

## Opinion of the Court.

lands is to be construed favorably to the actual settler, and the construction contended for by the canal company seems to us too narrow. If a party entering upon a tract, although he knew that it was within the limits of an old railroad grant, did so under the honest belief and expectation that that grant, if not technically extinguished by lapse of time, had remained so long unappropriated by any beneficiary that Congress would shortly resume it, and in that belief determined to make for himself a home thereon, with a view of perfecting his title under the land laws of the United States when the forfeiture should be finally declared, it must be held, we think, that he is, within the terms of this confirmatory act, a *bona fide* claimant of a homestead. The ruling of the Circuit Court was correct, and the judgment in favor of the defendant is

*Affirmed.*

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LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY  
v. FINAN. Error to the Circuit Court of the United States for the Western District of Michigan. No. 50. Argued November 2, 5, 1894. Decided December 10, 1894. MR. JUSTICE BREWER. This case differs from the preceding, in that the action was commenced March 21, 1889, and that Finan, the defendant, did not enter upon the tract in controversy until after the 1st of May, 1888. His entry and occupation gave him no rights to the land, because it was embraced within the railroad grant of 1856. He took nothing under the confirmatory act of 1889, because he was not a *bona fide* claimant or in actual occupation on the 1st of May, 1888. The land was selected and certified to the State for the benefit of the canal company, and was within the scope of the confirmation to the company by the act of 1889. The title of the company was, therefore, perfect as against him. The judgment of the Circuit Court must, therefore, be

*Reversed, and the case remanded for a new trial.*

*Mr. John F. Dillon* for plaintiff in error.

*Mr. Don M. Dickinson* for defendant in error.