Gains Jenkins
vs
The Robertails Float
James H. Lane

N. E. ¼ Sec 36:12:13

To the officers of the Land Office at Le=
=Compton

The attorneys of Gains Jenkins in his behalf present the following argument from the law and evidence so far as the respective rights of Jenkins and Lane are concerned. The merits of the case between the float and Jenkins will afterwards be considered

If Jenkins made a settlement on the land according to law in October 1854 and never abandoned or forfeited it, of course it has the precedence of priority over Lanes settlement which was in May 1855. Some of Lanes witnesses or one of them spoke of Lane being there in April to the best of their recollection: but the testimony of Lindsey who came into the territory with Lane and his family on April 22 1855 and who states that he commenced his house as late as ~~October~~ May 20/55 is conclusive. Lane resided in Olivers house the last days of April and onward but made no settlement till May 20. (See testimony page 121)

We hold the proof of Jenkins settlement in Oct. 1854 irresistable: but in considering the Merits between Jenkins and Lane

Let us suppose that Jenkins after having been driven from the claim and his goods put out of his house by Chapman Sykes Wood and others made his first settlement in the fall of '55 When his last house, the one he lives in now, was erected. i know in this case Lane cannot preempt. The evidence which he himself has produced settles this question See the contract signed by Lane and Jenkins. Exhibit U. Let it be remarked that this contract relates exclusively to the claim of Lane, the one he was then living on, and to the buildings of Lane on it: but has no reference to the claim or the buildings of Jenkins. In other words ~~he~~ Lane while residing on the claim and after having made his settlement made a contract with Jenkins to give him (Jenkins) ½ of it in Consideration of the $800. and ½ of the preemption money (See contract) These notes See Exhibits were given by Jenkins to Lane and the money paid him (Lane) by Lindsey and other monies which he admits the receipt of from Jenkins and which he tendered back to Jenkins in John Hutchinsons office (See Hutchinsons testimony page 30 of evidence) these notes and monies were given to Lane by Jenkins as a Consideration for one half of Lanes claim and buildings. There are 3 conclusive facts which prove this = 1st The contract in Writing produced by Lane himself. Speaks of the agreement as one Concerning the claim that Lane

The contract in Writing produced by Linnell. Speaks of the agreement as one
Concerning the claim that Lane
was then living on that is the claim
that Lane claimed as a preemption
right. There is no reference even by
implication to any claim that Jenkins
was living on or claimed And since
the land was then unsurveyed it could
not be known or presumed that Lane
and Jenkins would fall on the same
claim Whether such a contract as Ex
hibit "A" will prevent Lane from preempting
the claim I will leave to the Register and
Receiver without argument deeming it too
plain for argument Gen Lane can make
no such contract concerning his own claim
without a violation of Law: nor can
Jenkins or any man Concerning his own
Claim: but Jenkins or any other man
may make such an agreement with
Lane Concerning his Lane's claim
There is no law or principle of Equity
forbidding Jenkins to make with Lane
such a contract as Exhibit "A"; or
if it were illegal ~~the~~ the illegality
would merely render the contract void
and incapable of being enforced: it
could not vitiate Jenkins right of pre-
-empting his own claim Concerning
which he had made no contract. Take
the contract and the notes and money
paid by Jenkins to Lane together and what
is the result: Manifestly that Lane
bargained away holy of his claim and

Body of the Claim

buildings to Jenkins ~~for~~ for a consideration and that Consideration was the notes money &c. paid by Jenkins to Lane and Lane was to go on and finish the buildings &c. & the $800. (See Lindsays testimony)

Again: that these notes money &c. were given to Lane for Lanes buildings claim or any interest in or chance of a claim is most unequivocally shown by the testimony of Lindsey. According to his testimony the contract between Lane and Jenkins was this: if the lines when the surveys were made ran between Lanes and Jenkins's houses throwing them on different quarters then Jenkins was to have ½ of Lanes claim and improvements, house &c. which he (Lane) agreed to finish and Jenkins was to pay him $800. These notes (Exhibit "S" were the consideration or a part of it, and it will be borne in mind that it was a contract Executed: for Lindsey (See his testimony) paid $75. and Geo Lane acknowledged the receipt of other monies which he offered in the Spring of 1857 (See John Hutchinsons testimony p. 34) to refund, being the sum of $240.

The balance of the consideration all that was not already paid in money by Jenkins was in negotiable notes (See Exhibit "S") and this contract was a a contract executed by Jenkins on his part. But again according to Lindsays testimony if the survey lines threw Lanes and Jenkins houses on the same quarter then Jenkins was to not to have

$240

testimony of the Lawyer
Lanes and Jenkins houses on the same

quarter than Jenkins was to pay Lane
what his (Lane's) improvements should
be worth and Lane in that case
agreed to abandon the claim to Jenkins

Jenkins was to abandon nothing and
to sell nothing to Lane or any other person
in any case whatever: but Lane was
to sell in one case and abandon wholly
wholly in the other

Again look at the whole transaction
at that time between Lane and Jenkins
and see how plain it is that it was
Lane and not Jenkins who was selling
and abandoning or agreeing to do so: and
selling and abandoning his own (Lane's) property
or what he claimed as such. Jenkins paid
$800. Lane paid nothing - Does any man
in his senses suppose Jenkins agreed to let
Lane have a holy of his own claim and
give him $800- besides to take it. And
he Jenkins get nothing in return? If Jenkins
paid $800- he paid to get something in return
and that something as Lane would claim
was to lose holy his claim besides giving
away his $800. If Lane does not claim
this he claims nothing to the purpose and
the Counsel for Jenkins say that these three
proofs concur in showing what we contend
for These 3 things are - the Contract
itself, Lindsey's testimony, and the
very nature of the Contract itself and of
the Case: and not a single item

of testimony to the contrary ; when Lane's own proofs as well as those of Jenkins con-
cur in establishing a proposition, it ought to be sufficiently proved. One thing further and enough on this point of the case
The testimony of Lindsey is objected to by Lane because so much of it as relates to this contract because the contract is in writing and is the best evidence of.
To which we say = we are willing to leave the matter entirely to the language of the Contract and maintain that standing on that instrument alone Lane cannot and there is no reason furnished by it why Jenkins cannot prompt this claim

Contract in writing

But the objection to Lindsey testimony is futile. Parol testimony according to the strict rules of Law cannot contradict a written instrument if, made at the time the instrument was executed but if the contract or words saying it were afterwards the words may contradict and vary the writing To the objection we answer 2 things 1st The Contract as stated by Lindsey does not contradict but it explains the written contract ; for example after his testimony we know what was meant in the contract by the claim that Lane was then living on ; we know that Lane did not understand that it was the same Jenkins was living on Lane thought the lines would run between them and contracted on that

between them and Lane

Suppose in Lindsays testimony also show that neither party at that time claimed or pretended that Jenkins was selling or agreeing to sell any thing of his own but was buying of Lane Lindsays testimony is as good as a chapter of explanatory notes to this contract. But even if there is a variance it must be recollected that the conversation at which it was stated what the contract was between Jenkins and Lane was about the first part of October a month after the contract was made (7th Sept. '55) and the parties (this conversation was between Jenkins and Lane in Lindsey's presence) could if they saw fit vary their written contract or annul it altogether

Moreover it is a significant circumstance that this contract as well as nearly all other writings produced as Exhibits of importance by Lane are in Lanes hand writing though signed by other parties. We do not suppose that the land office will exclude important testimony to the sacrifice of truth and right

One other point; Exhibit "S." produced by Lane as issued upon or read to ~~Lane~~ Jenkins by Lane in 1857 and signed by Lane ~~Claims~~ admits the contract and Claims to rescind because Jenkins had failed to carry it out on his part. The office will take notice that although

it is claimed in that "Writing" Exhibit S "that Jenkins had not kept the contract on his part it fails any where or in any way whatever to show or particularize where in he had failed and the Land Officers will look in vain in the testimony from the first to the last page of it for any proof that Jenkins failed to keep and perform all he had sais What was he (Jenkins) to do on his part. The answer is the testimony of Lindsey shows that he was to pay Lane $800. for the half of Lanes Claim and house &c. and the testimony of Lindsey and John Hutchinson and others shows that at the very time when Lane claimed that Jenkins had violated the contract Lane himself by ~~offered~~ offering to refund the money and notes to Jenkins showed that Jenkins had kept the contract. for Jenkins' part of the contract was to pay a certain consideration to Lane which he did - partly in money and partly in negotiable notes Whereas Lanes part of the contract to give Jenkins ~~part~~ ½ of his Claim was not performed or attempted because the land was not there and could not have been preempted

The Contract by the words of the Written instrument "Exhibit A." "was on the part of Jenkins was to

Contract

Corr

divide ~~Lane~~ the claim Lane was living on with Lane and furnish one holy the preemption money. He did not fail in this because the time had not come ~~as~~ in 1867 and has not yet come when this could be done

When then had Jenkins failed to do as he had contracted. There ~~was~~ is not in the whole testimony one line or word showing it and there is as we have said the amplest proof to the contrary — Even from the witnesses of Lane himself There is a party known who ~~he~~ failed to keep his promises and that party was Lane himself in ~~Selling~~ & Jenkins agreeing & give Blood who had with Lanes consent rented Lanes house which Lane had sold (or the holy of it) & Jenkins, of Jenkins — Lane sold to Jenkins and Blood ~~sold~~ rented of Jenkins with Lanes consent and Lane promised possession and failed & give it. Lane also agreed (see Lindsays testimony) to dig a well and finish the house, cellar, and build a kitchen to the house he had disposed of to Jenkins for the $800. This also he failed to do — He agreed also for the $800 — to give Jenkins the ½ of his Claim which he now refuses to and not only refuses to do but in striving to defeat Jenkins in getting the claim which is honestly his and which he has already

Blood

Walt 25

paid for more than it was worth in 1855 It will be seen then that this notice - "Exhibit S" - and the offer by Lane to return the money and notes was a pretence and a sham: an endeavor to show that Jenkins had failed in his Contract by a notice from Linsey and in Contradiction of his own witnesses. While upon this matter of the money paid to Lane by Jenkins We will add that it appears from the evidence that on the 30th of May 1857 in John Hutchinson's Office Lane read to Jenkins the notice contained in "Exhibit S" and Counted out the money which Jenkins had paid Lane for his improvements and then and there offered to refund the money as well as notes to Jenkins and rescind the Contract. And it also appears that two days before by the testimony of Lane's witness, Shimmons, that is on the 28th of May 1857 at Lane house. Jenkins claimed that Lane house was his, as he had bought it and paid $400. for it And Lane denied every thing denied that he had received any money of Jenkins - His language was according to the witness that he denied all of this every thing = Two days afterward he offered to refund the money which he denied ever having received This fact speaks for itself and shows the reckless and unprincipled Course of Lane ———

Shimmons

For proof of this see Ex

for itself and of
unprincipled course of Lane

For proof of this see Shimmons' testimony
page 60

Let us now consider the evidence
as it bears upon the question Whether Lane
at <u>any time</u> sold and abandoned his
Claim or interest in it to Jenkins. Upon
this point we have the Contract "Exhibit
K" the testimony of Lindsey; of Judge
Smith, of Mayor Blood of Shimmons,
of the statements of Jenkins as produced in
the Cross Examination of Lanes witnesses
and of the admissions of Lane as proved
by Patterson The proof furnished by the
Contract and from Lindsey we have spoken
of; both speak of the Contract as being for
the half of Lanes Claim; Lindsey says
the holy if the lines divided the two
The testimony of Blood and Smith goes
to show though not conclusively that it
was the whole interest which Lane
had parted with. Blood wanted to
rent the house of Lane. Lane refused him
to Jenkins. and Jenkins wanted to Blood
with Lanes consent and wanted both
parts of the house or the whole house
for although Lane promised Blood immed-
=diate possession of only holy of the house
he was to have the other part as soon
as Stevens should go out. Blood from
his own testimony certainly wanted the whole
house of Jenkins and not a part of it
There was no Communication about renting
a part of the house or one of the rooms

Though Stevens was occupying but
part of the house and there would be no need
of his going out if Blood was to have
but part of it yet Lane caused him only
upon giving Jenkins to understand he could
not get Stevens to go out but Blood
was to get the whole house when Stevens
should go out (See Bloods evidence
from 12th page and onward and the cross
Examination) Blood thinks Lane told
him he had sold out to Jenkins but
is not certain. Let this go for nothing
We do not wish important interests
to be hang upon uncertainties - or
faint recollections

Blood

To the same Effect is the testimony of
Judge Smith - When Blood's load of
furniture drove up to the Lane house
Lane said What will I do I have
promised this house to Blood who
has rented it of Jenkins - and afterwards
Jenkins complained to Lane that
Stevens the tenant of one part of the house
was burning rails. Lane offered to go
to Stevens and forbid him from doing so
because the rails belonged to
Jenkins - About this time Jenkins paid
Lane $40 in Smiths presence nothing
being said what it was for. This
is the substance of Smiths testimony and
corroborates Bloods evidence (See Smiths
testimony 17th page and onward)
Such statements on the part of Lane

and between Lane

Such Statements

and between Lane and Jenkins would be hardly consistent with the idea that Lane had sold but a portion of house and claim to Jenkins and of course are conclusive proof that Lane had sold some interest in the house and claim to Jenkins To the same effect we may add the testimony of John Hutchinson* on of Lane's witnesses. He says his best recollection is that the notes which were tendered back to Lane in his office were given for for Lane's house and claim They may however have been given for a part of the house and claim; this recollection is from the statements of Lane Jenkins and from the reading of the contract This contract speaks only of half the claim: therefore his recollections concerning Lane selling a part must have been derived from that and about his having sold the whole from the other Sources - Lane and Jenkins.

* Hutchinson testimony page 36 - Evidence

The only evidence contradictory to this and of late date is that of Shimmon a partner of Lane. He says that in riding up in the stage Jenkins spoke of having bought the half of Lane's improvements. This was in Feb? 1856: Early in Feb.: It would be easy to make a mistake in the matter of the half but we wish the testimony to go for what it is worth This apparent discrepancy is

Mark's Claim

easily Explained by merely supposing what is intrinsically probable that there were negotiations varying in character and Extent between the parties from time to time. The contract was entirely in

September ~~August~~ for the holy of the claim as shown by the contract and by Lindsey and there might have been inchoate contracts or arrangements ending in nothing definite until about the time of Lane's departure from the territory in March 1856 The slight discrepancies in the testimony may thus easily be accounted for without affecting in the least the result of the whole. One thing is clear that whatever may have been the prior arrangements or understandings when Lane came to leave the territory in March 1856 he had finally disposed of his house and claim to Jenkins & ai is shown by his state=ment to Patterson the evening before starting.

The officers will read this whole testimony for themselves and we do not propose to comment upon it except in regard to the attempts to impeach it They show some evidence that Patterson in consequence of his injury was somewhat shattered in mind sympathetically, indulged in extravagant hopes and one instance of a failure of memory in remembering the Execution of a deed: all this is with very little: and if Patterson were to conjure up imaginary conversations with real men (a very difficult thing from forgetfulness) it would be very

Lindsey's testimony

if Patterson were to be [illegible] conversations with real men (a very difficult thing from forgetfulness) it would be very

suspicion. Lindseys testimony also shows that neither party at that time claimed or pretended that Jenkins was selling or agreeing to sell any thing of his own but was buying of Lane. Lindseys testimony is as good as a chapter of strange for him to light by accident upon a topic which had been a segment matter of negotiation with Lane and should make Lane say he had done what there is much other proof besides that he did do: to obtain his phantom which he had conjured up and the next morning send a man to get a door which an imaginary Lane had promised him the night before

It is attempted to be shown that Lane was not in Pattersons house the night before he started East in March '56 but this testimony is negative in its character and liable without any charge of corruption in Witness to many mistakes. There is one circumstance mentioned by Wm Hutchinson in his testimony which shows how Easily Shimmons might have been mistaken in his idea that he kept Lane in his eye every moment of that night from sun-down to midnight. The reason he gives for his certainty in this statement is that Lane was owing him money and if Jenkins paid Lane any he was bound to get hold of it: and to keep his eye on Lane every moment. Yet Hutchinsons says that Lane had hundreds of dollars in his

hand that night and pegunctly and yet it does not appear from Shimmons' ~~testimony~~ testimony nor Hutchinson's that Shimmons saw or knew any thing of it. If he was so little attentive to Lane as that, Lane might have been at Pattersons several times during the evening without his knowledge. ~~It would~~ See Wm Hutchinsons testimony page 81. It could appear from Mons Hunts evidence also ~~the~~ Concerning Lanes movements that night that Shimmons could not have been at his Elbow every moment as he claims. and in spite of all these attempts to swear to a negative it is manifest from their own evidence that they might have been mistaken or forgetful: ~~&~~ this is a much Easier supposition than that one man should falsely conjure in his brain a thing which had so much likelihood in it; and his wife a woman of high Character ~~from~~ over, the fresh ashes of her dead husband should commit perjury to sustain it, and that both should send ~~over~~ the next morning after a door which Lane had promised them. We ask if Patterson in his delirium saw and heard Lane there, when he was not there, did Mrs Patterson, also in her sober senses also see him, the same Lane in the same place and hear a portion of the same conversation, and act upon it afterwards (See Mrs Pattersons testimony)

. Regarding the Power of attorney given to
I. Hutchinson by Lane when about to leave this
Last ~~affair~~ affairs to Lanes furniture books &c and

4 his general affairs - Commanding him in in positive

J. Hutchinson by Lane's pa
Lod affidavit to Lane's pa

this general affairs - Conway did something
for him in in nailing up the doors and
windows of the house where his stuff was
kept and that was all (See Hutchinson's
and Conway's testimony)

One word further upon Lane's abandonment
He built his home on this claim from
the 20th day to June 1 1855 : his family
lived in it a few days and left & kept
himself and one son in the East and
have never until the Spring of 1858
returned - He and his son remain until
March 1856 and he leaves and deposits
his goods packed in boxes in the care of
an attorney or agent. His only reason
for leaving is the danger of remaining in
the territory - Yet during all the dangers
of 1855 and the winter of '56 he is free
unmolested. : and it is not claimed
~~that~~ by his own witnesses that he would
have been in special danger in Lawrence
from Pro or Secret enemies at any
time except on the 21st May 1856
when the town was entered by an
armed band. He remains away except
a few weeks in the fall of '56 (when he
makes no attempt at a resettlement upon
the claim) until the Spring of 1857 and
his family do not return until the Spring of '58

But there is another piece of testimony
given by Patterson of an interview or conversation
of Lane about June 20 1858 three months
previous after his new home was built. to the
Effect that he had made an arrangement

with Dr Wood one of the Proprietors of the Float to secure this claim to the Town Co. and he Lane was to get the half or some large proportion of what the claim should draw for his services and under this arrangement with Wood or the Town Co. he Lane had built his house on this claim

It will be remembered that this conversation was had before Patterson was blown up in the Mill and received his injury. Hence it will not be claimed that he was deranged at this time and it will be remembered that the discredit attempted to be thrown upon him draws all its force from the injury he received

Christian a witness of Lane and others Spoke of him as an honorable and truthful man. This testimony besides is entirely uncontradicted and unrebutted and no doubt stands to this day It is evident that Lane and his old associate Dr Wood are still engaged in the same cause and this very day and at this and every other trial of this cause Lane and the Float or town Co. have been making common cause against Jenkins. The attorneys of the Float and of Lane are mostly the same men

At all events the Lane House by Lane's own statement was built under this bargain with the town Co.: and if so we submit that a settlement consisting of erecting such a houses with such a bargain

Con
is invalid and in pent