PUBLIC LAND, PRIVATE SETTLERS,

and The Yosemite Valley Case of 1872

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In a 2009 documentary film, Director Ken Burns and writer Dayton Duncan describe the National Parks as "America's Best Idea."[1] Although they may be right, the establishment of the national parks has not been without controversy. This article is about the creation of one of America's first national parks, the Yosemite National Park in California. More specifically, it is about a controversy that arose when plans for the park came into conflict with claims of pioneers who had already settled in the Yosemite Valley. One of those settlers, James Mason Hutchings, persistently resisted California's efforts to have him removed from the land he had claimed. Hutchings's legal battle with the state eventually reached the United States Supreme Court in the 1872 case called *The Yosemite Valley Case*.[2]

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1 Web page for the documentary is found at http://www.pbs.org/nationalparks/history/. All Web sites cited in this article were last accessed on October 1, 2009.

2 *The Yosemite Valley Case*, 82 U.S. 77 (1872), also referred to as *Hutchings v. Low*.

JAMES MASON HUTCHINGS.

Courtesy National Park Service, Yosemite National Park, Catalog Number: RL-14,396.

In today's thinking, Hutchings's battle to retain his land may appear to be a greedy campaign to exploit a national treasure.[3] However, a closer look at *The Yosemite Valley Case* reveals that the conflict was much more complicated. Usually overlooked is that Hutchings's legal battle was also woven into a question of how the vast wealth of the West would be distributed. Most accounts in the press of Hutchings's battle focused on the hope of preserving the wonders of Yosemite. But the stakes were different in the courts, where the issues involved the future of the homestead movement and land reform — the idea that the public domain should be distributed in small plots to "actual settlers" who would live on the land and cultivate it.

James Mason Hutchings, an English cabinetmaker, came to California in the Gold Rush. Like many pioneer Californians, he was a frustrated gold miner, aspiring entrepreneur, and something of an adventurer. In 1855 he set off on an adventure that would shape his destiny. Guided by two Yosemite Indians, Hutchings took a small expedition, including artist Thomas A. Ayres, to the relatively unexplored Yosemite Valley. In 1855, after returning from his expedition, Hutchings published his experience, along with Ayres's drawings, in the *Mariposa Gazette* and the *San Francisco Daily California Chronicle*. He later included it in the inaugural edition of *Hutchings' California Magazine*. In his own words, he hoped "to portray its [Yosemite's] beautiful scenery and curiosities; to speak of its mineral and agricultural products; to tell of its wonderful resources and commercial advantages; and to give utterance to the inner life and experience of its people."[4]

Hutchings was not the first white man to visit the valley, nor was his group even the first tourist party. Yosemite was discovered by a loosely organized army of whites who set out on a campaign against local

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[3] Alfred Runte, *Yosemite: The Embattled Wilderness* (Lincoln, Neb.: University of Nebraska Press, 1990), 13-27 and 31-39 passim. Although Runte's account is measured and fair, it emphasizes the threat Hutchings's claim posed to conservation of the park. Burns and Duncan take a similar view saying that "now that the nation had moved to protect it in perpetuity by declaring it public, no one fought that decision with greater vehemence or moved more quickly to exploit the valley" than did Hutchings. http://www.pbs.org/nationalparks/history/ep1/2/.

[4] Quoted in Runte, *Embattled Wilderness*, 14.

Indians, and a man named James C. Lamon led the first tourist party into the valley. Nevertheless, Hutchings was the earliest and one of the most vocal advocates of the beauty of Yosemite, and he and Lamon were among the original white settlers of the valley.[5]

Believing that the Yosemite Valley lay within the public domain of the United States, and was therefore open to settlement, Hutchings and Lamon each claimed plots of land in what was then the usual manner. Homestead and preemption laws of the time were designed to distribute the public domain in small plots, usually 160 acres, to "actual settlers." The laws differed in that preemption laws were, in essence, a sale. The settler paid a nominal price for the land. Under the Homestead Act the government gave the land for free. The laws were similar in most other ways, however. They required that a settler occupy the land, cultivate and improve it, have it surveyed if the government had not already done so, file a claim, and pay the price of the land (or administrative fee in the case of a homestead).

Lamon claimed his land in 1859 when he located a parcel of land at the upper end of the valley and staked his claim. He recorded his preemption claim to 160 acres of land on May 17, 1861, built a log cabin, and planted crops and an apple orchard.[6]

Hutchings purchased his claim from an earlier settler. After exploring Yosemite in 1855, he decided to settle in the valley. In 1861 he and his wife set out on a journey to the valley with the hope of settling but were turned back by bad weather. In 1863 he purchased a preemption claim to 160 acres of land from George and John Hite, who had settled there earlier. The claim included a primitive hotel. Finally, on April 20, 1864, Hutchings brought his family to the valley. He made improvements to the hotel, built a cabin for his wife and three children, and cultivated crops.[7]

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[5] The fate of Native Americans who occupied the Yosemite Valley is important but beyond the scope of this article. For one treatment of the topic see, Mark Spence, "Dispossessing the Wilderness: Yosemite Indians and the National Park Ideal, 1864-1930," *Pacific Historical Review* 65:1 (Feb. 1996), 27-59.

[6] Robert F. Uhte, "Yosemite's Pioneer Cabins," *Sierra Club Bulletin* 36:5 (May 1951), 58-59.

[7] *Id.*, 61-62; Mrs. H. J. Taylor, "James Mason Hutchings," in *Yosemite Indians and Other Sketches* (San Francisco: Johnck & Seeger, 1936), 31ff. Part of this summary

At the time Congress designated Yosemite as a park neither Hutchings nor Lamon had completed the last two steps in the preemption process. The government had not yet surveyed the Yosemite Valley, and Hutchings and Lamon had not surveyed their claims. Consequently, it was impossible for them to perfect the claims and pay the fee. This was a common situation for settlers. Thus, the most important question in *The Yosemite Valley Case* involved the rights of preemptors who had settled on a parcel of land, cultivated it, and improved it, but not yet paid for it.

On June 30, 1864, a little more than two months after Hutchings had moved to the valley, President Lincoln signed the Yosemite Park Act into law.[8] The act granted to the State of California a large section of the Yosemite Valley. Its directive that the state would hold the land "inalienable forever" was intended to guarantee that the unique and majestic region would be preserved for the public. Control of Yosemite Park did not remain in California, but the goal of preserving the region continued. Eventually Congress took back the land and expanded the preserve. In 1890 Yosemite National Park joined Yellowstone as our first national parks and the model for our national parks system.[9]

The story of Yosemite can be told as a tale of success. In an era characterized by individualism and exploitation of the nation's natural wonders, it was an unusual step toward preserving a wilderness for the benefit of the community. As California Senator Conness put it, the objective of his act was to assure that the Yosemite Valley would be "used and preserved for the benefit of mankind . . . ."[10]

The story of Yosemite is also a tale of tension. Yosemite — as historian Alfred Runte deftly pointed out — has always been an "embattled

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also comes from Hutchings's own account found in *Memorial of J. M. Hutchings and J.C. Lamon, Settlers in the Yosemite Valley, Mariposa County, California. To the Senate and House of Representatives of the United States, in Congress Assembled*, December 10, 1867, found in Library of Congress, *American Memory,* "An American Time Capsule: Three Centuries of Broadsides and Other Printed Ephemera," at http://memory.loc.gov/ammem/rbpehtml/.

8 Act of June 30, 1864, *United States Statutes at Large*, 38th Cong. 13 (1864) 325. The act also granted to California the Mariposa Grove of giant sequoias.

9 *Congressional Globe*, 38th Congress, 1st session, May 17, 1864, pp. 2300-2301.

10 Runte, *Embattled Wilderness*, 21, citing *Congressional Globe*, 38th Cong., 1st Session, May 17, 1864, pp. 2300-2301.

wilderness."[11] Built into the Yosemite Park Act and implicit in the campaign to create the park was a tension between the ideal of preserving the area as a wilderness and the ideal of making it available to the public. It was a tension that a visitor to our national parks today can still detect: a tension between preservation and tourism.

The history of Yosemite is peppered with the names of men who have become well known to Americans. Publisher Horace Greeley, landscape architect Frederick Law Olmsted, and Sierra Club founder John Muir were among the prominent photographers, artists, and political figures who took part in the drive to preserve Yosemite as a park.

Less appreciated is the early role Hutchings played in bringing the beauty of the Yosemite Valley to the attention of the American people. Perhaps that is because, in addition to playing a significant role in bringing the beauty of the Yosemite Valley to the attention of the public, Hutchings also played a role in increasing what had been up to then a slow trickle of visitors to Yosemite. By 1857, one enterprising pioneer had built a rugged guesthouse. Two years later a larger structure called the Upper Hotel was built in the valley. Still, tourism in the valley was primitive. In his account of one expedition, Hutchings describes a service offered to assist visitors to ascend a cliff leading to Vernal Falls:

> Beneath a large, overhanging rock at our right, is a man who takes toll for ascending the ladders, eats, and "turns in" to sleep, upon the rock. The charge for ascending and descending is seventy-five cents; and as this includes the trail as well as the ladders, the charge is very reasonable.[12]

Primitive though it may have been at the time, Hutchings obviously saw the potential for tourism when he purchased the rights to a hotel in 1863.

For Alfred Runte, and others who have written the history of Yosemite, the first threat to the ideal of preservation came from settlers,

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[11] Runte, *Embattled Wilderness*, the phrase serves as the subtitle and theme of his book.

[12] J.M. Hutchings, *Scenes of Wonder and Curiosity in California* (New York and San Francisco: A. Roman and Co., 4th ed., 1871), 132.

like Hutchings, who had previously laid claim to land within what was to become the park. At the time it would have been difficult to envision Yosemite's budding tourist industry as particularly destructive, but park advocates nevertheless saw it as a threat. And, private ownership only exacerbated that threat. Recalling how Easterners had spoiled the beauty and serenity of the Adirondack Woods and White Mountains, *The New York Times* predicted what "fast" and "practical" California entrepreneurs would make of Yosemite:

THE HUTCHINGS HOUSE HOTEL, PHOTOGRAPHED BY EADWEARD MUYBRIDGE, CA. 1872.

Courtesy The Bancroft Library, UC Berkeley.

> The exquisite "Bridal Vail" [sic] will have a bowling alley at the foot of it; the solemn "El Capitan" will look down upon faro tables; the "Cathedral Rock" will be pasted up with advertisements of "Angelica bitters;" and the glorious Yosemite fall will run the wheels of a woolen factory. We shall have rowdy liquor shops and gambling saloons, and slovenly Chinese hovels, scattered about those scenes of unequaled poetry and loveliness; . . .[13]

Taking a cue also from the experience of Niagara Falls where trees and wildflowers framing the Niagara River had by 1850 been replaced by tourist traps and other eyesores, park advocates took a stance that the scenery of Yosemite should never be private property.[14]

Attractive as it might have been, the idea of prohibiting private ownership in Yosemite Valley created a moral and legal dilemma. At the time Congress granted the park to the state, Hutchings, Lamon, and several other settlers had already staked preemption claims in the valley.

Park advocates were not impressed. While emphasizing the theme that the purpose of Congress's grant was to preserve the wonders of Yosemite for the whole community, they hammered at the charge that Hutchings and Lamon were merely "squatters." Hutchings and Lamon's claims were illegal, they said, because the Yosemite Valley had not yet been surveyed by the government and was thus not open to settlement.[15] Some further maintained that Hutchings and Lamon knew the land was not open for settlement and simply hoped to put themselves in a position to monopolize the region for profit.

Subsequent events demonstrated, however, that many Californians thought Hutchings and Lamon should be allowed to keep their claims. One indication of this sentiment was that the first state commission to govern the park offered to Hutchings and Lamon ten-year concessions to operate tourist facilities. The men turned down the opportunity for

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13 *The New York Times*, Feb. 14, 1870; see also, Feb 13, 1872.

14 Runte, *Embattled Wilderness*, 26; *San Francisco Daily Evening Bulletin*, Dec. 17, 1869; *The New York Times*, Feb. 14, 1870.

15 See, for example, *San Francisco Evening Bulletin*, February 29, 1872; *The New York Times*, July 3, 1870. The strength of this particular charge is illustrated by the fact that it remains accepted to this day. See, Runte, *Embattled Wilderness*, 18.

concessions, however. Instead, they went to the state Legislature, hoping it would grant them clear title to their claims. On January 24, 1868 the California Assembly voted overwhelmingly to grant to both Hutchings and Lamon the 160 acres of land in the Yosemite Valley upon which each had settled and made preemption claims. Hutchings and Lamon's victory appeared to be thwarted when Governor Haight vetoed the bill on February 4. But a week later the assembly once again expressed overwhelming support for the settlers when it voted to override the governor's veto.[16]

Even ardent park advocates recognized that Hutchings and Lamon had settled on the land, expended significant sums of money to improve it, and had played a part in opening the Yosemite Valley to visitors. Equity and fairness surely swayed some people to their cause.

For many Californians, support for the settlers' claims ran deeper, however. It traced to an ongoing struggle over how the resources of California, inherited from Mexico, would be shared. Some Californians tended to favor the distribution of the land in large blocks to claimants of Mexican Land grants or railroad grants. Influenced by a long-running movement for land reform, others insisted that the land in the state should be distributed in small amounts to homesteaders and settlers. It was important to these land reformers that as much as possible of the state's unclaimed, unimproved, or uninhabited land be declared public domain and thus remain open for settlement.[17] For the most single-minded of land reformers, the Yosemite Valley was no exception. They maintained that, rather than being set aside as a playground for the rich and powerful, the valley should remain open to settlement.[18]

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[16] *Memorial of J. M. Hutchings and J. C. Lamon*, 4th unnumbered page (with handwritten notation, "2/9"), *supra* note 7; *San Francisco Evening Bulletin*, Feb. 1, 1868, Feb 13, 1868; *The New York Times*, Feb. 13, 1868.

[17] See, W. W. Robinson, *Land in California* (Berkeley: University of California Press, 1948); Paul Gates, *Land and Law in California: Essays on Land Policies* (Ames: Iowa State University Press, 1991).

[18] *San Francisco Evening Bulletin*, June 8, 1870 (criticizing an essay in the *Sacramento Union*); Comments of Representative Johnson, *Congressional Globe*, House of Representatives, 40th Congress, 2nd Session, June 3, 1868, p. 2817.

A less sweeping version of the land reformers' view held that by settling on and improving the land before it became a park, Hutchings and Lamon had established prior ownership of it. This led some Californians to believe that, while the government had a right to convert their land to a park, the settlers should receive just compensation. Others believed that, regardless of the language or purpose of the Yosemite Park Act, the State of California should grant clear title to the settlers.

The terms of the grant from Congress to California did not allow the state to give away any land within the park. To the contrary, by accepting the land, California promised to hold it "inalienable forever." Thus, when the state Legislature granted the lands to Hutchings and Lamon it could only do so subject to the approval of the United States Congress. Hutchings thereupon prepared a Memorial (petition) to Congress in December of 1867 urging confirmation of his and Lamon's claim.[19] Pressed by Congressman George Julian, in June 1868 and again in July 1870, Congress considered resolutions to confirm California's grant of the land.[20] A bill eventually passed in the House of Representatives but failed in the Senate.[21] Thus, without congressional approval, the state's efforts to transfer ownership to the settlers failed.

Reports surfaced in California that Lamon and another settler accepted $10,000 from the state in settlement of their claims, but Hutchings refused to leave.[22] California's subsequent legal proceedings to force him off the land eventually reached the United States Supreme Court as *The Yosemite Valley Case*.[23]

The case began when park commissioners filed a suit to eject Hutchings from the land. This first round of the legal proceedings went to Hutchings. Observing that ejectment would result in great hardship and irreparable injury to Hutchings, the California district judge rejected the commissioners' petition. Speaking to the legalities, he reasoned that

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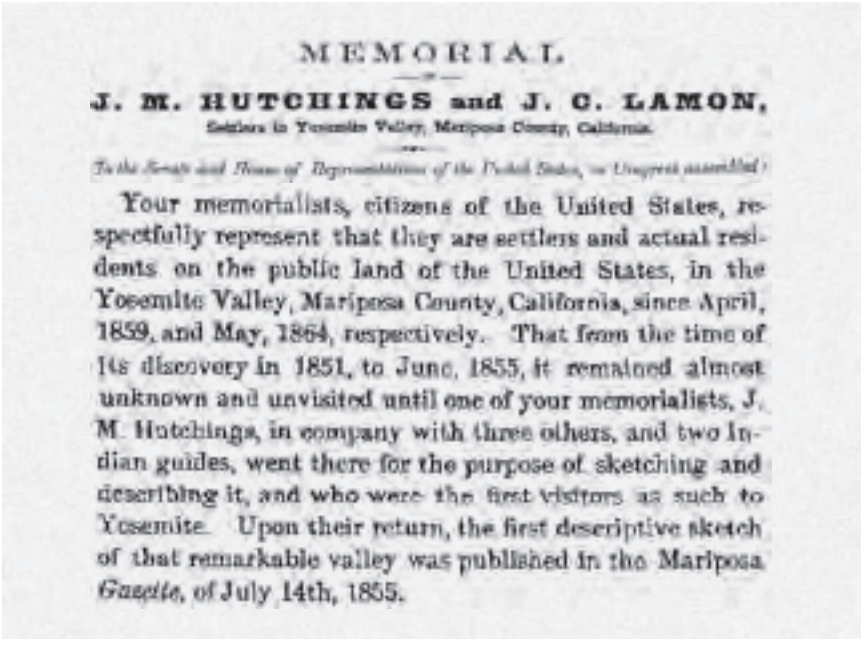
19 *Memorial of J. M. Hutchings and J. C. Lamon, supra* note 7.

20 *Congressional Globe*, House of Representatives, 40th Congress, 2nd Session, June 3, 1868, pp. 2816-17; *The New York Times*, July 3, 1870.

21 Runte, *Embattled Wilderness*, 24.

22 *San Francisco Evening Bulletin*, January 30, 1872.

23 *The Yosemite Valley Case*, 82 U.S. 77 (1872), also referred to as *Hutchings v. Low*.



MEMORIAL.

J. M. HUTCHINGS and J. C. LAMON,

Settlers in Yosemite Valley, Mariposa County, California.

To the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, citizens of the United States, respectfully represent that they are settlers and actual residents on the public land of the United States, in the Yosemite Valley, Mariposa County, California, since April, 1859, and May, 1864, respectively. That from the time of its discovery in 1851, to June, 1855, it remained almost unknown and unvisited until one of your memorialists, J. M. Hutchings, in company with three others, and two Indian guides, went there for the purpose of sketching and describing it, and who were the first visitors as such to Yosemite. Upon their return, the first descriptive sketch of that remarkable valley was published in the Mariposa *Gazette*, of July 14th, 1855.

[TWO PAGES OF TEXT INTERVENING]

Your memorialists would therefore ask from your Honorable Body that you take their case into consideration and afford them the relief demanded by Justice and Right, by having the Act of Donation so amended as to exempt their pre-emption claims of 160 acres each from the conditions of that act.

In the hope of their petition being heard at your earliest convenience, and their request being granted, your memorialists, as in duty bound, will ever pray.

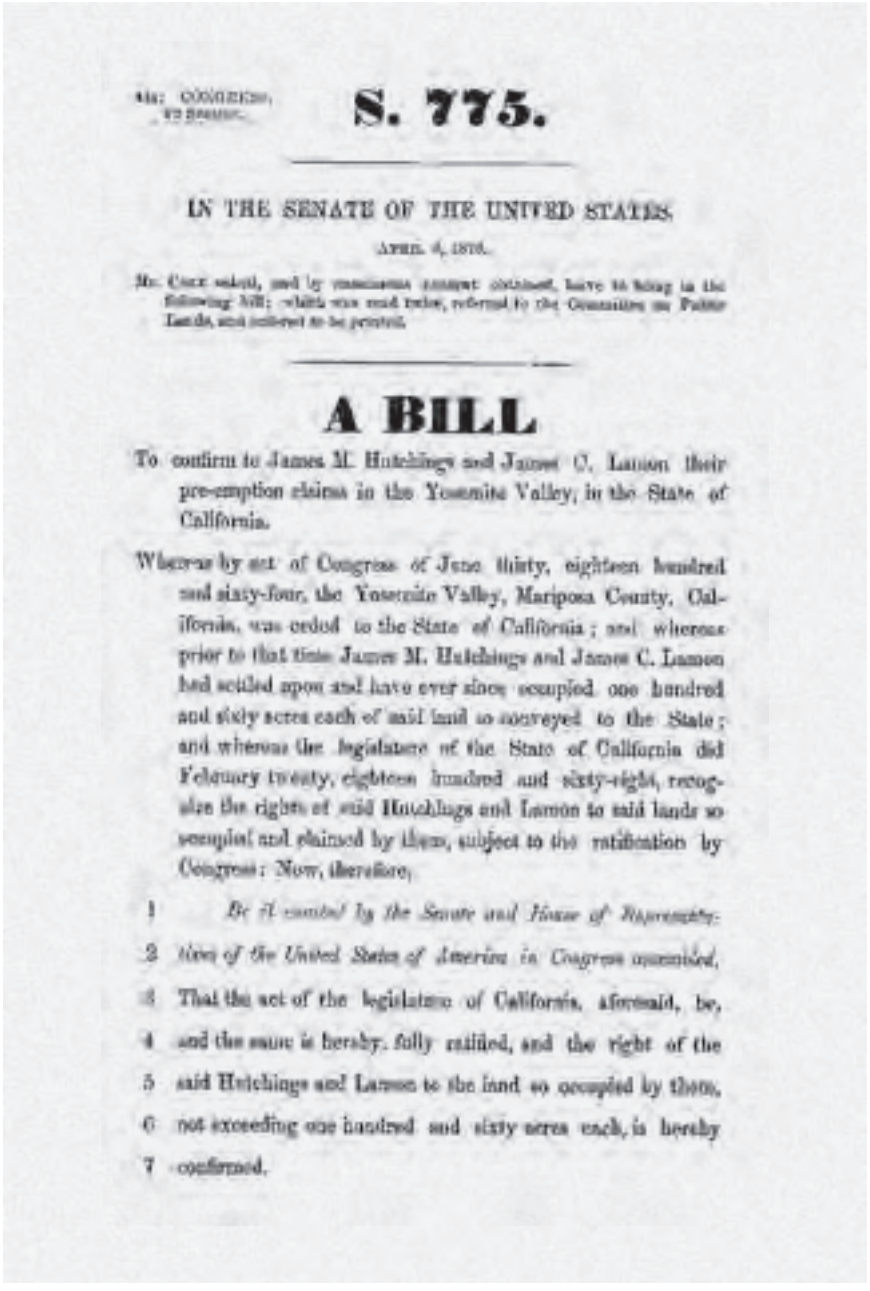
J. M. HUTCHINGS,
J. C. LAMON.

Subscribed and sworn to before me this tenth day of December, A. D. 1867.

ANGEVINE REYNOLDS, Clerk of Mariposa Co.
By JOHN C. HAMILTON, Deputy Clerk.

MEMORIAL (PETITION) TO CONGRESS BY HUTCHINGS AND LAMON

(caption, first paragraph, and conclusion reformatted for publication). Source: Library of Congress.



44th CONGRESS, 1st SESSION.

S. 775.

IN THE SENATE OF THE UNITED STATES.

APRIL 4, 1876.

Mr. CRAY asked, and by unanimous consent obtained, leave to bring in the following bill; which was read twice, referred to the Committee on Public Lands, and ordered to be printed.

A BILL

To confirm to James M. Hutchings and James C. Lamon their pre-emption claims in the Yosemite Valley, in the State of California.

Whereas by act of Congress of June thirty, eighteen hundred and sixty-four, the Yosemite Valley, Mariposa County, California, was ceded to the State of California; and whereas prior to that time James M. Hutchings and James C. Lamon had settled upon and have ever since occupied one hundred and sixty acres each of said land so conveyed to the State; and whereas the legislature of the State of California did February twenty, eighteen hundred and sixty-eight, recognize the rights of said Hutchings and Lamon to said lands so occupied and claimed by them, subject to the ratification by Congress: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of the legislature of California, aforesaid, be, and the same is hereby, fully ratified, and the right of the said Hutchings and Lamon to the land so occupied by them, not exceeding one hundred and sixty acres each, is hereby confirmed.

The failed U.S. Senate bill that would have confirmed Hutchings and Lamon's claims of land.

Source: Library of Congress.

"when a preëmptioner enters upon the unsurveyed public lands, under the sanction of a public law, and makes improvements and becomes a bona fide settler, he acquires such rights as the Government cannot divest or take from him."[24]

The park commissioners then appealed to the California Supreme Court, which disagreed with the underlying presumption of the district judge's opinion: that Hutchings was a bona fide settler. Instead it adopted the theme, advanced by Hutchings's detractors, that Hutchings and the other settlers were little more than squatters. Writing for the California Supreme Court, Justice Crockett admitted that Hutchings had been ready and willing to prove up his claim and pay the purchase price, but could not do so because the land had not been surveyed and was, therefore, not open to preemption.[25] Nevertheless, Crocket concluded that Hutchings's act of settling on the land did not establish ownership and Congress had the right to sell or transfer the land to someone else. The circumstances may have resulted in a hardship entitling Hutchings to relief in some form, Crocket noted, but it was clear that he had no established rights that could afford him relief in the courts.[26]

Although there was some merit to the charges that Hutchings's claim was illegal, the law on the matter was not clear. There is no doubt that unsurveyed lands in California were open to settlement under the preemption laws in effect between 1853 and 1862 — before Hutchings made his claim. Congress complicated the matter, however, when it enacted the Homestead Act of 1862.

The Homestead Act was considered to be a victory for the cause of land reform because it offered free land. But, according to land historian Paul W. Gates, the Act was also a step backward because it did not authorize settlement of unsurveyed lands. Gates presumed that enactment of the Homestead Act invalidated the earlier preemption statutes that did allow claims to unsurveyed lands. In fact the Homestead Act said nothing about its effect on existing laws. Furthermore, many settlers, and some judges and legislators, believed the old laws were still in effect.

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24 *Low v. Hutchings*, 41 Cal. 634, 635 (1871).

25 *Id.* at 638.

26 *Id.* at 639-640.

Consequently, settlers continued to lay claims to unsurveyed lands on the basis of those earlier statutes.[27] It is likely that Hutchings and Lamon genuinely believed they had the legal right to claim their plots.

On appeal to the United States Supreme Court, Hutchings maintained that he had a valid claim to the land under federal preemption law.[28] Hutchings's attorneys did not press the issue, however, and neither did the state.[29] The technical legal question of which law applied to Hutchings's claim was not a factor in the Supreme Court's opinion. Both sides seemed intent on testing a broader issue.

The presence of George Julian on Hutchings's legal team indicated what it was. For the past several decades the former congressman had been one of the most prominent and persistent proponents of land reform. Along with men like George Henry Evans and Horace Greeley, Julian campaigned for a policy to use the public domain to provide free or cheap land to a class of actual settlers.

For the most ardent advocates of land reform, like Julian, this policy was more than a matter of fair distribution of the resources of the West. It was linked to the ideals of free labor and, in that respect, to the abolition of slavery.[30] It also represented a particular view of natural rights. Julian insisted that, "In laying the foundations of empire in the yet unpeopled regions of the great West, Congress should give its sanction to the natural right of the landless citizen of the country to a home upon its soil."[31] But, perhaps more than anything else, land reformers believed

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27 Paul W. Gates, *History of Public Land Law Development* (D.C.: Public Land Review Commission, 1968) 244-247, 394-395; see, Act of May 30, 1862, 37th Congress, United States Statutes at Large, 12 (1862) 409-410; *San Francisco Daily Evening Bulletin*, Dec. 18, 1869.

28 *Hutchings v. Low*, Brief for the Plaintiff in Error, 1; citing Act of May 30th 1862, 37th Congress, *United States Statutes at Large*, 12 (1862) 410, sec 7. This and the following are the briefs in *The Yosemite Valley Case*. The style of the case in both briefs uses *Hutchings v. Low*.

29 *Hutchings v. Low*, Brief for Defendants in Error.

30 Patrick W. Riddleberger, *George Washington Julian: Radical Republican: A Study in Nineteenth Century Politics and Reform* (Indianapolis: Indiana Historical Bureau, 1966), 76-78.

31 George W. Julian, *Speeches on Political Questions* (New York: Hurd and Houghton, 1872), 51-52.

this policy provided the only means of saving American democracy from the influence of a landed monopoly and connected elite. Idealizing the agrarian republic, Julian maintained that, "Independent farmers are everywhere the basis of society, and true friends of liberty."[32]

In the minds of land reformers, the government's attempt to remove Hutchings from his preemption claim threatened to water down the achievements they had made. Recall that homestead and preemption laws required that a settler occupy the land, cultivate and improve it, have it surveyed if the government had not already done so, file a claim, and pay the price of the land or administrative fee. Through his purchase of the claim and subsequent settlement on the land Hutchings had satisfied the initial requirements for preemption. Since the land had not yet been surveyed, however, it had been impossible for him to pay the fee. Hutchings's situation was not unique in this regard. Preemptors, and even homesteaders, commonly found themselves in this position, facing a period of time during which they had committed to settlement, improved the land, but not yet satisfied all of the conditions necessary to finalize their claims.

Julian argued that settling on the land and improving it was enough to give Hutchings an equitable title to the property. The pioneer settler, he maintained, has been treated as the favorite of the law and the government was bound by good faith to protect settlers who had cultivated and improved the land.[33] He concluded that there is no justice in the argument that a preemptor, after having made valuable improvements on a claim, and complied with all the conditions of title which were within his power, may nevertheless be driven from his possession, his improvements confiscated, and land conveyed to another.[34]

Julian had actually lost this same argument in a United States Supreme Court decision four years earlier. In *Frisbie v. Whitney* (1869), the Court ruled that until a preemptor had satisfied all the conditions imposed by the law, including the survey and fee, he had no legal or equitable

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32 *Id*., 55; quoting Andrew Jackson's Fourth Annual Message to Congress, Dec. 4, 1832.

33 *Hutchings v. Low,* Brief for the Plaintiff in Error.

34 *The Yosemite Valley Case*, 82 U.S. at 84.

right to the land.[35] *Frisbie v. Whitney* was similar to *The Yosemite Valley Case* in that Whitney, the preemptor, had settled on the land but had not registered his claim or paid the required fee. It was different in that, where the *Yosemite* case involved a claim directly against the government, *Frisbie* was a dispute between competing private parties who each claimed the same parcel of land. Given this different circumstance, Julian argued that the *Frisbie* decision was an anomaly. He hoped to limit its impact as precedent.

He was to be disappointed. On January 6, 1873, the Court again rejected Julian's theory and, following the trend started in *Frisbie v. Whitney*, strictly interpreted the requirements of the statute. Writing for the majority, Stephen Field ruled that, until a settler had satisfied *all* the conditions of the law, he or she had no right against the government. Settling on the land did not give the settler a right but rather "only a privilege of pre-emption in the case the lands are offered for sale in the usual manner." In Field's view the act of settlement merely gave the preemptor a preference over others to purchase the land when and if the government decided to offer it for sale.[36]

Field's opinion reads like one side of a debate between old foes: A debate in which Field controlled the forum. Noting that Julian relied on the 1850 case *Lytle v. Arkansas*, Field spent a better part of his opinion demonstrating why *Lytle* did not apply here. He did not resist the temptation to toss barbs directly at Julian. Emphasizing that Julian had been one of the attorneys in *Frisbie*, Field began with lightly disguised sarcasm. "Inasmuch as counsel of the defendant contends with much earnestness that *Lytle* settles the case at bar," he said, "we are induced to state at some length what that case was and what it actually decided."[37] Describing Julian's theory as "little less than absurd," he concluded:

> The whole difficulty in the argument of the defendant's counsel arises from his confounding the distinction . . . between the acquisition by the settler of a *legal right to the land* occupied by

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35 *Frisbie v. Whitney*, 76 U.S. (9 Wall.) 187 (1869).

36 *The Yosemite Valley Case*, 82 U.S. at 87.

37 *Id.* at 89.

> him against the owner, the United States; and the acquisition by him of a *legal right as against other parties to be preferred in its purchase* when the United States have determined to sell . . . .[38]

Hutchings lost his appeal, but the Court's decision in *The Yosemite Valley Case* did not prove to be a boon for those who sought to preserve the park as a wilderness.[39] Almost as soon as the State of California accepted the grant, park commissioners immediately let out concessions for hotels, inns, stagecoach lines, toll roads, and other tourist services.[40] Even use of the specific plot of land Hutchings had claimed did not change. Hutchings continued to operate his hotel until 1875. When the state finally ejected him, commissioners gave the concession to John K. Barnard. The only obvious change was that the Hutchings House became the Barnard Hotel.[41]

The decision did not even have as much of an impact on James Mason Hutchings as one might have expected. He continued to write and lecture about Yosemite, and continued to live with his family near the Yosemite Valley. At one time he was the innkeeper of the Calaveras Big Tree Grove Hotel, located just north of the park. Many Californians continued to believe that Yosemite Valley's early settlers had at least an equitable interest in the land they had claimed. Consequently, in 1874 the state legislature appropriated money to pay the settlers for their claims. Hutchings received $24,000. Californians did not forget Hutchings's role as a pioneer settler and the first promoter of the Yosemite Valley. In 1880 Hutchings was awarded the office of "guardian of the valley," a position that he held until 1883. He died in Yosemite in 1902.[42]

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38 *Id*. at 93-94.

39 Given the outcome, Runte and other writers who are focused on the ecological or geographic history of the park conclude that *The Yosemite Valley Case* "in effect, established that national parks were indeed constitutional." However, the Court's decision was not about the constitutionality of the act or the power of Congress to create a park. See, Runte, *Embattled Wilderness*, 35.

40 See, Peter J. Blodgett, "Visiting 'The Realm of Wonder': Yosemite and the Business of Tourism, 1855 -1916," *California History* 69:2 (Summer 1990), 118-133.

41 Taylor, 34.

42 *Id*., 39.

The only impact of *The Yosemite Valley Case* was on the land reform movement. Afterward, the Court continued to follow the pattern of strictly construing homestead and preemption laws. Occasionally its formalistic interpretation of homestead and preemption law worked to the benefit of settlers. Although it held to the proposition that, until they complied with every requirement, settlers did not have a right to the land, the Court also recognized that settlement on the land did create a legally enforceable

"Distant view of the 'Pohono,' or Bridal Veil Waterfall, from a Photograph by C. L. Ward,"

in J. M. Hutchings, *Scenes of Wonder and Curiosity in California. Illustrated with over one hundred engravings. A tourist's guide to the Yo-Semite Valley* (1871), 109.

right of preference, or a right of first claim if the government should offer the land for sale. It also ruled that this right was transferable.[43]

The Yosemite Valley Case solidified the Court's intention to strictly interpret claims to the public domain based on preemption and homestead laws, and to require settlers to satisfy all conditions of the statute in order to obtain a property right in the land. In cases involving preemptors and homesteaders the Supreme Court emphasized the need to protect the public domain and preserve Congress's control of public property. But the Court did not apply the same strict interpretation in cases testing the validity of Mexican land grants or railroad grants.[44] The real effect of the decision was therefore to put "actual settlers" at a distinct disadvantage when competing with railroads, claimants of Mexican land grants, and others who had designs on the public domain. It was a major setback for advocates of land reform. ✯

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[43] *Lamb v. Davenport*, 85 U.S. 307 (1873); *Shepley v. Cowan*, 91 U.S. 330 (1875); *Quinn v. Chapman*, 111 U.S. 445 (1884); see also, *United States v. Schurz*, 102 U.S. 378 (1880) [once the Department of Interior had granted a patent, it could not subsequently withhold delivery of the patent to the settler]; *Wirth v. Branson*, 98 U.S. 118 (1878) [a settler who had complied with all the requirements of the law, including the survey and payment, but had not yet received a patent was to be regarded as the equitable owner of the land. A subsequent grant of the same land to another was therefore void].

[44] I have previously written about this other side of distribution of the public domain in Paul Kens, "A Promise of Expansionism," in Sanford Levinson and Bartholomew H. Sparrow, *The Louisiana Purchase and American Expansion 1803-1898* (Boulder, Colo.: Roman & Littlefield, 2005), 150-60.