Land Office in October, 1873, and there tried to procure the allowance of their fraudulent pre-emption claims; is the same person whose testimony on every material point given upon the trial before the Bismarck office, was impeached by a host of creditable witnesses and supported by none.

When "corporate authorities" are forced to rely upon such testimony for success, as they do in this case the *merits* of their claim should be closely scrutinized; and we apprehend that something in addition will be required, beside a Territorial enactment, before they can take from a citizen his vested rights.

But the law under which the "corporate authorities" seek to enter this tract as a "Town Site" does not provide or contemplate that the naked act of "selecting" land for such prospective purpose, shall exclude it from the operations of the pre-emption laws. It applies exclusively to lands *settled upon and occupied as a town site*, and cannot be construed as conferring upon an individual, or an association of persons, the right, by the simple act of "selecting," to take out from the operation of the general laws such portions of the public domain as shall seem profitable to select.

It refers to, and by its language recognizes, only such public lands as are, at the time of selection, actually occupied for town site purposes, and not such as may have been selected by non-residents, or speculators, for the site of a *future* town or city. Such has heretofore been the uniform construction of the law, by the Courts and the Department, and such is clearly its purpose, spirit and intent.

Otherwise, it would pre-emption rights of alleging that the land some prior time for a

Nor can the "corporate authorities" be authorized by law to make such entry any more than they can be used for town purposes.

These decisions have been based upon principles enunciated, and governing in all similar cases which have been litigated cases which have been decided by the Hon. Commissioner.

The evil of any other construction is illustrated in the case of the Hon. Commissioner.

The evidence here is to the effect that 138, R. 39, as at present, is in violation of the "corporate authorities" to the western boundary of the Territory. Hon. Commissioner.

We are safe in concluding that no such decision can be found, nor, as a matter of fact, no decision be found in this case. The decision is found in the purpose of affording the form of government, site purposes, does not apply to pre-emption laws, nor can they be used for town purposes, which they can assert of the United States.

Hence, we insist that no such showing any right to not enter it under his which by any reason to this land; that the law rejects their



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Otherwise, it would be in the power of any individual, to defeat the pre-emption rights of those they were interested in opposing, by simply alleging that the land claimed by the pre-emptor had been "selected" at some prior time for a town site.

Nor can the "corporate authorities," "Trustees," or other party authorized by law to make entry of a tract of land as a "Town Site," include in such entry any more than is actually occupied by the inhabitants thereof, and used for town purposes.

These decisions have heretofore been without exception, and the principles enunciated, and here claimed have been recognized as the *rule* governing in all similar cases; and no exception thereto is found among all litigated cases which have come before the Department, until the decision of the Hon. Commissioner in the case at bar.

The evil of any other construction of the law is apparent, and is well illustrated in the case at bar.

The evidence here shows an area of less than 80 acres, upon S. 4, T. 138, R. 39, as at present occupied as a town site, bona-fide, yet the application of the "corporate authorities," includes over 600 acres, extending to the western boundary of S. 32, T. 139, R. 80, and the decision of the Hon. Commissioner actually awards them 640 acres!

We are safe in challenging a single precedent for this decision, for none can be found, nor, as we have attempted to show, can any *reason* for such decision be found in the record herein, for the act of a legislature, including land within the area of a town or city, named in an act, for the purpose of affording the inhabitants thereof the advantage of a municipal form of government, when the same is in no manner *occupied* for town site purposes, does not exclude such land from the operations of the pre-emption laws, nor confer *any* rights upon the "corporate authorities" which they can assert in support of an entry of such lands, under the laws of the United States.

Hence, we insist that the "corporate authorities" failed, totally in showing any right to this tract, even though Jackman for any cause, could not enter it under his D. S.; that there is to be found neither law or facts, which by any reasonable construction, can be made to support their claim to this land; that the record in the case is fatal to their pretensions, and the law rejects their application, as without merit; and that the decision



of the Hon. Commissioner, awarding to the "corporate authorities" of the City of Bismarck, the S. 1-2 of Jackman's land, should, and of right, ought to be reversed.

#### SECOND.

By the decision of the Hon. Commissioner, John W. Plummer is awarded the North 80 of Jackman's land, to wit: The N. 1-2, S. W. 1-4, S. 32, T. 139, R. 80.

By what mode of reasoning the Hon. Commissioner came to such decision we are unable to discover, as it does not appear in the record. An examination of the evidence submitted and in the case, establishes clearly the following facts, viz:

First. That Jackman entered upon the tract, marked it out, and made substantial improvements thereon more than *nine months* before Plummer pretends to have claimed it.

Second. That Jackman filed his D. S. upon the land several months before Plummer's alleged settlement.

Third. That Jackman was, at the time of Plummer's alleged settlement in the *actual possession* of the land, and so had been continuously for months prior thereto.

Fourth. That Plummer removed from his *permanent* residence on Sec. 4, T. 138, R. 80, to this land.

Fifth. That Plummer's residence on this land was only *temporary*.

Sixth. That Plummer, before his attempt to enter, left the land, and returned with his family to his *permanent* residence on Section 4.

Seventh. That Plummer had *actually abandoned* all improvements on this tract, long prior to the trial of this cause.

Eighth. That Plummer *never* made any substantial improvements on this land.

Ninth. That Plummer had full notice and knowledge of Jackman's settlement and occupancy.

Tenth. That Plummer's attempt to enter this land was not bona fide, in accordance with the letter and spirit of the pre-emption law.

Eleventh. That Plummer sought to procure title to this land under the pre-emption law, for speculative purposes only; and,

Twelfth. That Plummer has not complied with the plain requirements of the law, and is not entitled to its benefits.

Many of these facts are fully established by the testimony of Plummer

himself, and appear in the testimony of other witnesses, records introduced and read.

By the latter, it appears large portions of this tract consideration exceeding \$2 many of these sales were on this land.

It also appears that the land, cost but slight labor portion of it except a small and that for only one season of 1873, on this land Section 4 all the time, in trial, he was not, and for residing upon, or in any. These are stubborn facts, sive against Plummer, which

We also urge that the exceptional consideration *essential* element in the payment that it does not exist, the

Plummer's claim, having merit, should have been refused is awarding a premium for are prominent in all the facts

The Hon. Commissioner

"That Jackman settled and did not return thereto, payments on his land, and was first ward of Bismarck, and assisted as a citizen in

With all deference, we markable finding;—remains found in the record, and

himself, and appear in the record of his cross-examination; some by the testimony of other witnesses, which is uncontradicted, and some by the records introduced and received in evidence upon the trial.

By the latter, it appears that Plummer had sold and conveyed by deed, large portions of this tract, for which he had received, *before this trial*, a consideration exceeding \$2,000! It further appears that contracts for many of these sales were made *prior* to his offer to prove up and pay for this land.

It also appears that the so called improvements made by him on this land, cost but slight labor and little time, and that he has cultivated no portion of it except a small garden patch about one-fourth acre in extent, and that for only one season; that he resided for only a short time in summer of 1873, on this land, but maintained and occupied his home on Section 4 all the time, in person or by employee; that at the time of this trial, he was not, and for more than one and-a-half years, had not been residing upon, or in any manner occupying any portion of this land. These are stubborn facts *in the case*, and it seems to us, must be conclusive against Plummer, whatever Jackman's rights may be.

We also urge that the case discloses no equities entitling Plummer to exceptional consideration. Under the pre-emption law, *good faith* is an *essential* element in the party claiming its benefits, and when it is apparent that it does not exist, the defect is fatal, and equity will afford no relief.

Plummer's claim, having, as the record shows, neither legal or equitable merit, should have been rejected by the Hon. Commissioner. To allow it, is awarding a premium for bad faith and fraudulent practices, for both are prominent in all the features of his case.

### THIRD.

The Hon. Commissioner in his decision herein finds:

"That Jackman settled June 28th, 1872; left his claim in July, 1872, and did not return thereto for ten months. He then found town improvements on his land, and was afterwards elected as an Alderman from the first ward of Bismarck. He made application for the purchase of lots, and assisted as a citizen in developing the town."

With all deference, we respectfully submit that it is, at least a remarkable finding;—remarkable in its variance, from the facts proven and found in the record, and remarkable as being the only basis upon which



Second. That Jackman at that time plainly marked and indicated the said tract, by measuring, staking out and ploughing around the same.

Fourth. That no adverse claim, or pretended claim, then existed to said land.

Sixth. That until his visit East, he had continuously resided upon and cultivated said tract.

Eighth. That at the time of his departure, it was his intention to return in a few weeks, which he attempted to do, and was prevented by circumstances beyond his control.

Tenth. That upon his return he found the public survey had been made, and that the lines of such survey, included within the S. W. 1-4 S. 32, T. 139, R. 80, the tract upon which he had settled and made his improvements, except that his dwelling house was a few feet outside of the western boundary of the public survey of his land.

Tenth. That thereupon he immediately removed his dwelling house across the line, and upon said land as so surveyed, and enlarged and improved the same, and has continuously occupied it as his home and sole place of residence to the present time.

Twelfth. That he has education and improvement of

Thirteenth. That no other work be made on any portion of this

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Eleventh. That he has *continuously* cultivated and improved said land, for *agricultural* purposes, from the date of his settlement thereon, in May, 1872, to the present time.

Twelfth. That he has expended several thousand dollars in such cultivation and improvement of this land.

Thirteenth. That no other agricultural improvements have *ever* been made on any portion of this land.

Fourteenth. That no "town site" survey, or other "town site" improvements, have *ever* been made upon any portion of this land.

Fifteenth. That he duly filed his D. S. upon this land, within the time prescribed by law, said D. S. being No. 179, Pembina series.

Sixteenth. That Jackman is, in all respects, a qualified pre-emptor under the laws of the United States.

Seventeenth. That he has acted bona fide, and in *all respects* complied with the requirements of the pre-emption law, in relation to this land; and,

Eighteenth. That no legal or equitable *adverse* claim exists thereto.

These facts, and each of them, are undeniably proven, and the record will bear us out in the assertion, that no attempt was made upon the trial to rebut or disprove them, and we appeal to it in all confidence.

Then *why* should the Hon. Commissioner take from Jackman his property, improved by his labor and means, and claimed and occupied by him in strict conformity to the requirements of law, and by a stroke of the pen award it to strangers? Surely not for any reason to be found in the evidence in the case, or in the law applicable thereto. It cannot be urged that Jackman *abandoned* his claim to the land, for the contrary fully appears; nor, that there had been "town improvements" on the land, for there is not a particle of testimony to that effect. Even the witness Sweet, with his manifest malice, and ready willingness to supply all required testimony, had not the hardihood to claim anything of the kind, and several disinterested and respectable witnesses, who intimately knew the land all the time since May, 1872, testify positively that there had never been any town improvements upon it, or nearer to it than Sec. 4, T. 138, R. 80.

We do not conceive that it will be seriously urged here, that Jackman being named by the Territorial legislature for some civil office, disqualifies him as a pre-emptor, and whether he did or did not perform the



duties of such office, is wholly immaterial to the issues here, and cannot affect his rights in this case. But the Hon. Commissioner says, "he (Jackman) assisted as a citizen in developing the town."

Admit it, what then? Was it a *crime*, the penalty for which is to deprive him of vested rights, and property legitimately acquired? Did he abandon his home on this land? Did he cease to cultivate and improve it? Did he do any act in so "assisting" which indicates bad faith or a want of good faith in the matter of his pre-emption claim? The *whole record* answers these queries in the negative, and must be received as conclusive. Had it been otherwise, the fact would have appeared in evidence, and so established.

The pre-emption laws, in their spirit and intent, are designed for the benefit and protection of *bona-fide* settlers upon the public lands, who go there to establish themselves in a home of their own. Such settler necessarily enhances the value of adjacent tracts, and promotes the development of uninhabited regions, and is deservedly entitled to that full protection in the enjoyment of his property and rights so acquired, which the law affords. Such settler having clothed himself with the rights which the law bestows, is entitled to, and will justly receive the *preference* over all other persons or corporations, viz: The right to enter the land upon which his home is situated, and whereon his cultivation and improvements have been made.

To claim this preference, it is necessary that the pre-emptor should be of the class designated;—that he should be the *first* bona-fide occupant of the tract; that he should give notice of his intention to claim the same, by filing his D. S. in the proper Land Office, within the proper time; that he should have a dwelling house upon the land he so claims; that he should occupy such dwelling house as his home; that he should not *abandon* his residence on the land so claimed; and that he should offer satisfactory proof of these conditions precedent, together with payment for the land, within the time prescribed by law. When these things appear affirmatively, the applicant becomes entitled to enter the land.

In this case the evidence abundantly proves that *all* the requirements of the law were fully complied with by Jackman; and upon what theory, or for what reason, the Hon. Commissioner denied him the exercise of a *right* which the law clearly gives him, we must again say, is beyond our comprehension.

The high character of Jackman appeared upon the trial, and the character and extent of his improvement of this land were so proven, nor was any evidence, by impeaching testimony, to their general good reputation.

To cite here at length would be unnecessary, knowing, as we do, from the record the facts, and the confidence, and appeal.

That the evidence in this case here claimed cannot be denied to Jackman to enter, and settle, made his home on this land, there can be no doubt. So be allowed the exercise of the right would be an unjust taking from the citizen of the land upon strangers, when he had discharged the full duty of his solicitation, or that the court, sent, saw fit to include in the pre-emptive town.

With as much justice, it would be land, because he has home on the States Court Commission. To inquire why *that* fact is not sufficient why his property, acquired by him, was confiscated, and passed to the State, is never likely to be, disqualifying.

If, including Jackman, the municipal law was authorized by the municipal organization, the laws of the United States, every citizen who participated in the community of

The high character and social standing of the several witnesses who appeared upon the trial, and testified unqualifiedly to the time, nature, character and extent of Jackman's settlement upon, and inhabitancy and improvement of this land, is such as to remove beyond suspicion any fact so proven, nor was any attempt made to impair the weight of their evidence, by impeaching their veracity, or showing anything derogatory to their general good reputation.

To cite here at length, the testimony of these witnesses, we deem unnecessary, knowing, as we do, that the Hon. Secretary will ascertain from the record the facts as they there appear; hence, we speak with all confidence, and appeal to it in confirmation of our assertions.

That the evidence and weight of evidence, sustains us in all we have here claimed cannot be successfully contraverted; that the law permits Jackman to enter, and so perfect title to the land upon which he has settled, made his home, and expended his labor and money at its invitation, there can be no doubt; that justice and equity demand that he should so be allowed the exercise of his legal rights, we earnestly insist. It would be an unjust and inequitable exercise of power, to arbitrarily take from the citizen the fruit of years of toil and labor, and confer it upon strangers, when no reason could be found therefor, except that he had discharged the functions of a civil office, imposed upon him without his solicitation, or that a legislative body, without his knowledge or consent, saw fit to include his residence within the territorial area of a prospective town.

With as much justice, could it be urged that Jackman cannot enter this land, because he has held the office and performed the duties of United States Court Commissioner? And we are at somewhat of a loss to determine why *that* fact is not assigned by the Hon. Commissioner as a reason why his property, acquired under the pre-emption law, should not be confiscated, and passed to Plummer, who, it does not appear, has been or is ever likely to be, disqualified by holding any civil office.

If, including Jackman's home within a tract of land, over which municipal law was authorized, or, if his holding the office of alderman, in a municipal organization, divested him of personal rights acquired under the laws of the United States, then, with the same reasoning and propriety, every citizen who participated in the administration of the local law governing the community of which he is a member, would be barred from the



privilege of claiming or asserting any right of pre-emption whatever.

We do not consider the case at bar, one in which it is necessary to determine who of the parties has the better or paramount right to enter the land sought, but rather one, wherein the *whole* and *entire* right, is shown by the evidence, to be with Jackman; nor for this, do we rely upon the "crooked" testimony of witnesses like Sweet; nor upon any doubtful or disputed evidence, but upon the uncontroverted facts established by the record, and the *best* class of witnesses.

We do not here seek a perversion of any fact, proven or pertinent, in order that Jackman's claim may be allowed, nor do we ask a special or novel construction of the law applicable to the facts, to enable him to enter this land, but we rely upon the merits of the case, as shown by the proof, and upon the application of the law thereto, as it has been interpreted and administered since its enactment. Jackman has observed the law, and complied with its requirements, and he now claims its protection; he seeks no violation of its letter or spirit, but asks only its just administration. With it, the ends of justice are accomplished; without it, perjury, fraud and conspiracy are rewarded. Where a right arising under a statute, is questioned or doubtful, it becomes the duty of the proper court or department to define and construe it, and this duty is discharged when the *intent* of the statute is ascertained, and found to confer or prohibit the exercise of the right claimed;—but here, the statute is plain and unambiguous, and the facts proven bring the applicant clearly within its provisions, and there is neither room or occasion for inference or construction.

The proper construction and application of the law, governing a given state of facts, is that which most harmonizes with its intent, and best promotes justice and the interests of society, and in this case, to give Jackman's property to the "corporate authorities" or Plummer, would be without precedent, and against that public policy, which all law is made to subserve; an injustice to claimant, and a violation of his right, honestly acquired and fully established.

The principles here contended for, are found in all the adjudicated cases, and are too familiar to require citation or argument. We think it will be conceded, that this is not a case, where the fixed rules of law should be ignored or disregarded, or one, where either adverse contestant presents equities justifying a departure therefrom, in order to defeat the *right* of

Jackman to enter this land under the pre-emption law; he is claiming the other.

We invite the closest scrutiny of the evidence here asserted as being proven, and the weight of the evidence, and the weight of the law applicable to the facts, and we are confident that we have sought the true principles enunciated in our mind, uniformly supporting the claim to enter this land, is complete.

But if we were to look for a defect, then, in that broad view of the law, in his behalf, *all* matters need to come into court with clear protection only where it merits, attempting no wrong, that, which of right belongs to this land claims it; no "Town Site."

We believe we are fully

First. That no part of the "Town Site."

Second. That Plummer has no right to enter the pre-emption laws.

Third. That Jackman has no right to enter the land under the

Fourth. That the decision is reversed, and Jackman all

We therefore respectfully will direct that Jackman

Jackman to enter this land. His duties and rights are plainly defined by the pre-emption law; he is shown to have performed the one, he is here claiming the other.

We invite the closest scrutiny of the record, as to *every* fact we have here asserted as being proved thereby, and respectfully submit that the evidence and the weight of evidence so appearing, fully sustains us. If mistaken in the law applicable to such facts, as we have here insisted, then we have sought the truth in vain, and read without comprehending the principles enunciated in the numerous cases examined, and which, to our mind, uniformly support our position, viz: That Jackman's *right* to enter this land, is complete in law.

But if we were to look for relief to equity, because of technical legal defect, then, in that broader field of justice, we could properly urge in his behalf, *all* matters necessary to entitle him to its interposition, for he comes into court with clean hands, seeking only his own, and invoking protection only where it should be afforded, resting his case upon its merits, attempting no wrong, and participating in no conspiracy to obtain that, which of right belongs to another. No other *bona fide* settler on this land claims it; no "Town Site" occupies it.

We believe we are fully sustained by the record, in these propositions, viz:

First. That no part of the land in controversy, was *ever* occupied as a "Town Site."

Second. That Plummer was never, *bona fide*, a settler thereon, under the pre-emption laws.

Third. That Jackman is shown to be entitled, and has the *right*, to enter the land under the pre-emption laws; and,

Fourth. That the decision of the Hon. Commissioner should be reversed, and Jackman allowed to enter the land.

We therefore respectfully ask, that the Hon. Secretary of the Interior will direct that Jackman be permitted to enter the land in controversy.

JOHN B. SANBORN, AND

OSCAR TAYLOR,

*Attorneys for Appellant.*



1876367

FIRST DIVISION

# St. Paul & Pacific Railroad.

Mortgage Trustees in Possession.

GENERAL MANAGER'S OFFICE,

Saint Paul, Minn.

187

M L	B L	
2687 94	6960.80	Jan
2224 86	7230.99	Feb
7966.72	9690.24	Mar
11075.65	12170.96	Apr
2145.90	10954.50	May
3336.86	8264.88	June
<u>29387.93</u>	<u>50272.37</u>	

~~Grack Main 18,000~~ ~~Aug~~ ~~June~~  
~~20 Feb 14,000~~ "  
 Put Six Month Steel Rails  
 to Amt 29600 Including Oct  
 40,000 New Lics  
 Main Line 16,000 New  
 Rails and about 60,000  
 New Lics, New Bridges

From Passenger House  
at Minneapolis, from Stone  
Convents &c, Also we  
have ~~built~~ six flat cars  
all new material  
Remainder Twenty House  
cars, 4 Passenger cars  
&c

Old rails on hand abt 10 miles

Steel Laid 65.  
Iron " 45.



**JOHN HART,**  
MANUFACTURER OF  
**CIGARS**

And Wholesale Dealer in Leaf Tobacco,

45 Sibley Street, - - ST. PAUL.

1876 JC25  
Majors Hill & Adams  
Left Beaver Cove  
1. Corde Was at charge  
Hart & Kender





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