

1954

Rex Holland et al v. Columbia Iron Mining Company et al : Brief of Respondents

Utah Supreme Court

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C. C. Parsons; A. D. Moffat; Calvin A. Behle; Counsel for Respondents;

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

REX HOLLAND,
REX HOLLAND, Administrator with the
Will Annexed of the Estate of JOHN
G. HOLLAND, Deceased,
Plaintiffs and Appellants,

— vs. —

COLUMBIA IRON MINING COMPANY,
a corporation,

COLUMBIA STEEL COMPANY, a
corporation,

GENEVA STEEL COMPANY, a
corporation,

UNITED STATES STEEL COMPANY,
a corporation,

UNITED STATES STEEL CORPORA-
TION, a corporation, *T*
Defendants and Respondents.

RESPONDENTS' BRIEF

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TION, a corporation,
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Case No.
8237

RESPONDENTS' BRIEF

STATEMENT OF FACTS

Appellants' Brief would completely obscure the uncontradicted facts of this record. Appellants' cited authority bears no relation whatever to the uncontradicted facts of this record.

Neither the defendant Arthur E. Moreton nor any other of the individual defendants is before this Court. Whether or not he or they be guilty of a perpetrated fraud has not been tried or determined, and this is not the appropriate forum for that purpose.

The corporate defendants, respondents here, are charged by appellants with having conspired with the defendant Arthur E. Moreton to perpetrate a fraud upon Moreton's co-owners in the sale to Columbia Iron Mining Company of the M&H, M&H No. 1 and M&H No. 2 Lode Mining Claims, situate in the Iron Springs Mining District, Iron County, Utah. It is charged that respondents participated in the alleged fraud by aiding Moreton to conceal from his co-owners the fact that out of the total purchase price of \$387,500.00 paid by the purchaser, respondent Columbia Iron Mining Company, Moreton received \$287,500.00, while his co-owners received only \$100,000.00.

The corporate defendants, respondents here, were dismissed out of this suit by the court below because the record, in all respects complete, failed to disclose as between the parties to this appeal an issue as to any material fact, failed to disclose, as between these parties, a controversial question of fact for submission to the trial court and, there being no just reason for delay, the court held all of these corporate defendants entitled to a summary judgment of dismissal.

Geneva Steel Company was a Delaware corporation and was organized to and did operate the Geneva Plant of Defense Plant Corporation at Geneva, Utah. Geneva Steel Company subsequently acquired title to the Geneva Plant. It was a wholly-owned subsidiary of United States Steel Corporation and was merged into United States Steel Company December 31, 1951.

Columbia Steel Company was a Delaware corporation and passed out of existence at midnight December 31, 1951, when it was merged into United States Steel Company. (Heald deposition, p. 5).

United States Steel Company was a New Jersey corporation and was merged into United States Steel Corporation, also a New Jersey corporation, on December 31, 1952, the latter then assuming all of the obligations of Columbia Steel Company, Geneva Steel Company and United States Steel Company.

Geneva Steel Company, Columbia Steel Company and United States Steel Company were thus merged into, and on December 31, 1952, became a part of United States Steel Corporation. None of these corporations had anything whatever to do with the negotiations for, the acquisition, mining or operation of the M&H, M&H No. 1 and M&H No. 2 Lode Mining Claims, which constitute the subject matter of this action. None of these corporations belong in this suit and all of them should

be dismissed out of it. (Heald deposition, pp. 3-9, Mathe-
sius deposition, pp. 3-7, 27, 30-43.)

18 C.J.S., §560, p. 1276,
Fletcher Cyclopedic Corporations, Vol. 9, §4474,
pp. 309-311.

Columbia Iron Mining Company was and is an Utah corporation and a wholly-owned subsidiary of United States Steel Corporation; it was and is a legal entity, separate and apart from and without relation to any of Geneva Steel Company, Columbia Steel Company or United States Steel Company; and except only that it is a wholly-owned subsidiary of United States Steel Corporation, Columbia Iron Mining Company is a corporate entity separate and apart from United States Steel Corporation.

Columbia Iron Mining Company was organized in 1930, and it has been its function to supply the Utah iron ore requirements of Columbia Steel Company, Geneva Steel Company and United States Steel Corporation; therein it acquired, owned and mined the necessary iron ore properties in Utah; Columbia Iron Mining Company has otherwise never had anything to do with the operation of the Geneva Steel Company or any other steel plant.

Columbia Iron Mining Company alone, and on its own behalf, purchased the M&H, M&H No. 1 and M&H No. 2 Lode Mining Claims, conducted all negotiations

looking toward their purchase and acquisition and has been alone engaged in the mining and disposition of the ores therein contained.

It will be our immediate effort to divulge the facts as disclosed by the record without contradiction. We think the simplicity of the issues here will be readily apparent.

The following is the sequence of events in which Columbia Iron Mining Company participated and which culminated in the acquisition by Columbia Iron Mining Company of the M&H, M&H No. 1 and M&H No. 2 Lode Mining Claims:

April 6, 1946, the defendant Arthur E. Moreton was the owner of and was engaged in patenting certain mining claims on iron deposits in the Pinto Iron Mining District on Iron Mountain in Iron County, Utah, and was in Cedar City, Utah, for that purpose, stopping at the Escalante Hotel. One William C. Murie contacted him there and told him that he, Murie, John Holland and Rex Holland had located three claims in the Iron Springs Mining District; that they lacked the funds necessary to survey these claims for patent, the patenting of them and to defray expenses incidental to their validation and purchase from the government. Murie asked Moreton if he would be interested in advancing the funds and rendering the legal services required to validate and patent the claims, in return for an interest in the claims. Moreton said he would talk to them.

The next day Murie, John Holland and Rex Holland discussed the matter with Moreton at the Escalante Hotel. The result of that discussion was that the co-owners offered Moreton a one-quarter interest in the three claims. Moreton said a one-quarter interest would be satisfactory, provided the co-owners would give him an option on their interests after he had performed on his part, and told them to decide among themselves what the option price should be. Murie and the two Hollands suggested \$100,000.00 and Moreton accepted. At that time there was no purchaser in sight. Murie and the Hollands had already granted an option to others to purchase the claims and other property for \$5,000.00, which option then unknown to Moreton was still outstanding. (Deposition Arthur E. Moreton, pp. 6 to 19, 26, 27.)

July 15, 1947, the defendant Moreton for the first time approached Dr. Walther Mathesius, President of Columbia Iron Mining Company, in an effort to sell to Columbia Iron Mining Company the three M&H claims, but was told by Mathesius that Columbia Iron Mining Company was not interested. Mathesius said it was far removed from his present scene of operations, and he did not know that he would have any interest in them, and certainly would not have unless he Mathesius should acquire the adjoining Milner property. (Mathesius deposition, p. 7, Moreton deposition, pp. 77 to 79, 260, 261.)

January, 1948 Moreton again approached Dr. Mathesius seeking to sell the M&H claims, and asked Dr. Mathesius if Columbia Iron Mining Company then had

not acquired the contiguous Milner property. Dr. Mathesius confirmed that acquisition, whereupon Moreton asked if under those circumstances Columbia Iron Mining Company might not be interested in purchasing the M&H claims, and Mathesius replied that it might be. Mathesius asked Moreton if the claims were patented and Moreton said no. Mathesius said that when the claims had been patented and good title acquired Mathesius would be willing to talk business with him. (Mathesius deposition, pp. 7, 8, Moreton deposition, pp. 262 to 266.)

In the middle of August, 1948, Mr. Sam Sargis, Supervisor of Raw Materials, Columbia Iron Mining Company, called Moreton on the phone and asked if he, Sargis, might have permission to make a magnetometer survey of the three M&H claims. Moreton gave permission. (Moreton deposition, pp. 266, 267.)

October 8, 1948, conversation with Arthur E. Moreton, previously arranged by telephone from Mathesius to Moreton. Ore prices and tonnage were discussed, and Mathesius read to Moreton a letter written by plaintiff Rex Holland to Mathesius dated September 14, 1948 (Appendix, Ex. A). This letter had advised Dr. Mathesius that Moreton's co-owners had placed the M&H claims in Moreton's hands for sale and that Moreton had advised them that the Steel Company had expressed to him its intention to purchase the property. By that letter Rex Holland had asked Mathesius to postpone the purchase until a more satisfactory agreement could be reach-

ed with Moreton. Rex Holland then stated that Moreton had made them believe there were only 1,400,000 tons of iron ore in the property and that, on the basis of that belief, they had agreed to accept \$100,000.00 for their $\frac{3}{4}$ ths interest, but that since signing the agreement with Moreton they had been advised that "instead of 1,400,000 tons * * * there are 3,500,000 tons of iron ore and that it is being offered for sale for 25 cents per ton or a total sales price of \$875,000."; wherefore under this agreement with Moreton the latter would receive \$775,000.00. By that letter Rex Holland had asked Mathesius to notify Moreton "that the sale has been cancelled", whereupon the co-owners would "demand that the sale be made on an equal basis", \$218,750.00 for each one-quarter interest.

Mathesius asked Moreton for his comment. Moreton expressed surprise, stated his ownership of a quarter interest in the claims and exhibited to Mathesius two documents, one an option to purchase and the other an agreement of ownership, (Appendix, Ex. B and C, respectively). Mathesius told Moreton he did not care to purchase a law suit and that before continuing the negotiations he wanted positive evidence in writing that all parties to the proposed transaction were completely satisfied with the settlement. (Mathesius deposition, pp. 8 to 11, Moreton deposition, pp. 267 to 277).

A few days later in 1948, October 10, 11 or 12, Moreton and Mathesius agreed by telephone to an estimated

iron ore tonnage of 1,550,000 tons as the basis of these negotiations. (Mathesius deposition, p. 11, Moreton deposition, pp. 277 to 281.)

October 16, 1948, or thereabouts, Mathesius received the letter of October 16, 1948 from the owners of the $\frac{3}{4}$ ths interest (Appendix, Ex. D), and accepted the same in response to Mathesius' demand for positive evidence in writing that all parties to the proposed transaction were completely satisfied with its terms, and also as satisfactory evidence that Rex Holland had abandoned the effort discussed by his letter to Mathesius of September 14, 1948, (Appendix, Ex. A).

This letter from the owners of the $\frac{3}{4}$ ths interest, to Columbia Iron Mining Company, attention Dr. Mathesius, dated October 16, 1948, recites Columbia Iron Mining Company's estimate of 1,550,000 tons of iron ore in the M&H claims, that the co-owners had that day prepared and submitted their offer to sell their $\frac{3}{4}$ ths interest for the sum of \$100,000.00 cash, and that that price "is entirely satisfactory to us and in full of our interest". The letter was concluded with the following statement, "Needless to say Mr. Moreton may offer and sell his interest in said claims for whatever price you and he may agree upon, if he so desires, and the entire proceeds therefrom will of course be his sole property, it being his right to determine and receive whatever amount you may agree upon with him". (Mathesius deposition, p. 11, Moreton deposition, pp. 281 to 286.)

October 16, 1948, Mathesius received the offer of that day to sell to Columbia Iron Mining Company by the owners of the $\frac{3}{4}$ ths interest (Appendix, Ex. E).

This offer was to sell to Columbia Iron Mining Company the $\frac{3}{4}$ ths interest for the sum of \$100,000.00 cash. The offer recited the following undertaking: The conveyance shall be in fee simple with covenants from the undersigned that they are lawfully possessed of an undivided $\frac{3}{4}$ ths interest in and to said mining claims, and that they will warrant and defend the title of Columbia Iron Mining Company, its successors and assigns, from all lawful claims whatsoever. (Mathesius deposition, p. 11, Moreton deposition, pp. 289 to 290.)

October 20, 1948, the Moretons' offer to sell of this date was received by Mathesius (Appendix, Ex. F). This offer to sell the Moretons' $\frac{1}{4}$ th interest was for the sum of \$287,500.00, payable in four equal installments, making the total purchase price for the three M&H claims \$387,500.00, which was based upon the agreed estimated tonnage of 1,550,000 tons at 25c per ton. (Mathesius deposition, p. 11, Moreton deposition, p. 292.)

Separate offers and deeds were prepared and executed on Moreton's objection to warranting the title of his co-owners. (Moreton deposition, pp. 292, 297, Heald deposition, pp. 28-29, 16-17.)

October 26, 1948, a letter from Moreton to Mathesius advising the latter of the issuance of patent and urging prompt acceptance of offers (Appendix, Ex. G). (Mathesius deposition, p. 12, Moreton deposition, p. 294.)

November 2, 1948, Moreton's letter to Mathesius transmitting patent and abstract of title. (Mathesius deposition, p. 12, Moreton deposition, p. 295.)

November 20, 1948, the owners of the $\frac{3}{4}$ ths interest, unsolicited, again addressed Columbia Iron Mining Company, attention Dr. Mathesius, President, by the following letter:

Cedar City, Utah
November 20, 1948.

Columbia Iron Mining Company
Provo, Utah

Attention Dr. Walther Mathesius, President:
Re: M & H, M & H No. 1 and M & H #2
Lode Mining Claims at Desert Mound

Gentlemen:

We reaffirm our letter to you of October 16, 1948, with respect to the offer made by us to your company for the sale of our interest in and to the M&H Claims at Desert Mound for the sum of \$100,000.00 cash.

We make this offer to sell our interest for this sum, free and clear of all encumbrances and lawful claims whatsoever. Patent on these claims has now been issued and we hope for an early acceptance of our offer.

An interest in these claims is also held by Arthur E. Moreton, and it is no concern of ours as to when and to whom he may sell his interest or at what price or upon what terms.

Sincerely yours,

(s) JOHN G. HOLLAND
John G. Holland

(s) C. S. HOLLAND
C. S. Holland

(s) REX HOLLAND
Rex Holland

(s) WILLIAM C. MURIE
William C. Murie

(Mathesius deposition, p. 14, Moreton deposition, pp. 296 to 297.)

By letter of December 8, 1948, Mathesius submitted to Moreton drafts of two warranty deeds, one agreement of sale, etc., for Moreton's review and comment. (Mathesius deposition, p. 14.)

December 10, 1948, Moreton returned, with interlineations the documents submitted. (Mathesius deposition, p. 15, Moreton deposition, p. 301.)

December 15, 1948, Mathesius accepted the two offers to sell, this by his letter to Moreton (Appendix, Ex. H). (Mathesius deposition, p. 15.)

December 20, 1948, transaction concluded in Moreton's office, and statutory warranty deeds executed and delivered. All parties present, except Susan Moreton Tevis, who was represented by her father Arthur E. Moreton. Dr. Mathesius testified in part as follows:

"My deliberate purpose in conducting the meeting was to make certain that all those present fully understood all phases of the transactions, had every opportunity to ask questions and obtain answers and were completely satisfied. I so stated. I conducted the meeting in accordance with a routine which had been developed informally between Mr. Heald and myself during a number of previous similar transactions; Mr. Heald presenting successively the documents which he prepared while I conducted the meeting. In the present instance there was no departure from the standard routine which we had heretofore established.

"The Murie-Holland transaction was handled first. I stated that the Warranty Deed, which Mr. Heald handed to me, was drawn as originally sent to Mr. Moreton on December 8, including, however, the interlineations in the text which were mentioned by Mr. Moreton in his letter to Mr. Heald of December 10, 1948, which has been marked as Defendant's Exhibit J, for identification. I stated that consequently I would not read the Deed unless someone requested it. There being no request, I asked the Hollands and Murie to sign the Deed, telling them that I would be prepared to hand to them upon completion of their signatures Columbia Iron Mining Company's check for \$100,000. Before doing so, I read aloud, because it had not previously been read by the parties to

the transaction, and I so stated at the meeting, a letter dated December 20, 1948, acknowledging receipt of the Deed and transmitting Columbia Iron Mining Company's check.

“This document is submitted and may be marked as Defendant's Exhibit L for identification.

(The document above referred to was marked for identification as Defendant's Exhibit L.)

“THE WITNESS: Likewise and for the same reason, that is because it had not previously been read, I read aloud receipt of Columbia Iron Mining Company's voucher Treas. No. 09130, and asked the Hollands and Murie to sign it. This may be marked as Defendant's Exhibit M.

(The document above referred to was marked for identification as Defendant's Exhibit M.)

“THE WITNESS: I then turned the check over to them, Mr. John Holland receiving it first, passing it along to the other three members of his group.

“Sometime during this meeting, I said to the Hollands and Murie that I thought this should be a nice Christmas present for them, and that I wanted to be sure that they were entirely satisfied with it. They nodded agreement and Murie then waving the check said, ‘Mister, this is more money than we have ever had in our lives, and we are entirely satisfied.’

"The same procedure was then followed with the Moreton group. I received from Mr. Heald the Agreement of Sale and the Warranty Deed. I offered to read them, if requested, and there being no request, I then asked that they be signed. This done, I read aloud the letter dated December 20, 1948, submitted herewith to be marked as Defendant's Exhibit O, acknowledging receipt of the Deed and transmitting Columbia Iron Mining Company's voucher, Treasury No. 01931 for \$71,875.00, as the initial payment upon the purchase price of \$287,500.

(The document above referred to was marked for identification as Defendant's Exhibit O.)

* * *

"THE WITNESS: I also read aloud receipt of Columbia Iron Mining Company's voucher, Treasury No. 01931, submitted herewith to be marked as Defendant's Exhibit P, and I asked the Moretons to sign it, turning over to Arthur E. Moreton the check for \$71,875.00.

(The document above referred to was marked for identification as Defendant's Exhibit P.)

"THE WITNESS: * * * At Mr. Heald's request, Mr. Arthur E. Moreton handed to him the Internal Revenue stamps, which Mr. Heald affixed to the two Deeds, and then cancelled.

"This ended the formal part of the meeting. There was some informal conversation expressing satisfaction all around during which all partici-

pants stood up as Mr. Heald and I started to leave. Mr. Heald having gathered up our papers, we said goodbye and shook hands all around, whereupon Murie again said to me loudly so that no one present in the room could fail to hear it, 'Mister, we are entirely satisfied, and we don't care if Arthur Moreton makes three-quarters of a million out of this deal.' These may not have been his exact words, but they are in substance what Murie said.

* * *

"THE WITNESS: Where it says in the text: 'I also read aloud receipt of Columbia Iron Mining Company's voucher, Treasury No. 01931 ...' there should have been added 'submitted herewith to be marked as Defendant's Exhibit P ...' "

* * *

"I do not recall having had any further written or oral communications concerning this transaction with any one of the Moreton-Holland-Murie participants; however, I received a letter from Rex Holland, dated September 20, 1951, and dealing with another matter, the first paragraph of said letter reading as follows: 'Because of the fine business associations that I have had with the Geneva Steel Company I feel that you should be informed of a matter that could result in an unpleasant situation for your company.' "

"MR. PARSONS: That letter will be identified as Defendant's Exhibit Q.

(The document above referred to was marked for identification as Defendant's Exhibit Q.)

* * *

"THE WITNESS: The letter dealt with a location claim by Holland which he stated was recorded as the M&H No. 3 mining claim, adjoining to the M&H No. 1 and 2 claims.

"The letter contained an offer to sell the M&H No. 3 claim for what we considered an exorbitant price. I so informed Rex Holland."

(Mathesius deposition, pp. 16 to 21; see, also, Heald deposition, pp. 38 to 55, Moreton deposition, pp. 152 to 163, Rex Holland deposition, pp. 32 to 38.)

During all of this period Dr. Walther Mathesius was President, and Merrill L. Heald was Secretary of Columbia Iron Mining Company.

In the course of Rex Holland's description of the closing of the transaction is the following:

Q. And did anyone read any document to you, or read aloud to the crowd that was here, any of the documents?

A. Yes, they read the prepared documents.

Q. Who did the reading, do you recall?

A. Mr. Moreton as I recall.

Q. You think so?

A. Yes, sir.

Q. Dr. Mathesius didn't read anything?

A. I can't remember that.

Q. You are sure that Mr. Moreton did the reading?

A. Yes, sir.

(Rex Holland deposition, p. 34.)

STATEMENT OF POINTS

The following are the points upon which respondents intend to rely for an affirmance of the judgment below:

I. Neither Columbia Iron Mining Company nor any other of the corporate defendants conspired with any one to defraud appellants.

II. Appellants' action is barred by Section 78-12-26, U.C.A. 1953.

III. The respondents here were entitled to a summary judgment of dismissal as rendered below.

ARGUMENT

I. Point.

Neither Columbia Iron Mining Company nor any other of the corporate defendants conspired with any one to defraud appellants.

A deposition has been taken of every person who had anything at all to do with the negotiation for or acquisition of the M&H claims; no one remains who possesses any probative information relating to this subject. These depositions were exhaustive, those upon oral interrogatories covering approximately 700 pages of transcript. The plaintiffs' answers of January 13, 1954, to the written interrogatories propounded by the corporate defendants, seeking to identify the persons having knowledge of the facts alleged in the several causes of action in the complaint and the names of the persons the plaintiffs intended calling to testify to those facts, named the persons whose depositions had been taken. The only additions were Mr. Sargis, whom the plaintiffs proposed to call on the question of value of the M&H claims, and Clara S. Holland as to the alleged conspiracy to defraud the owners of the $\frac{3}{4}$ ths interest. On the facts here disclosed, testimony as to the value of the M&H claims, whatever it might be, would be immaterial, and the deposition of Clara S. Holland was taken on written interrogatories and bears no relation whatever to a conspiracy. On this record, which is complete, there is not a scintilla of evidence of any conspiracy between the corporate and individual defendants to defraud the plaintiffs or for any other purpose or of any other character whatsoever.

Appellants charge that these respondents *instigated* an alleged conspiracy and scheme to defraud them by concealing from these co-owners that out of the total

purchase price of \$387,500.00, Moreton was to receive \$287,500.00 as against the co-owners' \$100,000.00. There is no evidence whatever that a conspiracy to defraud existed at all, much less that the respondents, or any of them, instigated such. The record here establishes, without contradiction, not only that Columbia Iron Mining Company was a party to no such concealment or to any conspiracy to that end, but that this plaintiff and his co-owners not only knew what Moreton was receiving but that to satisfy the condition Columbia Iron Mining Company had imposed upon its purchase of the M&H claims and to insure consummation of the sale, these co-owners by their letter of October 16, 1948, disclaimed any interest whatever in what Moreton was receiving, expressed their complete satisfaction with the \$100,000.00 to be paid them and by their letter of November 20, 1948, reiterated their complete lack of interest in what Moreton might receive and expressed their hope for an early acceptance of their offer. Columbia Iron Mining Company accordingly bought the M&H claims and paid the purchase price so directed by these co-owners.

It would be difficult indeed to imagine a more conclusive estoppel than that resulting against these plaintiffs. However, some four years later they charge they had first learned of the sum paid Moreton for his quarter interest and they proceed to charge Columbia Iron Mining Company and the other corporate defendants with having conspired with Moreton to defraud them.

While there is no testimony whatever to support this charge of conspiracy or fraud, the very premise upon which it is made is obviously false. It is the testimony of Moreton, Mathesius and Heald that upon the occasion of the closing and before delivery of the deeds, Mathesius read aloud to all present, including these co-owners, the following letter by Mathesius to Moreton, dated December 20, 1948:

Pursuant to the provisions of paragraph 4 of the December 20, 1948 Agreement between Columbia Iron Mining Company and Arthur E. Moreton, Ethel T. Moreton, John R. Moreton and Susan Moreton Tevis for the purchase of an undivided one-fourth interest in and to the M&H, M&H No. 1 and M&H No. 2 Lode Mining Claims situate in the Iron Springs Mining District, Iron County, Utah, Columbia Iron Mining Company hereby acknowledges receipt of the Utah statutory form of Warranty Deed conveying said undivided one-fourth interest to the Company. Said deed is approved by the Company's counsel.

There is transmitted herewith the Company's Voucher Treas. No. 01931 drawn on Wells Fargo Bank & Union Trust Co., San Francisco, California, to Arthur E. Moreton, Ethel T. Moreton, John R. Moreton and Susan Moreton Tevis in the amount of Seventy-One Thousand Eight Hundred Seventy-Five Dollars (\$71,875) as initial payment upon the purchase price of Two Hundred Eighty-Seven Thousand Five Hundred Dollars (\$287,500) for said undivided one-fourth interest. Will you kindly have the enclosed receipt executed before two witnesses and thereafter return the same for our files. (Item 10, Correspondence side, Exhibit A, Heald deposition.)

The plaintiff testified that Moreton read the prepared documents aloud to those attending the closing but could not remember Mathesius reading anything. (Rex Holland deposition, p. 34.) In her deposition, Clara S. Holland, mother of Rex Holland and widow of John G. Holland, denied recollection of the reading of anything. She was 71 years of age and in such poor health as to forbid taking her deposition upon oral examination. She and the plaintiff live together in Cedar City, Utah. Indeed she remembered little other than the \$100,000.00 they had received.

Upon the occasion of the closing and in the presence of all, Internal Revenue stamps, procured by Moreton, were placed on the warranty deeds; that for the Moretons' one-fourth interest, stamps in the amount of \$316.25; that conveying the co-owners' three-fourths interest, stamps in the amount of \$110.00. (Heald deposition, pp. 51, 53, 57, 59.) Both these deeds, with the revenue stamps affixed, were recorded in the office of the County Recorder of Iron County, Utah, January 5, 1949.

The following is an example of the examination to which the defendant Moreton was subjected on this question: (*Moreton Dep p 154-5*)

Q. Now, this was the last day of the deal, and the day upon which the sellers got their money, is that correct?

A. That is right.

Q. Now, prior to that date, did you tell them how much money you were getting?

A. I told them that I was getting twenty-five cents per ton. That was definitely understood at all times.

Q. Did you tell them?

A. Repeatedly told them that.

Q. Did you tell them in dollars how much money you were getting for your one-fourth interest?

A. Well, in the offer of October 16th made by them, or rather the letter accompanying, the tonnage was clearly stated as 1.55 million tons, a simple matter of arithmetic to figure it out.

Q. May I ask you again though, whether or not you told them in dollars how much money you were getting for your one-fourth interest?

A. Well, I assumed they understood. We discussed twenty-five cents and the tonnage was fixed in the letter.

Q. Now, aside from the fact that you assumed that they understood, did you ever tell them how much money, in dollars, you were getting for your one-fourth interest?

A. They were told that on December 20th, by Dr. Mathesius.

Q. Now, aside from the time that Dr. Mathesius told them on December 20, 1948, did you ever tell them?

A. Other than that we were getting twenty-five cents; that I was getting twenty-cents per ton on 1.55 million tons. *-five*

Q. Did you ever tell them in dollars how much money you were getting?

A. I have already answered that I don't think I did, but it was a simple matter of arithmetic, and I may have even told them the price, but I am not altogether sure of that, but any school boy could figure that out. * * * He well knew, they all knew. They all knew the going price. It was a matter of common knowledge in Cedar City that the price being paid was twenty-five cents per ton. Etc., etc.

Moreover, Rex Holland's letter to Mathesius of September 14, 1948 (Appendix, Ex. A), reads in part as follows:

Ever since the property has been diamond drilled Mr. Moreton has made us believe that there was only One Million, Four Hundred Thousand (1,400,000) tons of iron ore contained in this deposit.

We agreed to accept \$100,000.00 for this property based upon that tonnage and have signed Articles of Agreement that will expire at the end of September, 1948. Since we signed the Agreement we have been advised that instead of One Million Four Hundred Thousand tons of iron upon the property there are Three Million Five

Hundred Thousand Tons of iron ore and that it is being offered for sale for 25c per ton or a total sales price of \$875,000.00.

Therefore Mr. Moreton has, through misleading us about the total tonnage, had us sign an agreement that will net him \$775,000.00 for a \$700.00 investment.

and the letter of the plaintiff and his co-owners to Mathesius accompanying their offer to sell, both dated October 16, 1948, contains the following (Appendix, Ex. D):

We understand that proposed purchase of our interest in the three M & H Claims at Desert Mound, Iron County, Utah, known as the M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims is awaiting your determination of estimated tonnage (which we understand you estimate at 1.55 million tons) and issuance of a patent to us by the United States Government.

It is perfectly apparent that the plaintiff before the closing of the transaction well knew the purchase price of 25c per ton, that the estimated tonnage of ore in the M&H claims was 1,550,000 tons and that multiplication of the two would give the total purchase price of \$387,500.00; of that total purchase price the plaintiff and his co-owners were to receive \$100,000.00, leaving \$287,500.00 for Moreton. The plaintiff made his calculations readily enough and he must be charged with a calculation as simple as this. What provoked his letter of September 14, 1948, was the misinformation he had accepted that the tonnage instead of 1,400,000 was 3,500,000 tons — he

knew the value per ton and he and his associates were agreeable to the deal on the assumption of a tonnage of 1,400,000, well knowing on that assumption that Moreton would receive \$250,000.00 to their \$100,000.00. And they were satisfied with that. The plaintiff's letter of September 14, 1948, was a confirmation of the agreement between these parties as to the disposition of the total consideration to be paid. The transaction was closed on an estimated basis of ore tonnage of 1,550,000 tons at 25c per ton, to which the plaintiff and his co-owners agreed, Moreton to receive \$287,500.00 and the plaintiff and his associates \$100,000.00. Upon the conclusion of the transaction on the basis stated, they expressed themselves as well satisfied.

As a general rule, where a person with actual or constructive knowledge of the facts induces another by his words or conduct to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on such belief, alters his position, such person is estopped from repudiating the transaction to the other's prejudice. This rule obtains regardless of the particular intent of the party whose acquiescence induced action.

31 C.J.S. Estoppel. §114.

The doctrine of estoppel in pais is founded upon principles of morality and fair dealing and is intended to subserve the ends of justice. It always presupposes error on one side and fault or fraud upon the other and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. * * * Estoppel of this character arises from the conduct

of a party using the word "conduct" in its broadest meaning as including his spoken words, his positive acts, and his silence when there is a duty to speak * * * it holds a person to a representation made or a position assumed where otherwise inequitable consequences would result to another who, having the right to do so, under all the circumstances of the case, has in good faith relied thereon and been misled to his injury.

19 Am. Jur. Estoppel. §42.

The only way these co-owners could avoid the estoppel was to bring Mathesius into the alleged conspiracy with Moreton to defraud them; that they have failed utterly to do.

But the best defense to appellants' charge is the fact as disclosed by the record. The facts here apparent have been grossly distorted and misrepresented by appellants, which will be quite obvious to this court—even counsel's references to the record belie their statements.

The fact of the matter is that these co-owners were interested only in getting their \$100,000.00. They were not interested in what Moreton was receiving. That is precisely what they wrote Mathesius by their letters of October 16th and November 20th, 1948, and their declarations as therein contained were both unambiguous and emphatic.

These co-owners knew what Moreton was receiving. Had not Moreton told them, all they had to do to find out was to multiply 1,550,000 tons by 25c, the price per ton. Had they entertained any doubt, or had they been ignorant and interested, they could have asked Moreton how much he was getting. Had they been interested, it is inconceivable that they would not have asked him. There is not here even a suspicion that they had asked such a question of either Moreton or any one else, and had they asked Moreton that question, no one could on the face of this record have concluded Moreton would have concealed the fact or have answered the question falsely.

Rex Holland, by his letter of September 14, 1948, proceeded to acquaint Mathesius with what he thought Moreton had done, to confirm the co-owners agreement with Moreton, and to ask Mathesius' assistance in nullifying that agreement by withholding Columbia Iron Mining Company's acceptance until the contract had expired.

Counsel cite a multitude of authorities, none of which is objectionable on its facts. We do not propose to burden this court with a discussion of any of those authorities because none of them are pertinent to the fact as disclosed by the record here.

II.

Point.

Appellants' action is barred by Section 78-12-26 U.C.A. 1953.

The deed from Moreton bearing the proper amount of revenue stamps, \$316.25, was duly recorded January 5, 1949, in the office of the County Recorder, Iron County, Utah, in Book 3—Mining, pages 485-7. (Heald deposition, Exhibit A, Item 6.)

That revenue stamps reflect the consideration is a matter of law which appellants are bound to know. And the discrepancy between the amount of stamps on the Holland deed, \$110.00—and that on the Moreton deed, \$316.25, clearly indicates a similar discrepancy in consideration paid even though the actual amount of consideration is not shown except by reference to the statute.

The recordation of the deed with the stamps affixed is notice of the fact that Moreton received consideration commensurate with the amount of the stamps affixed to his deed. The statute of limitations began to run January 5, 1949, and this action, commenced December 19, 1952, is barred by Section 78-12-26, U.C.A. 1953.

The case is squarely within the rule stated in *Simon v. Clark*, 151 Kan. 431, 99 P. 2d 739, an action to set aside a deed because a fraud on creditors, wherein the court held:

The statute also provides the cause of action shall not be deemed to have accrued until the discovery of the fraud. The recording of the deed was constructive notice of the alleged fraud and sufficient to start the running of the statute on that particular cause of action.

In *Collins v. Richardson*, 168 Kan. 203, 212 P. 2d 302, it appeared that the parties had orally agreed upon the terms of a proposed trust and, upon representations that the written trust set forth the terms agreed upon, appellant signed the written document. In an action to quiet title based upon the written trust, appellant

* * * sought to have the written trust agreement reformed. * * * Considered as a cause of action for relief on the ground of fraud, was it barred? The stricken allegations, read in connection with the written trust agreement, disclosed that the trust agreement was made a matter of record in the office of the register of deeds in Ellis County in December, 1931. * * * That was an open, public disclosure of the contents of the agreement, and if it be assumed there was fraud, under the reasoning of *Malone v. Young*, 148 Kan. 250, 264, 81 P. 2d 23, and the cases cited therein, the claim now made was barred long before the instant action was commenced. * * *

In *Davis v. Rogers et ux*, 128 Wash. 231, 222 P. 499:

* * * The fraud relied on by respondent is that Rogers represented that he could dispose of the property for \$4,000 and was to receive a five per cent commission of \$200 for making the sale; * * * that Rogers had no other relation to the

transaction than that of agent * * * ; that Rogers upon getting possession of the property sold it * * * for \$6,500, and in addition reserved all the mineral rights; that Rogers represented * * * that he had received \$4,000 for the property, and remitted \$4,000 to the Davis-Comstock Company; that Davis was ignorant that the property was sold for \$6,500, and that the mineral rights had been reserved; that in 1921 Rogers met Davis a number of times, and made no mention of the price * * * paid for the property * * * nor of the mineral reservation; * * * that in November, 1921, Davis was told that Rogers had sold the land for \$6,500, and this was the first intimation that he had that Rogers had obtained more than the \$4,000; that on November 10, 1921, Rogers denied to Davis that \$6,500 had been obtained.

* * * The law is that the statute of limitations is tolled in actions of fraud by the failure of the defrauded party to make the discovery prior to the time of the commencement of the action. * * *

This rule, however, is itself subject to a modification, and that is that the defrauded party cannot be heard to say that he has not discovered the facts showing the fraud within the limit of the statute, if the facts should have been discovered prior to that time by anyone exercising a reasonable amount of diligence.

* * * the facts * * * were matters of public record * * * for the deed from * * * Rogers to Weatherwax was placed on record, and conveyed constructive notice to all the world of its contents, which included an express statement that the consideration was \$6,500.

III.

Point.

The respondents here were entitled to a summary judgment of dismissal as rendered below.

Rule 56, 9 Utah Code 1953, pp. 643 to 645, is verbatim Federal Rule 56, 6 Moore's Federal Practice, p. 2001, ch. 56. The position of the corporate defendants upon their motion for summary judgment is in accord with the following decision and may be weighed accordingly.

Zampos v. United States Smelting, Refining and Mining Co., Anderson v. United States Smelting, Refining and Mining Co., (CCA 10, July 9, 1953), 206 F. 2d 171:

* * * Rule of Civil Procedure 56(c), 28 U.S.C., authorizes the entry of a summary judgment when it affirmatively appears from the pleadings, depositions, and admissions on file, together with the affidavits, if any, that there is no genuine issue as to any material fact and that the moving party is entitled to judgment in his favor as a matter of law. The purpose of the rule is to provide against the vexation and delay which necessarily come from the formal trial of cases in which there is no substantial issue of fact. It is to permit the expeditious disposition of cases of that kind. * * * If it affirmatively appears from the pleadings, admissions, depositions, and affidavits, if any, that there is no genuine issue as to any material fact upon which the outcome of the litigation depends, the case is appropriate for disposition by summary judgment and the court

should enter such judgment. *Broderick Wood Products Co. v. United States*, 10 Cir., 195 F. 2d 433.

In considering a motion for summary judgment, the court may pierce formal allegations and grant relief if it appears from uncontroverted facts set forth in affidavits, depositions, or admissions on file that as a matter of law there are no genuine issues for trial. *Schreffler v. Bowles*, 10 Cir., 153 F. 2d 1, certiorari denied, 328 U.S. 870, 66 S. Ct. 1366, 90 L. Ed. 1640; *Avrick v. Rockmont Envelope Co.*, 10 Cir., 155 F. 2d 568; *New York Life Insurance Co. v. Cooper*, 10 Cir., 167 F. 2d 651, certiorari denied, 335 U.S. 819, 69 S. Ct. 41, 93 L. Ed. 374. And flimsy allegations which are transparently not well founded in fact are insufficient to state a justiciable controversy requiring the submission thereof for trial. *Sabin v. Home Owner's Loan Corp.*, 10 Cir., 151 F. 2d 541, certiorari denied, 328 U.S. 840, 66 S. Ct. 1011, 90 L. Ed. 1615.

* * * where the moving party presents affidavits, or depositions, or both, which taken alone would entitle him to a directed verdict, if believed, and which the opposite party does not discredit as dishonest, it rests upon that party at least to specify some opposing evidence that he can adduce which may reasonably change the result. *Radio City Music Hall Corp. v. United States*, 2 Cir., 135 F. 2d 715; *Gifford v. Travelers Protective Association*, 9 Cir., 153 F. 2d 209.

See, also, *Marion County Co-op Ass'n v. Carnation Co.*, 114 F. Supp. 58, as follows:

In the last analysis, the question before the Court is whether the plaintiff may make a general allegation in its complaint that defendant paid a "fictitious price," and, when faced with a motion for summary judgment, supported by affidavits and depositions, may stand on the general allegation in its complaint and make no effort to rebut the defendant's affidavits and depositions or to demonstrate to the Court that plaintiff can produce evidence to support its allegation. Stated differently, once a defendant has made a prima facie showing that no genuine issue of material fact exists, is the plaintiff required to make some showing that a genuine issue of fact does not exist?

The Court feels that the following quotations provide the answer to this question:

"The complainants' allegations with reference to the operations of RSM are meager and little more than conclusions, and in this respect it must be noted that no affidavits have been submitted by plaintiff who appears content to rely upon the complaint and the allegations of fact contained in the affidavits in support of the motion. Insofar as determining whether there exists any genuine issue of material fact, where plaintiff fails to introduce any facts dispelling the conclusion required by the facts adduced in support of the motion, the rule to be followed is that which is succinctly stated in 3 Barron & Holtzoff, Federal Practice and Procedure, page 88:

"The rationale of these cases seems to be that the moving party has the burden of showing that there is no genuine issue as to a

material fact and that he is entitled to judgment as a matter of law, but that when he has made a prima facie showing to this effect the opposing party cannot defeat a motion for summary judgment and require a trial by the bare contention that an issue of fact exists. He must show that evidence is available which would justify a trial of the issue.' ” Felt, for Use of United States v. Ronson Art Metal Works, Inc., D.C. Minn., 107 F. Supp, 84, 85.

“In 3 Moore’s Federal Practice (1938), 3174-5, it is said: “* * * The very object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to the burden of a trial.” To attain this end, the rule permits a party to pierce the allegations of fact in the pleadings and to obtain relief by summary judgment where facts set forth in detail in affidavits, depositions, and admissions on file show that there are not genuine issues of fact to be tried.’ * * *

* * * “Plaintiff’s failure to controvert the subject-matter of the affidavits and exhibits filed herein in support of the motions for summary judgment ‘requires rejection of (his) contention there (may be) a substantial question of fact’ in dispute.” Hisel v. Chrysler Corp. D.C. Mo., 94 F. Supp. 996, 1003.

“Mere formal denials or general allegations which do not show facts in detail cannot

defeat summary judgment.” *McClellan v. Montana-Dakota Utilities Co.*, D.C. Minn., 104 F. Supp. 46, 56.

* * * “The sufficiency of the complaint does not control and, although the burden is on the moving party to demonstrate clearly that there is no genuine issue of fact, the opposing party must sufficiently disclose what the evidence will be to show that there is a genuine issue of fact to be tried.” *Surkin v. Charteris*, 5 Cir., 197 F. 2d 77, 79.

“But where the moving party presents affidavits, and depositions, if any, which taken alone would entitle him to a directed verdict, if believed, and which the opposite party does not discredit as dishonest, it rests upon that party at least to specify some opposing evidence that he can adduce which may reasonably change the result.” *Zampos v. United States Smelting, Refining & Mining Co.*, 10 Cir., 206 F. 2d 171.

See also *Gifford v. Travelers Protective Ass’n of America*, 9 Cir., 153 F. 2d 209, 211; *Wilkinson v. Powell*, 5 Cir., 149 F. 2d 335, 337; *Fremont v. W. A. Sheaffer Pen Co.*, D.C. Iowa, 111 F. Supp. 39, 52; *Garcia v. United States*, 108 F. Supp. 608, 613, 123 Ct. Cl. 722; Vol. 10, *Cyclopedia of Federal Procedure*, Third Edition, Section 35.22, Page 192.

See, also:

Palmer v. Chamberlain, 191 F. 2d 532, 27 A.L.R. 2d 416;

R. I. Recreation Center v. Aetna C. & S. Co., 117
F. 2d 603, 12 A.L.R. 2d 230.

Friedman v. Thomas J. Fisher & Co., Inc., 88 A. 2d
321, 31 A.L.R. 2d 827, wherein the court held:

* * * If this case had gone to trial on the
facts as presented, plaintiff would have been
entitled to a directed verdict. That being so, sum-
mary judgment was properly entered.

Royal Indemnity Co. v. Olmstead, 193 F. 2d 451,
31 A.L.R. 2d 635.

DeLuca v. Atlantic Refining Co., 176 F. 2d 421, as
follows:

The plaintiff does not suggest that he is pre-
pared to reply to these documents. True, it may
be too strong to say that it is impossible to con-
jure up any conceivable answer to them. The
original may have been forged, the authentication
may be false; there may be a "surrender of
authority" on file which the custodian failed to
find. But if a motion for summary judgment
is to have any office whatever, it is to put an
end to such frivolous possibilities when they are
the only answer.

The California cases cited by appellants were of
course decided under the Code of Civil Procedure of that
State. Section 437c of that code is not similar to our
Rule 56. The California procedure does not contemplate
the use of any matter other than the pleadings and
affidavits of the parties. In contrast, however, the

Federal rules and those of Utah, with which we are concerned, expressly provide for the use of admissions, interrogatories and depositions for the purpose of piercing the formal allegations or denials. The basis of the California decisions is aptly illustrated by its Supreme Court in the case of *Eagle Oil & Refining Co., Inc. v. Prentice et al*, 19 Cal. (2) 553, 122 P 2d 264 at 265.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

C. C. PARSONS

A. D. MOFFAT

CALVIN A. BEHLE

Counsel for Respondents.

APPENDIX

Exhibit A

Cedar City, Utah
September 14, 1948

~~Dec.~~ ^{Sept}
Received ~~Dec.~~ 14, 1948, 3:52 P.M.
President, Geneva Steel Co.

Dr. Walter Mathesius
Geneva Steel Corporation
Provo, Utah

Dear Sir:

I sincerely hope that you will give this letter a lot of consideration as it means so much to us as the original owners of the M & H Iron Mining property located at Desert Mound, Utah, that has been placed in the hands of Mr. Arthur E. Moreton, Attorney at Law, Judge Building, Salt Lake City, Utah, who has advised us that the United States Steel Company has expressed to him their intentions to purchase this property and the reasons I am writing you to postpone the purchase of this property until a more satisfactory agreement can be reached between we, the original and present owners, and Mr. Moreton.

Ever since the property has been diamond drilled Mr. Moreton has made us believe that there was only One Million, Four Hundred Thousand (1,400,000) tons of iron ore contained in this deposit.

We agreed to accept \$100,000.00 for this property based upon that tonnage and have signed Articles of Agreement that will expire at the end of September, 1948. Since we signed the Agreement we have been

advised that instead of One Million Four Hundred Thousand tons of iron upon the property there are Three Million Five Hundred Thousand tons of iron ore and that it is being offered for sale for .25c per ton or a total sales price of \$875,000.00.

Therefore Mr. Moreton has, through misleading us about the total tonnage, had us sign an agreement that will net him \$775,000.00 for a \$700.00 investment.

Will you consider postponing the purchase of the property until after November 1st, 1948 and notify Mr. Moreton that the sale has been cancelled. This will then give time for the Agreement between us to expire. We will then demand that the sale be made on an equal basis whereby We the owners of the property will receive three-fourths of the total and Mr. Moreton will receive his 1/4 interest for patenting the property. This will be a fair return of \$218,750.00 for his \$700.00 investment and we who have been doing yearly assessment work for many years, to keep the property with a clear title, will enter into the sale of our property on a 3/4 equal basis.

Will you also please send me a duplicate copy of the letter advising Mr. Moreton of the refusal to purchase the property until after Nov. 1st, 1948 so that he can not in a future agreement between us insert the clause that the sale under old agreement is "still pending."

I write you this letter as a good citizen and a Veteran of World War II who has given three year of my life for the protection of this country and feel that you will not refuse my request to postpone a sale that will now be unjust to us.

Hoping that an immediate answer will be made before it is too late I remain

Yours truly,

REX HOLLAND

125 South 3rd East Street

Cedar City, Utah

Exhibit B

OPTION

For and in consideration of the sum of ONE AND NO/100 (\$1.00) DOLLAR and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby give and grant unto ARTHUR E. MORETON, of Salt Lake City, Utah, optionee, and his heirs, executors, administrators and assigns the exclusive right, privilege and option for a period of twelve months from date hereof, (and so long thereafter as the said Arthur E. Moreton shall have negotiations for the sale of said claims to others, actively pending) to purchase from them all their right, title, and interest, consisting of an undivided three-fourths interest in and to the following unpatented lode mining claims, to-wit:

M & H, located September 27, 1941 by W. C. Murie, J. G. Holland and Rex Holland. Notice of location of which, was recorded in the office of the County Recorder of Iron County on October 27, 1941 in Book "L" of Locations, page 215.

M & H No. 1, located October 9, 1943, by C. M. Murie and C. S. Holland. Notice of Location of which, was recorded in the office of the County Recorder of

Iron County on November 1, 1943, in Book "L" of Locations, page 323. As amended by Notice of date June 21, 1945 and recorded in the office of the County Recorder of Iron County on June 29, 1945, in Book "L" of Locations page 375, as reamended by Reamended Location Certificate of date April 21, 1947, and recorded in the office of the County Recorder of Iron County on April 21, 1947 in Book "L" page 474.

M & H No. 2, located October 9, 1943, by C. M. Murie and C. S. Holland. Notice of location of which, was recorded in the office of the County Recorder of Iron County on November 1, 1943, in Book "L" of Locations, page 324, as amended by Amended Location Certificate of date April 21, 1947, and recorded in the office of the County Recorder of Iron County on April 21, 1947 in Book "L" page 473.

Said claims are situated in the Iron Springs Mining District, Iron County, Utah, and notices of location of same were recorded in the office of the County Recorder of Iron County, State of Utah, that being the proper office of record.

for the sum of 100,000 (one hundred thousand) Dollars, payable as follows, to-wit: either in cash or in 10 equal annual payments, and without interest thereon.

John G. Holland

William C. Murie

Rex Holland

Witnessed by:
Ed H. Parry

(Signatures on second page on exhibit copied from)

Exhibit C

AGREEMENT OF OWNERSHIP

The undersigned, John G. Holland, William C. Murie and Rex Holland, of Cedar City, Utah, are the owners by location of the M & H, M & H No. 1 and M & H No. 2, Unpatented Lode Mining Claims, situated in Iron Springs Mining District, Iron County, State of Utah, in undivided one-third interests.

For and in consideration of the patenting of said claims, by Arthur E. Moreton, of Salt Lake City, Utah, at his sole cost and expense, and other good and valuable considerations, receipt of which is hereby acknowledged, the undersigned have agreed to and by Deed of even date, herewith have conveyed to the said Arthur E. Moreton, an undivided one-fourth interest in and to said mining claims, to the end that each of the three parties hereto and the said Arthur E. Moreton, shall henceforth each own an undivided one-fourth interest in and to each of said claims.

For and in consideration thereof, it is further agreed that if the said claims be sold, leased or otherwise disposed of on a tonnage basis for \$133,333.33, either on a cash basis or on a basis of equal annual payments, without interest, over a period not exceeding 15 years, the said sum of \$133,333.33 shall be divided as follows: one-fourth thereof to the said Arthur E. Moreton and one-fourth thereof to each of the undersigned, provided, however, that if said property shall be sold, leased or otherwise disposed of on a tonnage basis, for a sum in excess of \$133,333.33, the amount of such purchase price or receipts from lease, or otherwise on ore contained in said claims in excess of \$133,333.33, together with the said one-fourth of said sum of \$133,333.33,

WITNESS:
PEARL CLEGG

/s/ REX HOLLAND

STATE OF UTAH, }
COUNTY OF SALT LAKE } ss.

On this 23rd day of July, 1947, personally appeared before me John G. Holland, William C. Murie and Rex Holland, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

(S E A L)

Salt Lake City, Utah

Exhibit D

Cedar City, Utah
October 16, 1948

Columbia Iron Mining Company
Provo, Utah

Attention Dr. Walther Mathesius, President.

Re: M & H, M & H No. 1 & M & H No. 2 Lode
Mining Claims at Desert Mound

Gentlemen :

We understand that proposed purchase of our interest in the three M & H Claims at Desert Mound, Iron County, Utah, known as M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims, is awaiting your determination of estimated tonnage (which we understand you estimate at 1.55 million tons) and issuance of patent to us by the United States Government.

We, the undersigned, have this day prepared and submitted to you an offer for the sale of our interest in and to said M & H Mining Claims for the sum of \$100,000.00 cash. This purchase price to be paid us is entirely satisfactory to us, and in full for our interest.

We realized that in order to interest a purchaser in these claims, it would be necessary that they be patented. However, we were without such funds or means to secure such patent and costs incident thereto and we therefore asked Mr. Arthur E. Moreton to secure such patent, at his sole cost and expense in return for an interest. Needless to say, Mr. Moreton may offer and sell his interest in said claims for whatever price you and he may agree upon, if he so desires, and the entire

proceeds therefrom will of course be his sole property, it being his right to determine and to receive whatever amount you may agree upon with him.

Sincerely yours,

John G. Holland

C. S. Holland

Rex Holland

William C. Murie

Exhibit E

October 16, 1948

Mr. Walther Mathesius, President
Columbia Iron Mining Company
P. O. Box 269
Salt Lake City 8, Utah

Re: Sale of M & H, M & H No. 1 and M & H
No. 2 Lode Mining Claims

Dear Mr. Mathesius:

Relative to the purchase by Columbia Iron Mining Company of our undivided three-fourths interest in and to the M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims, consisting as recited in Final Certificate of a total of 39.502 Acres, adjoining the Short Line Mine, Short Line Wedge and Anaconda Lode Mining Claims

and situate in the Iron Springs Mining District, Iron County, Utah, please be advised that all proceedings in the Bureau of Land Management for the patenting of the said M & H Claims have been completed. The Bureau of Land Management has approved said proceedings and application to purchase the said M & H Claims from the United States was filed on January 8, 1948.

On January 8, 1948, Final Certificate, Serial No. 067748 was issued, wherein it is recited that the area of the said M & H Claims is 39.502 Acres; that there were certain conflicts, but such conflicts have been excluded from the foregoing area; and that on said 8th day of January, 1948, the applicants purchased the said M & H Claims and patents or patent to the same will issue upon presentation of the Certificate to the Director of Land Management in Washington, together with plat and field notes of survey of said claims, and the proofs required by law, all of which were approved by and sent by the Salt Lake City office to the Director in Washington, including the Final Certificate. To date, patent or patents have not been issued on said claims.

The undersigned, hereby tenders to Columbia Iron Mining Company a proposal for the sale of their undivided three-fourths interest in and to said M & H Claims, upon the terms and conditions herein expressed.

Within 15 days after the date of this offer, we shall furnish Columbia Iron Mining Company with an abstract of title to the said M & H Claims, brought down to date. Columbia Iron Mining Company shall have 45 days in which to investigate the abstract of title and

notify us whether the same is satisfactory. In the event the title to said claims is unsatisfactory to Columbia Iron Mining Company, the company may require any cloud on said title to be cured, or may not accept this proposal. In the event the title to said mining claims is satisfactory to Columbia Iron Mining Company, we hereby offer to sell and convey to Columbia Iron Mining Company for a purchase price of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS, our undivided three-fourths interest in and to the said M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims. Our title is and our conveyance will be subject to Right of Way to L.A. & S.L.R.R. Co., as shown in abstract of title.

The said purchase price of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS, for our undivided three-fourths interest in and to said M & H Claims, shall be paid to us upon issuance of patent or patents to all of the said M & H Claims, and issuance and delivery to Columbia Iron Mining Company of a Utah Statutory form of Warranty Deed by us, of our said undivided three-fourths interest in and to said claims. Said conveyance shall be by good and marketable title, free and clear of all adverse claims, liens, encumbrances and taxes and shall in all respects be subject to approval by Columbia Iron Mining Company's legal counsel. The conveyance shall be in fee simple, with covenants from the undersigned, that they are lawfully possessed of an undivided three-fourths interest in and to said mining claims, and that they will warrant and defend the title of Columbia Iron Company, its successors

and assigns from all lawful claims whatsoever. (Subject to above mentioned Railroad Right of Way.)

Columbia Iron Mining Company shall have 60 days from the date of this proposal in which to accept or reject the offer contained herein. Failure to inform us of Columbia Iron Mining Company's determination within said period of time shall be considered as a rejection of said proposal and shall automatically cancel the same.

It would be appreciated if you would please acknowledge receipt of this letter by signing in the space provided at the end hereof and returning the copy which is hereto attached.

Very truly yours,

John G. Holland

Clara S. Holland

Rex Holland

William C. Murie

Receipt acknowledged this
2nd day of November,
1948.

COLUMBIA IRON MINING COMPANY

By Walther Mathesius, *President*

Exhibit F

October 20, 1948

Mr. Walther Mathesius, President
Columbia Iron Mining Company
P. O. Box 269
Salt Lake City 8, Utah

Re: Sale of M & H, M & H No. 1 and M & H
No. 2 Lode Mining Claims

Dear Mr. Mathesius:

Referring to our conversations relative to the purchase by Columbia Iron Mining Company of our undivided one fourth interest in and to the M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims, consisting as recited in Final Certificate of a total of 39.502 acres, adjoining the Short Line Mine, Short Line Wedge and Anaconda Lode Mining Claims and situate in the Iron Springs Mining District, Iron County, Utah, all proceedings in the Bureau of Land Management for the patenting of the said M & H claims have been completed. The Bureau of Land Management has approved said proceedings, and application to purchase the said M & H claims from the United States was filed on January 8, 1948.

On January 8, 1948 Final Certificate Serial No. 067748 was issued, wherein it is recited that the area of the said M & H claims is 39.502 acres; that there were

certain conflicts, but such conflicts had been excluded from the foregoing area; and that on said 8th day of January, 1948 the applicants purchased the said M & H claims and patent or patents to the same will issue upon presentation of the Certificate to the Director of Land Management in Washington, together with the plat and field notes of survey of said claims and the proofs required by law, all of which were approved by and sent by the Salt Lake City Office to the Director in Washington, including the Final Certificate. We have been advised by the Office of the Director of the Bureau of Land Management in Washington that patent on these claims will issue on October 22, 1948.

We, the undersigned, co-owners of an undivided one fourth interest in and to said M & H claims, hereby tender to Columbia Iron Company a proposal for the sale of our said interest in and to said M & H claims upon the terms and conditions herein expressed.

Within 15 days from date of this offer, we shall furnish Columbia Iron Mining Company with an abstract of title of the said M & H claims, brought down to date. Columbia Iron Mining Company shall have 45 days thereafter in which to investigate the abstract of title to said claims and notify us whether same is satisfactory. In the event the title to said claims is unsatisfactory to Columbia Iron Mining Company, the Company may require any cloud on said title to be cured or may not accept this proposal. In the event the title to said mining claims is satisfactory to Columbia Iron Mining Company,

we hereby offer to sell and convey to Columbia Iron Mining Company for a purchase price of \$287,500.00 our undivided one-fourth interest in and to the M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims. Said purchase price of \$287,500.00 for our undivided one fourth interest in and to said M & H claims shall be paid to us upon issuance of patent or patents to all of the said M & H, M & H No. 1 and M & H No. 2 claims and execution and delivery to Columbia Iron Mining Company of a Utah Statutory Form of Warranty Deed by us of our said undivided one fourth interest. Said purchase price shall be paid by the Columbia Iron Mining Company to us in 4 (four) equal installments as follows: \$71,875.00 upon issuance of patent or patents to said claims and deposit by us of said Warranty Deed in escrow at a Salt Lake City bank, with instructions to deliver same to Columbia Iron Mining Company upon completion of payment of the further sums of \$71,875.00 on January 10, 1949, \$71,875.00 on January 10, 1950, and final payment of \$71,875.00 on January 10, 1951. Said conveyance shall be by good and marketable title, free and clear of all adverse claims, liens, encumbrances and taxes (EXCEPT Right of Way to Los Angeles and Salt Lake Railroad Company) and shall in all respects be subject to approval by Columbia Iron Mining Company's legal counsel. The conveyance shall be in fee simple with covenants from the owners that they are lawfully possessed of an undivided one fourth interest in and to said M & H, M & H No. 1 and M & H No. 2 claims, and that they will warrant and defend the title of Columbia Iron Mining Company, its successors and assigns, from all lawful claims whatsoever.

Columbia Iron Mining Company shall have 60 days from the date of this proposal in which to accept or reject the offer herein contained. Failure to inform us of Columbia Iron Mining Company's determination within said period of time shall be considered as a rejection of said proposal and shall automatically cancel the same.

It would be appreciated if you would please acknowledge receipt of this letter by signing in the space provided at the end hereof and returning the copy which is hereto attached.

Arthur E. Moreton

Ethel T. Moreton

John R. Moreton

Susan Moreton Tevis

Receipt acknowledged this
2nd day of November,
1948.

COLUMBIA IRON MINING COMPANY

By Walther Mathesius, *President*

Exhibit G

October 26, 1948

Mr. Walther Mathesius, President
Columbia Iron Mining Company
P. O. Box 269
Salt Lake City 8, Utah

Dear Mr. Mathesius:

Last week Senator Watkins (R., Utah) at my request telephoned the Office of the Director of Land Management in Washington to inquire when patent would issue on the M & H, M & H No. 1 and M & H No. 2 Lode Mining Claims. Later that afternoon the Senator received a telegram from that office stating that patent on these claims would issue on October 22, 1948 and would be mailed on October 25 or 26, 1948. As soon as I receive it I will send it to you for examination.

The abstract of title to these claims is now being brought down to date and, as set forth in the offer, I shall forward same to you within the next few days.

As you will note in the enclosed offer, we have provided that the period for examination of the abstract of title and for acceptance of this offer run concurrently. My co-owners and I are anxious to have the transaction accomplished before December 31, 1948. As you know Mr. J. G. Holland and Mr. William C. Murie are well along in years and have been approached by others in regard to their interest in these claims, and are therefore anxious that, if possible, this transaction proceed without undue overlapping periods for examination and approval of documents.

Unless you desire to prepare same yourself, I shall be glad within the next 60 days to send you a draft of proposed Warranty Deed and proposed escrow instructions for your examination and revision, or approval.

You will note the reference in the offer to the Right of Way to the Los Angeles and Salt Lake Railroad Company. As you know, this railroad passes between the short line ore body and Milner pit and crosses the Milner claims as well as a corner of one of the M and H's. This is shown in the abstract of title.

Yours truly,

Arthur E. Moreton

Exhibit H

December 15, 1948

Arthur E. Moreton, Esq.
Attorney at Law
Judge Building
Salt Lake City 1, Utah

Re: Purchase of M & H Lode Mining Claims.

Dear Mr. Moreton:

Pursuant to the provisions of the October 16, 1948 offer of John G. Holland, Clara S. Holland, Rex Holland and William C. Murie and the October 20, 1948 offer of Arthur E. Moreton, Ethel T. Moreton, John R. Moreton and Susan Moreton Tevis, Columbia Iron Mining Company hereby notifies the present owners of the M & H,

M & H No. 1 and M & H No. 2 Lode Mining Claims situate in the Iron Springs Mining District, Iron County, Utah, of its acceptance of said offers to sell said mining claims.

Columbia Iron Mining Company will accept the title and transfer of the M & H, M & H No. 1, and M & H No. 2 Lode Mining Claims by Utah Statutory Warranty Deeds subject to the right of way of the Los Angeles and Salt Lake Railroad Company and the conditions enumerated in the United States Patent to the mining claims. Payment of the purchase price for the respective interests of the Hollands and Murie and the Moretons will be made by the Company in accordance with the terms of said offers.

We shall contact you to arrange for a convenient time for a meeting to execute and deliver the necessary documents to complete the purchase of said mining claims within the next few days.

This letter is being forwarded to you in duplicate. It would be appreciated if you would please acknowledge receipt of this letter by signing in the space provided at the end hereof and returning the copy which is herewith enclosed.

Very truly yours,
Walther Mathesius, *President*

RECEIVED this 16th day
of December, 1948
Arthur E. Moreton
cc: M. L. Heald