

1957

# Lloyd F. Webster and Carl A. Webster v. John J. Knop et al : Brief of Respondents

Utah Supreme Court

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

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LLOYD P. WEBSTER and CARL  
A. WEBSTER,

*Plaintiffs and Respondents,*

—vs.—

JOHN J. KNOP, WYCOTAH OIL  
& URANIUM CO., a Corporation,  
DOUGLAS J. DAVIS, GRANT  
SHUMWAY, JOHN DOE, RICH-  
ARD ROE, FIRST ROE,

*Defendants and Appellants.*

**FILED**  
JAN 20 1957

Clerk, Supreme Court, U.S.

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**RESPONDENTS' BRIEF**

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*Defendants and Appellants.*

Case No. 8577

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## RESPONDENTS' BRIEF

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### RESPONDENTS' STATEMENT OF FACTS

The respondents in this case are Lloyd P. Webster and Carl A. Webster, who will be referred to as Plaintiffs and Respondents; and Appellants Douglas J. Davis and Grant Shumway will be referred to as Appellants. Other parties to the action who are no longer before this Court will be referred to by name.

Respondents do not controvert appellants' statement of facts as being inconsistent but contend that their

statement is incomplete and that the following facts also appear from the record:

That the location of the Faith Claims on April 15, 1954, in the name of plaintiffs and the defendant, John J. Knop, mentioned on Page 5 of appellants' brief, was made by the plaintiffs pursuant to the Grubstake Agreement set forth in full on Pages 3 to 5 of appellants' brief. (Pre-trial Order of the Trial Court, R. 45)

That the copies of the Notices of Location recorded on April 24, 1954, and the copies of the amended Notices of Location recorded on August 12, 1954, referred to on Page 5 of appellants' brief, named the plaintiffs and the defendant Knop as the locators of the Faith claims. (Abstract of title, plaintiffs' Exhibit 2)

That the appellant, Grant Shumway testified that on examination of the records pertaining to the Faith claims in the Recorder's Office of San Juan County, State of Utah, he and the appellant, Douglas J. Davis, found the recorded copies of the Notices of Location recorded on April 24, 1954, and the Amended Notices of Location recorded on August 13, 1954, which named the plaintiffs and the defendant Knop as the locators of the Faith claims. (Tr. 12)

That appellant Douglas J. Davis testified that when he examined the records of the Recorder's Office of San Juan County, Utah, in Monticello, Utah, he discovered the copies of the Notices of Location recorded April 24, 1954, and the Amended Notices of Location recorded

August 12, 1954, which named the plaintiffs and the defendant Knop as the locators of the Faith claims. (Tr. 33)

That prior to the execution of the quit claim deed of the Faith claims from defendant Knop to the appellants Douglas J. Davis and Grant Shumway, on July 26, 1955, as shown on Page 6 of appellants' brief, the appellants Douglas J. Davis and Grant Shumway made no effort to contact the plaintiffs to inquire as to whether they claimed any interest in the Faith claims. (Tr. 24, 25, 52)

That the Notices of Location recorded by the defendant Knop on August 27, 1954, used exactly the same description and covered exactly the same ground as the Amended Notices of Location recorded on August 10, 1954. (Abstract of title, plaintiffs' Exhibit 2)

### ARGUMENT

IN ANSWER TO APPELLANTS' POINTS NOS. 1 AND 2, THE EVIDENCE IS SUFFICIENT TO ESTABLISH THAT THE DEFENDANT, JOHN J. KNOP, HELD THE TITLE TO THE FAITH CLAIMS ACQUIRED BY THE LOCATION OF AUGUST 14, 1954, IN TRUST FOR THE PLAINTIFFS TO THE EXTENT OF AN UNDIVIDED TWO-THIRDS INTEREST.

It is well established that a co-owner of an unpatented mining claim who secures a patent to the exclusion of his co-owner, holds the title acquired thereby in trust for his co-owner. *Turner v. Sawyer*, 150 U.S. 578; *Stevens v. Grand Central Mining Co.*, 133 Fed. 28.

The cases unanimously hold that a co-owner or co-tenant in an unpatented mining claim, who relocates the claim in his own name alone after the lapse of the annual assessment work, holds the title acquired by reason of the relocation in trust for his co-tenant. *Hunt v. Patchin*, 35 Fed. 816; *Kline v. Wright*, 42 F. 2d 927; *Yarwood v. Johnson*, Washington, 70 Pac. 123; *Ballard v. Golob*, Colorado, 83 Pac. 376; *Soule v. Johnson*, Idaho, 201 Pac. 834; *Cadle v. Helfrich*, 36 Ariz. 390, 286 Pac. 186.

These cases are merely specific applications of the general rule that "co-tenants stand in a certain relation to each other of mutual trust and confidence; that neither will be permitted to act in hostility to the other in reference to the joint estate; and that the distinct title acquired by one will inure to the benefit of all . . ." (*Turner v. Sawyer*, *supra*) and further that "a co-owner who amends the location notice, *relocates the claim*, or procures the issuance of a patent in his own name, will not be permitted to thus exclude the other owners and appropriate the claim to himself, but will be declared to hold the right or title thereby acquired in trust for all." (*Stevens v. Grand Central Mining Co.*, *supra*.) (Italics added)

In the case at hand the evidence shows a location by the plaintiffs and the defendant John J. Knop and a subsequent relocation in his own name by the said Knop. The Appellants argue that the general rule above stated should not be applied to this case because it is distinguishable from the cases above cited, on the ground that



in this case the original locations by the plaintiffs and the defendant John J. Knop, pursuant to the Grub Stake Agreement, were invalid at the outset. Respondents concede that the locations of April 15, 1954, were "void as between the locators and the government and also as to third parties acquiring rights in the land." Respondents deny that the locations were void for "all purposes" and contend that as between the parties to the location, a fiduciary relationship of co-tenancy came into existence. ✓

The principle that the relationship of co-tenancy, in equity, between co-locators, arises upon the location of an unpatented mining claim, even though invalid as against third parties and the government, is clearly illustrated in the following cases:

In *Clark v. Mitchell*, Nevada, 130 Pac. 760, the defendant agreed with the owners to do the assessment work on the Silver King Fraction claim for a one-fourth interest in that claim. The defendant failed to do the assessment work agreed upon and relocated Whirlwind No. 4 claim in his own name over the ground covered by the Silver King Fraction. The owners of the latter claim brought a suit to impose a trust in their favor for a three-quarters interest in the Whirlwind No. 4 claim. The defendant contended that the Silver King Fraction was not valid because it was separated into two parcels by a prior valid claim and consequently there was no trust relationship because the claim was invalid in its inception. The court, in rejecting the defendant's contention and imposing the trust, said:

“As under the agreement, Mitchell (defendant) was a trusted agent or representative of Clark (plaintiff), for the doing of the work on the Silver King Fraction and for relocating the Whirlwind No. 4 and Mitchell was in duty bound to protect Clark to the extent of the interests agreed upon in the Silver King Fraction and in the relocation of the Whirlwind No. 4, *Mitchell as a tenant in common, was estopped from denying the rights of Clark in the claim, as recognized by their agreement.* Whether the relocation made by Mitchell contains more or less ground, and whether the Silver King Fraction may hold a piece of land segregated from its location point, are not questions properly in issue in these cases. *These parties being in equity tenants in common, whatever rights Mitchell acquired by location or by possession, or otherwise, in the ground, would inure to the benefit of Clark to the extent of the undivided interest to which he is entitled. Whether one or more of the locations are valid or subsequent to others is not material. The undivided interest of Clark and Mitchell stand on a common basis, differently than if a stranger were seeking to recover the land on the claim that their location was void and that he had made the first valid one.*” (Italics added)

In *Speed v. McCarthy*, South Dakota, 77 N.W. 590 (affirmed, 181 U.S. 269), the plaintiff purchased an interest of one of the locators of the mining claims located by the defendants. The defendants relocated the claim after no annual assessment work was done. Defendants sought to defend an action by the plaintiff to impose a trust on the grounds that the original claims were invalid because there was no discovery and consequently

there was no cotenancy and no fiduciary duty because no rights came into existence as a result of the location. The court rejected this contention, holding that it considered the claims valid as between the parties to the location and defendants would not be permitted to deny that their locations were valid. Based upon this assumption, the court applied the general rule, using the following language:

"The relocater is permitted by the statute (requiring annual assessment work) to acquire the property in the same manner that the original locator would have acquired it, but because of his relation to another who may be a co-tenant, a mortgagee, or person having no estate in the property, he will be adjudged to hold the title in trust for such person. *In all cases of this character the trust depends upon the relation of the parties and not upon the manner in which title is acquired.*" (Italics added).

Appellants seek to avoid the imposition of the rule applied in these latter two cases by drawing an even finer distinction, that is, "that the invalidity of the purported original location is not based upon minor technical defect, e.g., improper monuments or lack of discovery, but is based upon a conceded inability to place any mining claim whatsoever upon the property." It is worthy of note that Appellants assert no basis, which bears a relation to the reasons announced in the cases for applying the trust rule, for making the distinctions sought to be made, that is, between cases where the claim becomes invalid because of failure to perform the annual

assessment work; cases where the claim is invalid from the beginning because of lack of discovery or because the claim is divided by a prior valid claim; and the present case where the claims are invalid because the land on which they were located was withdrawn by a pre-existing oil and gas lease. The trust arises out of the relationship of the parties and does not depend on the technical rules governing the validity of unpatented mining claims as between the locators and third parties or the government.

*Hendrickson v. California Talc Company*, California, 130 P. 2d 806, presents a situation in which the mining claims were originally located on withdrawn land and effectively answers Appellants' contention that the distinctions above mentioned should be made. The facts of that case are stated as follows by the court:

"On June 7, 1930, appellant, Aman and respondent, Oscar L. Hoerner, Scott and Farnum were on the Mojave Desert on business connected with another claim which is not here involved. Noticing the white hill to the northwest, they went over, discovered a deposit of bentonite clay and located a claim Co-operation No. 1. Desiring to take in 120 acres, they included as co-locators the names of appellant, Hendricksen and respondent, Ratcliffe. They described and marked on the ground a parcel of land some 8,500 feet long and 600 feet wide and erected a discovery monument and boundary monuments. \* \* \* No contention is made that all requirements for making such a location were not met and observed. On the same day, they informed Hendricksen that he had been included as one of the locators of this claim and

shortly thereafter Ratcliffe was informed of his inclusion. \*\*\*

"It appears, however, that the land covered by the Co-operation No. 1 claim was included in a large tract of land which was temporarily withdrawn from public entry pending the fixing of a definite location of the line of an aqueduct to be constructed for the purpose of bringing waters from Boulder Dam into this state, which withdrawal order had been made on June 4, 1930, three days before that claim was located. This land was not restored to public entry until August 6, 1931. The fact that this land had been withdrawn from entry was unknown to any of these parties on June 7, 1930, and was unknown to the appellants until after the land was located by certain of the respondents. That fact was learned by Oscar L. Hoerner and by Scott, Ratcliffe and Farnum shortly after the attempted location of Co-operation No. 1 claim, but none of these parties informed their associates Hendricksen or Aman of this fact. \*\*\* On December 15, 1931, and after the land had been restored to entry, the respondent, Oscar L. Hoerner located Company claims No. 1, No. 2, No. 3 and No. 4, respectively, including as co-locators, his wife, his brother, and five of the other respondents. A few days later, the other five conveyed their interest to the Hoerners and still later the Hoerners entered into an agreement with the California Talc Company which was thereafter assigned to the National Lead Company. The court found that each of these corporate respondents entered into these agreements with notice that the appellants each claimed an undivided one-sixth interest in and to that part of the land which had been included in the Co-operation No. 1 claim. \*\*\*"

The court said, after reciting the above facts:

1. w/ dryum  
land  
2. location  
3. land  
reinstated  
4. Relocation

"The controlling question is, whether, under these circumstances, the respondent, Oscar L. Hoerner had the right to relocate this land for his own benefit, after it was restored to entry and whether he thereby secured a valid location as to that part of the land included in the former Co-operation No. 1 claim free from any equitable claims on the part of the appellants. The gist of the respondents' contention is that the original location being void, any of the original locators had a legal right, after the lands were restored to entry, to unite with other locators in making the new and valid location free from any duty or responsibility to other appellants, who were their associates in the original attempted location. \*\*\*

"There is no question that the attempted location of this claim on June 7, 1930, was void as between the locators and the government and that the same would be void as to third parties who acquired rights in the land. \*\*\*

"The situation here presented is one where the government is not complaining, where no third party is involved, where one of the original locators discovered that the method by which they were proceeding was defective because the land had been temporarily withdrawn from entry, and which fact was unknown to the others, and where this party without informing the others concerning the situation attempted to relocate or, as he says 'to locate' the claim for his own benefit.

"With respect to the invalidity of mining claims and the rights of co-locators, the courts have long recognized that a different situation may prevail as between the co-locators themselves and that which governs as between the locator and the government or a third party.

"In *Speed v. McCarthy*, 181 U.S. 269, 21 S. Ct. 613, 616, 45 L. Ed. 855, the court said:

"The court held that the relation of co-tenant existed between McCarthy and Franklin when Franklin located the Holy Terror and Keystone claims; that original locators may resume work at any time before relocation; that Franklin's acts of relocation did not terminate the fiduciary relocation between himself and McCarthy; and said: "We think the circuit court should have adjudged the defendants to be trustees, and have enforced the trust." This conclusion is not precluded by the language of the Federal statutes. They provide that upon failure to comply with required conditions as to labor or improvements the claim or mine upon which such failure occurred shall be open to location in the same manner as if no location of the same had ever been made. Rev. Stat. US 2324 (30 USCA (28) ). It is contended that if Congress intended to have the relocater regarded as a trustee, such intention would have been expressed in the statute. The contention is not tenable. The trust results from the fiduciary relation of the parties and not from the operation of the statute.'

"The respondents argue that the trustee principle there applied has no application here since in that case the original entry was valid while here it was invalid. No cases are cited where such a distinction is drawn and since the trust arises from the relation of the parties, it should no more be defeated by a temporary withdrawal order than by a failure to comply with the statute originally giving a right of entry. In fact, the former situation results from ignorance and inad-



vertance, while the latter involves a more positive disregard of the law. No good reason appears for drawing such a distinction or applying a different rule in such a case as this. If such a rule applies to a subsequent failure to comply with the law where the original location was valid, the reasons for the rule would seem to apply with even greater force where the locators have associated themselves together for the particular purpose of obtaining title to a particular claim, where they have complied with all of the requirements of the law in that regard, where their efforts are ineffective for the time being because of the temporary withdrawal of the land from the entry, and where one of the associates discovers the invalidity of the entry and without informing the others proceeds to locate the land for himself when the right of entry is restored. The usual rules that a fiduciary relationship exists between tenants in common and that one co-tenant may not gain a present advantage by acting adversely to his fellow tenants should be applied to such a case. If it may be said that, strictly speaking, these parties were not co-tenants since a complete right of possession did not exist, similar principles should still be applied. To paraphrase what the court said in *Speed v. McCarthy*, supra, "The trust results from the fiduciary relation of the parties and not from 'whether or not they may technically be said to be co-tenants.'"

"We find nothing in the cases relied upon by the respondents which support their contention that the fact that this land had been withdrawn from entry is controlling and all equitable rules and principles are inapplicable because the attempted location was void in law and in fact. There is no distinction in this regard between a



mining enterprise and other enterprises for which men associate themselves with an express or implied agreement to work together for their common good and to a desired end. Equitable rules have frequently been applied in controversies over mining claims. *Speed v. McCarthy*, supra, is an example of such cases.

"The general rule is that parties engaged in a common enterprise owe a duty to each other with respect to all matters in connection therewith, that a trust relationship is inherent in such an association for a common purpose, and that one of the parties will not be allowed to deal with the subject matter of the association for his own advantage. In *Munson v. Fishburn*, 183 Cal. 206, 19 P 808, 810, the court said, 'It is well settled that the associates in a common enterprise, under whatever guise, have a duty to each other to make full disclosure of any preference or profit not common to all of the associates.' These general principles are applicable here and the argument that the Hoerner location in December, 1931, was not a 'relocation' since there had been no legal location theretofore, that the parties were not co-tenants and that some of the elements of a partnership as between these parties were lacking, are beside the point.

"These parties entered into a joint enterprise, having for its object the obtaining of title to this particular land as a mining claim and the resulting fiduciary relationship between the parties could not thus lightly be ignored. \*\*\* The fact that the original attempted location was invalid, the land not being open to entry, is not the conclusive or determining factor. When the withdrawal order was vacated, and the land was restored to entry, no third party acquired any rights

and the original locators, having otherwise complied with the law, were free to make a valid location. Having found out the facts which were unknown to the appellants, Hoerner made such location without including the appellants as parties thereto, but, in so doing, he was not free to act for himself alone. Since he occupied a fiduciary position, the equitable rules apply and his act in relocating the land under such circumstances must be held to inure to the benefit of the appellants, for whom he was a trustee."

The court then ordered that judgment be entered in favor of the appellant with respect to a one-sixth interest in the part of the land which was found to be within the limits of the original claim as attempted to be located on June 7, 1930, as against the relocators and their transferees with notice.

Clearly, all the elements which established the trust in the above case are present in the case at bar. In both cases we find a location by plaintiffs and defendants of a mining claim on land withdrawn from entry and a subsequent location by the defendants, to the exclusion of the plaintiffs, after the impediment to location was removed.

In *King v. Hintze*, 2 Utah 2d 166, 270 P 2d 1095, the plaintiff made mining locations in Nevada which were not valid because of the failure to sink the required discovery shaft in accordance with Nevada law. Plaintiff contracted to convey his interest in the property to the defendant who agreed to form a company and give stock to the plaintiff. When the defendant visited the claims

and recognized that they were invalid, he relocated them in his own name. Defendant then failed to perform his obligation under the agreement. Plaintiff brought an action to recover on the contract. As a defense, defendant asserted that "the inability of respondent (plaintiff) \*\*\* to convey to appellant some substantial right or interest in and to said unpatented claims constituted a breach of the promotion contract of such nature as to defeat its purpose and relieve and discharge the defendant from the duty of organizing the corporation contemplated by the promotion agreement." The Court affirmed judgment for the plaintiff, and held that the defendant in re-<sup>es</sup>locating the claims in his own name, waived any defect <sup>wa</sup>in the prior filing. While the Court did not expressly base its decision on the trust theory, it is evident that it determined that the relationship of plaintiff and defendant was such that the relocation by the defendant inured to the benefit of plaintiff. (See Vol. 5 Utah Law Review, Page 35).

It is obvious from the foregoing, that, contrary to the statement found on Pages 18 and 19 of Appellants' Brief, this is a case "where co-tenants of real property enter into a relationship of trust, one to the other, so as to preclude one co-tenant from gaining some advantage with respect to the joint property over his co-tenant," and "where joint tenants are acting in hostility to the joint estate;" and *"where one of several joint owners of mining claims has sought to . . . relocate the claims for his own benefit."* (Italics added.)

Appellants contend that inasmuch as the Grubstake Agreement expired by its own terms prior to the relocation by the defendant Knop on August 14, 1954, Knop was free to relocate the Faith claims in his own name to the exclusion of plaintiffs. The cases we have cited hold that the trust relationship arises out of the original location of the claims, even though subsequently found to be invalid, and this relationship is not dependant upon any agreement to relocate the claims if and when it becomes possible to validate them. There is no evidence that the trust relationship between the parties in this case was ever terminated. In fact, the contrary appears from the fact that Amended Notices of Location, giving the survey description [the claims were surveyed during July, 1954, (Defendants' Exhibit 2)] and naming the plaintiffs and the defendant Knop as the locators, were posted on Faith No. 2 to No. 10, inclusive, on August 10, 1954, and copies of said notices were recorded on August 12, 1954, all after the expiration date of the Grubstake Agreement and the latter date only two days prior to the relocation by Knop in his own name on August 14, 1954. (Pre-Trial Order of Trial Court R. 45; Abstract of Title, plaintiffs' Exhibit 2). Furthermore, the Grubstake Agreement remains in effect for purposes of determining the rights and interests of the parties as to all claims located pursuant to its terms. The Agreement contemplated the situation which occurred in this case, that is, that the claims located thereunder might be subject to a pre-existing lease is-

sued under the Mineral Leasing Act of 1920 which would necessitate validation of the claims at a later date, for it provides as follows:

“3. It is furthermore specifically understood and agreed that the First Party shall advance all of the costs of filing the aforesaid claims whether filing as mineral claims or lease tracts under the Atomic Energy Commission Regulation Circular 7.”

At the time the defendant Knop validated the Faith claims, Public Law 585 of the 83rd Congress superseded Circular 7 as the means by which such claims were validated.

Appellants cite cases from courts in this country in which the parties to the prospecting agreement mutually abandoned the agreement and the claims located thereunder, (*Morrow v. Coast Land Co.*, 29 Cal. App 2d 92, 84 P. 2d 301; *Page v. Summers*, 70 Cal. 121, 12 Pac. 120), cases in which there was no location of the mining claims in question during the term of the agreement (*Jennings v. Rickard*, Colorado, 15 Pac. 677), cases in which the plaintiff contributed nothing to the discovery of the mining claims or the same were not acquired with partnership capital (*Hollingsworth v. Tufts*, Colorado, 162 Pac. 155; *Craw v. Wilson*, 22 Nev. 385, 40 Pac. 1076), cases which do not involve the location of unpatented mining claims at all (*Bradley v. Andrews*, 91 Colo. 378, 14 P 2d 1086), and cases in which the right

of the plaintiff had been extinguished by adverse possession. (Hodgson v. Federal Oil & Development Co., 274 U.S. 15).

There is no contention nor evidence in the present case that the plaintiffs abandoned or lost their rights through adverse possession. The Faith claims were discovered and located during the term of the Grubstake Agreement, through the skill and effort of the plaintiffs. The relocations by the defendant Knop on August 14, 1954, used the same discovery and corner monuments and contained the identical names and descriptions found in the Amended Notices of Location recorded on July 5, 1954 (Tr. 4, 5; Abstract of Title, plaintiffs' Exhibit 2). All Knop did in relocating the claims was to place a new location notice thereon and record a copy of the same. The contention that the plaintiffs contributed nothing to the location of the Faith claims and that there was no consideration to support the Grubstake Agreement is sufficiently answered by the following quotation from the Memorandum Decision written by the Honorable F. W. Keller, Trial Judge in this case, to wit:

“Under the location of the Faith Group as made by the plaintiffs, the parties could not assert and perfect title through patent proceedings or even a valid possessory right, nor could they assert a valid possessory right against other claimants locating the area after it became open to location. It cannot on that account be maintained that the defendant Knop got nothing for the considerations advanced by him in his con-

tract with the plaintiffs in the location of the Faith Group. Knop, in making the location after the area of the Faith Group was open to location had made use of the knowledge obtained by him through the efforts of the plaintiffs and their skill as miners in choosing and staking the area for the first location; he made use of the monuments erected by the plaintiffs for the first location to make the point of discovery and the exterior boundaries. There is justice in a rule which prevents his excluding the plaintiffs from an interest in the claims. The plaintiffs and the defendant Knop stood in a relationship of mutual trust and confidence, and the title acquired by Knop inured to the benefit of himself and the plaintiffs." (Memorandum Decision, R. 46.)

Thus it is apparent that the citations found in Appellants' Brief from 3 Lindley on Mines (3rd Ed.) § 858 and 40 Corpus Juris, Mines, Pages 1154 and 1155 and the cases from foreign jurisdiction cited in the footnotes; are not in point because the Faith claims were acquired pursuant to the Grubstake Agreement by the plaintiffs (Pre-Trial Order of the Trial Court, R. 45).

IN ANSWER TO APPELLANTS' POINTS NOS. 3 AND 4, APPELLANTS WERE NOT BONA FIDE PURCHASERS FOR VALUE WITHOUT NOTICE AND THEY TOOK THE FAITH CLAIMS SUBJECT TO THE RIGHTS OF RESPONDENTS.

The testimony of the Appellants shows that prior to the purchase of the Faith claims from the defendant Knop, the Appellants had actual notice of the following facts:

1. That plaintiffs and the defendant Knop located the Faith claims on April 15, 1954, pursuant to the Grubstake Agreement and amended the location of the same on July 5, 1954, and on August 10, 1954. (Tr. 20, 21, 45, 46; Appellants' Brief pp 8-9).

2. The pre-existing relationship of the plaintiffs and the defendant Knop. (Appellants' Brief, pp 9-10).

The Appellants made no effort to contact the plaintiffs to inquire of their claim to the property in question because they were advised and had concluded that the plaintiffs had no interest because the location made in their name and that of the defendant Knop was void. (Tr. 24, 25, 52).

Thus Appellants knew every fact out of which the trust relationship in favor of the plaintiffs arose. They read the original Notices of Location recorded April 24, 1954, which state that the plaintiffs along with the defendant Knop, as locators, claimed the ground covered by the locations. (Tr. 21, 22, 52). While they may have been misled as to the legal conclusion to be drawn from the facts which they knew, it is clear that they are not bona fide purchasers for value without notice and they took the Faith claims subject to plaintiffs' interest. *Hendrickson v. California Tale Co.*, supra; *Stephens v. Colorado*, 83 Pac. 381; *Soule v. Johnson*, supra. It follows from the foregoing that the cases cited by Appellants in their brief regarding a purchaser without notice are not in point.



That Appellants knew that the Websters (plaintiffs) claimed an interest in the claims is attested by the fact that they went to great lengths to assure themselves that such interest could not be established legally. (Tr. 24-27, 29, 35-40, 43, 44, 50, 51, 54, 55). It seems to us that it was not a question of lack of notice on the part of Appellants but rather of faulty advice.

## CONCLUSION

Since the proofs of the foregoing brief were received from the printer, the Utah case of Knight v. Flat Top Mining Co., filed January 8, 1957, No. 8439, has come to the attention of Respondents. That case held that the unpatented mining claims acquired by relocation of prior claims, when the latter were subject to relocation for failure to do assessment work, by a co-owner, to the exclusion of the other owners, is subject to a trust in favor of the excluded owners and their successors in interest. The Court quoted, with approval, the general rule from *Stevens v. Grand Central Mining Co.*, supra, cited on page 4 of this brief, which is applicable to the facts of this case.

It is respectfully submitted that the evidence of record is sufficient to sustain the finding of the trial court that the defendant John J. Knop held the title acquired by his relocation of the Faith claims on August 14, 1954, in trust for the plaintiffs, and that the Appel-

lants, having notice of the same, took the claims subject to the interest of the plaintiffs.

Accordingly, it is submitted that the judgment of the lower court should be affirmed.

Respectfully submitted,

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