

1950

Lafe Morley v. Earl Willden, T. A. Claridge and Alden Willden : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Merrill C. Faux; Skeen, Thurman & Worsley; Attorneys for Appellant;

Recommended Citation

Brief of Appellant, *Morley v. Willden*, No. 7476 (Utah Supreme Court, 1950).
https://digitalcommons.law.byu.edu/uofu_sc1/1297

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

LAFE MORLEY,
Plaintiff and Appellant,

— vs. —

EARL WILLDEN, T. A. CLAR-
IDGE and ALDEN WILLDEN,
also known as AL WILLDEN,
Defendants and Respondents.

Civil No.
7476

Brief of Appellant

FILED

JUL 21 1950

MERRILL C. FAUX
SKEEN, THURMAN &
WORSLEY,

Attorneys for Appellant

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS	1
STATEMENT OF POINTS	9
ARGUMENT	14
1. The trial court erred in finding in paragraph 16 of the Findings, "That there was no agreement between the plaintiff and Al Willden that Al Willden should prospect with or for, or locate claims for the plaintiff or that plaintiff should be named as a locator in any claim which he, Al Willden, might locate."	14
2. The trial court erred in finding in paragraph 17 of the Findings of Fact, "That neither Claridge nor the Willdens started work on the Lost Sheep Group, until after Earl Willden arranged with plaintiff to cease work on the Dell Group in the early part of June."	19
3. The trial court erred in finding in paragraph 18 of the Findings, "That there was no express agreement or definite arrangement at any time, either oral or written, between the plaintiff and Earl Willden or T. A. Claridge relative to the prospecting for or location or ownership of mining claims other than the Dell or Dell #1 claims, although Claridge and Earl Willden recognized an obligation to name plaintiff as a co-locator with them on claims adjoining the Dell and Dell #1."	21
4. The trial court erred in finding in paragraph 19 of the Findings, "That plaintiff knew at least as early as the forepart of June, 1948 that Claridge and the Willdens had located two or more claims northerly from the Dell Group and that he had not been named or included as a locator on such claims."	23
5. The trial court erred in the first Conclusion of Law in concluding that, "The plaintiff, Morley and the defendants, Claridge and Earl Willden, should be considered joint venturers or partners in equal shares in the development work done prior to about June 15, 1948 on the Dell Group of claims."	29
6. The trial court erred in the first Conclusion of Law, quoted next above, in that the court thereby goes outside of the pleadings and the trial of the case to make its decision and judgment	35

TABLE OF CONTENTS—(Continued)

	Page
7. The trial court erred in the second Conclusion of Law in concluding, "That no partnership arrangements was effected between the plaintiff and the defendants, or either of them, covering the prospecting for or location of mining claims other than those embraced within Dell Group."	39
8. The trial court erred in concluding in Conclusion No. 3, "That there was no legal or equitable obligation on the part of either Claridge, Earl Willden or Al Willden to include the plaintiff's name as a co-locator or co-owner with them in any of the mining claims referred to as the Lost Sheep group or in the Eagle Rock claim."	39
9. The trial court erred in concluding in Conclusion No. 4 that, "The plaintiff has no right, title, equity or interest in any of the claims referred to as the Lost Sheep group or in the Eagle Rock Claim, and is not entitled to any accounting for ores taken from any of said claims."	39
10. and 11. The trial court erred in rendering its judgment.....	46

CONCLUSION

The Supreme Court should reverse the trial court's judgment and make new findings of fact, conclusions of law and judgment in favor of plaintiff as prayed for in his complaint	47
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

AUTHORITIES CITED

Bancroft Code Pleadings Practice and Remedies, (Supplement), Vol. 3, Page 258, Section 1765	38
Bentley vs. Brossard, 94 Pacific 736	44
40 Corpus Juris 1152, Section 808	44
Costello vs. Scott (Nevada), 93 Pacific 1	17
Evans vs. Shand, 74 Utah 451, 280 Pacific 239	39
Kahn vs. Old Telegraph Mining Company, 2 Utah 174.....	22
Lindley on Mines, Vol 3 (Third Ed.)	22
Paxton vs. Paxton, 80 Utah 540, 15 P. (2nd) 1051	47
Sharp vs. Bowen, 87 Utah 327, 48 P. (2nd) 905	47
Shea vs. Nilima, 133 Fed. 209.....	22
Story on Partnership (7th Ed.), Section 172	44

IN THE SUPREME COURT OF THE STATE OF UTAH

LAFE MORLEY,

Plaintiff and Appellant,

— vs. —

EARL WILLDEN, T. A. CLAR-
IDGE and ALDEN WILLDEN,
also known as AL WILLDEN,

Defendants and Respondents.

Civil No.
7476

Brief of Appellant

STATEMENT OF FACTS

In the early part of the year 1947, the plaintiff, Lafe Morley had a conversation with defendant, Earl Willden, at Delta, Utah, where both lived. They talked about some “kidney quartz” ore which Willden had found about twelve years previously in the Topaz district, northwest of Drum Mountain in Juab County, Utah. During the course of the conversation, the two of them arranged to go out and search for the source of that ore and at Morley’s suggestion, defendant T. A.

Claridge, also of Delta, was to be taken with them to make the search (Tr. 4, 5).

After two attempts the three of them on about May 19, 1947 (Tr. 7), got together and went out into the district referred to. Willden could not locate the "kidney quartz" ore, but they did find some other ore, apparently fluorspar, and where it was found they located a mining claim which they named the "Dell" because of its location to the west of Dell Valley. They recorded this claim and another, Dell #1, in their three names, in the office of the Juab County Recorder on May 27, 1947 (Tr. 9).

Thereafter, during the same year, the three of them, Lafe Morley, Earl Willden and T. A. Claridge, made four or five prospecting trips to the said district which is about fifty miles northwest of Delta. Morley agreed to stand his portion of the expenses and Claridge went out on the claims and prospected (Tr. 71, 320).

In the meantime, they had obtained an assay of the ore which they found on their first trip and learned that it was fluorspar ore of good quality (Tr. 10).

During the prospecting trips and later on in the year 1947 and early in 1948, the three of them formed a partnership, which they called the Dell Mining Company (Tr. 14) and made plans to go out and open up the ground and find the vein from which their fluorspar sample had come (Tr. 11) and wherever it looked reasonable, to get out on these hills and develop new claims (Tr. 74, 137, 151). Morley made arrangements

with defendant Al Willden, Earl's brother, to work in Morley's place in opening up the claim and the partners arranged to take an air compressor out onto the claim to assist in the development work (Tr. 11, 182). Morley donated a ton and a half army truck (Tr. 12) to provide transportation for men and materials onto the claim. Earl Willden and Claridge agreed to put in their labor and Lafe Morley contracted with Al Willden to perform Morley's share of the work (Tr. 75). Al Willden was told to keep track of the time he worked and to report to Morley at the end of each week. Claridge undertook to act as manager for the group (Tr. 148) and to take care to a great extent of their clerical work and other work not actual mining labor, such as establishing boundary lines of the claims, making notices and recording the claims.

The foregoing arrangements were made in March of 1948. Additional claims were located and recorded as follows:

Locators		Dated	Recorded
T. A. Claridge) Lafe Morley) Earl Willden)	Dell #2	Mar. 8, 1948	Apr. 13, 1948
T. A. Claridge) Lafe Morley) Earl Willden)	Dell #3	Mar. 23, 1948	Apr. 13, 1948
T. A. Claridge) Lafe Morley) Earl Willden)	Dell #4	Mar. 23, 1948	Apr. 13, 1948
T. A. Claridge) Lafe Morley) Earl Willden) Al Willden)	Dell #5	April 6, 1948	Apr. 13, 1948

T. A. Claridge)
 Lafe Morley) Red Hill May 1, 1948 May 24, 1948
 Earl Willden)

T. A. Claridge)
 Lafe Morley) Lucky Day May 10, 1948 June 8, 1948
 Earl Willden)
 Al Willden)

T. A. Claridge)
 Lafe Morley) Dell #5 May 10, 1948 June 8, 1948
 Earl Willden) (amended)
 Al Willden)

In each claim the names of the three partners were shown as locators. In Dell #5 and Lucky Day, Al Willden was shown as locator. He found some ore on those locations after working hours and the partners permitted him to be named as a locator (Tr. 258).

The two Willdens continued on at the development work on the Dell claims. Morley's payments to Al Willden for his work were made once a week at intervals up to June 5, 1948. About once a month, they met at Claridge's home and equaled up the other expenses. Morley would pay one third of the amount incurred for supplies. In the meantime additional claims as follows were located and recorded:

Claim	Dated	Recorded
Big Boy	May 25, 1948	June 23, 1948
Dell #3 amended	June 5, 1948	June 8, 1948
Hill Top	June 5, 1948	June 8, 1948
Summit	June 17, 1948	June 29, 1948

In each claim the names of the three partners appeared as locators. In Big Boy, Hill Top, and Summit,

Al Willden's name also appeared as a locator. Claridge had prepared the notices and had put Al Willden's name therein as a locator without notifying Lafe Morley and had recorded them in that form.

Likewise, without knowledge of or participation by Morley, Claridge and the two Willdens on Sunday, May 9, 1948, had prospected for and discovered other claims listed below:

Claim	Dated	Recorded
Lost Sheep #1	May 10, 1948	May 24, 1948
Lost Sheep #2	May 10, 1948	May 24, 1948
Blow Out	May 10, 1948	May 24, 1948

In the claims recorded of the two "Lost Sheep" claims, the two Willdens were shown as locators and in the "Blow Out" claim, T. A. Claridge and his son, Rex Claridge were shown as locators.

There was no notice given to Morley by the Willdens or Claridge of any termination or change in their partnership arrangements. Nor was there any intimation of any change in the relationship until May 27, 1948. On that date the three defendants, Earl Willden, Al Willden and T. A. Claridge were together following their midday meal, in the miners cabin located near the workings on the Dell Claim. Plaintiff Morley came to the cabin with Les Price who was associated with Morley and others in the Ward Leasing Company. Claridge seemed displeased at the presence of Price and announced to Morley, "There is going to be a lot of fellows coming in, so from this date anyone wishing any

more claims is going to be responsible individually.” (Tr. 27.) Morley was embarrassed by the reception given him by Claridge and puzzled by his declaration, but he made no reply (Tr. 27).

Two days later in Delta, Claridge met Morley on the street and invited him to the Claridge home because—“There is a few things we want to talk over.” After their talk, they parted with a handshake and “swore to one another that we would stick together in this mining deal.” (Tr. 58.) Morley felt that the “misunderstanding was pretty well cleared up.” (Tr. 58, 118.)

Shortly after the conversation at the cabin on May 27th, Claridge informed Morley that he and the Willdens “each had a couple of claims down around the point that they had located.” Claridge followed up this announcement with the statement, “I don’t think that they amount to much.” Morley was uncertain as to the legal effect of that statement respecting his interest in the claims “down around the point.” As he stated it, “I didn’t know exactly where I stood on it.” (Tr. 59.)

The question remained in Morley’s mind and on about September 18, 1948, he went into the County Recorder’s Office at Nephi, Utah, and examined the record of mining claims and found that on May 24, 1948, Claridge had recorded the two Lost Sheep claims and the Blow Out claim as listed above which they had located on May 10, 1948, and that his name had been omitted as a locator (Tr. 54). Morley tried to get an explana-

tion from Claridge and to discuss the situation with him. Claridge then told Morley that the only place he would "discuss this thing" with him would be "in court." (Tr. 55.)

The Willdens had stopped working on the Dell claims during the latter part of June, 1948 and had commenced developing the Lost Sheep claims which were also located near the Dell Valley, the shortest distance between one of the Dell group of claims and one of the Lost Sheep group being about eight hundred feet, or less than a quarter of a mile (Tr. 22). The flourspar ore produced from the Lost Sheep claim was abundant and of high quality. They shipped one car to Geneva Steel on a contract which Morley had obtained with that company in his own name, but for the Dell Mining Company (Tr. 112). The check from Geneva Steel came back to Morley in his name. At the request of Earl Willden, Morley turned the check over to him, feeling that there would be an accounting of the money (Tr. 116), and that it didn't make any difference so long as the ore was being shipped (Tr. 118). The Willdens centered their efforts and energies on the Lost Sheep claims. Morley and Claridge had purchased from Earl Willden his one third interest in the Dell group of claims and they centered their interest there. On June 29 Morley and Claridge joined in a letter to Geneva Steel in which they wrote regarding shipment of ore (Tr. 126). In that letter, they referred to the relationship between Claridge, Earl Willden and Morley as a partnership "developing a property" which they named the "Dell Mining Company." (Def's. Ex. 7.)

On September 18, 1948 as related above, Morley learned that the Lost Sheep claims and the Blow Out claims had been located by his two partners and his own hired man (Al Willden) on May 10, 1948, at a time when there had been no intimation of any change in their relationship, when Morley was still paying one third of the expense of the operation, when he was paying Al Willden for working out Morley's share of the labor, when they still had Morley's truck on the job for hauling the men between Delta and the mine and for trucking at the mine; when they had Morley's other equipment in use at the mine (Tr. 45) and when the Dell Mining Company, organized without formality under the custom of miners, was operating fully in accordance with the plan and intent of the partners.

Morley then promptly, September 24, 1948, asked for an explanation from his partners and made an effort to discuss with them the situation which seemed to him inconsistent with their original relationship and operations. He was then told that they would discuss this thing with him in court (Tr. 55).

The Willdens had continued their operations of the Lost Sheep claims which had produced valuable ore in large quantities (Tr. 196). Claridge had done some development on the Blow Out Claim. Morley started this action in December, 1948 for an accounting by his partners and the trial was held in July, 1949. The trial court denied the relief sought by plaintiff and, being an equity action, this appeal seeks a review by the Supreme

Court of both the facts and the law and requests a reversal of the decision of the trial court which favored the position of the defendants and respondents.

STATEMENT OF POINTS

1. The trial court erred in finding in paragraph 16 of the Findings,

“That there was no agreement between the plaintiff and Al Willden that Al Willden should prospect with or for, or locate claims for the plaintiff or that plaintiff should be named as a locator in any claim which he, Al Willden, might locate.”

in that the evidence is insufficient to support such finding.

2. The trial court erred in finding in paragraph 17 of the Findings,

“ . . . that neither Claridge nor the Willdens started work on the Lost Sheep Group, until after Earl Willden arranged with plaintiff to cease work on the Dell Group in the early part of June.”

in that the evidence is insufficient to support such finding.

3. The trial court erred in finding in paragraph 18 of the Findings,

“That there was no express agreement or definite arrangement at any time, either oral or written, between the plaintiff and Earl Willden

or T. A. Claridge relative to the prospecting or location or ownership of mining claims other than the Dell or Dell #1 claims, although Claridge and Earl Willden recognized an obligation to name plaintiff as a co-locator with them on claims adjoining the Dell and Dell #1.”

in that the evidence is insufficient to support such finding.

4. The trial court erred in finding in paragraph 19 of the Findings,

“That plaintiff knew at least as early as the forepart of June, 1948 that Claridge and the Willdens had located two or more claims northerly from the Dell Group and that he had not been named or included as a locator on such claims.”

in that the evidence is insufficient to support such finding.

5. The trial court erred in the first Conclusion of Law in concluding that

“The plaintiff, Morley and the Defendants, Claridge and Earl Willden, should be considered joint venturers or partners in equal shares in the development work done prior to about June 15, 1948 on the Dell Group of claims.”

This is assigned as error for the reason that from the facts, the court should have concluded that the three persons named should be regarded as partners in all prospecting and development work regardless of where done at least until May 27, 1948.

6. The trial court erred in the first Conclusion of Law, quoted next above, in that the court thereby goes outside of the pleadings and the trial of the case to make its decision and judgment.

7. The court erred in the second Conclusion of Law in concluding,

“That no partnership arrangement was effected between the plaintiff and the defendants, or either of them, covering the prospecting for or location of mining claims other than those embraced within the Dell Group.”

This is assigned as error for the reason that from the facts, it clearly appears that there was a partnership effected for the location and development of mining claims without limitation as to the place where such claims should be found; that as to defendant Claridge and his interest in the Blow Out Claim and the other claims of the Lost Sheep group, irrespective of the status of the other defendants, this showing of the evidence is conclusive; and that while such partnership was in full effect and operating, the Lost Sheep group of claims were discovered and located.

8. The trial court erred in concluding in Conclusion No. 3,

“That there was no legal or equitable obligation on the part of either Claridge, Earl Willden or Al Willden to include the plaintiff's name as a co-locator or co-owner with them in any of the mining claims referred to as the Lost Sheep group or in the Eagle Rock claim.”

This appellant assigns as error for the reasons set forth in point No. 7 hereof and for the further reason that the facts place the defendant Earl Willden in the same partnership relationship with plaintiff as they place defendant Claridge and for the further reason as to defendant Al Willden that the facts show him to be in the employ of plaintiff Morley, working for him as a hired man at the time when the Lost Sheep group of claims were discovered and located.

9. The trial court erred in concluding in Conclusion No. 4 that,

“the plaintiff has no right, title, equity or interest in any of the claims referred to as the Lost Sheep group or in the Eagle Rock Claim, and is not entitled to any accounting for ores taken from any of said claims.”

This plaintiff assigns as error for the reasons set forth in points No. 7 and 8.

10. The trial court erred in rendering judgment that,

“the plaintiff herein has not, nor has any person or persons claiming under him, any estate, right, title, equity, interest, claim or demand of any nature or description in or to the following described unpatented lode mining claims, or any part thereof, situated in an unknown mining district in Juab County, State of Utah, and located about 52 miles northwesterly from the city of Delta in Millard County, Utah, and lying about one or two miles northerly and westerly from a small valley known as ‘The Dell’ or ‘Dell Valley’, to-wit:

Name of Claim	Names on Notices	Date on Notices	Date of Recording
Lost Sheep #1	Earl Willden Al Willden	10 May 1948	24 May 1948
Lost Sheep #2	Earl Willden Al Willden	10 May 1948	24 May 1948
Blow Out	T. A. Claridge	10 May 1948	24 May 1948
Lost Sheep #3	Earl Willden	24 May 1948	2 June 1948
Low Boy	Earl Willden Al Willden Tass Claridge	21 June 1948	22 June 1948
Low Boy #1	Earl Willden Al Willden T. A. Claridge	5 Aug. 1948	14 Sept. 1948
Eagle Rock	T. A. Claridge Rex Claridge Earl Willden Al Willden	15 Aug. 1948	14 Sept. 1948
Low Boy #2	T. A. Claridge Al Willden Earl Willden	21 Sept. 1948	1 Oct. 1948
Low Boy #3	Al Willden Earl Willden T. A. Claridge	21 Sept. 1948	1 Oct. 1948
Canyon	Earl Willden Al Willden T. A. Claridge	21 Sept. 1948	1 Oct. 1948

Appellant contends that the court erred in so rendering judgment for the reason that such judgment is not supported by the facts in the case and is contrary to law.

11. The trial court erred in rendering judgment that,

“The plaintiff is not entitled to any accounting from the said defendants or any of them for ores taken from any of said claims.”

“The plaintiff take nothing by his complaint and that the defendants have judgment against the said plaintiff “no cause of action.”

“The defendants have judgment against the said plaintiff for their costs in this cause incurred and hereby taxed at \$......”

This assignment is made for the reason that such judgment is not supported by the facts in the case and is contrary to law.

ARGUMENT

POINT No. 1

The trial court erred in finding in paragraph 16 of the Findings,

“That there was no agreement between the plaintiff and Al Willden that Al Willden should prospect with or for, or locate claims for the plaintiff or that plaintiff should be named as a locator in any claim which he, Al Willden, might locate.”

in that the evidence is insufficient to support such finding.

The finding that there was no agreement between the plaintiff and Al Willden that Al Willden should prospect with or for, or locate claims for the plaintiff is discredited by the only evidence in the entire record

concerning the intent of the agreement between plaintiff Morley and defendant Al Willden with respect to prospecting discoveries made by Al Willden. He testified (Tr. 257) referring to an occurrence after March of 1948,

Q. "Later on, Mr. Willden, there were some subsequent locations in this Dell group which is embraced in that red border in which four of you appear as locators?"

A. Yes sir.

Q. Did you have any conversation with Mr. Morley or Claridge or any of the others concerning being located in on these claims?

A. No sir.

Q. Do you know how you came to be located in these claims?

A. Well, I found some of the ore up there on my own after working hours, they just located me in."

The record shows that the first time Al received similar extra consideration for his labor was on April 6, 1948 when "Dell No. 5" was located. He was named as a locator because they had "found some ore coming up there." (Tr. 257.)

Some of the partners were with Al Willden when "Dell No. 5" was located and the time of day is not known. Those facts might dilute his claim to be owner of what he found. When "Lucky Day" was found, the circumstances were all in his favor. He found it. He was on his own. It was after working hours.

His testimony shows that he did not even talk to the partners about being located in on the find. Clearly only as a reward, the partners “—just located (him) in.”

Had his agreement with Morley permitted him to do so he would have laid some claim to the “Lucky Day.” When he was working out there in the hills he was working for Morley and all he had to do was report the hours and get his pay.

On this same day, the Lucky Day claim, the Lost Sheep claims and the Blow Out claim were located. Why did they not follow the same rule. When Al discovered “Lucky Day” Morley was not present. Yet it was located in the name of the partnership with Al’s name added as a reward for his industry. He was *on his own* and *it was after working hours*. Was the situation any different when they discovered the Lost Sheep, Lost Sheep #1 and Blow Out? Morley was not present, and it was after working hours, that is it was on Sunday, but those facts did not cut Morley out of the Lucky Day claim. What then did defendants advance as justification for upsetting their partnership understanding? The Lost Sheep group was a few hundred feet away from the Dell group. That is the reason they assigned. The real reason is that in the Lost Sheep group, Earl Willden, Al Willden and T. A. Claridge, these defendants, found a fortune. Morley was not present so they decided to cut him out. The trial court found that he, Al Willden, was under no obligation to Morley when he prospected and in that we think there is error.

The situation has almost a parallel in an early Nevada case—Costello vs. Scott, 93 Pac. 1.

This was an action for an accounting by Thomas J. Costello and another against Murry Scott and others. Scott was a practical miner. Costello was a stock broker. Scott was in the Fairplay Mining District. Costello was at Tonopah. Scott located certain claims at Fairplay then joined up with two other prospectors Mays and Savage. They went on a prospecting trip and located valuable mines at Wonder, twenty miles distant from Fairplay. Defendants contended that there was no partnership, only a “grub-stake” agreement; that the Costello-Scott arrangement was terminated when Scott teamed up with the other prospectors; that at most the Costello-Scott arrangement concerned only claims at Fairplay and not at Wonder, twenty miles away.

Respecting the first point the court said,

“We frequently encounter cases where the object of the venture is not only to search for and discover mines, but also to work and develop them, and conduct a general mining business. This is something more than a grub-stake contract. Such an agreement constitutes a partnership.” Lindley on Mines, (2nd Ed.), Vol 2, Section 858, p. 1565 et seq.

Respecting the scope of their operations the court said:

“It is very earnestly contended by counsel for appellant that the contract entered into between Scott and the plaintiffs had reference only to the

Fairplay District, — Although the earlier correspondence between the parties referred only to this district, there is no specific declaration that their operations are to be confined to that district. It is common knowledge that where parties enter into grub-stake agreements, or general partnerships for mining purposes, they care very little about the place where the mines are found.”

Relative to the contention of defendants that their partnership had terminated before their discovery of the Wonder Mines the court said at page 9:

“In all the correspondence between the parties from December, 1905, to May, 1906, inclusive, there is not a line or word indicating a severance of the contractual relations which they had entered into. After Scott made the Wonder discovery, he ceased all communications with plaintiffs. When one party to a partnership for mining purposes makes a discovery which would be of great value to the partnership, courts will not look with favor upon any contention upon the part of such discoverer that the partnership relations had previously been severed, unless such severance is clearly established.”

We think too that this court should not look with favor upon the contention upon the part of the defendants in this case that because the new, valuable discoveries were a few hundred feet away from the location where the partners at the time were actively engaged in working a mine, that such new discoveries did not belong to the partnership enterprise. Or that Al Willden who, while on plaintiff Morley's payroll par-

ticipated in the discoveries, might claim them as his own.

POINT NO. 2

The trial court erred in finding in paragraph 17 of the Findings of Fact,

“That neither Claridge nor the Willdens started work on the Lost Sheep Group, until after Earl Willden arranged with plaintiff to cease work on the Dell Group in the early part of June.”

in that the evidence is insufficient to support such finding.

The inference from the Finding that neither Claridge nor the Willdens started work on the Lost Sheep group until after Earl Willden arranged with plaintiff to cease work on the Dell Group in the early part of June is apparently that Morley thereby acknowledged that the Lost Sheep group was “out of bounds” for the partnership and an admission by him that thereafter the Willdens were no longer in the partnership enterprise.

What Earl Willden said and did about changing work from the Dell claim to Lost Sheep claim (Tr. 191) is not inconsistent with continuing on with their original arrangement. Morley’s role was to supply finances, supplies and equipment. Claridge did the managing, engineering and the paper work. Earl Willden was the miner. Morley had not directed the work at the outset, did not ever ask what claims they had worked on and Earl’s statement that he was going to work in and ship ore from a different location was no real basis

for surprise or objection on Morley's part. He had been required to furnish money to finance the operations, had paid his share of every bill presented without question and was ready and willing to continue on that course.

Earl Willden was not on salary. He had pledged his labor to the partnership enterprise. Had the needs of his family required him to leave the Dell Valley, his right to future discoveries certainly would have ended and his right to profit from development of the old discoveries would have been in doubt. It is not unusual for a miner to sell his interest in one claim to enable him to keep on in another more promising. It is a characteristic of a mining partnership that interests are traded, exchanged and rearranged and fluctuate and vary according to the exigencies of the circumstances without any formality and with little record of such transfers.

There was no real, visible reason whatever for Al Willden to quit his work on the Dell claim. He was on salary. All he had to do at the end of the week was to report to Morley the number of hours he had worked and get his check for it. Why then did he leave? The answer is clear. On May 9th, he and Earl and Claridge had found a "bonanza". Morley was not there, why permit him to share it? The certainty of wages at a dollar an hour with all expenses paid was no longer an attraction to Al. He wanted to reap the harvest of the Lost Sheep. Without any fear of the "starvation profits" that had purportedly caused his brother to forsake work on the Dell, he followed him into the

wealth of the "promised land" a share of which Morley now seeks to recover.

POINT No. 3

The trial court erred in finding in paragraph 18 of the Findings,

"That there was no express agreement or definite arrangement at any time, either oral or written, between the plaintiff and Earl Willden or T. A. Claridge relative to the prospecting for or location or ownership of mining claims other than the Dell or Dell #1 claims, although Claridge and Earl Willden recognized an obligation to name plaintiff as a co-locator with them on claims adjoining the Dell and Dell #1."

in that the evidence is insufficient to support such finding.

The finding of the trial court that there was no express arrangement between Morley and Earl Willden and Claridge relative to prospecting for or location or ownership of mining claims other than the Dell or Dell #1 claims is contested by plaintiff for the reason that it is against the weight of the evidence and that it infers as a matter of law that there must be an express agreement or definite arrangement in order to create an obligation between the parties relative to the prospecting for or location or ownership of mining claims.

Mining partnerships are the creation of miners, not lawyers. They grow out of the circumstances in isolated localities where men unite their efforts for their mutual benefit and whether or not they exist depends upon the

facts in each instance. Lindley on Mines, Vol. 3, (Third Ed.), referring to an early Utah case, Kahn vs. Old Telegraph Mining Company, 2 Utah 174, at Page 218, says:

“Mining partnerships have become ‘second nature’ to mining enterprises,”

and at page 1961, Section 797 says:

“What is a mining partnership, is a question of law. Its existence in a given case, however, is a question of fact depending for its solution on inferences to be drawn from the evidence deduced.”

In Shea v. Nilima, 133 Fed. 209, the court says, respecting a similar problem, that:

“The entire steps taken by the parties must be considered. Whatever was done in furtherance of the common purpose, understanding and agreement must be treated as an entire or continuous transaction, so far as their rights and obligations in respect to the enterprise are concerned. If by words, acts and deeds they joined together in a common purpose and agreed to share equally in the enterprise, they are in a certain sense partners and such a partnership may be formed without any written articles between the parties.”

Morley and Willden and Claridge had developed an enterprise from the stage of conversation to prospecting, exploration, discovery and mining, so that when the claims in dispute were discovered and located the Willdens were actually engaged in working a drift expecting to find a deposit of ore which could be profitably shipped. It is submitted that from those circum-

stances, the court should have found that the partners were then engaged in substantial mining operations; that the obligation which Claridge and Earl Willden recognized toward plaintiff Morley arose out of that relation and that that same obligation extended and bound them to recognize Morley in their prospecting for and discovery of the Lost Sheep group of claims.

POINT NO. 4

The trial court erred in finding in paragraph 19 of the Findings,

“That the plaintiff knew at least as early as the forepart of June, 1948 that Claridge and the Willdens had located two or more claims northerly from the Dell Group and that he had not been named or included as a locator on such claims.”

in that the evidence is insufficient to support such finding.

Plaintiff complains of the finding of the court as set out in paragraph 19 of the Findings to the effect that Morley knew as early as the forepart of June, 1948, that Claridge and the Willdens had located two or more claims northerly from the Dell group and that he had not been named or included as a locator in such claims. Reference to the record seems to be convincing that such finding is against the weight of the evidence. The finding relates to what was in Morley's mind—what he knew. It asserts that he knew he had not been named or included as a locator in the disputed claims. He testified in his direct examination (Tr. 54) as follows:

“Q. When were you first told? When did you first become aware of the fact that certain claims had been located by Messrs. Claridge and the two Willdens in which your name didn’t appear as one of the locators?”

A. I was in the courthouse at Nephi, on the way to Salt Lake.

Q. When would that be approximately?

A. It would be approximately in the latter part of September.

Q. Do you know when? Or is that as near as you can fix it, the latter part of September?

A. I think it was the 18th.

Q. The 18th of September.

A. Yes.

Q. Would it be any earlier than that?

A. No.

Q. And on that date the same thing occurred which you this morning stated had occurred on September 7th?

A. Yes.

Q. But as to the date of September 7th, you feel that you were in error?

A. That is the first that I knew, yes sir.

Q. You learned on or about September 18th, 1948, that you had not been included as owner or locator in some of the claims?

A. Yes.

In his cross-examination (Tr. 78):

Q. Well, you are claiming now that this arrangement you had on this Dell group was to have continued in this north block.

A. I thought we was pretty close at that time in the mining business.

Q. You thought you were. And did you suppose when the Willden boys went around to the other place they would be working under the same arrangement they were before?

A. Probably they would be working under the same arrangement.

Q. What arrangement did you think they would be working under?

A. I didn't know for sure.

Q. Why didn't you interest yourself to find out?

A. I figured there was a misunderstanding, and it would be straightened out.

Q. When did you think it would be straightened out, after they developed the property by valuable improvements?

A. I thought after we would figure it out.

Q. Did you think when they went out to the Lost Sheep property, that is did you expect when they went out to the Lost Sheep property, if they didn't develop any claims, you would pay one-third?

A. When they gave me the bill I paid.

Q. I am talking about the other group.

A. I didn't know there was any other group. They said there was another claim. I didn't know just what the status was.

Q. Did you expect when the Willden boys went around the point and went to work on the Lost Sheep that you would have an interest there?

A. I figured as soon as we got things straightened out. I was pretty busy in town, and we would get together and figure it out.

Q. When? You waited until after several months had gone by and they had made a number of shipments.

A. Yes.

Q. Then you wanted to get together?

A. Yes.

Q. And not before?

A. I didn't get a chance before. I didn't know just exactly what the score was.

Q. Oh, you didn't get a chance before. I thought you were on this ground with these others.

A. I mean I didn't get in to the courthouse to see what it was.

Q. You didn't have to go to the courthouse to know you were not located on the Lost Sheep.

A. No.

Q. You knew that when they went around and went to work in June, didn't you?

A. I wouldn't say I knew.

Q. What was your answer?

A. What is it?

Q. I say, you knew when they went around the point in June and went to work on that property you had no interest in the Lost Sheep claim?

A. I knew I had an interest. I didn't know I wouldn't get in on it.

Q. You knew you hadn't been located in on those claims?

A. They didn't tell me.

Q. How is that?

A. Claridge told me that they located some.

Q. So you didn't have to wait, you had such information when you went to the courthouse and learned of that fact, did you?

A. I wouldn't have to go."

While it is admitted by Morley that Claridge told him that they had located some claims, he also testified unequivocally that:

"I knew I had an interest. I didn't know I wouldn't get in on it."

During the later days of the partnership, plaintiff Morley was uncertain as to two important matters. First, the time when the Lost Sheep Claims were located and, second, the nature and extent of his interest in them. That what he did or failed to do shows some uncertainty, as we look back on the record of his statements and actions, may be explained by considering the relation of two events: On May 27, 1948, for the first time, there was an intimation by Claridge that there would be a change in the relationship that had theretofore existed between the partners. The trial court so found that in paragraphs 13 and 14 of the Findings of Fact, and this finding has not been challenged or disputed by defendants. As Earl Willden testified on the witness stand (Tr. 236) the statement of Mr. Claridge was as follows:

Q. What were Mr. Claridge's words to Mr. Morley?

A. He said "Lafe", or "Mr. Morley", whatever he called him, he said, "there is going to be a lot of prospectors in here," he said, "this district is getting well known", something to that effect, "if you and Mr. Price want any more claims you better get out and prospect for them, get some for yourselves," he says, "it is each man for himself from now on," he says, "we are going to prospect for ourselves."

Following this pronouncement, Earl Willden said nothing (Tr. 243). Two days later, Claridge invited Morley to his home to talk things over. When they parted they shook hands and vowed to stick together in their mining deal. Claridge was the spokesman for the group and Morley was justified in concluding that he spoke for Earl Willden as well as for himself when he shook hands and swore to "stick together." Morley sensed that there was some misunderstanding, but figured it would be straightened out (Tr. 78).

Up to May 9th, when Claridge and the two Willdens went out to Dell Valley to do some prospecting, Morley's name had been included on every claim they had located and recorded. Up to that day there had been no intimation by word or act that there was to be any change. Fifteen days later, without any word to Morley, Claridge recorded the claims and omitted Morley's name. At that time he had a right to assume that his name would be shown as a locator. Three days after the recording, Claridge announced, while Morley and Les Price were at the cabin,

“If you want any more claims from now on you will have to get out and prospect for them yourself because that is what we are going to do.” (Tr. 185.)

He had a right to assume even then that he had a one third interest in everything developed by his associates prior to that time. Certainly the only reasonable inference from the declaration is that up until that time their work had been for the benefit of the partnership and that only from then on would Morley have to prospect for himself.

POINT No. 5

The trial court erred in the first Conclusion of Law in concluding that,

“The plaintiff, Morley and the Defendants, Claridge and Earl Willden, should be considered joint venturers or partners in equal shares in the development work done prior to about June 15, 1948 on the Dell Group of claims.”

for the reason that from the facts, the court should have concluded that the three persons named should be regarded as partners in all prospecting and development work regardless of where done at least until May 27, 1948.

Plaintiff Morley prevailed in his contention that he and his partners, Claridge and Earl Willden, had formed a partnership. The Court concluded in that regard in paragraph 1 of the Conclusions:

“That the plaintiff Morley and the defendants Claridge and Earl Willden should be con-

sidered joint venturers or partners in equal shares—”

Plaintiff Morley also prevailed in his contention that May 27, 1948, was the earliest date on which any notice was given of the termination of that partnership. In that regard, the court found in paragraph 13 of the Findings:

“That on May 27, 1948, a conversation took place at the cabin near the Dell claims at which Morley, Claridge, Earl Willden, Al Willden, and one Leslie Price were present. — Claridge said to Morley in substance:

“This district is getting pretty well known and if you want any more claims you had better get out and locate them yourself. It is every man for himself from now on.”

Further in paragraph 14 of the Findings the court found,

“—this statement by Claridge is the first statement by either of the three as to termination of such co-ownership or partnership arrangement.”

Plaintiff takes the position that, having succeeded in proving that there was a partnership and that there was no termination of it until May 27, 1948, as the earliest possible date, the burden of establishing that valuable claims located before that date by some of the partners did not belong to the partnership, rests upon those asserting it, the defendants in this case. That they did just the contrary seems clear from the evidence. The testimony of defendant Claridge on cross examination in this regard is as follows:

Q. (Tr. 351.) In March 1948 you sort of got together and agreed to do something.

A. Yes.

Q. Now, nothing was said from March up to the present time and at this conversation, nothing was said during March, April, May or June, 1948, that your operations that you started out to make with Mr. Morley and Earl Willden, that those operations would be limited to any area?

A. No sir.

Q. That was never talked of or at least if it was talked about it was never uttered in your presence?

A. No sir.

Q. You went out there to prospect for claims together with the idea that you would locate those claims and then do some development?

A. Yes sir, at first we did.

Q. And that continued right up, according to your theory, right up until this conversation?

A. Yes.

Q. At which Mr. Price was present?

A. Yes.

Q. Up to that time nothing, not a single word had been uttered by anybody or by you, that you and Mr. Morley and Earl Willden would be limited to this South Group?

A. No sir.

Q. (Tr. 372.) Now, on your direct examination you said this, that no particular discussion was entered into about locating new claims. Is that correct?

A. Not that I recall.

Q. That is your recollection, you remember no discussion?

A. Yes sir.

Q. You don't say, however, though, that some discussion was not had to that effect?

A. There could have been.

Q. Up until the month of June you never once said that this partnership would be located, or would be limited to the claims in the South Group appearing on Exhibit 1.

A. Until the first of May, I meant.

Q. How is that?

A. About the first of May.

Q. Oh, the first of May. You said from then on it was each man for himself.

A. Yes.

Q. Did you ever say that the partnership which you and Earl and Lafe Morley formed or entered into, that partnership arrangement, did you say that we are going to confine our operations to the South Group? Did you ever say that specifically at any time?

A. (Tr. 373.) That was understood, sir.

Q. I am asking you, did you ever say that?

A. No.

Q. Did Earl ever say that in your presence?

A. Not that I know of.

Q. Did Mr. Morley ever say that in your presence?

A. No sir.

Q. You just agreed to locate claims, operate them, develop them, without saying the number of claims or where those claims were to be located, isn't that a fact?

A. That is what I did.

Q. Not until you had this conversation at which Les Price was present was there a single thing said by any of you that this partnership arrangement be terminated?

A. No sir.

Q. You knew at that time that you had a right to terminate that partnership, didn't you?

A. Yes.

Q. That individuals could terminate it?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. And no attempt was made by you, Earl Willden, or Mr. Morley to terminate that partnership prior to this conversation?

A. No sir.

Q. Up to that time you were working as partners?

A. We were working together on the South Group.

Q. (Tr. 374.) Up to that time everything you did was as a partnership out on the ground in that area, up to this conversation at which Les Price was present, isn't that a fact?

A. Yes.

Q. No one had acquired a single interest up to that time that didn't belong to the partnership.

A. No sir.

Q. That is, there were some operations and then after Al was taken in.

A. Yes.

Q. You and the others, so far as the three of you were concerned originally, the three partners, you, Earl Willden and Mr. Morley, you were all interested in everything that was located up to the time of this conversation?

A. Yes sir.

The court found that the conversation at which Les Price was present was on May 27, 1948. The Lost Sheep, Lost Sheep No. 1, and Blow Out claims (and other claims) had been prospected, located and recorded before that time. As determined by the testimony of defendant Claridge, these disputed claims belonged to the partnership and the conclusion that the partnership was limited to the Dell group was not the legal effect of the evidence. The defendants did not sustain that position but on the contrary proved that until May 27, 1948,

“—everything (they) did was as a partnership—”

“No one had acquired a single interest — that didn't belong to the partnership.”

and that,

“—the three partners — were all interested in everything that was located up to the time of this conversation.”

POINT NO. 6

The trial court erred in the first Conclusion of Law in concluding that,

“The plaintiff, Morley and the Defendants, Claridge and Earl Willden, should be considered joint venturers or partners in equal shares in the development work done prior to about June 15, on the Dell Group of claims.”

in that the court thereby goes outside of the pleadings and the trial of the case to make its decision and judgment.

Plaintiff Morley based his complaint upon allegations that he and defendants, Earl Willden and T. A. Claridge had entered into and formed a co-partnership for the purpose of prospecting for and locating mining claims and for the filing upon development and conducting of mining operations thereon under the name and style of Dell Mining Company;

That after the commencement of said co-partnership, defendants, Earl Willden and T. A. Claridge wrongfully took control of some of the mining claims belonging to the partnership and developed said claims and permitted defendant Al Willden to share in the development of said claims and that together the defendants had taken the receipts and profits from said claims to their own use.

By reason thereof, plaintiff demanded judgment against defendants among other things for dissolution of the partnership, an accounting and a division between the partners of the partnership property.

Defendants answered and categorically denied that they or either of them had entered into or formed a partnership with plaintiff at Delta, Millard County, Utah, or elsewhere for the purpose of prospecting for or locating mining claims or for the filing upon or development of mining operations, or for any other purpose or at all, either under the name or style of Dell Mining Company or under any other name. Defendants denied further that plaintiff or either or both of said defendants continued or did ever transact any co-partnership business.

Accordingly, whether or not the three parties to this lawsuit, Lafe Morley, Earl Willden, and T. A. Claridge, formed and entered into a partnership, became the primary issue and trial was held on that basis, plaintiff contending for and defendant contending against that proposition.

During the course of plaintiff's case, proof of the acts and circumstances which plaintiff asserted established a partnership was introduced. This proof has been summarized in appellant Morley's Statement of Facts, above. Morley testified that the partnership was agreed upon, commenced operations and continued without even a hint or intimation of change or termination until on May 27, 1948. He related the facts as set out in the foregoing statement respecting the meeting on that day in the miners cabin located near the workings on the Dell claim. The vital statement of that meeting was the declaration by T. A. Claridge to Morley as testified to by Earl Willden

“—if you want any more claims from now on, you will have to get out and prospect for them yourself because that is what we are going to do.”
(Tr. 185.)

As though abandoning their position, that no partnership whatever had been formed or entered into, defendants set about to prove that the statement of Claridge quoted above was a termination of the partnership and that it occurred on about May 1, 1948 before the Lost Sheep claims and the Blow Out Claim were discovered, located and recorded. The date of that meeting became the crucial point of the whole lawsuit and defendants called, besides themselves, six witnesses to prove that it occurred on or about May 1, 1948. Plaintiff called eight witnesses to disprove their contention and the court finally found that said meeting was held on May 27, as contended for by plaintiff. Plaintiff takes the position now that the court went beyond the scope of the pleadings and the trial to decide that the partnership though formed and entered into did not extend to and include the discovery, location and recording of the so called Lost Sheep group of claims, ten in number, to-wit:

Lost Sheep #1, Lost Sheep #2, Blow Out, Lost Sheep #3, Low Boy, Low Boy #1, Eagle Rock, Low Boy #2, Low Boy #3, and Canyon.

Had defendants admitted a partnership, but denied that it extended to the so called Lost Sheep group, it might have been said with some justification that this issue was pleaded and tried. Plaintiff contends that that issue as such has not been litigated and that the court erred in so deciding. There was no pre-trial conference or

pre-trial order. The pleadings framed the issues and as before stated, whether there was a partnership formed and entered into and upon what date it was terminated, if at all, became the prime points for decision.

“—it is settled doctrine that judgments must conform to and be supported by the allegations of the pleadings—that they be responsive to the issues made by the pleadings and involved in the case. A court is without jurisdiction to pass upon questions not submitted to it for decision; and its judgment, in so far as it undertakes to decide issues not made by the pleadings, is void. If a judgment is entirely outside of the issues in the case, and upon a matter not submitted to the court for its determination, it may be vacated on motion or reversed on appeal.”

Bancroft Code Pleadings, Practice and Remedies (Supplement) Vol. 3, page 258, Section 1765.

In support of the rule, this Court has said:

“Whatever liberality may be accorded procedure, there nevertheless are certain fundamental principles which cannot be disregarded. These, among others, are that pleadings are the juridical means to invest the court with subject matter jurisdiction and to limit issues and narrow proofs; that courts cannot make a complaint for one thing stand for a different thing; that recovery must be *secundum allegata et probata*, which is but a necessary deduction from the maxim that what is not juridically presented cannot be judicially decided; that the statement of the cause of action or ground of defense as laid

binds the court as well as the parties; that there must be no departure is but another statement of the maxim that it is vain to prove what is not alleged.

These principles are primary.”

Evans v. Shand, 74 Utah, 451, 280 Pac. 239.

POINTS No. 7, 8 and 9

The trial court erred in the second Conclusion of Law in concluding,

“That no partnership arrangement was effected between the plaintiff and the defendants, or either of them, covering the prospecting for or location of mining claims other than those embraced within the Dell Group.”

The trial court erred in the third Conclusion of Law in concluding,

“That there was no legal or equitable obligation on the part of either Claridge, Earl Willden or Al Willden to include the plaintiff’s name as a co-locator or co-owner with them in any of the mining claims referred to as the Lost Sheep group or in the Eagle Rock Claim.”

The trial court erred in the fourth Conclusion of Law in concluding,

“That the plaintiff has no right, title, equity or interest in any of the claims referred to as the Lost Sheep group or in the Eagle Rock Claim,

and is not entitled to any accounting for ores taken from any of said claims.”

for the reason that from the facts, it clearly appears that there was a partnership effected for the location and development of mining claims without limitation as to the place where such claims should be found; that as to defendant Claridge and his interest in the Blow Out claim and the other claims of the Lost Sheep group (so called), irrespective of the status of the other defendants, this showing of the evidence is conclusive; and that while such partnership was in full effect and operating, the Lost Sheep group of claims were discovered and located; and for the further reason that the facts place the defendant Earl Willden in the same partnership relationship with plaintiff as they place defendant Claridge and show Al Willden to be in the employ of plaintiff Morley, working for him as a hired man at the time when the Lost Sheep group of claims were discovered and located.

Defendants placed great reliance upon the letter of June 28, 1948, (misdated July 28, 1948) to Geneva Steel Company as being a declaration by plaintiff Morley that the Lost Sheep claims were exclusive property of the Willdens and an admission that he had no interest in those claims. To properly understand that letter, it must be viewed in light of the circumstances and conditions existing on the day when it was written and in light of the fact that it was dictated in large part by defendant Claridge (tr. 128) who is now hostile to Morley. It is thought to be of sufficient importance to set it out here, verbatim, as follows:

Fillmore, Utah
July 28, 1948

Mr. Ten Eyck, Purchasing Agent
c/o Geneva Steel Company
Provo, Utah

Dear Sir :

In the recent night letter, which I sent you I advised you of shipment of a car load of ore and indicated there would be more to follow shortly. Since that time I have read a letter which was sent by you to Mr. Willden. So I feel an explanation is due you.

When I called into see you, there were three of us, Tass Claridge, Earl Willden and myself, working as partner developing a property which we named the Dell Mining Company and should have had the contract set up in this name, so the three of us could ship on it, but that was an oversight on my part.

Since that time, Mr. Willden has sold Claridge and I his interest in most of the claims we had, in order to finance work on one claim for he and his brother. This sort of split up the original work plan, and since the property they are working on now is on the road we built they are able to ship ore in their name that was originally intended to be shipped on Contract 17444. Claridge and I will have to build more roads and do a little more development before we can make any definite promises. We are working steadily on this and have leased one of our largest deposits to the Spur Brothers and as soon as we get a road built they will ship, but the district is new and although there is any amount of ore it is taking us longer than we expected to actually get in production, especially since the

first car we had ready to ship proved too high in silica.

Trusting this will explain a situation which has been confusing to you and disappointing to ourselves, we remain,

Respectfully yours,

/s/ Lafe Morley
& T. A. Claridge

At that time, however, if that letter controls the decision, Morley and Claridge were working hand and glove together. Clearly it is an admission by Claridge that the three began as partners in the Dell Mining Company. The most Morley can be charged with insofar as the letter is concerned is some impression that Earl Willden had acquired a separate interest in "one claim of he and his brother." Certainly it is an admission by Claridge that at one time it was intended that the ore being shipped by the Willdens from Lost Sheep claims was to have been shipped on "Contract 17444" which contract Morley obtained from Geneva Steel Company for the benefit of the partnership. If originally intended to be shipped on the partnership contract what occurred to effect a legal transfer of the Lost Sheep claims, and the ore taken out of them, from the partnership to the Willdens individually? Its title was once in the partnership, what has defendants shown to prove a transfer of it to Earl Willden and his brother. What consideration passed between the parties? Would a misapprehension by Morley either as to the facts or the law when he participated in sending the letter to Geneva Steel Company on June 29, 1948 work a transfer of interests

or rights which vested by reason of relations and acts of the parties on May 9, 1948? Would Morley's rights and interests in the Lost Sheep claims disappear because of the perfidy of his partner Claridge who knew all the facts and had not revealed them to Morley but without disclosing fully what he and the Willdens had done permitted him to proceed? The partnership relation is one of trust and confidence and the law protects against their unfair and dishonest acts rather than shields and makes valid the attempts of Claridge and Willden to grab and hold for themselves that which should be shared with their partner, Morley. Plaintiff contends that as to defendant Claridge, particularly, no credit can be taken from said letter for the position taken by defendants.

As to the Blow Out claim recorded in the name of T. A. Claridge and his son, Rex, there is not the slightest evidence in that letter that Morley does not have a full partnership interest. There is accordingly nothing to justify the conclusion and judgment of the trial court that plaintiff Morley is not entitled to an accounting from Claridge with respect to the Blow Out claim, apart from the conclusion that Morley cannot require an accounting of the Willdens on the Lost Sheep Claims.

“Good faith not only requires that every partner should not make any false representation to his partners, but also that he should abstain from all concealments which may be injurious to the partnership business. If, therefore, any partner is guilty of any such concealment, and derives a private benefit therefrom, he will be

compelled in equity to account therefor to the partnership.”

Story on Partnership- - (7th Ed.)- - Section 172.

One leading text expresses the rule as follows:

“The members of a mining co-partnership are held to the exercise of the utmost good faith in their dealings with each other.”

40 C. J. 1152, Section 808.

This Court in Bentley vs. Brossard, 94 Pac. 736, has upheld the same rule in the following language:

“Though the lease was in the name of Brossard alone, nevertheless, the contract of the defendants, as between themselves, had the effect of an equitable assignment of the lease and gave each of the parties to the contract an equitable interest in the lease as fully as though an express agreement had been made by the parties that Brossard should obtain the lease in his own name, for the use and benefit of all the parties. Under the arrangement of the parties, had large and valuable ore bodies been found and the proceeds thereof had exceeded the expenses of operation, equity would have given all the parties to the contract an interest therein, and would have compelled Brossard to account to his co-defendants therefor; - - -”

It would appear from the record that necessity caused the Willdens to abandon the Dell Claims and search for a more promising location (tr. 218). That cannot be sustained as to Al Willden, however, because he was on salary and merely had to report the number

of hours he had worked each week in order to get from Morley his pay check. The record seems more accurately to disclose a deliberate plan to "squeeze" Morley out. He had stimulated Earl Willden sufficiently to make the initial prospecting trip after Earl had delayed twelve years following up his discovery of the "kidney quartz." He paid without question all charges for labor, supplies or equipment presented to him (tr. 143, 144). Yet, when development of the Dell Claim became discouraging and they located the promising Lost Sheep and Blow Out Claims, Earl Willden and Claridge turned their back on their partner, Morley, and omitted his name from the location notices. They claim to have discovered the Lost Sheep #1, Lost Sheep #2 and Blow Out Claims on May 9, 1948 and before the day was over they wrote up the location notices showing Al Willden as the new partner. Sometime later, Claridge, fearing, as it seems clear, that such a sudden switch in their relation as partners could not be maintained, erased his name from Lost Sheep #1 and Lost Sheep #2 notices and removed the Willdens' name from the Blow Out notice (tr. 391, 2, 3, 402). Then he placed the name of his son, Rex Claridge, on it in their stead. These claims he recorded in that form. Lost Sheep #3, located on May 24, 1948 carried the names of the Willdens only. Then, following the announcement on May 27th that thence forward *each would be on his own*, which at the trial the defendants desperately tried to prove occurred on May 3rd, all claims in the so called Lost Sheep Group were located in the new partnership line-up to-wit: Claridge, Earl Willden and Al Willden, as shown by the following record:

Name of Claim	Names on Notice	Date of Notice	Date of Recording
Low Boy	Al Willden Earl Willden Tass Claridge	June 21, 1948	June 22, 1948
Low Boy No. 1	Al Willden Earl Willden Tass Claridge	Aug. 5, 1948	Sept. 14, 1948
Eagle Rock	Al Willden Earl Willden Tass Claridge	Aug. 15, 1948	Sept. 14, 1948
Low Boy No. 2	Al Willden Earl Willden Tass Claridge	Sept. 21, 1948	Oct. 1, 1948
Low Boy No. 3	Al Willden Earl Willden Tass Claridge	Sept. 21, 1948	Oct. 1, 1948
Canyon	Al Willden Earl Willden Tass Claridge	Sept. 21, 1948	Oct. 1, 1948

POINTS 10 AND 11

The trial court erred in rendering its judgment that,

“ . . . the plaintiff herein has not, nor has any person or persons claiming under him, any estate, right, title, equity, interest, claim or demand of any nature or description in or to the (mining claims in dispute in this lawsuit).”

“The plaintiff is not entitled to any accounting from the said defendants or any of them for ores taken from any of said claims.”

“The plaintiff take nothing by his complaint and that the defendants have judgment against the said plaintiff ‘no cause of action’.”

“The defendants have judgment against the said plaintiff for their costs in this cause incurred and hereby taxed at \$.....”

In points 1 to 9 plaintiff has challenged the Findings of the trial court and its Conclusions of Law on the ground that the facts in the case are insufficient to support such findings and conclusions. This action was begun by plaintiff as a partner praying for an accounting by his partners. As such it is an equitable proceeding and the facts as well as the law are subject to review by the Supreme Court. Whether the facts support the judgment becomes, therefore, a proper subject of inquiry in this appeal.

Paxton v. Paxton, 80 Utah, 540, 15 P. (2nd)
1051.

Sharp v. Bowen, 87 Utah, 327, 48 P. (2nd)
905.

CONCLUSION

Plaintiff submits that the facts of the case and the arguments herein advanced in support of Points 1 to 9 inclusive, justify a reversal by this court of the judgment of the trial court and the making of new findings of fact, conclusions of law and judgment in favor of plaintiff as prayed for in his complaint.

MERRILL C. FAUX
SKEEN, THURMAN &
WORSLEY,

Attorneys for Appellant