

on you for \$150. I think that amount will carry me through until June next, when I shall have plenty of funds of my own."

Again, after ordering a car load of feed on April 25th, 1874, (Ex. 9, p. 110) he writes on November 4th, (Ex. 11, p. 111) "Have got to sell feed to other parties, *and will remit as soon as sold.*"

On November 11th, 1874, when Hill had been owing him as he says, for over a year; he writes to Hill (ex. 12, p. 112). "Government owes me over \$300.00 now, but God knows when I shall get it, and I want you to back me until I do; I know I have your permission to draw on you, but I don't like to do it so often without keeping you posted on what I am doing with it, so that there can be no misunderstanding; we shall have to carry quite a load all winter, and I shall make it as light as possible."

On January 20th, 1875, he says: (ex. 13, p. 113,) "I havn't heard a word from my vouchers yet, and shall have to draw on you again, but I hope it will be for the last time."

All that I can say is that these letters are unique and interesting specimens of correspondence between an importunate creditor and a tardy debtor, and should be incorporated into the next edition of "The Complete Letter Writer."

Mr. Hill avers that the original arrangement between himself and Jackman was in respect to the Proctor claim alone, and that this arrangement remained unchanged until January or February, 1874, when, as Hill and Robbins both testify, a new arrangement was entered into between them and Jackman, by the terms of which Jackman was to give to Hill & Robbins one-half of his interest in the Hackett & Proctor claims, and a half interest in his own claim, in consideration of Hill & Robbins advancing half the cost and expense of proving up and disposing of the contests on all three claims.

All this Jackman denies, and especially insists that his own claim was never included.

Here lies the main question, on this branch of the case; charity finds no room here for mistakes or forgetfulness. Either Jackman, or Hill & Robbins, have deliberately sworn to what is false.

When a man undertakes to act the scoundrel in a business transaction he should be careful what he writes, and should keep copies of his letters.

Here again I must appeal from the oral testimony of Jackman on the witness stand, to the silent but more persuasive testimony of his letters. There are two of these silent witnesses, cold and inflexible they may be, but they are neither biased by sympathy, nor warped by self-interest. They tell, in words that cannot lie, the facts *as they then were*, and not as subsequent perfidy and selfishness would wish to have them.

That Jackman, himself, realized the fact that these letters branded him as a perjurer, and his pre-emption as a fraud, sufficiently appears from his shameful and dastardly attempt to change their phraseology, after they had been introduced in evidence, of which I shall have occasion to speak further on.

The first of these letters is exhibit 1, p. 107, of Hill's deposition, its correct reading when introduced in evidence being found on p. 122, as Ex. "A," to Jackman's deposition.

The portion of the letter bearing upon the question we are consider-



ing, reads as follows: "I have just returned from up river. Am much disappointed in not hearing from you. The case of Proctor's comes off on the 18th, at Pembina, and I am depending on you in the matter. Don't fail me now, if you can possibly help it, for I think we have a good case, and it is too late for me now to make arrangements with any one else. There is money in it for all of us, and we must put it through promptly."

There is no need for extended argument upon this. It simply leaves no room for doubt that Proctor's case *alone* was involved, as between Jackman and Hill, at the Pembina contest. The other letter is Ex. 6 to Hill's deposition, p. 109, written April 28, 1874, shortly after the new arrangement with Hill & Robbins. It reads as follows:

"This is the fourth letter I have written you and received no reply. You or D. M. Robbins should have been here ere this, if you *mean business*. The claim which I spoke to you about, which joins mine, must be looked to soon, to be anything out of it. It will not take any more to fight the two of them than it will to fight mine alone, and it ought to be attended to at once. I don't think you fully appreciate the situation. If you have the funds to spare, you cannot do better than to go in here. It is a dead sure thing if you do not put it off too long. Something must be done at once, come up here immediately if you mean business. Let me hear from you."

This letter to my mind conclusively shows two things:

*First.* That there was a new arrangement, entered into subsequently to that of Jackman and Hill at the Pembina contest, and

*Second.* That this new arrangement included Jackman's own claim.

If there were no new arrangement after the Pembina contest, what possible significance could there be to the sentence, "You or D. M. R. should have been here ere this, if you mean business?" or, "I don't think you fully appreciate the situation," or, "If you have the funds to spare you cannot do better than to go in here," or, "It is a dead sure thing if you do not put it off too long," etc., etc.

They had already *meant business*, and had their contract in writing in Sanborn's safe keeping, and had already *gone in* without any procrastination before the Pembina contest, according to Jackman the witness and affidavit maker.

Again, the letter could not well express in plainer language, the idea that Jackman's own claim was included.

"The claim I spoke to you about, which joins mine, must be attended to, to be any thing out of it; *it will not take any more to fight the two of them than it will to fight mine alone*, and it ought to be attended to at once. If you have the funds to spare you cannot do better than to go in *here*; come immediately if you mean business."

How Jackman longed to have that word "*there*," instead of "*here*"—so that he could claim the "going in" was meant to refer solely to the claim adjoining his. See his testimony as to altering this word, p.p. 119, 121 and 122.

Jackman says in his testimony (p. 121) that by this claim "adjoining his," he referred to the east 80 acres, claimed by Plummer.



It will be remembered that during Jackman's absence from his claim in 1872-3, Plummer made a pretended pre-emption settlement, embracing the north eighty acres of Jackman's claim in dispute, and an adjoining eighty, which has since been awarded to Plummer. At the time of the alleged contract between Jackman, Hill and Robbins, in February or March, 1874, Plummer was contesting Jackman's right to the eighty acres above referred to, of the claim here in dispute, under his, Plummer's declaratory statement thereon, filed June 24th, 1873, (p. 58) and said contest was actually heard and determined at the same time as the contests of Hackett and Procter, in the summer of 1875, and as Hill and Robbins claim, the expenses of all three of these contests were borne by them without distinction.

Now the plain and unmistakable interpretation of this letter is as follows:

You Hill and Robbins have agreed to share equally in the expense of securing my claim and Hackett's and Procter's. The principal contest on my claim is that of the north 80 by Plummer. He has in his pre-emption claim another 80 adjoining said north 80. I believe we can beat him out of his whole claim, embracing both the eighty's, and it will not take any more to fight the two of them, than is his claim to his whole 160, than it will to fight his claim to my 80 alone, the expense of which latter fight you have already agreed to share. "*It ought to be attended to at once.*"

Of course it ought. If a man is going into a fight like that, why not go for everything in sight.

I am curious to see what other interpretation of this letter Mr. Jackman's very able and ingenious Counsel will be able to invent.

Another circumstance going strongly to corroborate Hill and Robbins' statement that Jackman's claim was included, is the fact, appearing in evidence all through the case, that the money, implements, provisions and supplies furnished by Hill and Robbins, were used to improve, cultivate, prove up, pay for and defend all three claims, without distinction.

But Mr. Jackman says that he was a monied man himself, and did not need to rely on Hill and Robbins for means to improve and secure his own claim.

It is enough to answer, that if he had the means which he alleges were at his command, he practiced upon Hill and Robbins during two or three years the most shameful deceit, which, while it accords very well with his character, speaks very ill for his honesty.

Personal poverty was, as I have shown from his letters, his plea to Hill and Robbins all through the years 1874 and 1875 for drawing so heavily upon them.

He had an abundance of money of his own, with which to pay his way to Bismarck in the spring of 1874, when Hill and Robbins say they paid him money for that purpose, and besides being then Deputy U. S. Marshall, he had a pass on the road, so that the trip was comparatively inexpensive, (Jackman's testimony, p. 65.)



Yet we find him writing from Morehead March 4, on his way out—(Ex. 3, p. 107), begging Hill to pay a bill for him of \$30 53—on the ground that if he paid it himself he would run short.

And again on March 15, (Ex. 4, p. 107), he informs Hill that his expenses going to Bismarck were nearly \$50.00 and begging Hill to pay a bill for him (Jackman) so that he might not go broke at Bismarck.

All through his letters we find him begging money and supplies from Hill and Robbins, for the express and avowed purpose of improving and securing his own claim. I do not understand him to deny *now* that a large amount of the means, furnished by Hill and Robbins went to the improvement, etc., of his own claim, and I am inclined to think that, for the purposes of this hearing, the *fact* that his own claim was put into the “pool” with Hackett’s and Proctor’s, so far as the expenses furnished by Hill and Robbins were concerned, is of much more significance than his present statement that he did not *need* to put it in.

The supplies mentioned in Ex. 4, 7, 8 and 10 of Robbins’ deposition pp. 54 and 55, were used by all three claimants, Hackett, Proctor and Jackman, as the latter admits in his testimony p. 70.

The wire, staples, stretchers, etc., for fencing (Ex. 5. p. 54) were used on all three claims.

The wagon and harness (Ex. 4 and 6, p. 54,) were for Jackman’s use on his claim.

The desks and chairs and comforters were for Jackman individually, (Ex. 4 and 9, pp. 54 and 55.)

See also Jackman’s testimony pp. 70 and 71, and his letters Ex. 2, p. 107, Ex. 3, p. 108, Ex. 9, p. 110, Ex. 10, p. 111, Ex. 11, p. 112, Ex. 12, p. 112 and Ex. 14, p. 113.

The three contests against Hackett, Proctor and Jackman were tried at Bismarck in June 1875, as *one suit*, evidence being taken in either interchangeably as convenient, and the expenses, attorneys fees, witness fees, printing, etc.” incurred in all three contests, were borne without distinction by Hill and Robbins.

(See evidence of Hill and Robbins, also of J. B. Sanborn, p. 57, and of Taylor, p. 96.)

Jackman claims that he paid Taylor \$100.00 for fees upon the separate contest of his (Jackman’s) claim, but this is shown to be false by the testimony of both Robbins and Taylor. It was manifestly for attending to the contest of Wolf’s claim, that he paid Taylor this \$100—and he got the money from Wolf to pay it with.

(See Taylor’s testimony, p. 97, and Robbins’s testimony, p. 104.)

*Query:* How many pre-emption claims was Jackman interested in around Bismarck, anyway?

The testimony plainly shows, also, that Robbins furnished the money that went to the R. and R. for their fees in the three cases. (p. 103).

Hill and Robbins were even drawn upon to buy off one Crow, who had filed a pre-emption claim on Jackman’s 160 acres.



Indeed, from first to last, throughout the entire dealings of the parties, no distinction was made between the three claims in obtaining money from Hill and Robbins, or in using it.

It would seem to be almost an abuse of the privilege of reasoning to further argue the proposition that such interest as Hill and Robbins were to have in one of these claims, they were to have in all three of them; they formed a "*pool*" in which Jackman is trying now to enact the role of the big fish swallowing the little ones, just as he did in the "*pool*" of the original five in 1872.

It appears from the evidence that during the years 1874 and 1875, a continued and voluminous correspondence was maintained between Hill and Robbins and Jackman. Now if Mr. Jackman's story of the transaction is the true one, it is incredible that it should not have been disclosed, or at least shadowed forth in some of the letters received by him from Hill or Robbins. Their letters, taken as a whole, must, at least, have been consistent with his theory, if it is the true one.

No one ever appreciated the necessity of corroborating testimony more keenly than did Jackman in this hearing, and if he could have produced a single letter from Hill or Robbins, tending, even remotely, to establish his theory of the case, it would have outweighed all the other testimony introduced in his behalf. Mr. Jackman and his counsel appreciate this to the fullest extent.

Nay more! If by introducing *all* the letters received from Hill and Robbins, Jackman could have shown that, taken as a whole, such letters were not positively repugnant to his story, it would have proved invaluable testimony.

Not a single one of said letters having been introduced, you are justified in the conclusion, nay! you are driven to it, that these letters would have clearly demonstrated, as we know they do, the utter falsity of Jackman's story.

The statement and settlement of account between Hill and Robbins, (Ex. 11, p. 55,) was introduced for the purpose of showing, and it does clearly show, that on November 10th, 1874, when it was made, *Hill and Robbins*, at least, understood that Jackman's own claim was included in the arrangement. The settlement in express terms (p. 55,) states that it is on account of Hill and Robbins, interest in lands at the terminus of the Northern Pacific Railroad, "pre-empted by John J. Jackman, Edmund Hackett and John W. Proctor." This it will be remembered, was before there was any difficulty or misunderstanding between Jackman and Hill and Robbins, and while the arrangement, such as it was, remained in full force. This being the understanding then of Hill and Robbins, is it not perfectly manifest that their letters *at that time* to Jackman, must have so expressed it.

#### IV.

I suppose I may as well pay my respects here to that generous friend of Jackman's innocent boyhood, Mr. Joseph R. Bodwell.

We rarely see, outside of the novels, such a story as Jackman tells of this fatherly friend, leading him to school through the rural byways of New England and following him through life with letters of credit for



any pressing emergency, and with acceptances at sight for every speculative venture.

What a beautiful picture of prodigal munificence on the one hand, and of unquestioning dependence upon the other!

"I would feel as free to draw upon him," says the gushing Jackman, "as upon my own father."

A little freer, one would suppose, for his bank account shows no drafts upon his *truly* paternal relative.

The world of mankind is found by the practical man, and especially by the lawyer, to be so uniformly selfish that it saddens one to think there might not be one such portrait, with nothing to mar its beauty. But truth compels me to say, that the "unities" would have been better preserved, the shading and background would have been more harmonious, and there would have been a rounded completeness so to speak, to the whole picture of this man Bodwell, as drawn by Jackman, had he and his counsel not refused to produce this fabulous "*letter of credit*," or to permit it to go in evidence, while admitting it to be then in their possession.

(See testimony p. 82.)

Of course it was not withheld from my inspection, and that of the officials who are to decide this case, without imperative reasons. My friend Mr. Rice is too able an attorney, and his client Jackman is too skillful a manipulator of testimony, not to realize the damaging effect of this refusal (p. 82) upon their case.

I am inclined to think that if we step from the region of Jackman's romance, to the plane of common sense, we shall find that this Mr. Bodwell is after all, a man of like passions and motives with the rest of us.

He is, I am informed, a very respectable, and at the same time a very active, energetic business man, *rather given to speculations in lands*, in which most of his wealth consists.

He *never* gave Jackman liberty to draw upon his *friendship alone*, for funds *ad libitum*.

I have not the slightest doubt that he has been from the very first, and is now, interested with Jackman, as a partner, in all his Bismarck speculations, including his preemption claim in dispute, and that the reason why this letter of credit was concealed, is because it would have disclosed that fact.

Again, I would ask, what has become of the affidavit of this Mr. Bodwell, referred to in, and filed at Washington in the Interior department, with, Jackman's affidavit of March 19th, 1877, in opposition to my motion for this hearing?

On our application to the department for copies of all the affidavits etc. used by Jackman on said motion, it was found that this affidavit of Bodwell's, had been removed from the files by some one and could not be found, by whom removed, the clerk in charge of the papers professed to be ignorant.

Is it possible that Mr. Bodwell, who may be a man of integrity, told the truth in this affidavit, as to his connection with the transaction, and that the truth in that regard is what Mr. Jackman is most anxious should not be discovered upon this hearing?



I do not wish to be understood as reflecting upon Mr. Bodwell in anything that I have said. I presume that he is a man of integrity. The fact of his sending from his own immediate neighborhood in Maine to St. Paul and Bismarck, so eminent and altogether honorable an attorney, as Mr. Rice, to conduct this hearing for Jackman, speaks as strongly for the personal respectability of Mr. Bodwell, *as it does for his personal interest in the subject matter of this hearing.*

## V.

It has been plainly intimated upon cross-examination, that counsel will attempt to disparage the testimony of Messrs. Hill and Robbins, by showing certain discrepancies between it and their respective affidavits, made and filed in the Department at Washington, upon my application for this hearing.

It will doubtless be urged against both these witnesses, that in their *affidavits* they spoke of the money, etc. therein specified as having been expended in the improvement, defense, etc. of Jackman's claim, without mentioning Hackett's or Proctor's.

This is true. I drew those affidavits, and I did not deem it necessary or advisable, in such a purely *ex-parte* application for a hearing, to amplify and detail all the minute circumstances of the case, which must be disclosed upon the hearing, where witnesses are sworn to relate the *whole truth*.

It was *true*, as stated in those affidavits, that Jackman had made such an agreement as to his own claim; it was altogether immaterial, *for the purposes of that motion*, that he had included other claims with his own.

It was then claimed, and is still claimed by Hill and Robbins to be true, that at least as much in amount as was mentioned in those affidavits, must have been expended by Jackman on his own claim, or appropriated to his own use, and that the difference between that sum and the whole amount expended, as shown by the testimony, is all that could have been legitimately used for the Hackett and Proctor claims.

It is true that Jackman, by including all the money spent by him for all purposes, during the years 1874 and 1875, has shown the use of a large amount of money, besides that furnished by Hill and Robbins. (See testimony, pages 84 to 88.)

But with the exception of a few items, there is nothing but the bare and worthless statement of Jackman, to show that this money was used under any agreement with Hill and Robbins, or in connection with the claim in dispute. Much of it may have been so used, and may not, and if the greater part was used, as Jackman says, in connection with the Hackett and Proctor claims (p. 66), then there is all the more reason for supposing that the greater part of the money furnished by Hill and R., was used by Jackman in connection with his own claim.

It was entirely immaterial, for the purposes of the motion in which those affidavits were used, whether any *separate* and *distinct* sum had ever been apportioned by the parties for the defense of Jackman's claim *alone* or not.



Again, it is objected that the affidavit of Mr. Robbins states that certain money was expended at the contest of Jackman's claim, at Pembina and Bismarck, while there never was any contest of said claim at Pembina.

Mr. Robbins says (p. 48), that he noticed this mistake in the affidavit and asked to have it corrected. It's not having been corrected in accordance with such request, was an act of unintentional omission on my part, and is no fault of Mr. Robbins.

That this was simply a mistake as to Pembina, sufficiently appears from an inspection of the affidavit itself, for further on, the affidavit states that the agreement pursuant to which said money was expended, was made about March 1, 1874, whereas there were no contests at Pembina after September, 1873.

The only discrepancy found in the affidavit of Mr. Hill, is the statement that Jackman represented to Hill early in 1874, that his (Jackman's) claim was being *bitterly* contested, whereas in his testimony Mr. Hill states that Jackman told him it was then *slightly* contested.

When it comes to impeaching a witness on the significance of an *adverb*, the case is decidedly weak; I presume I shall have to admit that in drawing that affidavit, I should have been more particular to correctly qualify the important word: "*contest*."

The fact is, as every lawyer knows, that it is not possible, and is never attempted or expected, in drawing such affidavits, to reach the nice accuracy, or comprehensiveness of statement, which is generally attained in an examination and cross-examination of the witness upon the stand.

I should even be inclined, upon this ground, to excuse the still broader and more palpable discrepancies between the testimony of Mr. Jackman, and his *affidavit* of March 19th, 1877, hereinbefore referred to, and now on file in the Department, were it not that I think we are entitled to invoke the medical maxim, "*similia similibus curanter*."

Jackman, in said affidavit, uses the following language:

"That he has never received one dollar from either Hill or Robbins, for the purposes alleged, and has never used any funds received from them in the improvement or cultivation of his said claim as alleged, or for his own personal use."

Now, this is wholly and unqualifiedly false; it is not merely a stronger expression, or a different adverb, than the facts would justify; it is telling a downright untruth, for Jackman all through his testimony admits the fact, which we have positively proved, that he used large sums of the money, and much of the supplies, furnished him by Hill and Robbins, for his own personal use, and in the cultivation and improvements of the claim in dispute.

(See citations of testimony supra.)

Again, Jackman says, in this affidavit, referring to the non-payment by Hill, through the winter of 1873, of his share of the Pembina expenses, "I did not then need the balance due."

Again, he says that he received in 1874,-5, from Hill or Robbins, only about *half* as much as he advanced in defending the claims of Hackett and Proctor.

His testimony on this hearing shows these statements to be false.





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