

Again, Mr. Jackman states that he returned from the east to Fargo, *from the first to the middle of October, 1872.* (Testimony, p. 79). Now it is within the personal experience and observation of the R. & R. to whom this argument is addressed, that from the first of October to the middle of November, is invariably the pleasantest season of the year in which to travel or perform outdoor labor in that latitude.

Earth and sky are then permeated with the soft and hazy atmosphere of the far-famed Indian summer, with its almost irresistible outdoor attractions. Mr. Jackman *knows* that at no time during the entire year could he so pleasantly and comfortably have made the journey from Fargo to Bismarck as during the month or six weeks immediately following his return to Fargo.

His excuse of a rigorous climate, to justify his absence, is false therefore, as it is preposterous. But he says that he waited at Moorhead, for a *chance* to get through the next spring. (Testimony p. 61.) One is tempted to suggest that he might have gone back by the conveyance with which he proposed when he left his claim to take back his lumber; or if in the intervening two or three months his intentions as to lumber had been modified, his "little hand satchel" would hardly have formed an impediment to his returning on foot.

If railroad employees were scattered along the line the previous May, when he made the trip alone with his man McCarty, it is certainly presumable that they were no less numerous in the following October, when, as everyone knows, that division of the road was being constructed with all possible energy.

Again, if, as the evidence shows, it was possible without difficulty to make the trip from Fargo to Bismarck in *March, 1872*, why the necessity of waiting until *May* the next year before returning, as Jackman admits he did.

No gentlemen! The real difficulty lay in none of the excuses offered by Mr. Jackman. They are so vain and shadowy as to challenge only your contempt. The true explanation of Jackman's conduct, as I believe, is simply this:

At the time of leaving his claim in July, 1872, he was discouraged and well nigh disgusted. It was a doubtful problem whether his enterprise would prove barren or fruitful; there was just enough hope left of the former to induce him to leave behind sufficient evidence in the shape of his team and outfit, to indicate an intention to return; there was still sufficient prospect of the latter to lead him to consult with those *whose money was invested in the speculation*, and to place himself in a position to take speedy advantage of his facilities for learning the plans of the railroad company near its head quarters.

From this masterly position in the rear of his forces, he could advance or retreat with equal facility.

So that if another point for crossing the Missouri was determined upon, he could, in the language of his locality, "tumble" to the new order of things, with little loss or inconvenience; while on the other hand if "Thom's stake" should still remain firmly planted, he could return to his first claim and plead his good intentions and the force of circumstances to excuse his absence.

The sunlight is not clearer to me than this proposition, that it was only when, *and only because* the village of Bismarck in the spring of 1873 began to assume such proportions, as to make it manifest that the railroad *would have to come to it* instead of it going to the railroad, that Jackman determined to again return to his original claim.

The testimony of Wood, p. 12, which is nowhere denied by Jackman, clearly sustains this view. When Woods returned a few days before Jackman, his shanty was deserted and there was no visible sign of life upon the claim.

It is altogether too heavy a draft upon your credulity to ask you to believe that if the line of the railroad had been changed to the new route contemplated when Jackman left in 1872, and if in the meantime no town of Bismarck had sprung up, Jackman would ever have returned to the claim in dispute *to live*.

If not, then his absence clearly constituted abandonment, as that term is understood in practice under the pre-emption law.

III.

We come now to the transactions of Mr. Jackman, in respect to the claim in dispute, after his return to it, in the spring of 1873, and especially his agreements with Hill and Robbins.

The testimony on this point is conflicting and voluminous, and some of the surrounding circumstances, it seems to me, serve rather to darken than to throw light upon the transaction: still as regards the main issue in the case, whether or not Jackman ever agreed to convey any part of his claim to Hill and Robbins. I think the evidence, taken as a whole, leaves no room for reasonable doubt.

Here again we find Mr. Jackman standing upon the record, alone and unsupported, in open, defiant and irreconcilable conflict with a number of unimpeached witnesses.

It has been a matter of wonder to me how far, in this regard, the impudence of the man would carry him.

He has not deemed it sufficient simply to contradict the statements materially affecting his interests, but has persistently sought opportunity, and stepped out of his way in trivial matters, to place his oath upon the record in direct conflict with that of gentlemen whose veracity has never been, and cannot be impeached.

I think you would be justified in ignoring all his bare assertions and denials, and considering only such as are supported by documentary evidence, or corroborated by surrounding circumstances.

Counsel for Jackman, in his argument, which I have not as yet seen, may perhaps contend that the admissions of Hill and Robbins, as to their complicity in Jackman's speculations, throw such a shade upon their character, as to render their uncorroborated statements, as well as Jackman's, of little weight.

I have not been employed in this case to vindicate the reputation of Hill and Robbins.

I think it quite likely that they would consider any attempt in that behalf on my part, an uncalled for gratuity.

Their character may possibly be as dark, as the eloquent pen of my opponent will paint it, but if so, there is a strange ignorance of the fact in this community, where they have lived and been honored and respected for 20 years. No breath of suspicion has ever been cast upon their integrity or veracity, so far as I am aware, and I do know that in this city to-day, there are no two men whose character for truthfulness and strict integrity, stands higher. They are enterprising, money-making business men, and it would be strange, with all the irons they have had in the fire, if they did not sometimes get their fingers burned, but that they have been dishonest, or would for any consideration be untruthful, is an accusation this community would neither believe nor tolerate.

So much for this point, if it shall be raised.

But the real question at issue in this case is, not whether Hill or Robbins were *particeps criminis* with Jackman, in whatever wrong there may have been, but did Jackman agree with Hill & Robbins that they should share in the benefit of his pre-emption.

Hill and Robbins say positively that he did,—Jackman says positively ~~that~~ he did not.

Now giving these bare conflicting assertions and denials equal weight, and admitting, for the purposes of this argument, that the scales, so far as these are concerned, stand balanced, although there are two witnesses on one side and only one on the other, let us examine the other evidence in the case and the surrounding circumstances, and see where the preponderance will lie.

Upon his return to the claim in dispute, in May 1872, Jackman found the village of Bismarck assuming proportions which gave promise of future greatness. The mania for townsite speculation again seized him, and we find him almost immediately entering into negotiations with Hackett and Proctor, two pre-emptors, upon the townsite proper, whose claims have been since cancelled, to assist them in their contest, against his old adversary the L. S. & P. S. Co.

It would perhaps be immaterial to enquire what in point of fact was the arrangement between Jackman and these pre-emptors, were it not for the purpose of throwing light upon his tortious path thereafter? He says (p.p. 62 and 63) that he agreed to advance to these men, and did advance to them money to carry on their contests and pay for their claims, upon their verbal promise, that they would pay back double the money so advanced to them, "*as soon after they had proved up on their claims, as they were able*;" that there were no writings, of any description, between him and these pre-emptors, before the contest of their claims at Pembina in 1873, (testimony p. 79); that after these contests at Pembina, and after these pre-emptors, Hackett and Proctor, had proved up and paid for their land, this original agreement as aforesaid, with each of said pre-emptors, was put into writing, and also, at the same time, another and different agreement, between them each and Jackman was executed, by which they bound themselves absolutely, to convey to Jackman half of their respective claims. (Testimony p. 79.)

Mr. Jackman draws very heavily upon our credulity in asking us to believe this story, if there were nothing before us but its face.

Will Mr. Jackman or his exceedingly able and ingenious counsel inform us, why, if the agreement *before* the contest at Pembina was simply for *money*, there was any necessity for waiting until after the contest, before reducing it to writing?

Neither the letter, nor the spirit of the pre-emption law, would have been infringed by such an agreement as that, nor would the rights of the parties under the pre-emption law, have been in the least affected by a reduction of the contract to writing, either as between Jackman and Hackett and Proctor, or Jackman and Hill. Jackman and Hill in such a writing, would both have had a lasting memento of their generosity and veridancy in furnishing to a couple of impecunious claim holders, on a townsite, two or three thousand dollars in money, upon their bare word, that they would pay it back with 100 per cent. interest, when they felt in the humor, after the happening of what is always in such cases a somewhat remote and doubtful contingency. Whatever my friend Mr. Rice may think of the moral obliquity of my witness Hill, or I may think of the unscrupulous dishonesty of his client Jackman, I know we will mutually acquit them both of being fools.

But we have more than the face of Mr. Jackman's story on this point to consider. The other evidence in that regard, and the circumstances of the case are against him, (*Ex. 1 and 2, of W. H. Sanborn's deposition, p. 114 and 115,*) which Jackman claims, are simply the embodiment in writing of his previous verbal agreements, are by no means simply promises to pay money, they are bonds executed by Hackett and Proctor respectively, to pay a sum certain in 30 days, or to convey by good and sufficient warranty deed, *within said period of time*, the undivided one half ($\frac{1}{2}$) of their pre-emption claims. This then, from Jackman's own admissions, was the agreement *originally* entered into and I say that it was beyond all question in contravention of the provisions of the pre-emption law.

It was a mortgage or bond for deed, which have been expressly held to be inhibited. Copp's Land laws, page 817. But again, if we examine Ex. 3 of Sanborn's Dep., p. 117, and Ex. B. of Jackman's Dep., p. 122, which Jackman says (p. 121), were the other additional agreements made with Hackett & Proctor, *after* they proved up, and to which he had alluded in his former testimony (p. 64), we find that they were dated and executed at the same time as the other two agreements of which we have just been speaking, to-wit: Sept. 29, '73. It nowhere appears which of these sets of agreements were executed first in point of time, counting by fractions of a day. They were manifestly all one transaction.

What an unmitigated absurdity is here; of what possible use or value would the former set of instruments be with the latter in force?

Mr. Taylor, (p. 99), says that all these agreements, executed at Pembina, were drafted by him before the contest, and this is not denied or controverted by Jackman. Is it not manifest from the testimony of both Taylor and Jackman, that the difference of opinion among the attorneys as to what sort of instruments would be advisable, was the reason of there being two sets of papers, and not any difference in the understanding existing between the parties before and after the contest?

In view of these circumstances and the contents of these instruments, it reflects upon a man's sanity to ask him to believe that Jackman, from the first, did not have an understanding with Hackett & Proctor, that upon furnishing them money to carry on their contests and prove up on their claims, he should have a conveyance of half the land secured. This view will be still further strengthened by the inspection of the record, which will show that this pretended proof and payment by Hackett and Proctor at Pembina, was the merest sham, made in fraud of the rights of those contesting their claims, and was accordingly set aside by the Department.

The truth of the matter is, that Jackman has so frequently asserted in his affidavits before the Department at Washington, and elsewhere, that he had no contract with Hackett and Proctor to share in their claims, that he finds it necessary upon this hearing to maintain the same view. Moreover he is sufficiently shrewd to see that if he should admit having made just such an arrangement with Hackett and Proctor in respect to their claims, as we allege he afterwards made with Hill and Robbins in respect to his own claim, the probabilities in favor of the latter allegation would be greatly strengthened, and the glowing eloquence with which, in his affidavit of March 19, 1877, to the Interior Department, in opposition to this hearing, he sets forth the shock to his moral susceptibilities at the bare ~~intimation~~ that he could be guilty of such a transaction *intimation* with any one, would prove quite stale and flat literature for second reading. If the matter had come up for the first time on this hearing, he would have had too much sense to deny what we all know were the facts of the case.

We come now to the first connection of Hill and Robbins with the matter.

Jackman says that about the middle of September, 1873, he was approached by Hill in St. Paul, who requested the privilege of taking an interest with him, Jackman, in his money transactions, with Hackett and Proctor; that is, in the verbal promise he had from Hackett and Proctor, to pay him back double the money he should expend for them.

That after being thus solicited by Hill he (Jackman) entered into a verbal agreement with Hill to give him half of the money he, Jackman, was to receive back from Hackett and one-third of the money he was so to receive back from Proctor, in consideration of which, Hill promised to furnish Jackman "one-half the money expended in defence of Hackett and Proctor claims,"—(p.p. 63, 79 and 80;) that on September 17, 1873, he received from Hill, \$400.00, as first payment upon this agreement, (p. 65).

That thereupon he (Jackman) went to Pembina and expended in the contests of the Hackett and Proctor claims, \$2,100.00, in money, aside from his own service, (p. 64).

That afterwards, and about November 6th, 1873, Jackman returned to St. Paul and assigned to Hill, or for his use, in writing, upon each of the four instruments executed to him, as aforesaid, by Hackett and Proctor, one-half of his (Jackman) interest in those from Hackett, and one-third of his interest in those from Proctor, (p.p. 63, 79, 80 and 81); that afterwards the one-third interest he was to give Hill in the Proctor claim was changed to an equal interest (p. 71). That he (Jackman) never knew Robbins in the transactions, except as the partner of Hill (p.

80) and that, save as aforesaid, no agreement or contract with respect to said claims, or either of them, was ever made by him with Hill and Robbins, or either of them, and that his own claim, here in dispute, was not included in any of the negotiations or transactions with Hill and Robbins. Here, again I say, the testimony of unimpeached witnesses, and the circumstances of the case are fairly in his face; indeed, the absurdity of his story seems to have affected even his own well conned narration of it, and this, not upon cross-examination, but when he was in the hands of his own attorney; see the ludicrous confusion of his statements on p.p. 63 and 64. The logic of the facts so irresistibly pointed to the truth of his having, in the first place, agreed with Hill, not for an interest in money, but for an interest in the land *itself*, that we find him continually so expressing it, unconsciously and without intention, no doubt, but for that very reason, all the more naturally and truthfully.

On p. 63 he says: "I got the order in consideration for his interest, which he was to have in the *Hackett claim*, and what I was to get."

On page 64, he says: "I made the agreement to give him one-half of my interest in the *Hackett claim*, or what I was to have."

His counsel seems sometimes to have been affected by the same logic. See his questions on page 83, etc.

Again, it is plainly stated by Jackman that no change was ever made in his arrangement of 17th of Sept. with Hill, except that some time afterwards the interest in the Proctor claims was changed from one-third to one-half. On page 63, after stating what the original agreement with Hill was, Jackman says: "This arrangement was made in the fall of 1873. I made arrangements with him for some money, etc."

Again, on same page he says: "The arrangements in September and November were the same, only the assignment was made in November." At bottom of same page he says, in answer to the question, when the original agreement with Hill was made: "The commencement of it was made at the time when I received this letter of credit for \$400. It was completed when the assignment was made." Then, on top of next page, he gives as his corrected answer: "It was made when I got the \$400 letter of credit. The assignment was made in November." See also bottom of p. 64, and top of page 65, and page 79.

Again on p. 63 and 64, Jackman says, that he made the assignments on November 6th, to Hill, then correcting himself on p. 65, that he made them to John B. Sanborn, in his office in trust for Hill; that Robbins was also interested in them, and that both Hill and Robbins knew of said assignments being made, and were in and out of the office, while they were being drawn up. (p. 81.)

In these statements, Jackman is flatly contradicted by Hill, Robbins, John B. Sanborn and Walter Sanborn. Of course he will claim that they have all committed perjury, and that his is the only truthful story. But Mr. Jackman may as well understand, that he has overdrawn his account on that score, and that henceforth he must show something more to support his statements, than the mere fact that he makes them. See also the Proctor transfers, p. 116. It will be seen that he assigns *one sixth* instead of one third of the lands described in the Proctor instrument, and on same instrument, he also assigns, in his own handwriting, an undivided *one half interest* to John B. Sanborn.

I accept as true, as I believe all who read the testimony will, that neither Hill nor Robbins knew anything about these assignments, or ever had any interest in them, direct or indirect, remote or contingent. (Testimony pages 31, 32, 90, 91, 102, 103, 104 and 105.)

I believe the truth to be, as Jackman very well knows, and as the records will show, was fully disclosed in the affidavits made to the department in the fall and winter of 1873, to reopen the Pembina contest, that one *Brashear* was the party interested in those claims with Jackman, and for whose sole use and benefit the assignments on November 6th were made, and that he was the client of Walter Sanborn, whose name is not disclosed.

Now Brashear was register of the Pembina land office.

See also testimony of Mr. Robbins, on p. 103.

But accepting Jackman's statements in this regard to be true, he is convicted out of his own mouth, for if as he states, (*supra*) the arrangements with Hill in September and November, 1873, were the same, *only the written assignments of the interest were made in November*, (pages 63 and 79,) then on the 17th of September, 1873, and before the Pembina contest, Jackman had promised Hill one half, and one third of his interest respectively in contracts from Hackett and Proctor, to him, Jackman, to convey to him a half interest *in the land itself*, for that was the exact tenor of two of the instruments, an interest in which Jackman asserts, was assigned to Hill in November. And yet Jackman insists that prior to the contests at Pembina, and consequently on September 17th, he had never made any such agreement with either Hackett or Proctor.

Hill & Robbins both aver that Jackman first approached them in respect to these claims and urged and entreated them for some time to embark in the speculation with him, before they would consent.

In this they are strongly corroborated by Jackman's own letters, written at the time.

Exhibit "A" to deposition of Jackman on p. 122, which is dated at Bismarck September 7th, shows that the arrangement with Hill was entered into, as Hill states it was (p. 30) in the latter part of August or 1st of Sept., 1873. It also shows the utter falsity of Jackman's claim, that it was Hill who was desirous to become associated with Jackman, and not Jackman who was anxious to obtain the assistance of Hill, Exhibits 4, p. 107. Ex. 6 and 7, p. 109, and Ex. 10, p. 111, to Hill's 2nd deposition, also throw, strong light upon the same subject.

I should be lacking in fairness if I did not admit that an inference may be fairly drawn from the letter, Ex. "A" (*supra*), that it was *Jackman's understanding*, that the expenses were to be borne, in some proportion, between himself and Hill.

There would seem to be more conflict in the evidence on this point, than upon any other, though I cannot see that it is very material, except as affecting the veracity of Hill and Jackman.

Mr. Taylor says in his testimony, (p. 98,) that Jackman told him Hill was to pay ALL the expenses of the contests at Pembina, and it will be observed that Jackman, when subsequently on the stand, does not deny that he told Taylor so.

Then, again, the statement of Mr. Hill that he agreed simply to pay the money required to enter Proctor's claim at the land office, is corroborated by the fact that \$400, the sum paid, was exactly what was required for that purpose; and Jackman does not attempt to explain how that precise sum was fixed upon, if it was intended for any other purpose.

Again, it seems to me utterly inconsistent with the theory that Hill was to pay any more than \$400—that Jackman, *after the contest at Pembina*, should have written such a letter as Ex. "C" to Hill's first deposition (p. 36), in which nothing is said about expenses, or that in all the numerous letters which Jackman must have received from Hill, he is unable to produce a single one showing or tending to show any liability on the part of Hill over and above the \$400 paid.

I think it manifest, that whatever *Jackman's* understanding at first may have been, Mr. Hill never understood or supposed that he was to pay more than the \$400. Jackman says that upon his first visit to St. Paul, after the Pembina contests, he informed Hill respecting the contest and its expense; that all through that winter, Hill excused himself from paying his share of said expense, on the ground that he was short, and that all through the transactions of the next two years, he, Jackman, was trying to collect from Hill this balance due, and never has to this day got it.

Jackman's testimony also conveys the idea that Hill never denied or objected to his liability and indebtedness in that regard, but only excused himself on account of temporary inability to pay.

This is all positively denied by Mr. Hill, and he avers that Jackman never mentioned the subject of the Pembina expenses to him after that contest, or asked of him their payment in whole or in part, and I must say that the conduct and correspondence of the parties, and especially of Jackman, during the two ensuing years, support and corroborate the position of Mr. Hill on this point.

Hill nowhere appears in the light of a debtor, and Jackman nowhere in that of a creditor.

On March 4th, 1874, Hill, as Jackman would insist, had been his acknowledged debtor for a large amount for six months, and yet Jackman writes on that date as follows: "I want to give an order on you for \$30.53, to pay a bill at B., the order will not probably reach you until about the first of April. I am afraid I shall run short if I pay it myself now, and it is the only bill I owe in the country; write immediately if you will not honor the order."

This letter, it will be observed, was written immediately after the *new* arrangement with Hill & Robbins, in February of that year.

Again, on March 15th, 1874, he writes (Ex. 4 to Hill's dep. p. 108,) "I wish you would pay to ac't of Raymond & Allen at First Nat. Bank at St. Paul, \$30.53, and charge to me. My expenses getting here were nearly \$50.00, and I don't want to go broke here, or I would have paid it, must put on as good a face as possible."

Again, on April 18th, 1874, (Ex. 5 to Hill's dep., p. 108,) he writes asking Hill to send lumber, etc., part of which he, Jackman, would sell for Hill, and it would be a good investment.

Again, on May 1st, 1874, he writes, (Ex. 7, p. 109) "I have drawn



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