

THE FIRST JURY TRIALS IN WINONA COUNTY

IN

HISTORY

OF

WINONA, OL MSTED, AND DODGE
COUNTIES.

TOGETHER WITH

BIOGRAPHICAL MATTER, STATISTICS, ETC.

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Gere v. Laird

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Foreword

By

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A dispute between Henry C. Gere and John C. Laird over a plot of 80 acres was the subject of the first two jury trials in Winona County, Minnesota, in March 1853. Gere alleged that Laird “jumped” his claim, and sought restitution. The first jury hung, the second returned with a plaintiff’s verdict. However, in another example of the old adage that “possession is nine-tenths of the law,” Laird never lost possession of the land—thanks to his formidable sister and a sympathetic constable.

The story of the first jury trials in Winona County appeared on pages 310-317 of *History of Winona, Olmsted, and Dodge Counties*, published in 1884. The title is by the MLHP.

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THE FIRST JURY TRIALS IN WINONA COUNTY

John C. Laird came to Wabasha prairie about the last of August, 1852, to attend upon Abner S. Goddard during his last sickness. After the death of Mr. Goddard, which occurred on the 11th of September, he decided to remain and make it his future home. Mr. Laird was a citizen of La Crosse at the time he came up to help his sister in the care of her sick husband. It was on her account that he changed his place of residence and came to Minnesota, where he has ever since resided. He was deputy register of deeds for La Crosse county. The register elected was a resident of a distant part of the county, and, not wishing to change his location, Mr. Laird was deputed to act for him and receive the emoluments of the position.

In the winter and spring previous Mr. Laird had visited Wabasha prairie, but never selected any special location as a claim. After he had decided to settle here he explored the country until in October, when, observing that the east "eighty" of the original Stevens claim was unoccupied, and without improvements of any kind, he was induced to take possession of it as an abandoned claim. Mr. Laird quietly procured the necessary material, and before the settlers were aware of his intention, they were surprised to see a snug and comfortable-looking shanty on "that lower eighty of Stevens's." This shanty stood about where Laird Norton & Co.'s stables now stand, — on the west side of Chestnut street, between Second and Third streets.

As soon as the circumstance became known, H[enry] C. Gere made application to the members of the claim club for aid to remove the trespasser on the land relinquished to him by Silas Stevens. Some of the members of the club came together and called on Mr. Laird to learn why

he had built the shanty and to ascertain if he really intended to jump Gere's claim.

Mr. Laird informed them that he had taken possession of "that eighty" because there was no one occupying it — nothing to indicate that any one had possession of it, and informed them that his shanty was the only improvement on the claim. This self-constituted claim committee decided to let Mr. Gere take care of his own affairs if he had got into trouble from his own mismanagement. He was then holding other claims.

Mr. Laird completed his shanty on Saturday evening, and, supposing that he had possession safe enough, stayed contentedly at Mrs. Goddard's, because it was Sunday and a day of rest generally observed by the settlers. It chanced to be the day on which Elder Hamilton had made an appointment to preach at Mrs. Goddard's shanty, and there the settlers assembled to listen to one of his best sermons.

Taking a great interest in the subject of the discourse, Mr. Laird for the time forgot about his recently acquired earthly possession, and gave his undivided attention to the sermon of the elder. After the service was over and the audience began to disperse, he cast his eyes toward his new shanty, not fifty rods away, and discovered Henry C. Gere on its roof. Accompanied by Wm. H. Stevens, and followed more deliberately by Elder Hamilton and his whole congregation, he rushed toward his unprotected claim improvement and found that Gere had jumped the shanty, if not the claim.

Taking advantage of the security from observation afforded while the attention of the settlers were engaged by Elder Hamilton, Mr. Gere had taken a load of his household goods to the shanty and taken possession of it.

On reaching the locality Mr. Laird found the shanty occupied; a table with a few dishes and a chair or two were on one side of the room, and on the

other a cook-stove, on which was a tea-kettle, a pot of potatoes, and a frying-pan with a slice of ham ready for cooking. Mrs. Gere was comfortably seated in a rocking-chair in front of the stove, waiting to touch a match to the kindling-wood as soon as the stove-pipe was put in place, and Mr. Gere was on the roof cutting a hole for it to pass through.

Mr. Laird called to Gere to come down, but he refused, replying, "You are too late, for I now hold possession." Laird and Stevens then tore off the boards from the roof, and notwithstanding Gere's resistance, caught him by the legs and dragged him to the ground. They then proceeded to carry the stove and other furniture outside, except the rocking-chair, which Mrs. Gere occupied, and very composedly maintained possession of the roofless shanty.

Elder Hamilton sedately seated himself on one of the chairs ejected from the cabin and calmly watched the proceedings. Occasionally a quiet smile would illumine his dignified expression as he observed the demonstrative movements of the noisy and excited settlers, who but a very few minutes before had been model representatives of a moral, intellectual and order-loving community. Feelings of partisanship were exhibited by loud expressions of opinion in emphatic language rather than by active participation. Men and women espoused the cause of one side or the other. Some threats were passed, but no serious collisions occurred. Mrs. Goddard took a firm and determined stand in support of the rights of her brother to the claim. While Laird and Stevens were tearing or knocking the boards from the roof on which Gere stood, she observed a second load of Gere's furniture approaching from the east; they had gone down the prairie and come up along the river.

Rushing toward the team and brandishing a cudgel, which she caught up on the first alarm, Mrs. Goddard ordered the driver to stop, and, taking the horses by the bridles, led them back across the line of the claim and told the driver to leave as soon as possible. Without a show of resistance

the teamster drove off. The team belonged to John Evans. In speaking of the occurrence afterward, Frank Curtiss, the driver, said it was not the first time he had been captured by a woman, and he did not propose to get into a quarrel with Mrs. Goddard.

It was charged that Elder Hamilton had a foreknowledge of Gere's design, and had selected one of his most interesting and lengthy sermons to give him ample opportunity to accomplish his purpose unmolested. Aunt Catharine says, "that was not so. Elder Hamilton and John C. were always warm friends, but Elder Ely knew all about it, for he kept going out every few minutes as if to see if a steamboat was coming. I know Elder Hamilton was on John's side that day, because he beckoned to me, and when I went over to where he was sitting on one of the chairs he said, 'The boys had better tear the shanty down now they are at it.' I told the boys and they tore the whole thing down without disturbing Mrs. Gere, and left her sitting in her rocking-chair on the bare prairie."

As soon as the shanty was demolished the excitement subsided and all started for their homes, leaving Laird and Gere to watch each other and hold the claim. Mrs. Gere went to her own shanty and sent her husband his supper, while Mrs. Goddard bountifully furnished rations for John C., who stood guard over his promiscuous pile of lumber.

The night was a cold, disagreeable one; a chilly west wind swept over the bleak prairie and compelled the lonely, unsocial watchmen to keep in motion to preserve proper circulation. Although each had a blanket in which they wrapped themselves, Mr. Laird formed a windbreak of boards. Mr. Gere solicited the loan of a few boards for a like protection, but Laird objected to his lumber being used for such purposes.

Finding it impossible to get any rest while so uncomfortable, Gere called to Laird about midnight and said — "I have a proposition to make to you which I think will be of advantage to both of us. I have no more

confidence in your honesty than I have in men generally, but I believe you will keep your word when you make a promise. Now, suppose we agree to let this claim matter remain just where it is, without either of us doing anything until tomorrow; we can then go home and get some sleep." Mr. Laird was amused at the proposition, but did not object to it. The two men solemnly pledged themselves to leave the claim undisturbed until the next morning, and bidding each other "good night" in more social tones than they had previously observed, they left the locality.

Both parties made their appearance at sunrise, and hostilities were resumed. Mr. Laird rebuilt his shanty, but moved to another location nearer the river and a little below, on what is now block 5 in Laird's addition. Gere tried for two or three months to obtain possession, but without effect, the cold weather interfering with any active measures. On the night of January 24, 1853, while Mr. Laird was temporarily absent from the prairie, his shanty was torn down and the lumber destroyed — chopped in pieces. Mr. Laird built another cabin on the same ground. It is said that this destruction of the claim-shanty was effected by a young man employed by Gere for that purpose, who received a hundred pounds of flour for his services.

Satisfied that it would not be possible for him to get possession and hold it against the opposition he had to contend with, Mr. Gere appealed to Justice Burns for aid to remove the trespasser, feeling confident that a select jury would award him his rights.

There were at this time two justices in this vicinity, George M. Gere, on Wabasha prairie, and John Burns, at the mouth of Burns valley. Jabez McDermott, of Wabasha prairie, was constable. In February, H. C. Gere sued John C. Laird before John Burns, Esq., for trespass, etc., to get possession of the claim. The trial by jury came off in March. This was the first jury trial ever held in this part of the territory — the first jury ever called in what is now Winona county. The court was held in the upper

part of the "Viets House" (the old Winona House), which was then unfinished, Squire Burns having adjourned the court from his office at his house to this place to accommodate all parties, interested. The trial was considered an important event by the settlers.

Mr. Gere engaged the professional services of Mr. Flint, a lawyer living in La Crosse, and of Andrew Cole, of Wabasha prairie. Mr. Cole was then the only practicing attorney living on the west side of the river. Mr. Laird had for counsel and management of his defense, a lawyer from La Crosse by the name of French. The jury impaneled to try the case was George W. Clark, Scott Clark, O. S. Holbrook, William Hewitt, W. H. Coryell and Hiram Campbell.

This being the first important case brought before Squire Burns, his inexperience in his official position made it necessary for him to seek advice as to his own duties. He selected as his confidential adviser the "home attorney." He was personally acquainted with Mr. Cole, and had great confidence in his Opinions of law. This peculiarity in the case excited some comment from outsiders, — Mr. Cole being attorney for the plaintiff, but no charges were ever made that any improper or unjust proceedings were entertained by the court. Notwithstanding the very marked eccentricities exhibited by the squire, his court and official position was duly respected. His comical expressions and blundering style of doing business afforded considerable amusement during the trial, and were subjects for many a hearty laugh for a long time afterward.

About two days were spent in the examinations of witnesses and speech-making by the attorneys before the case was submitted to the jury. After due deliberation, it was ascertained that there was no probability of the jury agreeing, and they were discharged. The court adjourned until the next Monday, March 14, at which time, another jury was impaneled and the trial of the case again repeated.

In the first trial the jury stood five for the defendant and one for the plaintiff. The one who stood out against his fellow jurors was Hiram Campbell. The jury on the second trial was John Iams, S. A. Houck, H. B. Waterman, Wm. L. Luark, S. D. Putnam, and Elijah Silsbee, all residents of Minnesota City except the last. After about the same amount of time consumed as with the first trial the case was given to the jury, and at about 11 o'clock at night, March 16, the jury decided unanimously in favor of the plaintiff, Henry C. Gere.

The next morning Mr. Laird and Wm. H. Stevens started for La Crosse, and took the lawyers home. The condition of the ice in the river would not permit of delay — even then traveling on the river was unsafe. The ice in the river appeared as if it might break up in a few days. It did leave the river in front of the prairie on the 20th of March.

Mr. Laird left the claim in charge of Mrs. Goddard to hold until his return, not supposing that any movement would be made before that time. Mrs. Goddard, with a young lady, Miss Salina Kellogg, of La Crosse, who was up on a visit, accordingly took possession of the shanty, with a firm determination to hold the fort. The suit had been decided in Gere's favor, and he became anxious to get the claim into his possession before Mr. Laird should have an opportunity to appeal to a higher court, as he had given notice that he should do on his return. Under the management of Mr. Cole, his attorney, judgment was entered up against Mr. Laird on the justice's docket, and an attachment issued to take possession of his property for the payment of the costs in the suit. A writ of restitution was also issued, under which it was supposed possession would be acquired and the claim held.

The constable, McDermott, was friendly and in full sympathy with Mr. Laird, and was also a boarder with Mrs. Goddard. Before the papers were placed in his hands, he notified Mrs. Goddard of the proceedings, and arranged with her a plan of defense. He aided them to procure material

and barricade the building, so as to resist an assault if Gere and his friends attempted to take forcible possession of the shanty. It was supposed that they were provided with firearms. Being forewarned, they had the courage to believe that they would be able to resist the officer of the law, with his consent, and hold Gere and his friends at bay until the return of Mr. Laird from La Crosse.

Learning from McDermott that the yoke of oxen would be attached when they came across the river from their work, Mrs. Goddard sent for the cattle and had them brought over and chained to a post by the side of the shanty, while the constable had business elsewhere.

When the writ was placed in McDermott's hands he went down to the claim. As he advanced, Mrs. Goddard warned him that if anyone attempted to come near the shanty it would be at their own peril. The constable withdrew to a safe distance and apparently waited for a more favorable opportunity to perform his official duties. Neither Mr. Gere or any of his friends ventured within short range of the cabin where Mrs. Goddard and Miss Kellogg stood guard, and, to the surprise of the settlers, successfully resisted the execution of the law and boldly defied any one who should dare molest them.

These two women held the claim and retained possession of the oxen until Mr. Laird returned from La Crosse with the money to defray the expenses of the suit, which had been the principal object of his trip. He at once paid the cost and appealed the case to the United States district court. The writ was never enforced.

Of the proceedings in the district court, nothing official can be learned. It is said that, from some cause, judgment in the justice's court was suspended and the case dismissed. Mr. Laird was never afterward disturbed in his possession of the claim. It is now known as Laird's Addition.

Although Mr. Gere never made any actual attempts to obtain possession of the claim, he several times threatened suits for its recovery. Mr. Laird soon found that a little money would stop all proceedings — less than the fee of a lawyer to defend the case. Gere consulted about every lawyer that located here for the next two or three years. He was among the first clients of Hon. Judge Wilson, when he came here in 1855. Mr. Wilson, then a young lawyer, became interested in the story of Gere, and, considering it an important case, at once commenced suit against Mr. Laird. He was greatly surprised a day or two after to learn from his client that, on account of a satisfactory arrangement with Mr. Laird, he wished to stop all proceedings against him. The lawyers never shared in these periodical settlements. When Gere again ran short of funds, he again called on his attorney to bring suit against Laird, but Mr. Wilson indignantly refused to have anything further to do with the case.

Mr. Laird became a permanent settler on Wabasha prairie, where he was prominently identified with public and private enterprises which tended to the development of the resources of the county. Although for many years Mr. Laird gave his attention to the cultivation of a large farm in the eastern part of Olmsted county, and lived there with his family a portion of each year, he has maintained an interest in Winona county and occupied his residence in the city of Winona.

John C. Laird now lives on the same claim he "jumped" from Henry C. Gere, on Wabasha prairie, in the fall of 1852. His present residence is within two blocks of where his claim-shanties stood while contesting possession with Mr. Gere. This is the only instance where any one of the original claimholders of land on Wabasha prairie, now the city of Winona, is living on the claim he held in 1852, and with one exception Mr. Laird is the only one in the city living on land which they held prior to the sale of public lands in 1855. ●

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