Much more that I could specify, is clearly inconsistent with the facts as proved on this hearing, but I have set forth sufficient to show, that like, and even greater inconsistencies afflict his own affidavit, than he can charge upon ours.

But I have more than this to say of Mr. Jackman's affidavit of March 19th.

It manifestly was written by no third party. It speaks in the *first person* all through. From an inspection of it, I can readily believe Jackman's story that he had once been a journalist.

His utter scorn at the bare intimation that *he* could possibly be a fraud, is depicted with a *cheek* that deserts none of his craft, even in the most trying situations.

But will Mr. Jackman's sensitive soul pardon me the offense of asking him what has become of "*Ex. B,*" referred to in his said affidavit, as follows?

"D. M. Clough is merely the attorney acting for J. J. Hill, D. M. Robbins and Peter Mantor, (Receiver of the Bismarck Land Office,) who have entered into a conspiracy, as I verily and truly believe, to rob me of my home, *the accompanying letter marked Ex. "B,"* shows such to be the case, if other proof were wanting."

Now this pretended letter, ("Ex. B,") has also *been purloined from the files of the Department at Washington,* and when we asked for a copy of it, the original could nowhere be found, or its loss accounted for.

Jackman has given his *veritable belief,* and now I will give mine.

I verily believe that the letter referred to was a forgery, manufactured by Jackman for the occasion, and which he dared not leave upon the files for our inspection, after it had served his purpose.

I have the most positive assurances from all the parties implicated in Jackman's charge, that no such letter was ever written.

The charge of conspiracy is false in every particular, as its author is false.

If such a genuine letter had existed, it would have been worth more to Jackman, as evidence upon this hearing, than all he has introduced. It would have simply concluded the case against us.

He knows this well, and so does his counsel; and while I would exonerate Mr. Rice from any complicity in such miserable chicanery and fraud, I say that Jackman is abundantly capable of it, as his shameful conduct on this hearing discloses.

One word more in respect to these affidavits and exhibits filed by J. at Washington, in opposition to my motion for this hearing.

From the tenor of the order of the Hon. Secretary of the Interior, appointing this hearing, we had supposed that all the affidavits, etc., Jackman's as well as ours, would have been transmitted to the land office at Bismarck, and I expected to find them there for use and reference upon this hearing, but for some reason, only the moving affidavits of Hill and Robbins were sent, and we were obliged to call for certified copies of Jackman's from Washington, with the success hereinbefore indicated, and even such partial copies as we could get came too late for introduction as evidence upon this hearing.

VI.

I would gladly have spared my opponent Mr. Rice, the mortification of such an exhibition of depravity on the part of his nominal client, Jackman, upon this hearing, as appears in the testimony at p. 119.

The circumstances were briefly these:

I had introduced in evidence, as part of Mr. Hill's deposition, two of Jackman's letters, Ex. "A," p. 122, and Ex. 6, p. 109.

These letters as we have seen, tell heavily against Jackman. After they had been introduced in evidence, and Hill had left the stand and room, Jackman asked permission of me to copy them. I gave it unhesitatingly, and placed the letters in his hands, his attorney being present. A short time after and while the letters were being copied, I was called temporarily from the office, and left the letters there in Jackman's possession, trusting implicitly to his honor. In a short time his counsel, Mr. Rice, also left the office for a few moments, and when thus alone, Jackman altered the letters, as disclosed on p. 119. On my return I immediately discovered what Jackman had done, and called the attention of his attorney to it.

It is true that Jackman afterwards humbly confesses the crime under oath, but even this confession is tainted with its author's irresistible propensity to prevaricate.

He changed Exhibit 6 as he altered the other letter, *and he knows he did*, and moreover, I say that this confession was only wrung from him after he ascertained that I had taken the precaution to have true and carefully compared copies of the letters made, before they were introduced in evidence, and was prepared to prove his offense beyond the shadow of a doubt.

The honor and integrity of his counsel, Mr. Rice, is to be thanked for this confession, and not any genuine repentance on the part of Jackman.

I cannot refrain from expressing here the high esteem in which I hold my opponent, Mr. Rice, his gentlemanly qualities and fine sense of personal and professional honor exhibited all through the trial of this case, shine all the more conspicuously in contrast with the low cunning, and utter disregard for truth and decency, displayed by his client, Jackman.

I have no doubt that it was a consolation for the counsel to reflect that his connection with this fellow Jackman was at most a temporary and nominal one, and that his real client, Bodwell, was another sort of man.

In respect to this conduct of Jackman's, the question for you gentlemen, and for the honorable commissioner to consider and determine, is:—

What is the unsupported testimony of a man capable of such dishonesty worth, when given in the direction of his own self interest?

I say that it is absolutely worthless; that the universal experience of mankind, and your own observation through life, must have taught you, as it has every observing man, that any one who could be guilty of such dastardly meanness and perfidy as Jackman has exhibited in this case, would unhesitatingly swear to a lie, if necessary to save imperiled interests.

And yet, you are asked by counsel, against the great preponderance of testimony and against the circumstances and probabilities of the case, to decide it in favor of Jackman, upon the faith *alone* of his own uncorroborated, improbable and flatly contradicted testimony.

I say that he has shown himself to be a rascal, that his story is an absurdity, and his case a fraud, and I believe it should and will be disposed of accordingly.

I surmise that an attempt will of course be made to enlist sympathy for this man. It would be such a hardship, they will say, for him to lose his improvements, etc. I answer that the ways of the transgressor are always hard, and it is a part of the Almighty's economy that they should be so, *here* at least if not hereafter.

Besides I am not at all certain, if the laws of Dakota provide for it, as they do in Minnesota, that Jackman could not remove his improvements, if beaten in this contest; see act June 1st, 1874, 18 U. S. Stat. p. 50.

Moreover, these improvements were made, not in the ordinary course of pre-emption and in good faith, but as the exigencies of his pre emption contests dictated. This is shown by the time and manner of their commencement and progress.

In a decision found in 2nd Lester p. 298, the Hon. Secretary Interior says:

"I have no such judicial function or authority as would justify me in refusing to execute the law, or to execute it in a sense not authorized by its terms, because I may think it in conflict with the fundamental principles of equity and justice."

Yet this is precisely what is asked by Jackman in this case. The evidence shows that not a single *bona fide* step was taken by him *before his claim came in contest.*

He had not only failed to comply with the provisions of the pre-emption law, but had frequently transgressed its plain requirements, and by any authorized or proper construction or execution of said law, he acquired no right whatever under it, to the land

But *after* his falsehood and his fraud had been brought home to his door, he then commenced with commendable energy to improve and cultivate his claim, and has continued in that course ever since.

Now because, under these circumstances, he exhibits at this hearing proof of somewhat extensive and valuable improvements on the land, counsel contends that it would be inequitable, and a great hardship to deprive him of all he has done, and entail upon him so heavy a loss.

I answer, that the law provides for no such case as this, and is susceptible of no such construction as is demanded.

Counsel is asking the R. and R. and commissioner, to interpolate new provisions into the law and not to interpret and execute it, as made by Congress.

You are asked to say that when Congress declared, that anything done by the pre-emptor, inconsistent with his oath that the claim was taken and held for his own exclusive benefit, etc., should deprive him of all right to or interest in the land, it did not mean that, but it meant

to say, that if the pre-emption claimant, when accused of or detected in fraud, would thereafter proceed to make valuable and permanent improvements on the land and to continuously reside upon it, his claim should not be rejected.

I say there is no power to so widely depart from the plain provisions of the statute; the language of the pre-emption law is unambiguous, and its intent is plain. In such case, no room is left for construction, all that remains is to give it effect, whatever may be the opinion of its wisdom or policy, or however great the alleged hardship in individual cases.

See Edneck's case, 5 *Rep*, 445.
1 *Term Rep.*, 51.
Fisher vs. Blight, 2 *Black.*, 389.

But I believe if the law were ever so pliable, no just judge would bend it in favor of Jackman, as he has exhibited himself. I can *conceive* of this case, under circumstances which would invite sympathy for Jackman, but as the matter stands every such sentiment is repelled, and only abhorrence and disgust remain.

He has deliberately placed himself without the pale of sympathy as well as credence, and it is only another illustration of his cool effrontery to ask it here.

He has abused the bounty of every benefactor who has aided him and betrayed the confidence of every friend who has trusted him.

To sum up his connection with this case; he has been from the start a uniform and consistent fraud. In his personal and business relations with his associates, in his affidavit of March 19th, already referred to, and all through the trial of this hearing, his brazen impudence, low cunning, meanness, dishonesty and shame, shine and stink, and stink and shine, like Randolph's rotten mackerel by moonlight.

VII.

There remain only a few legal propositions to consider:

First.—It may be claimed, that admitting the story of Hill and Robbins to be true, there was no such transfer of interest as would invalidate Jackman's claim; that there being no writings the alleged agreement was obnoxious to the statute of frauds.

I answer; that any *contract* or *agreement*, whether in writing or not, by which a third party is to have any interest in the land, is equally void. Its being in writing does not make it any the more, nor any the less void.

This is a verbal agreement with Hill and Robbins, it is true, but it was followed by such part-performance, that if not void otherwise, it could probably have been specifically enforced, but whether it could or not, it was equally against the law.

The theory of the pre-emption law, manifestly is, that any act on the part of the pre-emptioner which would interfere with his *truthfully* taking the required oath shall invalidate his claim.

In a decision of the Commissioner, 2d Lester p. 396, it is held:

"That any transactions which would render a claimant under the pre-emption law unable to take the oath prescribed in the thirteenth section of that act, would necessarily defeat his application to enter."

Fourth opinion Attorney General, p. 558.

See section 2262, U. S. Statutes, p. 417.

In decision No. 369, Copp's Land Laws, p. 312, it is held: that a contract for the sale of growing trees, which the purchaser was to cut and remove as soon as the vendor obtained a patent, is such a contract as is inhibited by the act.

See also No. 370, Copps, p. 312.

Killers vs. Eastley, 2 Abb. C. C., p. 554.

1 Dillon, 281. Case of W. O. Grewell, No. 647, Copp. p. 814.

No. 436, (Secretary Interior) 1 Lester, p. 390.

Second.—As to the *mala fides* of *Jackman* in first settling upon and afterwards attempting to secure the claim for *speculative* purposes.

See Harkins and wife vs. Underhill 1 Black. 316.

Myers vs. Croft 13 wall, 295.

In No. 441, 1 Lester p. 393, the preemptor Jacobs had, *previous* to his preemption claim in dispute been a member of a "*claim club.*"

The Hon. Secretary Interior says:

"This complicity of said Jacobs with others, engaged in an unauthorized appropriation of, and *speculation* in the public lands, and his acts as a member of such organization; render it proper that the strictest rules of the law should be applied in adjudicating his alleged rights. * * * Stronger proof of the honest intent of said claimant must be produced, than would be required in ordinary cases."

To the same affect see:

No. 445, 1 Lester p. 396.

No. 446, 1 Lester p. 397.

No. 450, 1 Lester p. 399.

Third.—It may be claimed by counsel that this being a "Suspended Entry" all the equities of the case must be taken into consideration.

But I claim that this is not a "Suspended Entry" in the sense of that term, as used in the statutes and rules of the general land office.

"Suspended Entries" under the act of June 26th, 1856, apply only to cases where, through ignorance, accident or mistake, some minor provision of the law has not been complied with.

I claim that at the time of granting this hearing, the opinions and decisions sustaining Jackman's entry, had not passed into a final act, that is, no complete right had been vested under them.

They remained at the commencement of this hearing, things *in fieri*, and so did the question of Jackman's right to the land.

His rights therefore are to be tested according to the provisions of the preemption law, as it reads, and not otherwise.

The law provides in plain and explicit terms, that the land shall not be settled upon or improved by the claimant with a view to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; That the claimant, after so taking the land shall not abandon it, but shall continuously reside upon and improve it, and lastly; that no contract or agreement shall be *directly or indirectly* made

by the preemptor, before receiving title from the Goverment, by which the title so to be recieved, shall inure in whole or in part to the benefit of any person except himself.

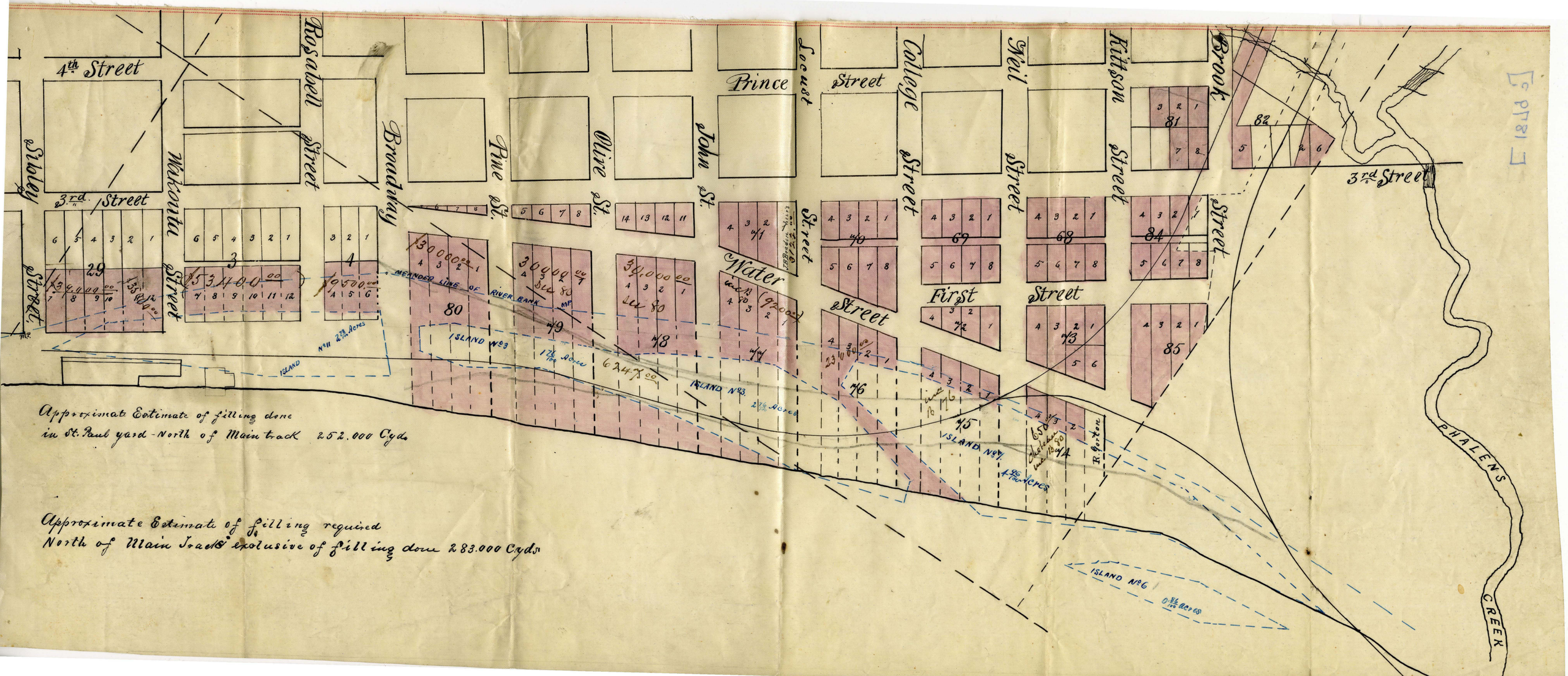
Mr. Jackman, in this case having infringed each and every of the above requirements of the law, the entry should be cancelled and his preemption claim disallowed, and the land should be awarded to those who show a valid claim to it.

Respectfully submitted,
CHAS. D. KERR,
Counsel for homestead claimants

Note.—The errors in printing the testimony and this ~~agreement~~ argument, are noted and corrected on the margin of same respectively, where they occur.

Counsel for Jackman states that the testimony on p. 9, as to Corry's business relations, was stricken out at Bismarck upon his motion; I regret that this was not brought to my attention before the printing, and I ask that it may be considered as out of the case.

C. D. KERR.


4th Street
Sibley Street
3rd. Street
Mckenzie Street
Rosabell Street
Broadway
Pine St.
Olive St.
John St.
Prince Street
Locust Street
College Street
Neil Street
Kittson Street
Brook Street
3rd Street
First Street
Water Street
2nd Street
PHALENS CREEK
MEANDER LINE OF RIVER BANK
ISLAND No 3
ISLAND No 4
ISLAND No 5
ISLAND No 6
Approximate Estimate of filling done in St. Paul yard - North of Main track 252.000 Cyds.
Approximate Estimate of filling required North of Main track exclusive of filling done 283.000 Cyds.

1879 [illegible]

Found loose in
Amberg # 79 - along
with several other papers
stuffed on top Amberg

Probably from Kennedy
to Hall.

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