

1953

Roland E. Cranford and Fred C. Clemore v. H. Spencer Gibbs et al : Brief of Respondents

Utah Supreme Court

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Civil No. 7931

IN THE SUPREME COURT
of the
STATE OF UTAH

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ROLAND E. CRANFORD, et al.,

Appellants
(Plaintiffs)

— vs. —

H. SPENCER GIBBS, et al.,

Respondents
(Defendants)

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FILED
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BRIEF OF RESPONDENTS

H. Spencer Gibbs and Ida Pearl Gibbs, husband and wife;
Dana Gibbs and Verlie Gibbs, husband and wife;
Delone Jensen and Estell Jensen, husband and wife;
Phil Rosequist and Rose Rosequist, husband and wife;
Walter J. Cropper and Jane Doe Cropper, husband and wife;
Manton C. Gibbs and Flora B. Gibbs, husband and wife, and
Richard B. Kennedy and Anita Gae Kennedy, husband and wife.

Appeal from the District Court of Piute County, Utah
HONORABLE JOHN L. SEVY, Jr., *Judge*

ALTON C. MELVILLE

Attorney for Respondents

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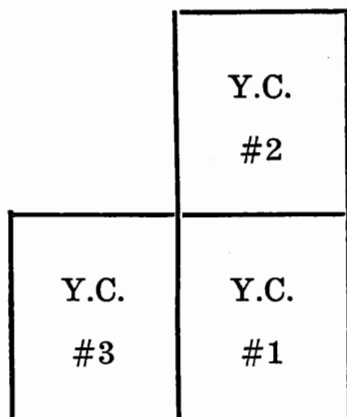
STATEMENT OF FACTS

The statement of facts submitted by the Appellants consists largely of a summary of the pleadings in the case. We respectfully suggest it is neither a concise statement of the essential facts nor is it amply documented. We submit the following statement which is substantially a summary of the facts as found by the trial court (R.40).

The Respondent, H. Spencer Gibbs, a native of Marysvale, Utah, and his associates made their first mining locations in the newly-discovered uranium area northeast of Marysvale by locating three claims, the validity of which was to be later disputed by the Appellants, to-wit:

Yellow Canarie No. 1 and Yellow Canarie No. 2, both located on April 25, 1949 (R. 266), and the Yellow Canarie No. 3 on June 7, 1949 (R. 275). The locations were made in the newly discovered uranium area two to three miles northeast of Marysvale, Utah. Notices were posted and recorded as provided by statute. These locations were made soon after the initial "Farmer John" discovery and within a few days after the "Prospector" locations were made, and before the latter were staked, (R. 265-267) and the earlier locations were always acknowledged and respected by Gibbs because of their priority

(R. 268, 631, 419). Yellow Canarie No. 2 was located immediately north of No. 1, and as stated in the notice “joins Yellow Canarie No. 1 north end line” (Defendants’ Ex. B, R. 269). Yellow Canarie No. 3 was located west of the No. 1.



These claims were later leased to Howell Mining Co. and with their assistance, the claims were surveyed (R. 468, 522) and amended notices filed and recorded, (Defendants Exhibits D, E, and F) to correct minor defects and to exclude the area covered by the earlier “Prospector” claims (R. 387, 433, 466). Respondents have been in continuous possession of these claims since their location, have done substantial work thereon and had expended upwards of \$4,000 in development work to the time of trial (R. 46, 274, 302, 401-2, 471).

Respondent Gibbs and associates thereafter made additional locations in the same area in order to extend and solidify their holdings and to eliminate gaps, (R. 430, 490) as follows:

<u>Name</u>	<u>Locators</u>	<u>Date Located</u>	<u>Recorded</u>	
Independence (R. 282, 441, 452, 517)	Manton C. Gibbs	7-4-49	7-6-49	E-268
Independence Fraction (R. 285, 525)	Manton C. Gibbs Richard Kennedy	5-28-50	5-31-50	F-100
Anita Gae No. 1 (R. 287, 514, 529)	Richard Kennedy H. S. Gibbs Walter J. Cropper	5-30-49	5-31-49	E-222
Grover Gibbs Fraction No. 2 (R. 293, 438, 493, 526)	H. Spencer Gibbs	6-7-50	6-9-50	F-115
Lucky Strike No. 2 (R. 273)	Manton C. Gibbs H. Spencer Gibbs	4-29-49	5-2-49	E-208
Fraction (R. 295, 527)	Walter J. Cropper Richard Kennedy	6-12-49	6-13-49	E-229

All of the above were located and recorded prior to May 31, 1950, the date of the first locations of Appellants, except Grover Gibbs Fraction No. 2. Reference to the maps placed in evidence by each side is probably essential to get a clear picture (Plaintiff's Exhibit 5, Defendant's Exhibit AA) (R. 39, 425). These maps are in substantial agreement.

Appellant Clemore first came to Marysville from California "to look over the uranium situation" about Christmas of 1949 (R. 130). After another trip or two

and after listening to rumor, gossip and hearsay to the effect that various claims including the Canaries had been changed or moved around (R. 131-2) he decided to ignore the Canaries and other prior locations and proceeded to make his own locations in complete disregard of all existing claims (R. 150, 159, 183-6, 309, 524, 531). Early in the trial Respondent Clemore denied he knew of some of these prior locations (R. 154) but later in the trial he admitted he saw these earlier monuments (R. 626), notices and workings and he talked with Mr. George Ryan, an engineer representing Howell Mining Company, (R. 423) the lessee of the Yellow Canarie claims who informed him of these prior locations (R. 187-9, 192, 285, 536).

Four locations were allegedly made by Appellants: Juanita No. 1, 2, and 3 and Debra Fraction No. 10. In attempting to establish these locations, the Appellants made the fatal error of making their discoveries and placing their discovery monuments within the boundaries of prior valid claims, and the Court so found (R. 40).

The three Juanita locations were all made on May 31, 1950 (R. 190), more than a year after the three Yellow Canaries claims had been located and after five other claims (above listed) of the Respondents whose validity is not seriously questioned, had been located and recorded.

Juanita No. 1 discovery was located within the boundaries of Yellow Canarie Fraction (R. 109) as well as Prospector No. 3 (R. 110-111, 447, 523, 540, 560) which

counsel stipulated was a valid pre-existing claim (R. 86). Appellants failed to follow through on their locations by work or even to maintain their monuments and boundaries (R. 625).

Juanita No. 2 discovery was located by Appellants within the boundaries of Yellow Canarie Fraction and Yellow Canarie No. 1, (R. 308, 540) and it was found and photographed within Prospector No. 3 (R. 304, 447, 523, 560, Defendant's Ex. X).

Both Juanita No. 1 and Juanita No. 2 conflicted with the following prior locations: Yellow Canarie No. 1, Yellow Canarie No. 3, Yellow Canarie Fraction, Independence, Independence Fraction, the Fraction; also with the Prospector No. 3 and No. 4 which counsel stipulated were valid pre-existing claims (R. 86, 110, 40, 109, 150, 303, 431, 540, 560). The corners on these claims were not maintained (R. 108).

The Juanita No. 3 discovery monument was located within the Anita Gae No. 1 and the Yellow Canarie No. 2 prior locations, (R. 150, 550) and in substantial conflict with Prospector No. 4 (R. 130). The boundaries of this alleged claim were never traced on their map, Exhibit 5. In fact, the Appellant did not attempt to maintain his monuments after November, 1950, and the court so found (R. 40, 129-130, 187, 557, 611, 619).

Appellant's fourth claim, Debra Fraction No. 10 located July 20, 1950 (R. 95) had its discovery monument within the Anita Gae No. 1, Grover Gibbs Fraction No.

2 and Yellow Canarie No. 2, and it was in substantial conflict with these three claims and with Lucky Strike No. 2, which was located on April 29, 1949 (R. 274, 370, 629) and the Fraction (R. 528). Its discovery monument and stakes were apparently abandoned by Appellants after June, 1951 (R. 112, 116, 509, 535, 557, 619, 621). There were some major discrepancies between Appellant's posted notices and those he recorded (R. 419, 449, 500, 532).

On the other hand the Court found, with ample evidence to support it that the above named mining locations of the Respondents were all valid and all except one of those enumerated were prior to those claimed by Appellants (R. 41-47, 264-298, 458, 487).

STATEMENT OF POINTS

POINT I

ANSWER TO APPELLANT'S POINTS 1 AND 2.

POINT II

APPELLANTS CLAIMS WERE NEVER VALIDLY LOCATED.

POINT III

THE TRIAL COURT'S FINDINGS AND JUDGMENT ARE SUPPORTED BY THE EVIDENCE AND BY THE LAW.

ARGUMENT

The appeal in this case is taken only from the Order Denying Motion for New Trial (R. 55). This is covered by Point 5 in Appellant's brief. The other four points discussed by Appellants were not actually raised by this appeal. Rules of Civil Procedure 73 (b).

POINT I

ANSWER TO APPELLANT'S POINTS 1 and 2.

Points 1 and 2 raised by Appellants in their brief contain the gist of their appeal. Briefly, it is that the defendants Gibbs originally located his Yellow Canarie No. 1 claim in a different area, and later moved it to its present location, thus invalidating it. By inference from the fact that the three claims are tied together by their location notices, they claim Yellow Canarie No. 2 and No. 3 must also have been moved. It is a matter of factual evidence that this Court is asked to weigh and construe in Appellant's favor. There are 578 pages of testimony and over 50 exhibits received in evidence, and while Appellants quote and refer to various extracts to support their theory of the facts, they do not suggest that there is no substantial evidence to support the facts as the trial court actually found them. The Court not only heard the evidence, but made a personal inspection of the area with counsel from both sides (R. 262).

Evidence to the effect that Gibbs location of the original three Yellow Canarie mining claims was made

where Respondents claim they were made, where they were when the Appellant Clemore found them, and were at the time of the trial can be found in the testimony of H. Spencer Gibbs himself, (R. 264-298, 301) in the testimony of Dana Gibbs (R. 411), Delone Jensen (R. 413), Mrs. Ida Pearl Gibbs (R. 415), Otho Howes (R. 408), Richard Kennedy (R. 458), Walter Cropper (R. 514), and other witnesses for Respondent.

The testimony of Appellant's own witnesses verified the place of location, two of them Dunsmore (R. 232, 239) and Johnson (R. 251) having helped do some staking of the boundaries of these very claims soon after their location.

Appellants would have this Court reject the above testimony which the trial court accepted, and adopt a theory based on conjecture "rumor and gossip" and a stray location notice transplanted from the Yellow Canarie No. 1, apparently written by Mr. Gibbs, which was allegedly picked up by the Appellant Clemore and his attorney just a week before the trial (R. 194) in what Appellants now call "Area #1", a mile and a half away from the original discovery area and away from where all of the uranium activity was taking place. How this stray location notice got at the foreign location neither the Appellants nor anyone else was able to explain (R. 179, 311).

Appellants emphasize the point that this stray notice recites that the Yellow Canarie No. 1 was located

along the “old county highway” which runs or ran northeasterly from Marysvale to Monroe. Both Appellants “Area #1” and “Area #2” are reached by travelling on the “old county highway”. This stray notice (Plaintiff’s Exhibit 12) also says “1 mile east of Sevier River” and “2 miles Northeast of Marysvale, Utah” which conforms to distances for “Area #2” where the location of Yellow Canaries No. 1 was originally made according to Respondent’s witnesses and where it now is. Appellant Clemore described “Area #2” as being 2 miles northeast of Marysvale (R. 139) the same distance as Gibbs’ “misplaced” notice, while Clemore’s altered location notice says “2½ miles north of Marysvale” (Plaintiff’s Exhibit 1, R. 614) and his testimony estimates the distance to “Area #2” at from 2 to 3 miles (R. 181), whereas the distance to this “Area #1” is less than half of that from Marysvale, (Plaintiff’s Exhibit 6) or as Appellants indicate in their brief (p. 26) it is 1½ miles south of “Area #2”, which is 1½ miles closer to Marysvale.

Both parties claimed that their monuments had been tampered with and moved and the court so found (R. 39, 175, 132, 278, 291, 305, 530, 561). The notices in the Yellow Canaries No. 1 and No. 2 were transposed at one time (R. 156, 311, 332, 379, 538) and notices on the “galloping camels” (R. 389) and “Jumping Jeepsters” (R. 398) were allegedly moved. It was not surprising to learn that a Yellow Canarie notice of location was found transplanted a mile and a half from the active uranium area just a week before the trial. Appellants attempt to

dramatize and capitalize upon the fact that Respondent's markers, monuments and notices in the area were changed and tampered with. But the court did not attach much probative value to that as against the abundant testimony of witnesses on both sides that Gibbs' Canarie claims and Gibbs himself was operating in the active area a full year before Appellants came into the picture; that he was in continuous possession and had expended some \$4,000.00 on these claims up to the time of the trial (R. 46, 401-02).

POINT II

APPELLANT'S CLAIM WERE NEVER VALIDLY LOCATED.

Appellants have relied largely upon alleged weaknesses in Respondent's locations, and have said relatively little to explain the evidence indicating movement of their own stakes and monuments and their failure to maintain them (R. 560, 625), the variance between their posted notices and the ones which they recorded (R. 419, 500, 533) or the evidence of abandonment of at least two of their claims. (Supra pp. 6-7). However, the law favors a liberal rather than a technical application of the law to these matters, and we are willing to concede to Appellants the benefit of this interpretation, but at the same time claiming this leniency for ourselves. *Morrison's Mining Rights*, 16th Ed. p. 89; *Wilson v. Triumph Consol. Min. Co.*, 56 Pac. 300, 19 Utah 66.

What is of more importance is the evidence and finding by the court that Appellant's claims were all located subsequent to eight of Respondent's locations with which we are directly concerned and the Appellant's discoveries were actually within prior valid locations. (Supra pp. 5-6). Furthermore, they made these overlapping locations with full knowledge of Respondent's prior claims and awareness of their possession. Under these established facts, Appellant's purported claims were void *ab initio*, and their good faith was open to question. On the principle of law here involved there can be no compromise, for it is well established that one who makes a mining location must do so upon unoccupied mineral lands of the United States. *Lockhart v. Farrell*, 31 Utah 155, 86 Pac. 1077. Utah Code, 1953, Title 40, Chap. 1. In that leading Utah case the court summarized the law:

“The following propositions may be said to be well established and generally recognized: (1) That a discovery of a vein or lode on unoccupied and unappropriated mineral lands of the United States is a prerequisite to a valid location of a mining claim. (2) That a location based upon a discovery within the limits of an existing and valid location is void. * * *”

The law is universal in this respect. As the California court states it:

“A relocation on lands actually covered at the time by another valid and subsisting location is void; and this not only against the prior locator, but all the world, because the law allows no such thing to be done.”

Denman v. Smith, 14 Cal. (2) 752, 97 Pac. (2) 451.

Good faith confronts any subsequent locator who enters upon the actual possession of senior locator's land for the purpose of initiating a claim to the same ground, although the senior location be invalid, and when such entry is in bad faith, such intrusion constitutes a naked trespass.

Brown v. Murphy, 36 Cal. App. (2) 171, 97 Pac. (2) 281.

An interest in mineral lands cannot be acquired by location or stealth as against one in actual possession and working ground under even an attempted location.

Springer v. So. Pac. R. R., 67 Utah 590, 248 Pac. 819.

The undisputed fact of priority and possession of the Respondents in the area in question is controlling in this case. A locator having actual notice that a prior locator was in possession of the ground covered by location notice and was claiming it under the mineral laws was not in a position to make an adverse location or acquire the property thereunder.

Hayden Hill Consol. Min. Co. v. Lincoln Min. Co., 160 Pac. (2) 468 (Idaho).

No mining rights can be initiated on government land by force, fraud or clandestine entry on the actual possession of another, whether the location of such other be valid or invalid. *Winslow v. Burns*, 132 Pac. (2) 1048 (N.M.) One having actual notice that a prior locator is claiming a tract and has done location work thereon cannot make a valid location, and may not even question the sufficiency of the original location or the character of the original occupant's title.

Gerber v. Wheeler, 115 Pac. (2) 100 (Idaho)
30 U.S.C.A. Sec. 38.

A recent California case holds that prior peaceful possession is sufficient to maintain action of ejectment against one who enters as a trespasser.

Smpardos v. Piombo Const. Co., 244 Pac. (2) 435.

The importance of prior and continuous possession is discussed in *Morrison's Mining Rights*, 16th Ed., pages 93, 101, 449-452.

POINT III

THE TRIAL COURT'S FINDINGS AND JUDGMENT
ARE SUPPORTED BY THE EVIDENCE AND THE LAW.

The Respondents in the present case stand before the court upon sound moral as well as legal grounds. The courts have consistently protected the prospector

and miner who has been first to enter upon a location, and has remained there and expended effort and money in the hope of developing a mine. That is the undisputed status of the Respondents.

On the other hand the law has never favored one who appears on the scene subsequently and tries to gain a toe-hold which must be based upon some alleged weakness or technical defect in the prior claimant's location. Priority and possession have usually been the determining elements in controversies of this nature. The matter of maintenance of stakes, wording of notices and technical variances between the two have always been subordinated to these more important considerations which find their basis in the good faith and industry of the locator, and as in the instant case are elements which are factually determinable.

To follow any other premise would result in confusion and uncertainty to every bona fide prospector and locator. The trial court considered these matters and necessarily arrived at sound conclusions on the facts and the law in this case. Its judgment should be sustained.

Respectfully submitted,

ALTON C. MELVILLE

Attorney for Respondents