

The foregoing considerations, we think, dispose of the various contentions presented to our notice, and, finding no error in the judgment of the Supreme Court of Nebraska, it is, for the reasons stated,

Affirmed.

MISSOURI VALLEY LAND COMPANY v. WRICH.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

No. 102. Argued January 10, 1908.—Decided February 3, 1908.

Decided on authority of *Missouri Valley Land Co. v. Wiese*, ante, p. 234.

THE facts are stated in the opinion.

Mr. Charles A. Clark for plaintiff in error.

Mr. James H. Van Dusen, with whom *Mr. Edward F. Colladay* was on the brief, for defendant in error.¹

MR. JUSTICE WHITE delivered the opinion of the court.

This case was argued with *Missouri Valley Land Co. v. Wiese*, No. 101, of this term, just decided, ante, p. 234, and in all essential particulars the two cases are alike. Wrich purchased his land in 1881 from the Union Pacific Railroad Company and received his deed in 1890. The land lay within overlap grants to the Union Pacific Company and the Sioux City and Pacific Railroad Company. Wrich took possession immediately after his purchase, and ever afterwards held and claimed the land as his own. In September, 1893, he under-

¹ For abstracts of arguments see ante, p. 234.

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took to make a cash entry of the land under the act of 1887, as did his neighbor Wiese. All the questions involved in the *Wiese case* are present in this, and, for the reasons given in the opinion in the former, the judgment of the Supreme Court of Nebraska in this case must be

Affirmed.

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RAILWAY COMPANY v. DOUGHTY.

ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

No. 81. Argued December 17, 1907.—Decided February 3, 1908.

Under the act of March 3, 1875, c. 152, 18 Stat. 482, granting to railroads the right of way through public lands of the United States, such grant takes effect either on the actual construction of the road, or on the approval of the Secretary of the Interior, after the definite location and the filing of a profile of the road in the local land office, as provided in § 4 of the act; and a valid homestead entry made after final survey but before either the construction of the road or the approval by the Secretary of the profile, is superior to the rights of the company. *Jamestown & Northern Railway Co. v. Jones*, 177 U. S. 125, explained and followed. 107 N. W. Rep. 971, affirmed.

THE facts are stated in the opinion.

Mr. Alfred H. Bright for plaintiff in error:

The filing of the plat and the approval thereof by the Secretary of the Interior were not conditions precedent to the acquisition of a right of way under the act of March 3, 1875.

It was the intention of Congress to protect the company as well as the settler from the time of entry. It is assumed by Congress that the company must of necessity locate its