

1957

Glen E. Fuller et al v. Mountain Sculpture, Inc. : Brief of Respondents

Utah Supreme Court

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Glen E. Fuller; Joseph Y. Larsen, Jr.; Attorneys for Respondents;

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100.

IN THE SUPREME COURT
of the
STATE OF UTAH

KATHY FULLER and KIMBERLY G.
FULLER, minors, appearing by and
through Glen E. Fuller, their guardian
ad litem; GLEN E. FULLER, CONNIE
J. FULLER; JACK R. DECKER and
LEJEUNE DECKER,

Plaintiffs and Respondents,

vs.

MOUNTAIN SCULPTURE, INCOR-
PORATED, a Utah Corporation;
RICHARD K. HATCH, RALPH MAX-
WELL, WARREN M. O'GARA, and
PETER M. LOWE,

Defendants and Appellants.

FILED

NOV 12 1957

Supreme Court, Utah

No. 8576

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

STATEMENT OF FACTS

Respondents are unable to agree with the statement of facts set forth in appellants' brief and, under the recent Utah Supreme Court decision of Douglas vs. Duvall, 304 Pac. 2d 373, elect to restate the facts in a manner consistent with the true nature of the controversy.

During September, 1954, plaintiffs Glen E. Fuller and Connie J. Fuller began construction of their family residence at 733 Sunrise Avenue, Salt Lake City (Exh. 3). The plans for the home called for a considerable amount of decorative stonework and, in searching for a substance of different qualities, they ultimately arrived at the small town of Park Valley, located approximately 100 miles west of Brigham City in the western portion of Box Elder County (R. 40). There they found several large deposits of a blue-green quartzite stone, much of which was lying loose in slab form on the mountain side in an area referred to as Rock Canyon, in Section 18, Township 13 North, Range 13 West, Salt Lake Base and Meridian. The area is a United States government section open to the location and filing of mining claims.

Upon examining the stone at the time, Glen E. Fuller conceived the idea of veneering the thin slabs against a back-up wall in a "boulder" fashion (R. 41), and shortly thereafter returned to the area and secured 22 tons of the stone. He personally laid the stone on the structure during the remaining months of 1954 and the early part of 1955.

The effect of the stone immediately created a very favorable public reaction (R. 42). Concluding that a valuable discovery had been made, plaintiff Glen E. Fuller and his two minor children, Kathy (8) and Kimberly (4), went to Park Valley on May 12, 1955, and located four lode claims in the Rock Canyon area on the various deposits of the stone. Glen E. Fuller, Connie J. Fuller and their two children all signed the four lode location notices, in duplicate and in ink (R. 123). The notices were signed in long-hand, but Glen E. Fuller had

to help Kimberly sign the notices (R. 143). The notices were properly posted and suitable monuments were placed at the end centers and the four corners of each of the four contiguous lode claims—Kathy-Kim Nos. 1-4, inc. (Findings of Fact—R. 19; Exh. 7, 8, 9, 10). The claims were located by metes and bounds and were tied to the mouth of Rock Canyon, a prominent landmark in the locality.

Two days later (May 14, 1955) Glen E. Fuller returned to the area and made a placer location which covered the four lode locations and other ground (R. 45). At that time he erected monuments at the four corners of the placer claim and placed the location notice at the southeast corner of the placer claim in a conspicuous spot by the creek crossing at the mouth of Rock Canyon, and nailed it to a cedar tree, all in the manner required by law. (Findings of Fact—R. 20, R. 46). The placer location notice of the "Turquoise Stone Placer Claim" was also signed in ink by plaintiffs Glen E. Fuller, Connie J. Fuller, Jack R. Decker and Le Jeune Decker. The notices had been signed in duplicate the prior evening in Salt Lake City. The Deckers hold their interests in trust for Kathy and Kimberly, minors being unable to locate placer ground under the U. S. mineral laws.

The lode notices were recorded in the Box Elder County Recorder's office on May 16, 1955; the placer notice was recorded on May 25, 1955.

In May, 1955, automobiles could not reach the mouth of Rock Canyon (R. 42). However, plaintiffs immediately thereafter took a bulldozer and opened the road to the mouth of Rock Canyon, and continued the road westerly up the steep

face of the hill in zig-zag fashion to reach the various deposits of stone. Plaintiffs thereupon coined the name "Turquoise Stone" and began trucking the stone to Salt Lake City, where it received immediate acceptance for many of the finest commercial and residential structures in the city and other parts of Utah (Exh. 3, 4, 5, 6, 19, 20).

Respondents at this point take sharp issue with appellants' assertions in their brief that Glen E. Fuller was well acquainted with mining and mining law. To the contrary, on direct examination he stated he had never had prior experience or training in this line (R. 142):

Q. Had you had any previous training or experience in locating claims?

A. None whatever.

Defendants Hatch and Maxwell made their appearance in the Rock Canyon area in the early part of June, 1955 (R. 224), traveling over plaintiffs' roads where Glen E. Fuller had (R. 151) spent over a day breaking stones with an 8-lb. sledge hammer so that vehicle tires wouldn't be ruptured. Hatch and Maxwell immediately saw the placer location notice, the lode notices (R. 273) and another posted sign giving information relating to the Fuller claims (R. 274).

Defendant Richard K. Hatch was much experienced in placer mining claim matters, being familiar with the mining laws of Utah, Idaho, and Nevada (R. 273), and defendant Ralph Maxwell had a similar background (R. 274), having been a miner for many years and formerly associated with the Stardust Mining Company quarries as manager (R. 294). In

addition, Hatch was a surveyor (R. 83) and had done work as a civil engineer in Salt Lake City and Utah County (R. 222). He stated that before June, 1955, he flew over this particular area, charted it and made observations preliminary to making locations and filings (R. 224). He later spent months surveying the entire area (R. 252) and assisted the survey parties which he later engaged to go into the area (R. 68, 82).

During June, 1955, Hatch and Maxwell proceeded to make locations on quartzite stone deposits on approximately 2,240 acres of land on all sides of plaintiffs' claims, but avoided the Rock Canyon area where plaintiffs had located their claims (R. 276). The activities of Hatch and Maxwell in the general area continued all during the summer of 1955 and into the fall of the same year. During the latter part of 1955 and during January, 1956, Hatch and Maxwell filed on an additional 2,240 acres in the same general area without entering any conflict area with plaintiffs.

On October 26, 1955, defendants Hatch and Warren M. O'Gara came to Glen E. Fuller's office to discuss the Fuller claims in the Rock Canyon area. At the conversation Fuller told Hatch and O'Gara that he had filed on all of the green stone in the Rock Canyon area (R. 48, 49) and drew a sketch of the general area of the Fuller holdings in reference to the terrain (Exh. 13), specifically writing into the exhibit the "saddle" area which was the key point of the subsequent controversy, and the location of the four lode notices which plaintiffs also had located. Fuller further informed Hatch and O'Gara at the time (R. 49):

"I don't believe there is any green rock located west

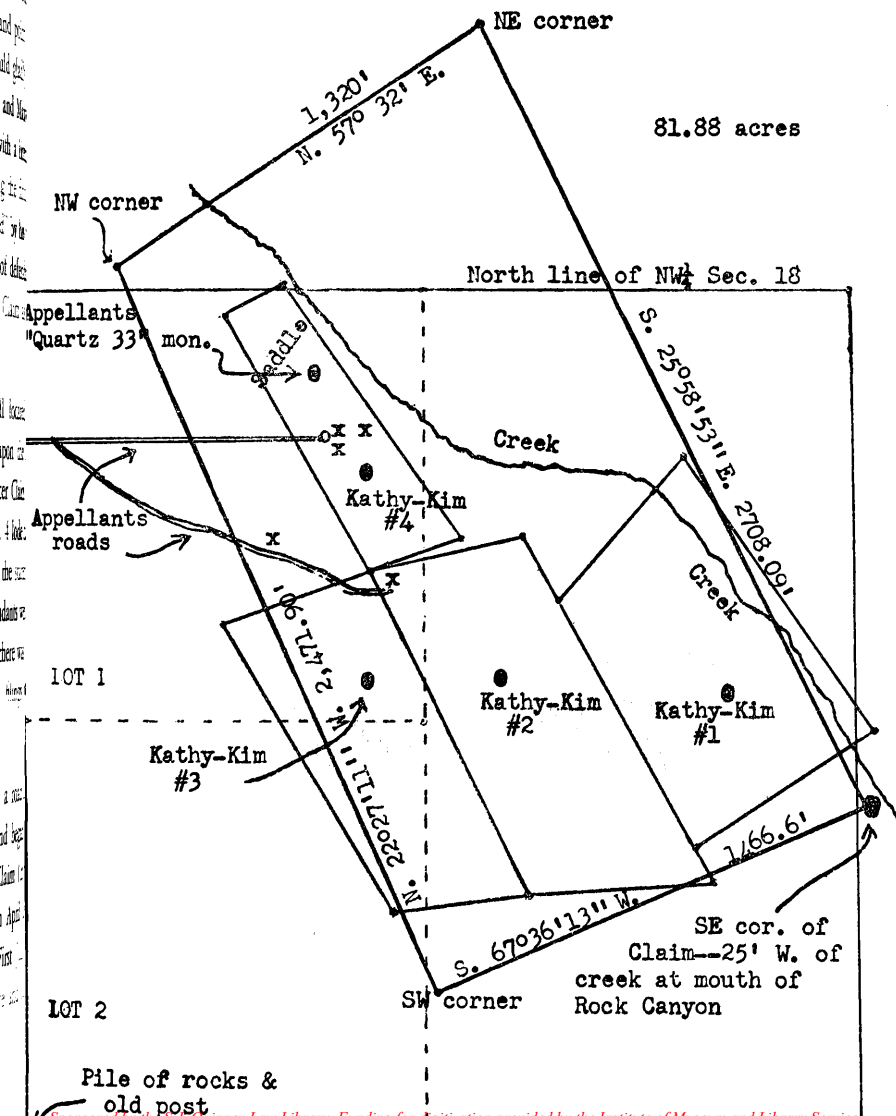
of my claims . . . I have filed claims on all of the green rock in the Rock Canyon area."

As the discussion progressed, the defendants asked Fuller if he would agree to go to the area with them and point out his boundaries, to which Fuller told them he would gladly do. However, without following this course, Hatch and Maxwell went to the area within two weeks (Nov. 9) with a licensed engineer (Exh. 14) for the purpose of verifying the findings of his own prior surveys which were "questioned" by his own group (R. 232). No attempt was made by any of defendants' surveyors to survey the Turquoise Stone Placer Claim as tied to the terrain (R. 75).

On January 7, 1956, Hatch and Maxwell located the "Quartz 33" placer claim which encroached upon the area included within plaintiffs' Turquoise Stone Placer Claim and which covered almost all of the Kathy-Kim No. 4 lode claim (Exh. 21). At about the same time, contrary to the statement made by defendants' attorney (R. 34) that defendants were at a different place from plaintiffs' claims and that there was "no conflict", defendants had actually made other filings over plaintiffs on all of Section 18 (R. 154, 276, 333).

On April 10, 1956, defendants constructed a road at a high elevation and from a western approach and began removing stone from the Turquoise Stone Placer Claim (in the Kathy-Kim Lode No. 4 area—Exh. 21); and on April 12th plaintiffs commenced legal proceedings in the First Judicial District Court of Box Elder County for injunctive and quiet title relief.

TURQUOISE STONE PLACER CLAIM
 and
Kathy-Kim Lode Claims 1-4, inc.
 (Shown in red)



Respondents have inserted a scale model of their claims (see Exhibits 16 and 21) to assist the Court in referring to the record.

STATEMENT OF POINTS

I. APPELLANTS HAD ACTUAL NOTICE OF THE EXTENT OF PLAINTIFFS' TURQUOISE STONE PLACER CLAIM.

II. THE BOUNDARIES OF A PLACER CLAIM DO NOT HAVE TO BE ORIENTED NORTH-SOUTH AND EAST-WEST AS A MATTER OF LAW.

III. PLAINTIFFS' TURQUOISE STONE PLACER CLAIM WAS SUFFICIENT AND PROPERLY LOCATED ON THE GROUND.

IV. APPELLANTS WERE NOT ENTITLED TO A DECREE QUIETING TITLE AGAINST PLAINTIFFS TO ANY PART OF THE "QUARTZ 33" CLAIM.

V. PLAINTIFFS ARE ENTITLED TO DAMAGES.

ARGUMENT

I. APPELLANTS HAD ACTUAL NOTICE OF THE EXTENT OF PLAINTIFFS' TURQUOISE STONE PLACER CLAIM.

It is a well-established rule of mining law that actual notice of the extent of a prior locator's claim prevents a subse-

quent locator from filing on the same property even if there are technical defects in the original locator's notice or manner of filing. The rule has been well stated in the Idaho cases of *Gerber vs. Wheeler*, 115 Pac. 2d 100, and *Independence Placer Mining Company vs. Hellman*, 109 Pac. 2d 1042:

"One who has actual notice that a prior locator is claiming a tract of mining ground and has done location thereon and continued to do prospecting and assessment work on the property is not in a position to make a valid location on such property. In such case he has notice that the ground is claimed by another and that so much of it as is claimed and occupied is no longer public domain subject to location; and he may not question the sufficiency of the original location or the character of the original occupant's title."

An examination of plaintiffs' Turquoise Stone Placer Claim location notice clearly traces the boundaries of the claim from the mouth of Rock Canyon in such a manner as to clearly inform anyone coming into the area as to the exact terrain included:

"Eighty (80) acres in area, consisting of two contiguous 40 acre tracts, covering the south slope and face of a hillside (and other areas) prominently visible from Park Valley by reason of the Turquoise colored rock visibly exposed thereon . . . entire area is covered with said stone, . . . :

"Beginning at Monument #1—being about 175 feet south of the campsite at the mouth of Rock Canyon—at the creek crossing; and running thence 2,640.00 feet north generally along the creek and up the hillside to Monument #2, consisting of stone; thence West down said hill and across creek and up other side to and beyond top of ridge to clearing to

Stone Monument #3, a distance of 1320 feet; thence South down hill 2,640.00 feet to Stone Monument #4, thence East 1320 feet along the base of hill to point of beginning at this Monument #1."

Appellants' whole argument is founded on the contention that plaintiffs' reference to the directions of north-west-south and east—whereas the courses vary slightly from true bearings—should give them a technical excuse to invalidate plaintiffs' claim and to ignore the many evidences of exactly where the claim lay.

The foregoing description, even if all directions were deleted, clearly ties the boundaries of the claim so strictly as to prohibit "swinging" and, to an engineer such as defendant Hatch, would instantly inform him—as appears obvious from his course of conduct—that the boundary lines varied slightly from true N-S and E-W bearings. Compare the comments of surveyor Gilgen (R. 112).

Q. Mr. Gilgen, in your opinion would you say that the survey . . . follows the terrain and the general description of the description set forth in exhibit 11?

A. I studied it from a general description after we made the survey—before and after—and from this description it could follow *very closely* the outlines of the survey.

Again (R. 118), taking note that plaintiff Glen E. Fuller had no chains or survey instruments and considering the terrain, Gilgen stated:

A. From the area, having not been able to see any fences to orient yourself from, I would say that *the general description given in exhibit 11 is about as close as they could have got.*

No witness challenged Mr. Gilgen's conclusions!

Lindley on Mines:

Section 381—

" . . . In matters of description, calls that are erroneous will not destroy the validity of the notice or certificate, *if by excluding them a sufficient description remains to enable its application to be ascertained.*

"A mistake in the certificate as to the direction and course, such as "northerly" instead of "northeasterly", the description being aided by monuments on the ground, is of no moment."

Section 382—

" . . . courses and distances are generally regarded as more or less uncertain, and always give place, in questions of doubt or discrepancy, to monuments and boundaries that are referred to as indicating and identifying the land."

An examination of Exhibit 13 which was sketched for Hatch and O'Gara on October 26, 1955, clearly shows that both men were informed that the boundaries of plaintiffs' placer claim basically encompassed plaintiffs' four lode claims. Specifically, when the discussion of the "saddle" area was brought up (R. 50) Glen E. Fuller wrote the word into the area being discussed. Referring to Exhibit 13 it can be plainly seen that the west boundary line of the placer claim and also the west boundary line of Kathy-Kim Lode Claim No. 4 both lay well to the west of the "saddle" area where defendants placed their "Quartz 33" location monument.

Both Hatch and Maxwell admitted seeing plaintiffs' Kathy-Kim No. 4 lode notice which was *barely 100 to 200 feet*

south of their "Quartz 33" monument! (R. 290). Hatch also admitted (R. 272, 273) that in June, 1955, he and others saw the other lode notices of plaintiffs (see map page 9).

To make it completely clear that defendants were fully informed of the boundaries of the placer claim, O'Gara was questioned on cross-examination (R. 332):

MR. FULLER: Mr. O'Gara, when you were in my office on October 26, didn't I make it quite plain to you that my placer claim had been filed over the lode claims to encompass them generally?

A. Yes, I believe you stated that was your intention.

In view of O'Gara's admission that he and Hatch were so informed, together with the admissions of both Hatch and Maxwell (R. 314) that they had seen the lode notices in the area, and, in view of their understanding of the correlation of the two types of claims to each other, Hatch can hardly claim lack of notice by ignoring the location of the lode claims with such comments as:

A. Can't mark the Mississippi River on the map of Louisiana. (R. 257).

* * * *

Q. You just took pictures of the placer location notice?

A. When you're hunting ducks you don't run home to get your deer rifle. (R. 272).

* * * *

A. I didn't even bother to read any other claims than were on the type of thing I was claiming. (R. 272-3).

* * * *

Q. After seeing this map (Exh. 13 of Oct. 26) did you go back on the premises and examine the lode filings

to ascertain their relationship to the placer filing or to assist you in getting your bearings?

A. I have never looked at the lode filings. I have never been interested in them and I am not interested in them now.

Q. But you knew they were there?

A. I run across two or three of them and read them and they were signed, and I think the signatures are visible. (R. 279).

Even though plaintiffs' lode claims may have been insufficient as a matter of law to satisfy a valid location on the turquoise-colored quartzite stone in the area because of a "technical" lack of discovery (as found by the Court—R. 380), a question immediately arises as to whether appellants' doings would permit them to prevail even though plaintiffs had never filed their Turquoise Stone Placer Claim:

"Good faith confronts any subsequent locator who enters upon the possession of a 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 vs. Murphy, 36 Cal. App. 2nd 171, 97 Pac. 281.

The Utah Supreme Court had occasion to pass upon a similar case in *Springer vs. Southern Pacific Company*, 67 U. 590, 248 Pac. 819. That case also arose in Box Elder County and involved lode filings on stone which the court held should have been filed on as placer claims. The court stated that the respondent did not make a discovery of valuable mineral in rock-in-place, but merely discovered mineral within the pur-

view of the law relating to the location of placer claim. Although respondent prevailed under the Utah statute relating to acquisition of title by adverse possession for seven years, the case also established law which is controlling in this particular case on another point. The court there held that, on an alternative ground, it would have decided as it did, notwithstanding that the lode filing was technically improper because of the nature of the actions of appellants. Fully knowing that plaintiffs' lode notices covered the area where appellants' later filed and that plaintiffs' Turquoise Stone Placer Claim covered the lode claims, can appellants now argue that they exercised good faith in view of the following four quotations from the *Springer* decision?

"Neither is there any doubt that an honest attempt was made by respondent to make a lode location, and that in view that no proper discovery was made and no valid or legal lode location was made. Notwithstanding that fact, however, *respondent has fulfilled every other legal requirement.*"

"Then again, respondent was in actual, open and visible possession of the claims and was developing and constantly using the only minerals contained there when the appellants made their attempt to locate the ground as placer claims, . . . all of which appellants knew, and for a long time prior to their attempt at location had known."

The evidence is clear that Hatch and Maxwell avoided the activity of plaintiffs (R. 259), and took a photograph of plaintiffs' placer notice (Exh. 23) *at night with the aid of flash bulb!*

"(3) In this connection it should also be remembered that the Court found . . . the appellants "early in t

morning of said day, long before working hours and either before or about daylight, clandestinely and surreptitiously entered upon and invaded the actual possession of said claims . . . What one may not do by force he likewise may not accomplish surreptitiously or by stealth. That such is the law applicable to the location of mining claims to too well settled to require the citation of authorities.”

Plaintiff Glen E. Fuller testified in detail of plaintiffs' expenditures in the area (R. 152) for machine work, hauling, quarrying, tools, interest on borrowed money, travel, surveying and other costs exceeding \$3,000.00. Quoting further from the *Springer* decision:

“ . . . we feel impelled to add, however, that in view of the facts and circumstances the conclusion of the district court, is clearly right. We cannot conceive of a more flagrant disregard of the rights of one who . . . has been in the actual, open, visible and exclusive possession of mining ground, one who has expended thereon . . . thousands of dollars, one who has in every respect but one complied with the mining laws of both the state in which the mining claims are located and those of the United States, than is made to appear in this case.”

Plaintiffs submit that appellants' actions come within the condemnation of the *Springer* case, both as to the four lode claims and to the Turquoise Stone Placer Claim.

Defendant Hatch certainly did not lack knowledge of the ownership of the lode and placer claims despite his disbelieved (R. 20) contention that the placer claim notice was not signed, because he admitted seeing a large printed sign in the same general area within a few feet of the placer location notice

which informed him as to the ownership of both groups of claims (R. 229, 274—and see Exh. 24 with sign in background). Also, Hatch admitted seeing the recorded notice of the placer claim at the Box Elder county recorder's office (R. 274):

A. I think I looked at that within a week after you filed it and two dozen times since.

Hatch further testified (R. 275) that he surveyed in the Rock Canyon area during each and every month of the summer of 1955, and through the remainder of the year. Since he had already filed on some 2,240 acres of building-stone land in the surrounding area, it is inconceivable that so much attention should be focused in plaintiffs' Rock Canyon area. Actually, Mr. Hatch made it quite clear (R. 280) that when he and O'Gara went to visit Glen E. Fuller on October 26, he had embarked on a claim-jumping expedition and had completed his survey to his own satisfaction:

A. At that time (October 26, 1955) *I had come to all of my conclusions* and I had made my stand, and I'm holding it now. (R. 280).

* * * *

Q. At that time . . . was there any antagonism existing between us?

A. Not a bit. Never been any except in the court room.

Q. Did you expect there would be?

A. I certainly did. (R. 281).

* * * *

A. All of them coincided with my survey, and I made it a point not to inform them (other surveyors) of any previous surveys I had made or any information I wanted. (R. 234).

Furthermore, Mr. Hatch admitted commenting to people in the Park Valley area that it would take more than Glen Fuller to keep him out of the Rock Canyon area (R. 283), and "*. . . that we had an attorney on our hands to fight with, and so I fight fire with fire, . . .*" (R. 281).

"In other words, in the parlance of the miners, he (defendant) decided to 'jump the claims.' Such, we think, is a fair deduction from the record. The verdict of the jury is not surprising."

Young vs. Pabst (Oregon), 37 Pac. 2d 367.

It is significant that neither Hatch nor Maxwell really attempted to locate the corners of the Turquoise Stone Placer Claim. Although the reference to the outer perimeter of the claim was so clear-cut when taken in relationship to the terrain that anyone would know exactly where the claim lay, Mr. Maxwell admitted that at no time did he or Hatch attempt to chain or follow the very first course "north generally up the creek area" (R. 314) "or along the north boundary line of the Turquoise Stone Placer Claim "down and across the creek and up the other side to the west" (R. 314). Maxwell admitted on cross examination that the placer notice descriptions went along the areas just referred to (R. 315).

Defendant Warren O'Gara on direct examination stated that in May, 1955, he had a discussion with Glen E. Fuller at a school festival relating to the lode filings and that he informed Fuller that he thought the stone was locatable only under a placer filing (R. 324). Whether this discussion prompted O'Gara to seek out Hatch and Maxwell or whether their association arose by chance, is not revealed in the record;

but O'Gara certainly should not have been surprised when appellants found the placer location notice in the Rock Canyon area. Nor should appellants be heard to complain that they couldn't find the boundaries of the placer claim when they ignored the lode location notices which were all well-marked on the ground and contiguous to each other.

The actions of Hatch and Maxwell all point to just one conclusion: For the simple reason that the Fuller lode and placer claims did not follow true north-south and east-west bearings, Hatch felt that by a survey he could force the Turquoise Stone Placer Claim to be swung to the east and thereby acquire the valuable stone deposits in the northwest corner of the Turquoise Stone Placer Claim, thus causing the placer claim to be no longer encompass Kathy-Kim Lode Claim No. 4 and most of Kathy-Kim Lode Claim No. 3.

II. THE BOUNDARIES OF A PLACER CLAIM DO NOT HAVE TO BE ORIENTED NORTH-SOUTH AND EAST-WEST AS A MATTER OF LAW.

Appellants have incorporated in their brief four cases to support their position that placer claims should be located in a manner "approximating conformity" with the United States system of public land surveys, "if practicable." However, all of those cases are Land Department Decisions, and only the *Snowflake Fraction Placer* decision needs study (as appears later in this brief) because it was the last of the four cited decisions (1907), and it specifically considered the other three decisions. The *Snowflake Fraction Placer* decision, 37 L. D. 250, upheld the holding of the Wood Placer Claim (that an irregular entry averaging 500 feet wide by $1\frac{3}{4}$ miles in length

should not pass to patent) but expressly disapproved and overruled the Rialto No. 2 Placer Mining Claim decision.

The Snowflake decision is a landmark Land Decision case and is conclusive authority that the Turquoise Stone Placer Claim would pass to patent. An exhaustive search has revealed that in no instance since that case has the Land Department refused a patent to a claimant on a placer claim, even though irregular in shape. The tract approved for patent in the Snowflake decision was diamond-shaped and had six courses, only one of which had an east-west bearing, and was not tied to the U. S. public survey system.

By way of contrast, the Turquoise Stone Placer Claim is rectangular and extremely compact, consisting of 81.88 acres. Considering that Glen E. Fuller marked the boundaries of the claim without a compass or any measuring device whatsoever (R. 46, 189), partly by stepping and partly by guess, it is amazing that the boundaries and the acreage approach the allowable 80 acres permitted to four locators of a placer claim under the Code of Federal Regulations. In fact, surveyor Gilgen stated that in his opinion the placer claim (R. 118) was laid out " . . . about as close as they could have got . . . " Gilgen further testified that the metes and bounds description of the placer location notice following the outlines of his survey "very closely" (R. 112).

As a general rule, it is no concern of the courts whether a placer claim conforms to the U. S. system of public surveys. It is primarily a matter which arises when a claimant seeks to secure a land patent, and was so recognized by Judge Jones (R. 382):

"It is also contended that the location was fatally defective because it did not conform to the U. S. system of public land surveys. As to whether a placer claim conforms "as near as practicable with the United States system of public-land surveys," Sec. 35, Tit. 30 U.S.C.A., is a question addressing itself primarily to the land department, to be determined when the claimant seeks title from the government; and concerns the courts only insofar as the issue may be raised between adverse claimants to the actual possession of the land embraced within the claim. *Snowflake Fraction Placer*, 37 Land Dec. 250, 257; *Hy-Grade Placer Mining Claim*, 53 Land Dec. 431; *Hanson et al, v. Craig*, 9 Cir., 170 F. 62, 95 C.C.A. 338; *Mitchell vs. Hutchinson*, 142 Cal. 404, 76 P. 55.

Wiesenthal vs. Goff et al. (Idaho) 120 Pac. 2d 248.

* * * *

"As to whether it is practicable to make a location or survey conform to legal subdivisions is *a matter which rests entirely within the land department.*" (Italics added.)

I *Lindley on Mines*, 3rd Ed., Sec. 448
Snowflake Fraction Placer, 37 L. D. 250, 257.

Assuming that this court were inclined to determine whether the Turquoise Stone Placer Claim must follow the lines of the United States Government Survey System, the matter was completely settled in the famous SNOWFLAKE FRACTION PLACER decision of the U. S. Land Department, 37 L. D. 250, 257, decided in 1907, where it was stated:

"It is the policy of the government to have entries, whether they be for agricultural or mining lands, in compact form . . . the public domain must not be cut into long and narrow strips."

" . . . It is the view of this department that a *claim hereafter located by . . . four persons which can be entirely included in two square forty-acre tracts placed end to end . . .* should be approved. In stating this rule it is necessary to say that *we do not intend that the forties which are made the unit of measure should necessarily have north and south and east and west boundary lines . . .* No locator would be compelled to include non-placer ground unless he so desired, . . . " (Italics added.)

What clearer authority do appellants require? The lower court was satisfied, making specific reference to the foregoing rules (R. 383) which were copied verbatim and cited in the Code of Federal Regulations.

CODE OF FEDERAL REGULATIONS

Lode and Placer Mining Regulations

Section 185.28 *Conformity of placer claims to the public land surveys.*

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact

and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (*Snow Flake Fraction Placer*, 37 L.D. 250.)

Since Fuller testified that he did not desire to include waste land (R. 47, 148), that he was trying to tie the placer claim to the contour of Rock Canyon and the western slopes beyond (R. 48), that the placer claim was intended to include the area of the lode claims (R. 47), that the whole area had very little grazing value and was valueless for timber or farming purposes (R. 145), and that he was attempting to include two contiguous forty-acre tracts in the placer claim (R. 47, 57), the lower court had ample evidence to sustain its ruling.

It should also be noted that the area had many other monuments erected by would-be claimants over the years (R. 44, 46, 53, 301, 302, 318, 336). To know the extent of all of the possible claims would be very difficult, thus making it only wise to carefully circumscribe the terrain claimed as was done in the Turquoise Stone Placer Claim filing rather than to file on 160 acres or more according to governmental subdivisions and invite other possible and unnecessary litigation. This situation was also recognized in the Snowflake case and the same section of the Code of Federal Regulations:

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

It would appear much more consistent and logical to file on a single compact placer claim of 80 acres, as plaintiffs did, than to merely set up shop with a typewriter and file on approximately 4,500 acres as was done by appellants in the same general area. The latter type of conduct was the type of thing the U. S. Congress specifically sought to exclude in its 1955 legislation. See 30 U. S. C. A. 611.

The Supreme Court of Oregon in the case of *Young vs. Papst*, 37 Pac. 2nd 362, had occasion to pass upon a very similar factual situation involving a placer filing. Among some of the statements contained in that well-decided decision are the following:

"It is true that the evidence fails to tie these claims to any government corner, yet such failure does not of itself invalidate the claims. They may be located by reference to monuments and natural objects.

"It is apparent from the record that plaintiff, in locating these placer claims, was endeavoring to follow the contour and meander of Briggs creek . . . Like most prospectors, he did not have with him any instruments with which to survey land . . . He was, however, undertaking in good faith to stake out and mark certain claims on which he had discovered gold in paying quantities . . . We think it a fair inference that he was not sure about the direction in which Briggs creek flowed."

"In the instant case we think, as no doubt did the jury, that the defendants were not misled or confused by the posted notices."

"The law does not contemplate, however, that the locator shall be obliged to include in his claim a large amount of waste or nonmineral land. Hence, it is not

required under all circumstances that claims be located according to legal subdivisions.”

“The mere fact, if it be a fact, that the defendants were unable to find any stakes or to trace the boundaries of the claims is not conclusive proof that the plaintiff did not distinctly mark the boundaries. It is altogether possible that the stakes may have been obliterated or destroyed without fault of the plaintiff.”

III. PLAINTIFFS’ TURQUOISE STONE PLACER CLAIM WAS SUFFICIENT AND PROPERLY LOCATED ON THE GROUND.

Glen E. Fuller testified on direct examination as to the physical markings which he made in establishing monuments and otherwise establishing the boundaries of the four lode claims and the Turquoise Stone Placer Claim (R. 44, 45, 46, 47, 123, 125—see also Exh. 7, 8, 9, 10, 11). The court made express Findings of Fact—contrary to the statements made by appellants in their brief—that plaintiffs’ lode and placer claims were all originally monumented and located with reference to natural and permanent monuments which were erected by Fuller, and that the Turquoise Stone Placer Claim also described the area claimed “ . . . by metes and bounds and with reference to the terrain and other physical characteristics of the area (R. 19, 20).

Although appellants throughout their brief argue facts contrary to the express findings of the court, plaintiffs submit that the record contains ample evidence to sustain the courts’ findings on every point raised. In this connection appellants have claimed that they were unable to locate the area included within the Turquoise Stone Placer Claim, but the volume of

evidence and argument heretofore set forth should prove that they knew only too well where the claimed area was located. Furthermore, would any person in his right mind ever believe that a location would fail to include the most valuable deposit of all (the Kathy-Kim Lode No. 4 area) in an 80-acre filing and only include areas of desolation and waste (See Exh. 28) as appellants would have this court believe?

In their efforts to "swing" and pivot the north line of the Turquoise Stone Placer Claim to the east of where it was actually located, appellants had their surveyors draw imaginary claim lines in relation to north-south and east-west compass bearings (Exh. 15), but they were extremely careful to avoid locating the creek within the exhibit. Had they done so they would have found that the east boundary of the Turquoise Stone Placer Claim would not run "*. . . north generally along the creek . . .*", and the north line would not run "*. . . thence down said hill and across creek and up other side to and beyond top of ridge . . .*" In fact, under appellants' version the north line would never even reach westerly to the creek! Compare the testimony of appellants' surveyor, Mr. Craven (R. 74):

A. In other words, if you crossed the creek on the north line of section 18 going west, you have to be in Lot One.

MR. FULLER: That's what I'm asking you.

A. That's correct.

Further, as to whether Mr. Craven attempted to survey the Turquoise Stone Placer Claim for appellants (R. 75):

Q. Did you have any occasion, during the course of your survey, to make an attempt to map, either on

paper or to ascertain the area included within, the description that is on Exh. 11?

A. No, I dont . . .

Q. . . . So that all you really did was to run east-west and north-south section and quarter section lines?

A. That's correct.

Fuller testified that by April, 1956, lode location notices 3 and 4 had been torn off or had worked loose by the weather, that lode location 2 had been completely removed by unknown persons, but that lode location notice No. 1 and the Turquoise Stone Placer Claim notices were intact, although the signatures had been practically obliterated by the weather (R. 362). He also stated that it was necessary for him to partially reconstruct the NW corner of the Turquoise Stone Placer Claim (R. 362), that the bulk of the NE corner as originally set up had either been torn down or moved (R. 124), and that it was necessary to do reconstruction work on both. However, the SW corner was still intact (Exh. 47). But plaintiffs should not be penalized because of the such facts. As stated in the case of *Mieblisch v. Tintic Standard Mining Co.*, 60 U. 569, 211 Pac. 686:

"The staking or marking of mining claims having once been properly performed, completed valid location of ground, and thereafter it was not incumbent on claimant, as matter of law, to preserve standing of stakes against meddlesome persons or trespassers in order to preserve its rights as against subsequent locator seeking to acquire mining rights in premises."

In *Young v. Papst et. al.*, supra, the Oregon court quoted 18 R.C.L. 1135:

"It is a well known fact that the boundaries as marked upon the ground, and the notices thereon posted, often disappear within a very short time, but there is no requirement in the law that they shall be maintained or replaced by the locator in order to keep his location good. When the location of a mining claim is once sufficiently marked upon the surface so that its boundaries can be readily traced, and all the other acts of location are performed as required by law, the right of possession becomes fully vested in the locator, and cannot be divested by the removal or obliteration of stakes, monuments, or notices, without the act or fault of the locator, during the time he continues to perform the necessary work upon the claims, and comply with the law in all other essential respects."

To guard against such happenings Fuller had two large printed notices prepared and erected them in the Rock Canyon area (R. 48) for all to see. Hatch and Maxwell saw the printed signs (R. 274).

In an effort to persuade the lower court to invalidate the Turquoise Stone Placer Claim appellants contended that plaintiffs had never signed the location notice. This position is curiously inconsistent with their claim which was raised at the beginning of proceedings that " . . . we're not over on his property . . . " (R. 34), and that no conflict existed. However, the court expressly found (Findings of Fact—R. 20) that the notice was signed.

In support of plaintiffs' claim that proper signatures were on the notice, Glen E. Fuller testified that he and his wife signed the placer notice, in duplicate, on the evening of May 13, 1955, at their home (R. 144), and that the Deckers' signed it the same evening. Jack R. Decker, a lawyer and a

member of the Bar of the State of Utah and his wife, LeJeune Decker both testified (R. 355, 357) that they signed the placer notice the night of May 13, 1955, at their home, in duplicate, and that the signatures of the two Fullers were on it at the time.

Although the signatures on Exhibit 22 were badly weathered from a year's exposure, both of the Deckers were able to recognize impressions of their signatures on the exhibit. In fact, both of them examined appellants' Exhibit 23 (R. 356, 358) and could make out Jack Decker's signature and other lettering, even thought Hatch took the picture at night with flash bulbs and at a considerable distance. If Hatch was trying to prove something should he not have taken the same picture from the same close distance at which he photographed it in Exhibit 25?

Several other witnesses acknowledged seeing signatures on the placer location notice. Appellants' geologist, Roy A. Shane, admitted seeing the indentation of a signature on Exh. 22 at the time of trial and Laurence Carter, a prominent rancher in the Park Valley area, admitted seeing the signatures on the notice several times during the summer of 1955 (R. 340, 342), and stated that he and his son found the Fuller sign and the placer notice torn down, lying face-up to the weather, about deer season of 1955. He noted that the writing had faded somewhat, and stated that he nailed the objects back on the trees (R. 341). And even on April 25, 1956, surveyor Gilgen testified (R. 111) that he could make out the signatures very faintly.

If this Court has any doubts as to whether the Turquoise

Stone Placer Claim was properly marked on the ground or whether it was signed, it would be well to examine Exh. 8 (Kathy-Kim Lode No. 1) and note the care and detail used to tie that claim to the terrain, particularly noting that the notice included a map with the creek area carefully drawn in position. Since this notice was seen by appellants just up the hill from the placer location notice, and knowing that the Kathy-Kim No. 1 lode claim and the placer claim each used the same general directional system from SE corners relatively close together (See Exh. 21), it is too well evident that appellants knew the direction of the east line of the Turquoise Stone Placer Claim.

The lower court had ample evidence to justify its findings.

Appellants make issue of the fact that the Fuller survey of April 25, 1956, was made in a direction opposite to that of the courses of the description in the Turquoise Stone Placer Claim. But they fail to inform the court of the difficulties of surveying the claim in a counter-clockwise manner. Appellants' surveyor, Mr. Craven, stated that it was "rough going on the mountain to the north" (R. 71), appellant Maxwell admitted that the area up the creek was very rough (R. 314), plaintiffs' surveyor, Mr. Gilgen stated that the east line of the Turquoise Stone Placer Claim was up a "very steep canyon." Witness Laurence Carter stated that in order to go up certain portions of the canyon he had "crawled on hands and knees . . ." and "you can't possibly get up there" with a horse (R. 349).

In view of the nature of the terrain, together with an understanding that the Court expected respondents to secure a

surveyor and to complete the survey within a "couple of days" (R. 85), it should hardly be surprising that the survey was taken westerly in an area easier to traverse (to Monument 3), then northerly up the long slope of the west boundary of the claim. From the northwest corner of the Claim (Monument 2) surveyor Gilgen was able to take his traverse shot across the steep canyon to the northeast corner (Monument 1) and then, without traveling afoot over the rugged east line of the claim, simply make a mathematical computation and run a closure on the line and the distance to the place of beginning.

In describing the Turquoise Stone Placer Claim (Exh. 11) "*. . . two contiguous 40 acre tracts, . . .*" were included, and the first course ran "*north generally along the creek . . .*" To a surveyor such as Hatch, tying the first course to the creek which actually ran approximately 25 to 30 degrees west of due north would put him on notice that the other courses would vary similarly from true bearings.

An inspection of respondents' lode notices (Exh. 7, 8, 9, 10) and the placer notice (Exh. 11) all reveal a consistent minor variation from true N-S and E-W bearings. In this connection, Glen E. Fuller testified that upon laying out the claims he looked for government survey corners but was unable to find any (R. 47, 58, 64). Even defendant Hatch with his engineering experience was unable to find the NW corner of Section 18 (R. 237).

Being unable to locate any survey monuments Fuller laid out all of the claims by metes and bounds and followed "*. . . the directions as near as they appeared to me at the time, and from reference to exhibit number one which I had,*

... ” and used “ . . . the stream and the canyon as my main directional find.” If the Court will examine Exh. 1 (a copy of the original survey map made in 1894) it will be noticed that the creek enters Section 18 near the east side of Lot 1 (which corresponds to Exh. 21), but that it terminates with an arrow marking half way down the section at the mouth of Rock Canyon just slightly east of the SE corner of Lot 2. Actually, however, *the creek should have been placed almost an additional 1/4 mile east of where its terminus shows!* Surveyor Craven stated (R. 76) that the creek flowed “quite a bit east” of the east side of Lot 2. Fuller stated that he later found out that the creek “comes down dead center in Section 18 . . . ” and “is off a quarter of a mile in a distance of a half mile, . . . ” (R. 57). This fact was verified by witness Carter (R. 348-9) and by the various surveys (Exh. 21).

Since the original surveyor misplaced the direction of the creek by approximately 25 degrees, it is not surprising that Fuller was unable to find survey monuments or that his claims should vary corresponding from true N-S and E-W bearings. But it would be an extreme situation to declare a forfeiture of a claim where the appellants actually knew the exact area included therein (see argument and authority previously cited) and where a locator relied on official maps of the Bureau of Land Management.

Lindley on Mines (3rd Ed.):

Section 382—

“ . . . courses and distances are generally regarded as more or less uncertain, and always give place in questions of doubt or discrepancy, to monuments and

boundaries that are referred to as indicating and identifying the land."

* * * *

"As was said by the Supreme Court of Utah,—

"If by any reasonable construction, in view of the surrounding circumstances, the language will impart notice to subsequent locators, it is sufficient."

Lindley on Mines (3rd Ed.) Sec. 381

Wells v. Davis, 22 Utah 322, 62 Pac. 3, 4

Bonanza Cons. Mining Co. vs. Golden Head Mining Co., 29 Utah 159, 80 Pac. 736, 738

* * * *

"Where a locator attempts in good faith to comply with the law, the courts are inclined to be liberal in construing his acts so as not to defeat his claim by technical criticism."

58 C.J.S., *Mines and Minerals* #46, p. 101

Simmons vs. Muir, (Wyo.), 291 P. 2nd 814

Farmington Gold Mining Co. vs. Rhymney (Utah), 58 Pac. 832.

" . . . every reasonable doubt will be resolved in favor of the validity of a mining claim as against the assertion of a forfeiture."

58 C.J.S., *Mines and Minerals*, 46(c), p. 101

Simmons vs. Muir (Wyo.) 291 P. 2nd 814

Hagerman vs. Thompson (Wyo.) 235 P. 2nd 758

Knight vs. Flat Top Mining Co. (Utah) 305 Pac. 2d 503.

IV. APPELLANTS WERE NOT ENTITLED TO A DECREE QUIETING TITLE AGAINST PLAINTIFFS TO ANY PART OF THE "QUARTZ 33" CLAIM.

The lower court's decision quieted title in appellants to all that portion of their "Quartz 33" Claim lying west of the Turquoise Stone Placer Claim. To this ruling respondents do not take issue for the reason that there is practically no turquoise stone in the area and do not claim the area themselves. However, as a precautionary measure in the event this court should feel any inclination to reverse the lower court and disallow respondents' claims, thereby enlarging the Quartz 33 Claim to its originally planned size (80 acres, more or less, and including Kathy-Kim Lode No. 4 and most of Kathy-Kim Lode No. 3) respondents contend that appellants' entire group of lawyers, mining men and engineers failed to effect a valid filing.

In their Notice of Location of Placer Claim (Exh. 31) appellants have attempted to include within a placer claim lands which, according to their own description, could only be subject to a lode claim, particularly so inasmuch as nothing in their original claim indicates that it is a building-stone placer claim. Witness the following portion of their Notice of Location of Placer Claim (Exh. 31):

*QUARTZ**

"This claim is located upon a valuable deposit, bearing gold and other precious metals, situated in QUARTZ.*

This claim shall be known as the QUARTZ #33.*

*The body of the foregoing is printed on the form, but the references to "QUARTZ" are inserted by typewriter.

By their own statements they have set forth that their claim consists of—

- (a) a valuable deposit of quartz bearing gold and other precious metals, and
- (b) the gold and other precious metals are situated *in quartz*.

Such a claim attempts to include much more than the 20 acres permitted in a lode claim under the heading of a "placer claim" contrary to the provisions of 30 USCA Sec. 35:

"Claims usually called "placers," including all forms of deposit, *excepting veins of quartz, or other rock in place*, shall be subject to entry and patent . . ."

It is submitted that the purported notice of location is void on its face because it describes a lode!

The original Notice of Location is further defective for the reason that it fails to comply with the Utah statute with respect to locating the claim by reference to a permanent monument:

Section 40-1-2:

"The locator at the time of making the discovery . . . must erect a monument at the place of discovery, and post thereon his notice of location which shall contain:

(5) If a placer . . . claim, the number of acres or superficial feet claimed, and such a description of the claim . . . , *located by reference to some natural object or permanent monument, as will identify the claim.* . . ."

Appellants did not attempt to so locate their original Quartz 33 claim. However, it would appear as if an abortive attempt to do so was made when they filed their two amended location notices (Exh. 32 and 33). In both of those they started

their description from an "old marked stone" which they classified as being the southwest corner of Lot 2 of Section 18.

An analysis of all three notices filed by appellants leaves very little room for them to complain of any inaccuracies in respondents' notices. Although an attempt was made to trace directions from the starting point in fractions of a mile and to tie the claim to Lots 1 and 2, appellants presuppose that every locator is a surveyor with instruments and able to clearly trace the boundaries of their claim. None of their notices as put in evidence specify what kind of monuments will be found at any of the three corners other than the beginning, if any, nor do any of them attempt to tie the location monument to the beginning point. Actually, the beginning point where the "old marked stone" is found was by the admission of defendant Hatch (R. 289), one-half mile from the location monument. No attempt was made to tie the location monument to the point of beginning. To add to the confusion, Maxwell testified that those corners of the claim which were actually marked contained the statement "Mt. Sculpture" (R. 318).

How could any person coming into the area, even were he to accidentally stumble onto the location monument, ascertain the boundaries of appellants' claim without having in his possession surveying instruments? The country is very rough and rugged, and from the claimed description given by appellants it would be otherwise impossible for a locator to ascertain the boundaries of their claim. Furthermore, Hatch admitted that the original location monument at the NE corner of the "Quartz 33" Claim was subsequently moved about 500 feet to the "saddle" area. It seems elementary that this act would require a new filing with a subsequent date.

Nor is it conceded that Lots 1 and 2 actually exist. Although it was stipulated that the United States Government Survey has been run at one-half mile intervals around the perimeter of Section 18, respondents deny (and appellants failed to establish evidence) that any further survey has been made by the United States Surveyor General. As such, Lots 1 and 2 exist on paper only. Exh. 1 shows them merely as dotted lines laid within the Section. On this subject Mr. Lindley has the following to say:

Section 448—Page 1052:

“The proximity of the unsurveyed to the surveyed lands has led to an error quite common of treating these unsurveyed lands as if the lines of the public surveys have been extended over them, and locating placer claims thereon by the government subdivision which the locator determined would be created when the system of surveys is extended over them. *But such a description would not identify anything and would not satisfy the law.*

It may be practicable where discoveries are made in a region in which the public surveys have been partially extended to perfect by unofficial and private surveys the township and section lines, and in addition to a description by metes and bounds, which would certainly be necessary, there might be added a statement that the subdivision so located would, if the government survey were extended, embrace such and such a tract, describing the probable result of the extension of such surveys.”

Utah does not have a statute specifically permitting an amendment to a location notice, but the practice has been adhered to by court decisions. Consequently, according to Mr.

Lindley, amended notices *should be properly dated and should not bear a fictitious date* (*Muldoon vs. Brown*, 21 U. 129, 50 P. 720), and should otherwise contain the original essentials of the first location notice. It is submitted that none of the alleged and claimed amended location notices of defendants qualify.

Lindley on Mines, Section 398, p. 927:

“Where there is no statute, in re-marking the boundaries and preparing and recording the certificate the same formality should be observed as in the case of an original location.”

Section 335, p. 819:

“When we deal with cases, however, arising under laws similar to those found in Arizona, California, New Mexico, Oregon and *Utah*, . . . we encounter a different element. Where the posted notice is the basis of the one to be ultimately recorded, the provisions of the federal law are operative, and the posted notice must contain the requirements of the law as to the contents of the record.

A notice might serve the purpose of a notice of discovery manifesting an intention to locate, and be wholly insufficient as a notice of perfected location which is to be recorded.

Respondents respectfully submit that appellants' filings are actually far inferior in law and fact to the lode and placer filings which respondents made.

V. PLAINTIFFS ARE ENTITLED TO DAMAGES.

Respondents have taken a cross-appeal from the lower court's decision failing to award them damages for stone re-

moved from the Turquoise Stone Placer Claim. In this respect respondents are particularly grateful to a system of justice which has provided a ruling quieting title in them to the stone deposits upon which they have expended their hopes, funds and labors.

The lower court on its own initiative prepared Findings of Fact (R. 22) stating it was not sufficiently established that the stone removed by appellants was taken from the Turquoise Stone Placer Claim. Actually, there is absolutely no evidence that the stone taken from Section 18 by appellants came from anywhere other than respondents' claim and certainly nothing suggests that respondents took any stone from any area west of the Turquoise Stone Placer Claim.

Apparently the real reason behind the lower court's refusal to award damages was its feeling that

"Mr. Fuller should have jumped in a helicopter or speed car and raced out there at the moment O'Gara and Hatch left his office, and having failed to do so, I can't bring myself to award damages in this case." (R. 380).

The lower Court seemed to feel that at such time Fuller should have re-established the placer corners and lines with blazed flags and other warnings. If such can be considered "negligence that can be imputed to the plaintiff" (R. 381), then respondent won't take the issue with the Court as to the two loads of stone (approximately 10 tons) which were removed prior to the commencement of the action. But what excuse can appellants advance for their removal of many loads after suit was commenced and they were put on positive notice?

Perhaps Glen E. Fuller, as a lawyer, should have immediately become suspicious of Hatch and O’Gara after the Oct. 26 meeting despite their parting inquiry as to selecting a time when Fuller would personally point out his boundaries (R. 280, etc.) But as a lawyer—and the author of this brief—if this Court thinks it necessary to disbelieve and question the motives of a fellow member of the Bar with whom one is acquainted, then respondents prefer to maintain their principles and continue to have reasonable trust in their fellow beings at the sake of being unable to recover the reasonable value of their property.

That appellants removed approximately 50 tons or more of valuable surface stone of an uncontroverted value of \$30.00 per ton in-place is clear (R. 156-164). Glen E. Fuller pointed out the area where appellants had removed stone (R. 161, 162) in reference to Exhibit 16. (See also areas marked with “x” on map at page 9). Without further elaborating the record, it is clear that appellants removed stone from the Turquoise Stone Placer Claim:

Q. . . . and, as a matter of fact, most of the green rock has been loaded from a point east of those stakes (west line of Turquoise Stone Placer Claim), hasn’t it?

MR. MAXWELL: Yes, a good share of it. (R. 173).

* * * *

THE COURT: . . . I guess there’s no doubt but what some of the rock . . . has been removed by defendants. (R. 381).

CONCLUSION

In a very recent decision handed down on Jan. 16, 1957, by the United States Court of Appeals for the Tenth Circuit, involving valuable uranium claims in southeastern Utah (*Kay Hunt and Andrew Hunt vs. Vernon J. Pick*, Fed. 2d, Circuit Judge David T. Lewis stated:

"Prospectors . . . are not held to strict and technical compliance with the niceties of procedural law pertaining to discovery, location and other statutory requirements for it is essential that reward be preserved to him who searches and finds, and not handed to him who, armed with technical knowledge, listens and waits. The reward should be preserved to him, who having discovered, proceeds to develop."

Respondents submit that the decision of the lower court should be affirmed and that, in addition thereto, respondents should be awarded damages for the value of the turquoise stone removed from their Turquoise Stone Placer Claim.

Respectfully submitted,

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