

“CLAIM MAKING AND PREEMPTION”

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FOREWARD

BY

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The following article was the thirteenth installment in a series called “Minnesota As It Is” that the *Minnesota Republican* published in 1855 to introduce immigrants to the ways of their new land.

Making a claim to a plot of land through the process described by the *Minnesota Republican* was the first entry in an endless log of deed recordings, transfers, boundary disputes, lien filings, mortgage foreclosures and, frequently, litigation, that is still being written today. There is an old saying: if you wish to understand a court during a particular period, look at its docket. From the 1850s through the end of the nineteenth century, disputes over real estate occupied a significant part of the caseload of Minnesota courts. Given the way title to land was first acquired in the territorial era, this is not surprising.

The newspaper asserts that “claim-making is one of the romances of the frontier and pioneer life.” Though the hardships of the frontier are well known, it would be a mistake to dismiss the newspaper’s observation as excessive. In letters and diaries, many settlers in the 1850s expressed feelings about their claims that have several of the elements of nineteenth century romanticism.¹ The following is an excerpt from a long letter dated November 20, 1855, from twenty-one year old Theodore Bost to his parents in Switzerland:

¹ See generally, Isaiah Berlin, *The Roots of Romanticism* (Princeton: Princeton University Press, 1999).

Now I must tell you what I've already bought, but before I do that I must thank you from the bottom of my heart for lending me this money. I am setting out at last for a place where I'll have land of my own, free and able to work for myself and at the same time for you. It was too late in the year to take an uncleared *claim*, since winter has already begun in earnest and since I can't do any building, well digging, etc., during the very cold weather. Besides, it would cost a great deal of time and money to make a cabin tight enough to hold in some warmth and give me a place to store my potatoes. Furthermore, the available claims are a long way from any settlement and hence, for the time being, not so desirable. But the *claim* I've just bought was occupied by a railroad engineer who thought he'd like farming but got tired of it. He built himself a good cabin from tamarack logs, twenty-three feet long by thirteen or sixteen feet wide, with a cellar six feet deep and twelve feet square; [he left me] sixty bushels of potatoes, three of rutabagas, a good stove and stovepipes, kettles, and so on; also three tons of hay, ten or fifteen bushels of Indian corn, 200 fence rails (in addition to those in the fence that already encloses one and one-half acres of cultivated land), an excellent well, 160 acres, of which twenty are in natural meadowland and the rest in good timber (and easy to clear in some places). Naturally, I'll still have to pay \$200 to the government when the land is put on sale, as well as about \$12 to finish the house and about \$30 more for tools, beds, blankets, etc.

The *claim* is four miles from Excelsior, [a town on] Lake Minnetonka, four and a half miles from Chaska, and five miles from Shakopee, which is on the Minnesota River. If it pleases God, I'll build more fences this winter, and perhaps I can get the use of a neighbor's oxen to haul some logs to the sawmills, where they pay a fairly high price for good sawing logs, a big advantage to people who live near a settlement.

Another good point of this claim is that the people round-about are English or American, either Christians or at least churchgoers, ready to lend a hand to their neighbors and to protect one another's claims, so that this *claim*, though not the

very best, is in any case one of the best I've yet seen. Maybe when Spring comes, I'll sell it at a good profit and take up another one farther west. Nearly all the claims have the shape of a perfect square [with its sides running] from north to south and from east to west, though the boundaries have only been roughly marked out up to now. When I have the time, I'll go all around the present boundaries, carving my name on the trees in place of that of the former owner. There are lots of partridges and a few deer, and this will relieve the monotony of the potatoes and bacon. Since I'll be doing my own cooking, I won't bake bread, which would take too much time and be too much trouble. I'll do my cooking in the evening while I'm repairing the cabin or writing letters.

In my next letter I'll send you a sketch-map of my claim so you can get an idea of the spot where I've pitched my tent. If I stay here two years, I'll probably go on and stay the next twenty, and if I'm here two years, I'll get this claim in apple-pie order—it has all sorts of possibilities for being very nicely improved.²

The letter is remarkable for its optimism. Bost has a passion—for the land, *his* claim. He is full of energy. Though it is late autumn, he is impatient to get to work. He will impose himself on nature. His is an active, dynamic, Spartan life, not one of ideas or contemplation. Dreaming out loud, he thinks he might sell his plot for a profit in a few months and move westward but, moments later, he predicts with confidence that in two more years, he will get it in “apple-pie order.” The claim “has all sorts of possibilities.” Failure is not one of them.

Bost bought his claim from another settler. But he still must pay the government for it. He will mark the boundaries of the claim by carving his name into trees. But already he is thinking of selling it to someone else. It sounds simple, but the process was complicated and over time would get more complex. For good reason the *Minnesota Republican* warned, “The

² Letter from Theodore Bost to his parents, dated Tuesday, November 20, 1855, sent from St. Paul, in Ralph H. Bowen, editor & translator, *A Frontier Family in Minnesota: Letters of Theodore and Sophie Bost, 1851-1920* 69-70 (Minneapolis, University of Minnesota, 1981) (Emphasis in original, footnotes omitted).

requirements of the pre-emption law are so complicated and frequently so ill-understood, that many claimants lay themselves liable by some trifling neglect to a forfeiture of their claim.”

The following article headlined “Minnesota As It Is—No. 13. Claim Making and Preemption,” appeared on the second page of the *Minnesota Republican* on July 26, 1855.³ Though reformatted, it is complete. The author’s spelling, emphasis and punctuation are not changed. ■

³ There are numerous scholarly articles that relate to the process of claim making on public lands in this state, including Verne E. Chatelain’s “The Public Land Officer on the Western Frontier,” 12 *Minnesota History* 379-389 (December, 1931), and “The Federal Land Policy and Minnesota Politics, 1854-60,” 22 *Minnesota History* 227-248 (September, 1941); Fremont P. Wirth, “The Operation of the Land Laws in the Minnesota Iron District,” 13 *Mississippi Valley Historical Review* 438-498 (1927); William J. Stewart, “Settler, Politician, and Speculator in the Sale of the Sioux Reserve,” 39 *Minnesota History* 85-91 (Fall, 1964); Lydia Lucas & Gregory Kinney, compilers, *A Guide to the Records of Minnesota Public Lands* (St. Paul: Minnesota Historical Society, 1985); Matthias Nordberg Orfield, *Federal Land Grants to the States, With Special Reference to Minnesota* 145-255 (Minneapolis: University of Minnesota Studies in the Social Sciences, No. 2, 1915), reviewed by George Stephenson, 1 *Minnesota History Bulletin* 126-129 (August, 1915); and Gordon Cain, “Indian Land Titles in Minnesota,” 2 *Minnesota Law Review* 177-191 (1918).

For social histories of settlers, see Anne B. Webb, “Forgotten Persephones: Women Farmers on the Frontier,” 50 *Minnesota History* 134-148 (1986)(study of how four women homesteaded in Minnesota between the 1850s and 1880s (a photocopy of a Homestead Claim proof is at the end of the article); and Kathleen Neils Conzen, “Peasant Pioneers: Generational Succession Among German Farmers in Frontier Minnesota,” in Steven Hahn & Jonathan Prude, eds., *The Countryside in the Age of Capitalist Transformation: Essays in the Social History of Rural America* 259-292 (Chapel Hill: University of North Carolina Press, 1985) (study of German farm families’ succession plans in St. Martin Township in Stearns County between the 1850s and the early 1900s).

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Minnesota As It Is—No. 13.

CLAIM MAKING AND PREEMPTION.

Many persons at a distance are frequently inquiring by what process one may come into real possession of public land. And though the answer to this question applies to many parts of the West, we venture to base upon the general subject as article with special reference to Minnesota.

The public lands offered to settlers are divided into Districts, in each of which the Government opens an office for the sale or entry of the lands included in that district. As we have elsewhere mentioned, there are six of these Districts and Local Offices in the Territory. After the land has been surveyed into townships, sections, quarter-sections, &c, it is “brought into market,” that is, it is advertised for public sale on a given day. What is not there sold to the highest bidder is subject to private entry at \$1.25 per acre.

Preemption means prior entry the entry or purchase lands *before* they have been thus offered at public sale. In order to this one must make a “claim,” that is must become a “squatter” on the land which he desires to pre-empt. He must make improvements, put on it habitation of some sort, and make it his actual residence for a *while*.

This claim-making is one of the romances of the frontier and pioneer life. To get into the unbroken wilderness, and call from a thousand locations this one which best pleases the eye, to spot a few trees, drive a few stakes, hurry up a cabin of logs or of boards brought from a distance; to call that "home," perhaps no wife to cheer, and perhaps with no humans being for miles around; to get soaked with the rain, or bitten by the frost, or bored by the mosquitoes, or smoked out by your own camp-fire; to walk around and plan where shall be your house, your garden, your tillage, your meadow, and dream yourself into raptures at the thought that you are "monarch of all you survey;" to get hungry, and start for the far off town for provisions; to be detained by new chances for business, and to go back in a month or two and (if no gruff Dutchman with a fat vrow and ten pigs and six children has fast possession of your "pleasant places") put a few more improvement on the "claim," to live thus off and on until "matters come around right," when you go to the Land Office, "prove up" pocket your duplicate, and wait till the record of your case can pass the inspection of the Department at Washington, and then to receive from the United States a patent, or confirmed title to the premises you have so long desired to call your own; all this is an experience of adventure anxiety exertion and success, which brings out in bold relief every quality of a man's nature.

Claim-jumping is an inodorous business though sometimes practical. The requirements of the pre-emption law are so complicated and frequently so ill-understood, that many claimants lay themselves liable by some trifling neglect to a forfeiture of their claim. The jumper is the man who, taking advantage of the ignorance or carelessness of the squatter, puts up *his* shanty on the same subdivision, and declares himself the rightful and real claimant.

This jumping business frequently gives rise to arm controversy. Sometimes the matter goes to law, sometimes voluntary associations of the settlers arbitrate, and once in a while, when two men of brutal tendencies meet there is a resort to pummeling or powder.

As a matter of fact, however, the cases of a jumping or contested claim are few. Most men are enlightened enough in their selfishness to see that the safest way is for every one to make his own claim.—The general sense of the settlers is against jumping, though there are cases where men attempt to hold land in clear violation of the law, and every body rejoices in seeing them disposed.

The pre-emption right may be exercised by any one who is the head of a family, or a widow, or a single woman over 21 years old, but by no man of foreign birth, unless he has been naturalized or declared his intention to be a citizen of the United States. No man can pre-empt but once.—No man can pre-empt who owns 320 acres of land elsewhere, in any State or Territory. No man can pre-empt who abandons a residence on his own land to reside on public lands in the same State or Territory, though we are informed that the Commissioner has just decided that the restriction does not apply to a man who leaves a village or town lot.

One person can pre-empt 40, 80, 120, or 160 acres, but no more, and this must all lie in one body, or in contiguous parts.

There can be no transfer of pre-emption rights. Men frequently sell out their improvements and their claims, but the purchaser must make improvement in his own and erect a habitation of his own, before he pre-empts. Within three months after the improvements are made, the claimant must file at the Land Office a declaratory statement of his intention, and before the land is offered for sale he must prove his right and deposit the money or run his risk of being out bid. If he fails to pay up and no one bids off the land, he or any other person may subsequently enter the land at \$1.25 per acre. No claimant, however, would be very likely to run this risk.

When contested cases come before the Land Office, and both are qualified to make an entry, the law gives the first right to the one who proves to have made the first improvements. Anyone who is aggrieved by the decisions of the local officers may appeal to the Commissioner at Washington, and thence to the Secretary of the Interior.

In “proving up” a pre-emption right, the claimant is required to show that he has the qualifications above mentioned, and to make oath that he had not directly or indirectly bargained to any other person any portion of the land he proposes to enter, but that it inures to his own special use and benefit.—The officers before whom he makes this oath are bound to accept his affidavit, but if a civil tribunal convict him of perjury he forfeits both his money and the land, in addition to the ordinary penalties.

The duplicate given to the pre-emptor by the local Land Office is generally considered as good as a government patent, and sometimes warrantee deeds are based upon it, but it is not strictly safe, as the authorities at Washington sometimes reverse the decisions of the local officers even when they are in favor of the claimant. A case of this kind just occurred, in Hennepin County and deemed satisfactory by the Register and Receiver of the Minneapolis Land Office, was set aside as imperfect by the Commissioner. In some such cases, however, the claimant is permitted to apply the defect in the evidence.

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