

1958

Rex Holland v. Arthur E. Moreton et al : The Verbatim Testimony and Certain Exhibits

Utah Supreme Court

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

 Part of the [Law Commons](#)

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

Rawlings, Wallace, Roberts & Black; Brigham E. Roberts; Nick Spanos; William Jerome Pollack; Counsel for Appellants;

Recommended Citation

Brief of Appellant, *Holland v. Moreton*, No. 8740 (Utah Supreme Court, 1958).
https://digitalcommons.law.byu.edu/uofu_sc1/2936

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

IN THE SUPREME COURT
of the
STATE OF UTAH

REX HOLLAND,
REX HOLLAND, Administrator with
the Will Annexed of the Estate of
John G. HOLLAND, Deceased,

Plaintiffs and Appellants,

—vs.—

ARTHUR E. MORETON, ETHEL
T. MORETON, also known as E. T.
MORETON, JOHN R. MORETON,
also known as J. R. MORETON,
ROSE ANN P. MORETON, SUSAN
MORETON TEVIS,

Defendants and Respondents.

THE VERBATIM TESTIMONY
and
CERTAIN EXHIBITS

RAWLINGS, WALLACE, ROBERTS & BLACK
BRIGHAM E. ROBERTS
NICK SPANOS
WILLIAM JEROME POLLACK
Counsel for Appellants
530 Judge Building
Salt Lake City, Utah

UNIVERSITY UTAH
DEC 19 1958

LAW LIBRARY

DEC 19 1958

Supreme Court, Utah

TABLE OF CONTENTS

	Page
Testimony Re: The Confidential Relationship.....	1
Testimony Re: The Overreaching of Attorney Moreton and the Unfair Advantage taken by him of his Clients	4
Testimony Re: Bureau of Mines Report.....	40
Testimony Re: Rex Holland's Letter of September 14, 1948, to Dr. Mathesius	44
Testimony Re: The Closing of the Deal and the Conceal- ment Continued	53
Testimony Re: How and When Rex Holland Discovered the Fraud	58

APPENDIX

Letter of September 14, 1948, from Rex to Mathesius Exhibit P-14	I
Letter of October 16, 1948, from Co-owners to Columbia, Exhibit P-16	III
Letter of November 20, 1948, from Co-owners to Columbia Exhibit P-17	IV
Agreement of Ownership (July 23, 1947), Exhibit P-6.....	VI
Letter from Moreton to John Holland dated September 25, 1948, Exhibit D-33	VIII
Letter from Rex Holland to Moreton dated December 16, 1951, Exhibit P-21	IX
Letter from Moreton to Rex Holland dated December 18, 1951, Exhibit P-25	XV
Letter from U. S. Attorney Scott M. Matheson to Rex Hol- land dated January 16, 1952, Exhibit P-68	XVII
Letter from Rex Holland to Scott M. Matheson, U. S. Dis- trict Attorney dated January 23, 1952, Exhibit P-69....	XVIII
Letter from Scott M. Matheson, U. S. Attorney to Rex Holland dated February 18, 1952, Exhibit P-70.....	XIX

IN THE SUPREME COURT of the STATE OF UTAH

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

—vs.—

ARTHUR E. MORETON, ETHEL
T. MORETON, also known as E. T.
MORETON, JOHN R. MORETON,
also known as J. R. MORETON,
ROSE ANN P. MORETON, SUSAN
MORETON TEVIS,
Defendants and Respondents.

Case No. 8740

THE VERBATIM TESTIMONY and CERTAIN EXHIBITS

THE CONFIDENTIAL RELATIONSHIP

TESTIMONY OF REX HOLLAND

R. 337, lines 5 through 12:

Q. Was there anything else said in the conversation, about what he was going to do, or what you shouldn't do, or anything of that kind?

A. He told us at that time, that he, when we started on

this patent, that he would be our attorney, that he would be our attorney in getting the patent, and that he would also be our attorney in the sale of these properties.

R. 337, lines 21 and 22:

Q. (By Mr. Roberts) Is that what was said?

A. That is what was said.

R. 445, lines 3 through 6:

Q. Is it a fact that on several occasions prior to this time Mr. Moreton had asked you and your father not to discuss the terms of this deal?

A. On most every occasion.

Testimony of Mr. Moreton.
R. 596, lines 3 through 8:

Q. (By Mr. Pollack) Did you ever at any time suggest to the co-owners that they employ a lawyer to represent them?

MR. GUSTIN: Objected to as being immaterial in this case.

THE COURT: Objection overruled.

A. I never did.***"

~~REDACTED SECTION~~

R. 640, lines 5 through 9:

Q. (By Mr. Pollack) Am I quoting this correctly, Mr. Moreton?

"You may feel free to show them your properties, but do not discuss price or terms with them. This is a matter that is in my hands***"

R. 641, lines 26 to 29:

Q. “Therefore, it is all the more necessary that you do not quote any figures, but simply advise anyone who may ask you what your price is that the matter is in my hands. * * *”

R. 644, lines 6 through 9:

Q. Now, do I understand from that letter that you did not want the co-owners to discuss the price of the M&H claims with these people who were coming down there?

A. That is right.

Defendant's Exhibit D-33, Letter of September 25, 1948 signed by Moreton:

“***However, let me caution you again to leave the entire bargaining and selling of these properties to me as agreed upon.”

R. 662, lines 2 through 6:

Q. Now, we have cleared up, we have concluded with the April 6, 1946 meeting, and I believe the next thing you did was, you wrote a letter of July 5, 1946, wherein you told these people not to discuss prices with anybody?

A. That is right.***

R. 660, lines 28 through 30:

Q. All right, now, Mr. Moreton, we have covered the—Isn't it a fact in whatever you wrote to these people, you wrote to them on your stationery, “Arthur E. Moreton.

R. 661, lines 1 and 2:

Attorney-at-Law," isn't that true?

A. Oh yes, certainly, I wrote on my—[stationery]

TESTIMONY OF MRS. HOLLAND

R. 940, lines 3 through 11:

Q. What is the date of your husband's death?

A. October 9, 1949.

Q. Did you employ an attorney to handle the administration of your husband's estate?

A. Yes.

Q. Who was that attorney?

A. Arthur E. Moreton.

Q. Up until what time did he act as such attorney?

A. Up until the summer of 1953.

THE OVERREACHING OF ATTORNEY MORETON AND THE UNFAIR ADVANTAGE TAKEN BY HIM OF HIS CLIENTS

DIRECT EXAMINATION OF REX HOLLAND

R. 331, lines 8 through 11:

Q. When did you first become acquainted with Mr. Moreton?

A. That was in the spring of 1946.

Q. And where, please?

A. That would be at Cedar City.

R. 526, lines 5 through 9:

Q. Rex, you were asked some questions concerning your father's work in mining claims and the mining industry. Have you ever known of your father, John Holland, to have sold any mining claims, other than these M&H claims?

A. I do not.

R. 526, lines 17 and 18:

A. I don't know of him selling any other claims, other than the M&H.

R. 533, lines 3 through 6:

Q. (By Mr. Roberts) Now in connection with these transactions of yours on mining claims, have you ever sold or made any other deal except this M&H, on any of your mining claims?

A. No.

R. 332, lines 26 to R. 333, line 28, inclusive:

A. When we met Mr. Moreton, he was in the doorway of the ballroom of the El Escalante Hotel. I was introduced to him, and after the instructions he pointed to a table in the ballroom, and says, "Let's go over here."

And we went over to this table where Mr. Moreton had a large map laid out on the table, and he pointed to a place on this map, and he asked us, "Is this where the M&H Claims are situated."

Q. What was said to that?

A. Our reply to that was that, "That is the place where the M&H claims are situated."

Q. What next was said?

A. Mr. Moreton then asked us if those claims were patented, and our reply to that was that they were not patented.

Q. What did he say?

A. He asked us, then, if we would like to have the claims patented.

Q. And what did you say?

A. We told him that we would like to have the claims patented.

Q. And then what took place?

A. Then he made the statement of, "Would you be willing to give me a one-fourth interest in those claims if I obtain a patent to those claims?"

Q. And what was the reply to that, and who said it, if anyone?

A. Well, in the presence of Mr. Moreton I and my father and Mr. Murie considered the proposal he had just made us.

Q. When you say "considered", what did you do about it? What was said?

A. Well, we told him that if he would get us a patent to those properties that he would get a one-fourth interest in them.

R. 337, lines 5 to 12, inclusive :

Q. Was there anything else said in the conversation, about what he was going to do, or what you shouldn't do, or anything of that kind?

A. *He told us at that time, that he, when we started on this patent, that he would be our attorney, that he would be our attorney in getting the patent, and that he would also be our attorney in the sale of these properties.*

R. 334, lines 7 to 17, inclusive:

MR. GUSTIN: May I ask to interrupt Mr. Roberts, if the court please, and ask one question?

THE COURT: Yes.

MR. GUSTIN: Was this transaction reduced to writing?

THE WITNESS: All transactions that I know of with Mr. Moreton was prepared in writing by Mr. Moreton.

MR. GUSTIN: I did not—Was it reduced to writing, were all transactions reduced to writing?

THE WITNESS: Yes, the transactions I remember.

R. 335, lines 7 to 11, inclusive:

Q. Do you have a copy of any writing that was made at that time?

A. I do not have a copy of any writing made at that time.

Q. Did you ever have one?

A. I never did have a copy.

R. 336, lines 14 to R. 337, line 4, inclusive:

Q. And was there any further discussion or conversation?

A. Then Mr. Moreton told us that if he was going to get this patent he wanted an assurance from us that we would not sell our three-quarters interest to any other parties, and at that table Mr. Moreton did not have his stenographer or his typewriter with him, and I think it was on a letterhead of the hotel, in which it was written out in long-hand, that he would get a one-fourth interest in the mining claims for obtaining the patent.

Also in longhand it was stated about the time that we would allow him to start the patent, and at that time there was a parentheses made, and that was not inserted, that number there was not inserted. It was left blank on the time.

Q. Was anything else said at the conversation?

A. About the price, yes. After—At this point when this letter was being made out in longhand, a price was mentioned, and the same thing was done with the price, that he did not know at that time just what value this property had. So that was left blank, to be filled in at a later date.

DIRECT EXAMINATION OF DEFENDANT MORETON

R. 610, lines 4 thru 21:

Q. I understand that is the position you take in this lawsuit. But my question is whether John Holland ever said anything, in the presence of Rex Holland, that indicated that he had sent for you?

A. Definitely no.

Q. Did Rex Holland ever say anything to you that would indicate that he had sent for you?

A. No. They came to see me. Nothing said about that.

Q. I understand that is your position. I just want to know if there was ever any conversation.

Now, at this very first meeting in the El Escalante Hotel, on April 6, 1946, that was the date of the very first meeting, wasn't it?

A. That is right.

Q. You did have some maps with you on that trip, did you not?

A. Yes, I had a map with me of the area in connection with the survey of these other claims that I had.

R. 611, lines 27 thru 30:

Q. At any rate, however, there did come a time when the co-owners and yourself looked on *your* map at the location of the M&H claims, is that correct?

A. That is true.

R. 612, lines 1 thru 15:

Q. Now, on that same date of April 6, 1946, you undertook, did you not, to get the claims patented by way of some sort of an option, is that correct?

A. No.

Q. Well, under your arrangement on that very first meeting, were you required to patent the claims?

A. The option of April 1st or April 6th, whichever it was, in 1946, was written in long hand, and signed by the parties, and expresses just what we intended to do.

Q. Where is that document you have just spoken of?

A. It is in evidence here. You have offered it yourself.

Q. I have never seen such a document. I would like to look at it.

A. You mean the first one, of April? Oh, that one I do not have.

R. 623, lines 12 to 14, inclusive; lines 18 to 25, inclusive:

Q. (By Mr. Pollack) This document of April 6, 1946, what did that recite with respect to the patenting of the property?

A. It recited that I should have an option to purchase the claims for \$100,000, and also to patent the claims for a one-fourth interest. That is to say, an option to purchase their remaining interest for \$100,000.

Q. (By Mr. Pollack) Now, would it be correct to say that if you chose not to patent the claims you did not have to?

A. Do you want me to interpret the instrument?

R. 625, lines 29, 30; R. 626, lines 1 through 6:

Q. Not only were you not required to pay the hundred thousand dollars, you weren't even required to patent the land, were you?

A. That is right.

Q. So you were not required to pay the hundred thousand dollars and you were not required to patent the property. You paid no money for that option, did you?

A. Which option?

R. 626, lines 18 through 21:

Q. I am talking about the April 6th. You say you don't have it.

A. Well, it recited, just as did the renewal option in September, that it was in consideration of \$1.00.

Q. Did you pay the \$1.00?

MR. GUSTIN: Now, we object to that on the ground that it is immaterial.

R. 627, line 5 and line 19:

Q. Was there a time on this option when it was to be exercised?

A. I think it was fixed as of September 1st of the same year, or thereabouts. That is my present recollection after these eleven years.

R. 628, lines 5 through 7:

Q. Now, you have got the deposition. Turn to page 19 of your deposition, and look at lines 11 through 16.

A. 19?

R. 628, lines 27 through 30; R. 629, lines 1 through 3:

Q. And isn't it true that you gave this answer:

"A. Oh, that option was to run for about an eight-months period. It was limited, yes, eight months from April 6, 1946."

You gave that answer, didn't you?

A. That is right, and that answer is true. My memory is refreshed by this.

R. 630, lines 8 through 14:

Q. (By Mr. Pollack) Mr. Moreton, which was the correct answer, that the option expired in September, on September 6, 1946, or did it expire in December of 1946?

A. Well, you have my answer. My memory was better then than it is now. That was five years after, seven years after, and I said eight months. I was correct then. Now you want to quibble about four months.

R. 636, Lines 8 thru 11, inclusive:

Q. Now, Mr. Moreton, you wrote a letter to the co-owners on July 5, 1946, did you not?

A. I may have done. I can't remember the various letters. I don't know. You have them all here.

R. 637, line 21 and 22:

MR. GUSTIN: Now, that letter is quoted verbatim in this deposition.

R. 644, Lines 6 to 9, inclusive:

Q. Now, do I *understand from that letter you did not want the co-owners to discuss the price of the M & H claims with these people who were coming down there?*

A. *That is right.*

R. 645, Lines 17 thru 27:

Q. Now, if it was common knowledge in 1946 that the price of ore was 25 cents a ton, why was it that you did not want these people to discuss price?

A. Now, you are trying to confuse this issue. It wasn't to discuss price per ton. What I didn't want them to then discuss was the overall price to me, over \$100,000, because if that were known it would leave me in a position

where I could obtain little or anything over \$100,000, and it was part of our bargain that I should have all in excess of that, and I didn't want them undercutting me on price. It is perfectly obvious why, naturally.

CROSS EXAMINATION OF REX HOLLAND

R. 445, Lines 3 thru 6:

Q. Is it a fact that on several occasions prior to this time Mr. Moreton had asked you and your father not to discuss the terms of this deal?

A. On most every occasion.

DIRECT TESTIMONY OF REX HOLLAND

R. 337, Lines 27 to Line 2, R. 338:

Q. When next did you see Mr. Moreton?

A. That would be in the fall of 1946.

Q. And was a document signed at that time?

A. A document was signed at that time, giving Mr.....

Q. Never mind that. Just a document was signed?

A. A document was signed at that time.

R. 338, lines 23 thru 27:

Q. And he was in this ballroom again, the same one. Mr. Moreton — you say Mr. Moreton was in the ballroom?

A. Mr. Moreton was in the ballroom.

Q. And did you have a conversation with him at that time?

A. We had a conversation with him at that time, yes.

R. 339, lines 14 thru 18; lines 26 thru 28, inclusive:

Q. (By Mr. Roberts) Will you tell us what was said, please, and I am speaking now of this conversation in the fall of 1946?

A. *Mr. Moreton said he wanted an extension of time in which to get this patent.*

* * *

Q. And you say eventually a writing was made up at that time?

A. A writing was made up at that time.

DIRECT EXAMINATION OF DEFENDANT MORETON

R. 627, lines 22 thru 30; R. 628, lines 1 thru 4:

Q. (By Mr. Pollack) Now, isn't it a fact, Mr. Moreton, that the option you have been talking about, of April 6th, did not contain any purchase price, and it did not contain any time within which it was to be exercised?

A. No, that is not true. It was, as I have already stated.

Q. And isn't it true that when September rolled around you hadn't done any work at all towards patenting the claims; isn't that true?

A. That is true.

Q. And isn't it true that you didn't exercise the option in any way, isn't that true?

A. That is the truth.

R. 649, Lines 6 to 14, inclusive:

Q. Let me ask you one question preliminarily, without the exhibits it would be difficult for you to remember, wouldn't it, when the next meeting was?

A. After when?

Q. April 6, 1946.

A. Oh, September, 1946, when the option was renewed, yes.

Q. That was on September 1st, 1946?

A. Either the 1st or the 6th. It is here in evidence. These dates, I don't know the exact date.

R. 651, lines 15 thru 19:

Q. All right, so you told them you hadn't done anything on it, and you were not going to be able to do anything because winter was coming on and *you wanted more time*, is that it?

A. That is right. If they wanted me to follow up the matter *I would have to have an extension of time*.

R. 653, lines 2 to 9, inclusive, lines 17 to 18, inclusive:

Q. Now, in this second document, did you fix the time in writing when the option would expire?

A. Now, that is here in this exhibit of September 1st, 1946. It has already been read several times, and it fixed the time as of April 1st of 1947. Extended it from September 1st to April 1st, 1947.

Q. Now, as I understand it, the first option was to expire in December, 1946?

* * *

A. Yes.

Q. That option you never exercised, did you?

R. 654, lines 24 to 26, inclusive:

A. It is perfectly obvious I did not. I was acting under the renewal option that continued that, extended it not to December, but April 1st.

R. 657, lines 26 to 30, inclusive:

Q. Did you give them a copy of either the document of April 6th, or of September 1st, 1946?

A. Not of either of those. They were written, as you see, just on the stationery of the Escalante Hotel, written informally, written in pen and ink, by me.

R. 660, lines 16 to 19, inclusive:

Q. Isn't it true that you never gave them a copy of anything at all as of the time they signed it? Isn't that true, "Yes" or "No".

A. I can't remember.

R. 662, lines 2 to 18, inclusive:

Q. Now, we have cleared up, we have concluded with the April 6, 1946 meeting, and I believe the next thing you did was, you wrote a letter of July 5, 1946, wherein you told these people not to discuss prices with anybody?

A. That is right. We have gone all over that.

Q. And then on September 1st you had a meeting with them.

A. That is right.

Q. And you wrote up another document?

A. That is right.

Q. And, as I understand, in that document no reference was made to \$100,000, is that correct?

A. We have answered that six times today.

Q. All right. After the September 1st meeting, did anything else more take place that year, by way of meetings or letters or telephone calls?

A. I can't recollect or remember of anything until March of 1947.

R. 664, line 12 thru 30, R. 665, 1 thru 8:

Q. So in March of 1947, when you met with these people, you told them that the option was going to expire April 1st, is that right?

A. That is right.

Q. And what was done about that?

A. I told them that I would have to have a renewal of it because I couldn't get a patent that fast, that it would take maybe eight, ten, twelve months. Sometimes it takes a little longer.

Q. Was a written document prepared in connection with that, at that time?

A. No. They said they would extend the option, and it was later extended.

I told them when I returned the next month, in April, in connection with the surveyor, I would bring a renewal of the option.

Q. And when is the next time you saw them?

A. In April, 1947.

Q. Now, this second option ran out on April 1, 1947, didn't it?

A. That is right.

Q. And you did not exercise that option, either, did you?

MR. GUSTIN: You mean

A. Exercised the renewal of that option.

Q. I don't mean the renewal. I mean did you exercise it by putting up the \$100,000?

A. No, I didn't.

R. 677, lines 3 thru 12, lines 19 thru 21, lines 27 thru 30;

R. 678, lines 1 thru 3:

Q. Right. After the meeting of March, 1947, when is the next time you saw the co-owners?

A. April, the next month.

Q. And when you came to Cedar City, you did meet them in Cedar City, didn't you?

A. Yes.

Q. You had a document all prepared, didn't you?

A. I had an option all prepared in accordance with our understanding that I would bring it down in April, to renew—

Q. Now, Mr. Moreton, referring to the option that you had prepared, *you prepared it in your office, didn't you?*

A. That is right, the option of April, 1947.

Q. But at the time you wrote it up *you ommitted to mention the date, isn't that true?*

A. *We overlooked putting the date upon it. Yes, that is true.*

Q. And isn't it also true that at the time you dictated this option in your office *you did not put in the amount of money that the co-owners were to get for the property?*
R. 678, lines 24 thru 30 and R. 679, lines 1 thru 3:

THE WITNESS: That is correct. There was no amount in there, but the amount was filled in by Rex Holland, in the sum of \$100,000, payable as follows, to-wit, either in cash, or in ten annual payments, and without interest thereon.

The reason the amount wasn't filled in by me wasn't because there was any doubt about the purchase price, but if it were to be paid in ten annual payments, and without interest, perhaps they might have wanted time to raise the price, but they didn't.

R. 680, lines 17 thru 20, 26 thru 28

Q. (By Mr. Pollack) Do I understand you to say when you went down to Cedar City, sometime after April 21, 1947, you were prepared to pay more money for the property than \$100,000?

Q. Just tell me, is it a fact that you were prepared to pay these people more than \$100,000 for the property if they asked for it?

R. 681, lines 2 thru 11:

A. Well, I was willing that the price be modified, because of the fact that it might be sold over ten years, and without interest. And there is quite a little difference in the original proposal and that, in that the time is spread out. But the price was not changed. But, I thought if they wanted an opportunity to say more, "It ought to be worth \$110,000 or \$120,000 because we won't get it for ten years," then they could have changed it. But they were satisfied, and said they were, to have the price remain as it had always been, at \$100,000.

R. 682, lines 26 to 28:

Q. All right. Now, the option called for the payment of \$100,000 either in cash or in equal annual payments. Now, did you pay them \$100,000 in cash, or payments?

R. 683, line 8:

A. No, I did not pay them personally \$100,000.

R. 687, lines 16 and 17, lines 20 thru 23, 25 thru 30 R. 688, lines 1 thru 6, lines 14 thru 18:

Q. (By Mr. Pollack) Coming to the agreement of ownership, what was the date of that, do you know?

A. It has the date on it. It is in July.

MR. GUSTIN: It is the 23rd day of July, 1947.

Q. (By Mr. Pollack) Up to that time you had not paid the co-owners any \$100,000.00, had you?

A. That is right. I had not.

Q. Up to that time you had not obtained the patent, had you?

A. At that time—

Q. Can't you just answer that yes or no? It is a very simple question. We could save so much time.

A. It was evident at that time that the patent would be issued. The United States cadastral engineer had respecting—

MR. GUSTIN: Mr. Moreton, he is asking you about the patent, the document.

A. No.

Q. (By Mr. Pollack) As a matter of fact, how many months later was it that the patent was actually issued?

MR. ROBERTS: It was issued October 22, 1948.

THE WITNESS: I think that is right.

Q. (By Pollack) That is roughly fifteen months later, is that correct?

A. That is correct.

R. 688, lines 27 thru 29:

Q. In July of 1947 you yourself prepared a so-called agreement of ownership, is that right?

A. I did.

DIRECT EXAMINATION OF DEFENDANT MORETON

R. 691, lines 15 thru 27:

Q. Well, would it be correct to say that there were two reasons why you prepared that agreement of ownership. One was to provide for the contingency of the property

being disposed of by lease, and second, was to establish the fact that you had a one-fourth interest.

A. I would say that was right, just as I have already stated.

Q. Isn't it a fact that you could have gotten your one-fourth interest by a deed to a one-fourth interest?

MR. GUSTIN: Well now, if the Court please, the instrument, the ownership agreement, recites right in it that a deed of even date had been executed and delivered to Mr. Moreton.

R. 692, lines 12 thru 24:

Q. (By Mr. Pollack) Is it a fact that you got a one-fourth interest by virtue of a warranty deed that was executed at the same time as the agreement of ownership?

A. That is right, recited in my agreement.

Q. What is not clear to me is this, if you got a one-fourth interest by a deed, why did you need an agreement of ownership to give you that interest?

MR. GUSTIN: Now, if the Court please, that is argumentive. It is repetitious. We object to it on those grounds.

THE COURT: Objection overruled. You may answer that, Mr. Moreton.

R. 695, lines 8 to 17, inclusive:

THE COURT: He is not asking that. He is asking him why he made the warranty deed.

MR. POLLACK: With the agreement of ownership.

THE COURT: Yes, along with the warranty deed. Just tell them that, Mr. Moreton.

THE WITNESS: *I preferred to have it that way to evidence my ownership as a matter of record. Certainly the agreement wasn't anything anyone could put on record as affecting the title.*

R. 696, lines 21 thru 6 on R. 697:

Q. Is this a correct statement, Mr. Moreton, that prior to the execution of this agreement of ownership you claim that you had an option for \$100,000.00, is that correct?

A. Yes, I had that option.

Q. And in order for you to make a profit under that option, there would have to come a time, would there not, when you would put up \$100,000.00, is that correct?

A. Either I or any person to whom I assigned the option.

Q. In other words, you would either have to put up \$100,000.00, or you would have to go out and get someone with \$100,000.00?

A. Of course. That is perfectly obvious.

Q. Isn't it also true that prior to the time that agreement of ownership was signed you would either have to put up \$100,000.00 "or get" on or before a certain date?

A. On or before a certain date is right, sure.

Q. That is true?

R. 698, lines 10 thru 15:

Q. Would that agreement of ownership require you to put up \$100,000.00?

MR. GUSTIN: That instrument, your Honor, speaks for itself, and we object to it on that ground.

THE COURT: Overruled.

A. No. It provides that amount of money.

R. 699, lines 13 thru 30:

Q. (By Mr. Pollack) And the agreement of ownership not only did not require you to not put up \$100,000.00, it did not require you to go out and get anyone to put up \$100,000.00, but in addition to that there wasn't any time limit, was there?

A. The option speaks for itself, just what it provides.

THE COURT: Was there a time limit?

THE WITNESS: I don't think there—

THE COURT: In the agreement of ownership?

THE WITNESS: No, I don't see any.

MR. POLLACK: All right.

Q. And so, Mr. Moreton, isn't it a fact that what you were attempting to accomplish by that instrument was to get for yourself all over \$100,000.00 without your having to put up \$100,000.00 or without your having to get anyone to put up \$100,000.00, as you were required to do under your option?

A. Definitely not. You can't read that into it.

DIRECT EXAMINATION OF
DEFENDANT MORETON

R. 700, lines 1 thru 27:

Q. Now up to that time, Mr. Moreton, up to the time you signed this agreement of ownership, you had not earned your interest in that property, had you?

A. As I said to you before—

Q. Can't you answer that yes or no?

A. I have answered that question before and I will answer it again. At that time the claims had been surveyed and the survey had been approved by the cadastral engineer, and all that remained thereafter were pure formalities in the office of the Land Department, Bureau of Interior.

Q. My question is, you had not earned your interest in that property up to that time, had you?

MR. GUSTIN: He has just answered.

MR. POLLACK: No, he hasn't.

A. I would say yes.

MR. GUSTIN: We submit he has.

A. I would say yes.

Q. (By Mr. Pollack) Now I will refer to your deposition with you, Mr. Moreton, on Page 245. You have your deposition there, haven't you?

A. Yes, I have it. Yes, I have it.

Q. Now this deed, Mr. Moreton, that you took one-fourth interest in the property at the same time you had

the people sign the agreement of ownership, you didn't record that deed, did you?

A. Not until September.

R. 701, lines 12 thru R. 702, lines 1 thru 30:

Q. Isn't it true that the reason why you didn't record it is because you felt you hadn't earned it?

A. I have answered that already that I was practically sure then just when I took the deed.

Q. All right. Do you want to refer to your deposition?

A. Yes. The page please?

Q. Line 12, 246. Are you ready?

A. I can refer to Line 12, yes.

Q. Do you remember I asked you this question, Mr. Moreton?

“Q. What harm would have come to you if you had recorded it,”—that is the deed we are talking about—
“immediately?

“A. That isn't the point. I didn't feel it should be recorded until these proceedings had reached that point.

“Q. Why should it not be recorded before the proceedings reached that point?

“A. For the reasons I have already stated twice.

“Q. I understood you to say that you didn't want to do it until you knew for sure you would get a patent.

Isn't that what you told me?

"A. That is right.

"Q. And I wanted to know why you felt that way about it. Why did you have to know for sure you would get a patent before you would record your one-fourth interest in the property?

"A. Because up until that time I really hadn't earned the one-fourth interest."

You gave that answer, didn't you?

A. That is right, I did, but read before that, before that too, if you will.

"Q. Then your reason for not recording the deed was because you felt you hadn't earned the one-fourth interest?

"A. Right."

You gave that answer, didn't you?

A. That is right. That isn't inconsistent with what I have said here. If you will read what is said a little earlier there, you will find it is not inconsistent. But you don't want to read that.

Q. And isn't this true, Mr. Moreton, that if something had happened to you after July of 1947, that is to say that you had passed on, that your wife and your children would become the—would get that interest in the property, that is to say all over \$100,000.00, even though you hadn't earned it, isn't that true?

MR. GUSTIN: If the Court please, that is argumentative. Object to it on that ground.

THE COURT: Objection will be sustained.

R. 703, lines 1 thru 30, over to line 7 on R. 704:

MR. GUSTIN: And I would say debatable too.

THE COURT: I beg your pardon?

MR. GUSTIN: I would say debatable as most lawyers would view it.

Q. (By Mr. Pollack) And isn't it true, Mr. Moreton, that under the agreement of ownership, and one of the reasons why you had the people sign it was because under the agreement of ownership you didn't have to get the property patented, did you?

MR. GUSTIN: We object to that, your Honor, on the ground that the document speaks for itself.

MR. POLLACK: It is his state of mind as to why he did this.

THE COURT: That is the only purpose it could be admitted, and the objection is overruled.

A. Surely I had to get it patented under the option, of course.

Q. (By Mr. Pollack) I didn't hear you. I didn't hear you.

A. Of course I had to get it patented under the option. That was an option to patent and an option to sell.

Q. But isn't it a fact that you maintained that this agreement should supersede and take the place of the option?

A. Not at all.

MR. POLLACK: May I have the exhibit?

MR. GUSTIN: Your Man Friday has got them all right there.

Q. (By Mr. Pollack) I am going to hand you a letter dated September 25, 1948, and ask you whether you didn't say so in that letter, the agreement of ownership in the place of the option?

THE COURT: Let's refer to it by exhibit number.

A. It is referring to Exhibit D-33, and the letter of September 25, 1948. That is the agreement of ownership. It is here, and it is stated there that, "The enclosed agreement of ownership is a better way to handle it." Yes, that is true.

R. 704, line 30, all of R. 705 and all of R. 706:

Q. (By Mr. Pollack) Now, Mr. Moreton, under the agreement of ownership, there is no reference made to your patenting, to your being required to get a patent to the property, is there?

MR. GUSTIN: He has asked that question and it has been answered.

A. No, for the reasons I have heretofore given.

Q. (By Mr. Pollack) Well, was there an agreement, outside of what was reduced to writing, with respect to this ownership agreement?

A. No.

Q. Now, Mr. Moreton, would you like to turn to Page 223 of your deposition, Line 23. Page 223. Do you have it there?

A. Yes.

Q. Remember, Mr. Moreton, I asked you this question:

“Q. Well, supposing you were to die and wouldn’t exert any more effort, you would still be entitled to all over \$100,000.00, wouldn’t you, under that ownership agreement?”

“A. That is right.”

MR. GUSTIN: Now just a minute. Now, if your Honor please, we object to that question, just as we objected to the same question counsel put here. Just because it is in the deposition doesn’t make it competent.

THE COURT: What is the purpose?

MR. GUSTIN: We object to it because it is incompetent.

MR. POLLACK: Our purpose is to show what his intentions were when he prepared this agreement of ownership. What his thinking was, what he had in mind, what he intended to do. And certainly this answer is competent and relevant to show his intentions. How else are we going to do it? It is all in his mind, your Honor.

THE COURT: I appreciate that part. I just don’t see what this part about this dying business has got to do with it.

MR. GUSTIN: Yes, that is right.

MR. POLLACK: Well, because you see you have to take anything up to the time of the agreement. If he died his heirs wouldn’t get anything under the option because the option wasn’t exercised, the patent hadn’t

been gotten. But under this agreement they were fully protected, even though he hadn't performed his services.

MR. GUSTIN: Our objection goes to the argumentative, controversial nature of that question.

THE COURT: Well, the objection will be sustained. I don't see the purpose.

MR. POLLACK: All right.

MR. GUSTIN: May that answer that the witness gave, that he read from the deposition, be stricken?

THE COURT: Yes, it may be.

Q. (By Mr. Pollack) Mr. Moreton, may I ask you just one more question in regard to the agreement of ownership. Isn't it true that under the agreement of ownership if less than \$100,000.00 was received from the property, it would be the co-owners, that is the Hollands and Murie, would have to dig up the difference in order to pay you your one-fourth?

MR. GUSTIN: Now, if the Court please, that is argumentative and contentious, and it is based upon a premise that has never occurred.

DIRECT EXAMINATION OF MR. MORETON

R. 769, lines 12 thru 17:

Q. (By Mr. Pollack) Now, isn't this true: that after you and Dr. Mathesius had agreed upon the price of \$387,500, that Dr. Mathesius sent you over one offer of sale which provided for the sale of the entire property by all four co-owners for the total sum of \$387,500?

A. That's right.

R. 770, lines 14 thru line 7 on R. 771:

Q. (By Mr. Pollack) Didn't Columbia originally prepare a single offer of sale reciting that the total purchase price was \$387,500?

A. They prepared a document that provided for a single sale.

Q. For what?

A. A single sale, all joined in the same deed to them, and that each and all warrant the title of the other; and that I refused to do because—I will tell you why.

MR. POLLACK: Your Honor.

THE COURT: He wants to know if it had the purchase price in it of \$387,500.

THE WITNESS: I can't remember.

Q. (By Mr. Pollack) Did you receive such a document from Columbia which provided for an offer of sale to be signed by four people and provided for the payment of \$387,500 for the entire property? Did you receive such a document?

A. I received such a document, and I think the purchase price of the whole was within the document, yes, the total purchase price.

Q. And it is true, is it not, that you told Columbia that you didn't want the deal to be handled in that way?

A. That's right.

R. 772, lines 1 thru 11:

Q. (By Mr. Pollack) The title—as I understood you to say, the reason why you didn't want one document was because you didn't want to warrant the title of these other people, is that right?

A. That's right.

Q. Did you advise them that amongst themselves they should have separate documents so that one co-owner did not warrant the title of another co-owner?

A. I don't think there was any discussion about that. I knew what I wanted to do, and that is the way I proposed it; and with their consent, there were separate offers.

R. 806, line 28 thru line 24 on R. 808:

Q. (By Mr. Pollack) Now, at the time of the agreement of ownership, do you recall the date of that off hand, Mr. Moreton?

A. July, 1947.

MR. GUSTIN: It was dated July—it was acknowledged on July 23, 1947, and the records so show.

Q. (By Mr. Pollack) Now, at the time you had the co-owners sign their names to that document what did you tell them with respect to the import of it?

MR. GUSTIN: We object to that on the ground that it is immaterial.

I will withdraw that objection, your Honor.

THE COURT: Answer, Mr. Moreton.

A. I told them that at that time the survey had been completed and that the—by the United States Deputy

Mineral Surveyor and that his notes had been filed with the Department of the Interior, and they were either approved or about to be approved, as I had been informed.

Of course, that was the very foundation of the patent, was the survey. After all, that is it.

Q. To save time, I just want to know what you told them with respect to the agreement of ownership.

MR. GUSTIN: Well, in what regard?

A. I just answered that. I told them at that time just what I have related.

MR. SPANOS: That the survey had been completed?

THE WITNESS: Yes.

Q. (By Mr. Pollack) At the time you asked them to sign the agreement of ownership you advised them that the survey had been completed, is that right?

A. That is my best recollection.

Q. What else did you tell them in addition to that?

A. Oh, we discussed the fact that these claims, in order to be disposed of, might have to be leased; so we made that provision in there about the leasing of the claims, because that seemed to be what Columbia's program and policy was, was to lease, rather than to buy.

Q. What did you tell them with respect to what would happen in the event of a lease?

MR. GUSTIN: That is assuming that he told them something.

A. It is in the agreement what it provided for in the event of a lease.

THE COURT: Ask him if he did tell them something. That is the purport of his question. Did you tell them anything?

THE WITNESS: Well, I told them what I have said with reference to perhaps the necessity of making a lease, rather than a sale, that we might have to dispose of the property upon that basis, and that in the event that we did, the division of the purchase price would be just as set forth in the option. And so it was.

Q. (By Mr. Pollack) What, if anything, else did you tell them?

A. Let me see the paper. That might refresh my recollection. I can't think of anything else.

R. 809, lines 3 thru 30:

A. This brings nothing more to my mind that I told them than I have already related.

Q. (By Mr. Pollack) Would it be fair to say, then, that you told them nothing more than you have testified to within the last ten or fifteen minutes?

MR. GUSTIN: Now, your Honor, we object to the form of that question, that it would be fair to say that. The record shows what the witness has been asked and his answers that have been made. And the little summary and twist that counsel puts on this situation is an unfair question.

MR. POLLACK: I don't mean to be unfair. I just want to make sure.

MR. GUSTIN: Well, you are.

MR. POLLACK: I will ask the question in some other way.

Q. (By Mr. Pollack) Do you want to add anything more to it?

MR. GUSTIN: He said he didn't.

Q. (By Mr. Pollack) Anything else you can think of that you told these people at the time you had them sign the agreement of ownership?

MR. GUSTIN: Your Honor, he just got through saying that that agreement didn't refresh his recollection at the moment. Repetitious.

THE COURT: Can you add anything, Mr. Moreton, or can't you, to what you have already said?

THE WITNESS: No, I think not.

R. 810, lines 1 thru line 5 on R. 811:

Q. (By Mr. Pollack) Now, at the time you had them sign this warranty deed what did you tell them with respect to it?

A. Well, that is provided for in this agreement, that a deed shall issue, and that I had made the necessary expenditures and would like to have the deed for the one-fourth interest pursuant to the agreement; and the deed was so made and executed.

Q. Did you tell them anything else?

MR. GUSTIN: I assume he means if you can recall, Mr. Moreton.

A. Not at this moment can I recall anything further.

Q. (By Mr. Pollack) Would you like to look at the deed and see if that refreshes your recollection as to whether you might have told these people anything else at the time you got them to sign the warranty deed?

(Document handed to witness.)

A. What are you trying to do, mix this up by handing me a deed from Rex Holland and the Muries—from the Columbia Iron Mining Company? Trying to add confusion?

MR. GUSTIN: In any event, your Honor, the matter of the signing of this deed is not in issue in this case.

MR. POLLACK: Not the signing, but as to what was told to these people is in issue.

THE COURT: I thought you went into all that the other day. That is my recollection.

MR. SPANOS: We didn't cover the conversations, your Honor.

Q. (By Mr. Pollack) I am sorry that I handed you the wrong deed. They both said, "Warranty Deed." Do you want to read it over?

A. This deed which you have handed me does not add anything further to my recollection of what was said at that time.

R. 818, line 23, thru line 16 on R. 820:

Q. (By Mr. Pollack) While we are on the subject of the final negotiations, who represented the Columbia Iron Mining at that deal?

MR. GUSTIN: Now, your Honor, that calls for a conclusion.

MR. POLLACK: He is a lawyer. He was present. He can tell.

MR. GUSTIN: If he knows. He can tell who was there.

THE COURT: Well, yes, I think the proper thing would be to show who was there and what was done, and we can determine whether they were represented.

MR. POLLACK: All right.

Q. (By Mr. Pollack) Mr. Held, attorney-at-law—

MR. GUSTIN: Heald, (spelling) H-e-a-l-d.

Q. (By Mr. Pollack) Mr. Heald, an attorney-at-law employed by Columbia, was present at that meeting?

MR. GUSTIN: He is secretary of the Company, too.

Q. (By Mr. Pollack) He was there, wasn't he?

A. Merrill Heald, secretary of Columbia Iron Mining Company and also attorney for Columbia Iron Mining Company, was present.

Q. Yes. And you, an attorney-at-law, were present representing yourself?

A. The point—of course I am an attorney-at-law, but I was not there in that capacity, as you well know. You are throwing something in here to cloud the question.

THE COURT: Just answer the question.

A. No, not as an attorney-at-law, as a co-owner, the holder of an option, selling these properties.

Q. (By Mr. Pollack) Did the Hollands or Murie have any lawyer there representing them?

MR. GUSTIN: Now, your Honor, the connotation of that question is wrong in form. There is nothing in this record to show that they needed an attorney.

THE COURT: Well, the objection is overruled. Answer the question, Mr. Moreton.

A. They had already made their offer and had repeatedly affirmed it.

Q. (By Mr. Pollack) The question said: Did they have a lawyer there representing them?

A. They had put in the full purchase price—

MR. POLLACK: I move to strike all this.

THE COURT: The motion will be granted.

A. No, there was no lawyer representing them.

Q. (By Mr. Pollack) Now, coming back to these negotiations, the letters and the offers of sale, those were all prepared by you, you submitted them to the co-owners Hollands and Murie, they were returned to you, and you took them over to the Columbia Iron Mining Company, did you?

MR. GUSTIN: And that has all been testified to.

A. That's right.

R. 821, lines 19 thru 28:

Q. (By Mr. Pollack I want to know whether the Hol-

lands and Murie carried out any negotiations for the sale of this property other than those that were carried on through you, with the exception, as you have mentioned, of the letter of September 14.

MR. GUSTIN: I am assuming that he is asking so far as your knowledge is concerned, Mr. Moreton.

MR. POLLACK: Yes, that is right, so far as you know.

A. No. So far as I know, no.

BUREAU OF MINES REPORT

TESTIMONY OF REX HOLLAND

R. 468 lines 21 thru 26:

Q. And you knew that a report from the Bureau of Mines was in existence?

A. I did.

Q. And that such a report would disclose the nature and the various values of the deposits in the ground, didn't you?

A. I did not.

R. 485, lines 6 thru 11:

Q. You were familiar with all of this nomenclature and these symbols at that time?

A. No.

Q. How could you interpret it then, Mr. Holland?

A. I can interpret it better now than I could at that time.

R. 485, lines 22 thru 27:

Q. All right, when you sent this report down to Kaiser Steel, excluding the last symbol, "Mag", did you know what these figures and symbols represented?

A. No, I did not.

Q. You had no idea?

A. I had no idea.

R. 532, lines 26 thru 28:

Q. Now in connection with this report, which is the Bureau of Mines report, is there anything at all in there about the value or price of ore or the quantity of ore?

R. 532, line 30:

A. No. *Testimony of Mr. Moreton.*

R. 591, lines 8 thru 10 cont.:

Q. (By Mr. Pollack) Now you have known right along, have you not, that Rex Holland is not such an engineer?

A. Yes, I have known that. Neither of us are. Yes.

R. 591, lines 21 thru 23:

Q. There was nothing in that report, was there, that would indicate the tonnage?

A. I have already answered that there wasn't.

R. 592, lines 2 thru 11:

Q. Mr. Moreton, of course there wasn't anything in that report that indicated how much per ton anyone would pay for that ore?

A. Oh, decidedly not. Nothing about price at all.

Q. So therefore it would be correct to say, would it not, that a man like Rex Holland could not possibly tell the value of that ore from that report?

A. Oh, no, not from the report. Neither he nor I nor anybody else from the report. They were dealing with scientific facts, not market price.

BUREAU OF MINES

R. 586, lines 9 thru 14:

Q. (By Mr. Pollack) Are you familiar with reports of the Bureau of Mines?

A. Some yes, I am familiar with the William E. Young report that has been introduced here in evidence and about which Mr. Holland identified and pointed out the M & H claims. Yes, I am familiar with that report.

R. 591, lines 1 thru 10:

A. * * * * But you asked me if it gave me complete information and it would to an engineer or a geologist because it contained a cross-section of the ore body. *But as far as giving me, a layman, one who is not acquainted with engineering, I could not figure nor did I try to figure the tonnage contained. That would be an engineer's job.*

CROSS-EXAMINATION OF W. E. YOUNG

R. 742, lines 5 thru 10 and lines 14 thru 26:

Q. Now, did you ever—How long, if you were to try it right now, how long would it take you to figure out

what the tonnage was on those three claims, if you were to start with a pencil and paper?

A. If I tried real hard I think I could come up with an answer in about three days.

* * *

Q. (By Pollack) And you are an engineer, aren't you?

A. Yes, sir.

Q. Where you have specialized in estimating tonnages for quite a number of years, haven't you?

A. Yes, sir. I have made tonnage estimates over quite a number of years.

Q. And you know, of course, a great deal more about doing this estimating than a practical miner would know?

A. I think I do; yes, sir.

Q. And when you speak of a "practical miner" you mean a man who does the work with his hands and tools?

A. Yes, sir.

RECROSS EXAMINATION OF MR. YOUNG

R. 745, lines 22 through 25:

Q. This report that we have, of course, does not contain anything that would indicate the price per ton that a steel company would pay for the ore, does it?

A. It does not, no, sir.

R. 746, lines 13 through 16:

Q. Just one question. There is quite a difference, isn't there, between understanding it and being able to estimate the tonnage from it?

A. Yes, there is quite a difference.

**REX HOLLAND'S LETTER OF SEPTEMBER
14, 1948, TO DR. MATHESIUS**

(Plaintiff's Exhibit 14)

TESTIMONY OF REX HOLLAND

R. 368, lines 11 through 30:

Q. And now I show you a letter dated September 14, 1948, and will ask you if that is a photostatic copy of the letter which you wrote in your own handwriting?

(The document referred to was marked Exhibit P14 for identification.)

A. Yes, this is a photostatic copy of a letter that I wrote to Dr. Walther Mathesius, in my own handwriting.

Q. Previous to that time, had you seen a fellow by the name of Canfield?

A. Previous to this time I had seen a fellow by the name of Canfield.

Q. Tell us his full name, and where does he live?

A. Parley Canfield.

Q. And where does he live?

A. He was living in St. George, Utah, fifty miles below Cedar City, Utah.

Q. And how long have you known him?

A. Up until a short time before this time, Parley Canfield was a total stranger to me.

Q. How long before you wrote the letter had you known him?

R. 369, lines 1 through 3:

A. Not more than a week, just a few days.

Q. Did you have a conversation with him concerning some of the things that are contained in that letter?

R. 369, lines 9 through 17:

Q. (By Mr. Roberts) Did you have a conversation with Mr. Canfield concerning some of the matters that are contained in this letter?

A. I did have a conversation with Mr. Canfield.

Q. And who was present?

A. I and Mr. Canfield.

Q. And will you tell us what was said, please?

MR. GUSTIN: That is objected to, your Honor, on the grounds it is hearsay.

HOLLAND TESTIMONY (*Continued*)

R. 380, lines 13 through 21:

Q. Mr. Holland, at one time yesterday I had just shown to you Exhibit 14, which is the letter that you wrote to Walther Mathesius on September 14, 1948, and in it you have referred to a conversation which you had had with Mr. Canfield. Now would you tell us when and where that conversation occurred?

A. The nearest I can fix this in my memory, it was on the morning of September 14th.

R. 381, lines 5 through 14:

Q. Will you tell me where and when it was you had the conversation with Mr. Canfield?

A. The nearest I can fix this in my memory is that it would be on the morning of September 14th.

Q. And where?

A. At Cedar City.

Q. Whereabouts in Cedar City?

A. Mr. Canfield met me on the street in front of the Lay Hotel, and he begun to ask me some questions concerning the M&H Mining Claims.

R. 381, lines 26 through 28:

(Holland) And in that conversation I asked Mr. Canfield if he knew approximately how many tons of iron ore was in the M&H, in these claims of ours, and his reply to me was that there was 3,550,000 tons.

R. 382, lines 8 thru 19:

(By Mr. Roberts) Was there anything else said?

A. I think at that same meeting, too, I asked Mr. Canfield concerning a price, and he stated that—he stated to me that as far as he knew for the iron ore that had been sold at that time, was bringing 25 cents a ton.

Q. After that was that the end of the conversation?

A. That was the end of the conversation, we had discussed.

Q. After the conversation what did you do?

A. I then went home, and that evening I wrote this letter to Dr. Walther Mathesius about the conversation I had had with Mr. Canfield.

CROSS-EXAMINATION BY MR. GUSTIN

R. 519, lines 10 through 19:

Q. And in that communication did you represent the quantity of ore in the M&H claims?

A. As I recall I did.

Q. Did you represent the price that you were willing to take per ton?

A. As I recall I did.

Q. What was the price that you were willing to sell for?

A. I based this on Mr. Canfield's information to me of 25 cents.

R. 445, lines 26 through 30, R. 446, lines 1 through 3:

Q. Then why in the world did you write the letter of September 14, 1948 to Dr. Mathesius reflecting upon the integrity of Mr. Moreton?

A. Because of these statements made by Mr. Canfield.

Q. And you believed them, didn't you? You believed Mr. Canfield, didn't you?

A. I wrote then to Dr. Mathesius asking about it. I never received a reply from him.

R. 446, lines 8 through 11:

A. I didn't know whether to believe Mr. Canfield, and I wrote this letter in to Dr. Mathesius hoping that he would advise me on it or give me some figures on this, and I never did receive a letter from Dr. Mathesius.

R. 382, lines 20 thru 26:

Q. Did you again see Mr. Canfield?

A. Yes.

Q. When, please?

A. That would be in the forepart of October, approximately two weeks after our first conversation.

Q. Where did you see him?

A. At Cedar City.

R. 383, lines 7 through 14:

Q. You can tell us now what was said in the conversation?

A. I again asked Mr. Canfield how he estimated that there was 3,500,000 tons in the M&H Claims, and Mr. Canfield's reply to me was that he (had) not meant there was 3,500,000 tons in the M&H properties, but he had meant to include the M&H properties and the Shortline properties adjoining the M&H. That was estimated tonnage of the complete ore body, and not just the separate M&H claims.

R. 383, lines 25 through 27:

Q. (By Mr. Roberts) After your conversation with Mr. Canfield, what was your state of mind with respect to the price of this ore?

R. 384, lines 2 through 10:

A. Yes, I understand your question on that. At that time he had quoted me a figure of 3,500,000 tons, which I thought he was referring only to the M&H claims. And then later on he tells me that he had not meant it was in the M&H claims alone, but was in the complete ore body. So, I concluded that he had no basis at all on which to base his estimated tons of ore in that property, and, if he was not correct on the tons, then how could he be correct on the price.

R. 385, lines 11 through 14:

Q. (By Mr. Roberts) At this time, or after this second conversation with Mr. Canfield, what was the state of your mind as far as Mr. Moreton was concerned, and what he had told you concerning the price?

R. 385, line 26:

A. I concluded then that Mr. Canfield had no basis—

R. 385, line 30; R. 386, line 1:

A. That Mr. Moreton had advised us correctly as to the tonnage and the price of the ore in the M&H claims.

R. 539, lines 29, 30, R. 540, 1 through 6:

Q. That after you had talked to Mr. Canfield the second time, that is some two weeks after September 14, 1948, that as far as your mental state was concerned you came to the conclusion that Mr. Moreton was an honest man?

A. That is right.

Q. Therefore you believed what he had said in the past and I take it you believed what he would say in the future?

A. That is right.

R. 527, lines 17 through 23 (cont.):

Q. (By Mr. Roberts) Counsel also asked you whether or not you had ever queried or asked Mr. Moreton how much he was getting for his quarter interest, or how much was being obtained for this property, and you said that you had never asked him. Now why was it that you had not asked him?

R. 528, line 1 through 3:

A. *Because we had always relied upon Mr. Moreton, as being our attorney and we had confidence in him at that time. It had been restored after this letter to Dr. Mathesius*

DIRECT EXAMINATION OF MR. MORETON

R. 717, lines 21 through 29:

Q. That is not material at the moment. I asked you when he came to talk to you about the letter Rex had sent him, and you said I hadn't gotten to that yet.

A. That was, oh, in the early days of October. Much transpired in the way of conversations and his visit to me, but that was the purpose of his coming as he expressed it right at the start, he did, on the phone. First that he wanted to make a date with me to discuss the acquisition of these M&H claims.

R. 785, lines 7 through 14, lines 25 through 30.

R. 786, lines 1 through 24:

Q. And that was the end of the conversation around October 8, 1948?

A. It was not, not the end of it.

Q. Excuse me.

A. Not the end of it. After we discussed what I have already related, he said, "I think there is something you ought to know."

And I said, "What is it?"

* * *

A. (Continuing) He said, "There is something I think you ought to know." He said, "Do you know that Rex Holland wrote me a letter in which he claimed that you were getting too much and that your option had expired?"

And I said, "No."

"Well," he said, "I will read it to you."

So he proceeded to read what we have here, his letter of September 14, 1948, addressed by Rex to Dr. Mathesius, in which he spoke of the number of tons and the 25 cents per ton as being the going price, showed an exaggerated idea as to the number of tons, and he said, "It says here—he winds up this letter—" Now, this is the conversation: "He winds up this letter with the statement that for me to wait a couple of months until your option expires and then we will do business on a different basis." And he said, "I understand you have an option. Do you?"

And I said, "Indeed I do."

And he said, "I would like to see it. I want to know the facts about this matter. I want to know who is telling the truth and I want to know whether this option is in effect."

He said further, "If we are to proceed on this trans-

action, I want a letter from these co-owners very definitely and very certainly and emphatically stating that they will be satisfied with the acceptance of \$100,000 pursuant to your option."

I said, "I think you are entitled to it and I will get it."

I think he was right in asking for it in view of Rex's letter.

CROSS-EXAMINATION OF REX HOLLAND

R. 438, lines 18 thru 22:

Q. You never thought of it? Did Dr. Mathesius ever answer the letter of September 14, 1948?

A. No.

Q. Did he ever refer to it?

A. No.

R. 526, lines 19 through 30:

Q. Now in connection with the transaction concerning Mr. Arthur, counsel asked you whether or not during those conversations with Mr. Moreton you had ever mentioned the letter of September 14, 1948, which you wrote to Mr. Mathesius concerning your conversation with Canfield. I will ask you whether or not Mr. Moreton ever at any time mentioned or said anything to you about that letter during that period of time, and that was in November of 1948?

A. May I ask a question here to clear up in my mind as to which letter is being referred to now?

Q. The letter of September 14, 1948, that you wrote to Mr. Mathesius.

R. 527, lines 1 and 2:

A. No, Mr. Moreton had never said anything about that letter to me.

R. 439, lines 18 through 24:

Q. And you never made reference to your letter of September 14, 1948, to any of the parties at the closing of this transaction on December 20, 1948?

A. Reference to the letter, that letter, was not made by either party.

Q. At any time?

A. At any time.

THE CLOSING OF THE DEAL
THE CONCEALMENT CONTINUED
TESTIMONY OF REX HOLLAND

R. 392, lines 3 through 14:

Q. (By Mr. Roberts) Now, after you had signed the document of November 20th, which I showed you just a few moments ago, when next did you hear from Mr. Moreton?

A. We received a telegram from Mr. Moreton, to come into Salt Lake, and we did come into Salt Lake.

Q. Do you recall when it was you came into Salt Lake?

A. As I recall it was on the morning, or during the day of December 19, 1948.

Q. And when did you next, or when did you see Moreton, Mr. Moreton?

A. I and my father and my mother and Mr. Murie met Mr. Moreton over at his offices in the Judge Building.

R. 392, lines 15 and 16 cont.:

Q. On what day?

A. December 20, 1948.

R. 395, lines 12 thru 29:

Q. Now, specifically, was anything at that meeting said concerning the amount of money that Mr. Moreton was to receive for his one-fourth interest?

A. Absolutely not.

Q. Were there any documents relative to, or anything said about the purchase of his one-fourth interest at that time?

A. Nothing was said about that at that time.

Q. At that time was there any mention of a figure of \$387,500?

A. Nothing was said about a figure of \$387,500.

Q. Was anything said about a figure of \$287,500?

A. Nothing was said about a figure of \$287,500.

Q. Was anything said about Revenue Stamps to be put on this deed, or any deeds that were to be signed?

A. I don't know anything that was said about Revenue Stamps to be put on these deeds.

Q. Did you see any Revenue Stamps?

A. I didn't see any Revenue Stamps.

R. 447, lines 21 through 30:

Q. And in Mr. Moreton's office in your presence, wasn't it stated by your father after the closing of this transaction—or mother, on the 19th day of December and in the presence of Miss Clegg, wasn't it stated by your father in your presence that he wished that Mr. Moreton could make a million dollars out of this transaction?

A. I don't know of any statement made by my father.

Q. You don't recall any such statement?

A. No.

Q. By anyone?

R. 448, line 1:

A. By anyone.

R. 448, lines 18 and 19:

Q. (By Mr. Gustin) Now do you know why Mr. Murie did not join? [in this lawsuit]

R. 448, lines 22 through 25:

A. I think it was because Mr. Murie was receiving a monthly payment from Mr. Moreton between the time, and that Mr. Murie was looking forward to another sale of property with Mr. Moreton.

TESTIMONY OF MRS. HOLLAND

R. 938, lines 21 and 22:

Q. Did you see any check for \$287,500 or did you hear anyone mention any such check at that meeting?

R. 939, lines 5 through 9:

A. No.

Q. Did you see or hear mention of any check at all other than a check for \$100,000 that your son, husband and Mr. Murie were getting?

A. No.

R. 939, lines 13 through 28:

Q. Did either Dr. Mathesius, Mr. Moreton, Mr. Heald or anyone else in the room affix any revenue stamps to any deeds or to any other documents?

A. Not that I know of.

Q. Did you see any revenue stamps or any other kind of stamps anywhere in that room during the entire time that you were there?

A. No.

Q. Did you hear anyone say that they hoped Mr. Moreton would make a million dollars on his interest in the property or any other amount?

A. No.

DEPOSITION OF MRS. HOLLAND

R. 935, lines 4 through 6:

Q. Was anything at all said while you were in the room regarding the sale of Mr. Moreton's interest in the M&H properties?

R. 935, line 10:

MR. ROBERTS: The answer is, "No."

R. 935, lines 14 through 16:

Q. What was it that was said regarding the sale of Mr. Moreton's interest in those properties?

A. Nothing was said.

R. 935, lines 20 through 25:

Q. Was anything at all said by anyone during any of the time that you were in the room, or at any other time, regarding the amount of money which Mr. Moreton was to receive or was receiving for his interest in the M&H properties from the Columbia Iron Mining Co. or from anybody else?

R. 935, line 28:

A. No.

R. 936, line 9:

Q. Did you hear any figures mentioned?

R. 936, lines 19 through 22:

Q. What figures did you hear?

A. \$100,000.00 which John Holland, Rex Holland and Will C. Murie were to receive.

Q. Who was it that mentioned that figure of \$100,000.00?

R. 936, line 27:

A. Attorney Moreton.

R. 937, lines 2 through 11:

Q. In what connection was that figure mentioned?

A. In connection with the check of \$100,000.00 which John Holland, Rex Holland and Will C. Murie were to receive.

Q. Do you remember meeting Dr. Mathesius at this meeting?

A. Yes.

Q. Did he or anyone else read from any document or say anything with regard to the sale of Mr. Moreton's interest in the M&H properties?

R. 937, line 15:

A. No.

HOW AND WHEN REX HOLLAND DISCOVERED THE FRAUD

TESTIMONY OF REX HOLLAND

R. 399, lines 27 through 30:

Q. (By Mr. Roberts) Now, when did you first learn or hear that the property had been sold, and by "the property", I mean these three M&H claims, had been sold for \$387,500?

R. 400, lines 9 through 23:

THE COURT: Can you answer?

A. Yes, I can answer. When I first heard that this property was sold for \$387,000?

Q. (By Mr. Roberts) When was it, please?

A. In October of 1951.

Q. And where were you at the time?

A. I was at the home of Bishop Parson U. Webster of Cedar City.

Q. You said that too rapidly. Speak up so that we can hear you. Who was present?

A. Parson U. Webster and Rowe Palmer and myself.

Q. Did anybody in particular tell you?

A. Mr. Canfield did.

R. 401, lines 19 through 28, R. 402, line 1:

THE WITNESS: *** And he came into that meeting and he expressed in one sentence there we didn't realize how much he had found for us, that the M&H claims had brought at that time \$387,000, and he wanted to show us he had found something equally as valuable as the M&H mining claims.

Q. (By Mr. Roberts) Now, after receiving that information, what, if anything, did you do?

A. I was shocked to know, to learn of the total price.

Q. What did you do?

THE COURT: What did you do?

A. I considered it for some time and then I wrote Mr. Moreton a letter concerning what I had heard from Mr. Canfield.

R. 402, lines 18 through 30:

Q. (By Mr. Roberts) I show you Exhibit P24, and I will ask you to identify that, please.

(The document referred to was marked Exhibit P24 for identification.)

A. This is the letter that I mailed Mr. Arthur E. More-

ton when I first learned that the total price received for the M&H properties was \$387,500.

MR. GUSTIN: Now, if the court please, could we have him state the date of that letter?

THE COURT: Will you do that, Mr. Holland, please.

THE WITNESS: December 16th.

MR. POLLACK: What year was that?

R. 403, lines 3 through 6:

THE WITNESS: December 16, 1951.

Q. (By Mr. Roberts) Then I show you Exhibit P25, and will ask you if that is a photostatic copy of the letter you received from Mr. Moreton?

(The document referred to was marked Exhibit P25 for identification.)

MR. GUSTIN: Can we have the date of that.

MR. ROBERTS: December 18, 1951.

A. This is a photostatic copy of the letter I received from Mr. Moreton.

R. 467, lines 6 through 12:

Q. (By Mr. Gustin) Mr. Holland, do I understand correctly that the value of this property did not become apparent to you until your conversation with Mr. Canfield on September 14, 1948, or am I in error?

A. The value of this property never become apparent to me until 1951 in a conversation in which Mr. Canfield was present at a meeting.

RECROSS-EXAMINATION OF REX K. HOLLAND
BY MR. GUSTIN

R. 878, lines 25 through 28:

Q. When was it that you said you had this conversation with Canfield, where, for the first time, you were advised of the total consideration paid by Columbia in this transaction?

R. 879, lines 19 through 21:

A. That would be in the fall, the fall months of 1951.

Q. And that was at Parson Webster's home?

A. And that was at Parson Webster's home.

R. 909, lines 17 through 23:

Q. (By Mr. Pollack) Now, Mr. Holland, I am going to hand you a letter marked, for the purpose of identification, P-68, dated January 16, 1952, from the United States Department of Justice, United States Attorney, District of Utah, Salt Lake City, Utah, and signed by Scott M. Matheson, United States Attorney, and ask you how you happened to receive that letter.

R. 910, lines 3 through 9:

Q. (By Mr. Pollack) Did you receive that letter?

A. I received this letter.

Q. And was that in response to a letter that you had written, or how did it come about that you got that letter?

A. This is in response to the letter that I had written to the United States Department of Justice after I received this letter from Mr. Moreton December 18 of 1951.

R. 910, lines 14 through 20:

Q. (By Mr. Pollack) Go ahead. After you received the letter from Moreton of December 1951, what did you do?

A. I sent a copy of that letter I received from Mr. Moreton to me and a copy of my letter that I had written to Mr. Moreton—these two copies were sent in to the United States Department of Justice, because in the letter that I had received from Mr. Moreton there was a—

R. 910, lines 23 through 30:

A. (Continuing) There was a sentence in there that scared me and I wanted to know from the Department of Justice if I had, without my knowledge, sent a letter in to Mr. Moreton which would indicate that I was attempting to use the mails in which to extort money from him. And my sole reason at this time was to clear myself if I had done it.

Q. (By Mr. Pollack) Did you send the copy of the letter you had written to Mr. Moreton, together with his answer—

R. 911, lines 1 through 7:

did you send both of those letters in to the United States Attorney?

A. I did, yes.

Q. Now, after you sent those in, what is the next thing that happened?

A. Well, I think this letter here would be a reply from the United States Department of Justice.

R. 911, lines 12 through 16:

Q. (By Mr. Pollack) Now, at the time you sent that letter in to the United States Attorney, or those letters in to the United States Attorney, you did not know either me or Mr. Spanos, did you?

A. No, I did not.

R. 911, line 20 through 23:

Q. (By Mr. Pollack) Now I am going to hand you a letter dated January 23, 1952, Plaintiff's Exhibit 69, addressed to Scott M. Matheson, United States Attorney, Salt Lake City, Utah, and ask you what that is.

R. 911, line 30 through line 4, on R. 594:

A. Well, after receiving this letter here from Scott Matheson, from the United States Department of Justice, I then acknowledged receipt of this letter from the United States Department of Justice, and this is my letter to Scott M. Matheson.

R. 912, lines 17 through 25:

A. (Continuing) After I had received this letter from the United States Department of Justice in reply to a question that I asked them pertaining to whether I had unintentionally, or not knowingly, written a document to Mr. Moreton that could be interpreted as using United States mails to extort money from him—and after I received this letter from the United States Department of Justice, the answer Mr. Matheson wrote me—that the answer to that question was definitely “No.”

R. 913, lines 4 through 6:

A. (Continuing) And in this letter here I made it known again to Mr. Moreton that I was not satisfied with the division of money.

R. 914, lines 8 through 17 and lines 21 through 25:

Q. (By Mr. Pollack) In Plaintiff's Exhibit 69, the letter you wrote to Scott Matheson, you asked him, did you not, on what basis he would take your case?

A. I did. It shows in the letter.

Q. And thereafter he suggested to you that whenever you got around to it, you should come in and talk to him about it?

A. Yes.

Q. And that was in February, 1952?

A. According to the date on the letter, yes.

* * *

Q. (By Mr. Pollack) And isn't this true, Rex: that at the time you met me and Mr. Spanos for the first time you told us you were looking for a lawyer to handle this case?

A. I did, and I was. I was trying to find an attorney to handle the case.

R. 915, lines 13 through 30:

BY MR. GUSTIN:

Q. Now you say, Mr. Holland, that you entered into a new employment agreement with these counsel, Spanos and Pollack, between the 14th day of July, 1952 and the 19th day of December, 1952, is that right?

A. Between the 14th day of July, 1952, and December, 1952?

Q. Yes, you entered into a new employment agreement?

A. Between these two dates?

Q. Yes.

A. Yes, I did.

Q. When your deposition was taken in 1953 you were questioned about the agreement, the employment agreement, dated the 14th day of July, 1952, weren't you?

A. As I recall, I was.

Q. Yes. Now, isn't it a fact that after that date you entered into a new agreement with these men and it was dated back?

A. No.

R. 916, lines 1 through 7:

Q. You don't have a copy of that agreement?

A. I don't have it with me. I have had a copy of it.

Q. You say you entered into that agreement in Beverly Hills?

A. That's right.

Q. When did you go to Beverly Hills?

A. In October of '51.

MR. POLLACK: '52.

Respectfully submitted,

RAWLINGS, WALLACE, ROBERTS & BLACK

BRIGHAM E. ROBERTS

NICK SPANOS

WILLIAM JEROME POLLACK

Counsel for Appellants

530 Judge Building

Salt Lake City, Utah

APPENDIX

I

EXHIBIT P14

Cedar City, Utah

Sept. 14, 1948

Dr. Walter Mathesius
Geneva Steel Corporation
Provo, Utah

Dear Sir:

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

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

We agreed to accept \$100,000.00 for this property based upon that tonnage and have signed Articles of Agreement that will expire at the end of September, 1948. Since we signed the Agreement we have been advised that instead of One Million, Four Hundred Thousand tons of iron upon the property there are three million five hundred thousand tons of iron ore and that it is being offered for sale for .25 cents per ton or a total sales price of \$875,000.00.

II

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

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

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

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

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

Yours truly,

(s) Rex Holland

125 So. 3rd East St.
Cedar City, Utah

III

EXHIBIT P16

Cedar City, Utah

October 16, 1948

Columbia Iron Mining Company

Provo, Utah

Attention Dr. Walther Mathesius, President.

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

Gentlemen:

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

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

We realize that in order to interest a purchaser in these claims, it would be necessary that they be patented. However, we were without such funds or means to secure such patent and costs incident thereto and we therefore asked Mr. Arthur E. Moreton to secure such patent, at his sole cost and expense in return for an interest. Needless to say, Mr. Moreton may offer and sell his in-

IV

terest in said claims for whatever price you and he may agree upon, if he so desires, and the entire proceeds therefrom will of course be his sole property, it being his right to determine and to receive whatever amount you may agree upon with him.

Sincerely yours,

(s) John G. Holland

(s) C. S. Holland

(s) Rex Holland

(s) William C. Murie

EXHIBIT P17

Cedar City, Utah

November 20, 1948

Columbia Iron Mining Company

Provo, Utah

Attention Dr. Walther Mathesius, President:

Re: M & H, M & H No. 1 & M & H No. 2 Lode

Mining Claims at Desert Mound

Gentlemen:

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

We make this offer to sell our interest for this sum, free and clear of all encumbrances and lawful claims

whatsoever. Patent on these claims has now been issued and we hope for an early acceptance of our offer.

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

Sincerely yours,

(s) John G. Holland

(s) C. S. Holland

(s) Rex Holland

(s) William C. Murie

AGREEMENT OF OWNERSHIP

DATE 10-1-1913 P-6
CASE NO. 97299-A

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

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

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

WITNESS.

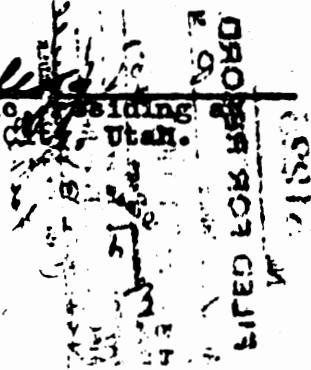
Pearl Clegg

John G. Holland
John G. Holland
William C. Murie
William C. Murie
Rex Holland
Rex Holland

STATE OF UTAH,
COUNTY OF SALT LAKE } SS

On the 20th day of July, 1947, personally appeared before me John G. Holland, also known as J. G. Holland, William C. Murie, also known as W. C. Murie and Rex Holland, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Pearl C. Clark
Notary Public, Residing at
Salt Lake City, Utah.



~~SECRET~~ K-33
 CASE NO. 97299-A

September 25, 1948.

Mr. John G. Holland
 124 South 3rd East
 Cedar City, Utah

Dear Jack:

However, let me caution you again to leave the entire bargaining and selling of these properties to me as agreed upon.

I expect to come down to Cedar City either the end of next week or the first of the following week and will see you at that time.

With kindest regards, I am

Yours truly,

ARTHUR E. MORETON

AEM:pc
 c.c. William C. Murie "

HOTEL WILSON



tourist apartments

PARKING LOT NEXT TO BUILDING

HAROLD F. ROBERTS, MGR.

32 EAST SECOND SOUTH

SALT LAKE CITY, UTAH

Sunday Dec. 16th

Dear Mr. Moulton:

I have decided to write you because I find that I can express myself better this way than by talking about a matter that I am getting a lot of both criticism and advice from many men who now have learned of what actually happened in the sale of the M & H claims.

I do not know just where it originated but it is common knowledge that the price received from the sale was \$387,000.00 or \$287,000.00 more than what we as owners received.

It seems that my father had the respect of all who was associated with him and why that after the many years that he spent trying to develop his property that he did not get an equal share in what they were sold for is the cause of other parties criticizing me for not

HOTEL WILSON



tourist apartments

PARKING LOT NEXT TO BUILDING

HAROLD F. ROBERTS, MGR.

32 EAST SECOND SOUTH

SALT LAKE CITY, UTAH

standing on my rights.

I know, and you know, that you sent us a letter before the sale was made stating that there was 1.6 million tons of good grade iron ore on these claims, proven by diamond drilling and that the Geneva Steel Co. would pay 10 cents per ton for the deposit, and it was because of this letter, which is still at home, that we decided that for your services we were willing to take the \$100,000.00 and you would get the \$60,000.00.

Because of the criticism I am getting from men who are interested in the continued development of the iron deposits I am keeping this among us because we have always been able to discuss this business among ourselves with the outside influence from others

HOTEL WILSON



PARKING LOT NEXT TO BUILDING

tourist apartments

HAROLD F. ROBERTS, MGR.

32 EAST SECOND SOUTH

SALT LAKE CITY, UTAH

not being considered.

I have avoided as much criticism as I can and yet because it continues I have now gone to one of the best law firms in Salt Lake and found on what ground I stand. I have not mentioned any names but have kept to the facts and figures of the sale.

This law firm called me on the phone yesterday and want to take the case whereby they will, if necessary, go to court to get an equal share of that amount above the 1.6 million tons as stated in the letter to us and on which our price was based.

Frankly, Mr Moulton, I do not want to have to go into court to get what I believe rightfully belongs to I and Mother above the \$160.000.00 that we were led to believe would be the total amount received from that sale, which additional amount will

HOTEL WILSON



tourist apartments

PARKING LOT NEXT TO BUILDING

HAROLD F. ROBERTS, MGR.

32 EAST SECOND SOUTH



SALT LAKE CITY, UTAH

equal close to \$75,000.00 now that the
papers have been paid by you on that
additional amount, \$287,000.00.

What I want to do is to come to some
solution where we both will feel better
about the whole thing so I am going to
present my side of the story to you.

I have told you about the property in
Canada that has the $8\frac{1}{2}$ to 11% Titanium.
Just before coming to Salt Lake this trip I
received letters from the National Lead Co.
the International Titanium Co. and the
Orefactory Company wanting information on this
property and that they were buying Titanium
ores. The General Electric Company wrote
that they were now conducting experiments
and would contact us when their
experiments were completed. These Companies,
as well as the DuPont Company, are sound

HOTEL WILSON



tourist apartments

PARKING LOT NEXT TO BUILDING

HAROLD F. ROBERTS, MGR.

32 EAST SECOND SOUTH

~

SALT LAKE CITY, UTAH

and well recognized.

The price for Titanium ore, concentrates, as quoted very recently is \$5 per pound. Even though the ore would average but a low 5% makes it a \$500.00 per ton ore.

There is exposed a deposit of this for at least 2 miles in length. by 50 feet in height, the depth below the surface is not known but the width is more than a hundred feet.

It is estimated that there are ^{more} than 10 million tons already to mine and concentrate.

Because of our past associations I would like to see you get an interest here and now that this other matter has come up I am offering to make you a quit claim deed to a 1% interest of my 20% interest for the \$75,000.00 in question. Paying \$10,000.00 per year until the \$75,000.00 has been paid.

This will quiet these other parties and

67

HOTEL WILSON



tourist apartments

PARKING LOT NEXT TO BUILDING

HAROLD F. ROBERTS, MGR.

32 EAST SECOND SOUTH



SALT LAKE CITY, UTAH

*make me feel better about both deals and
at the same time provide you with an
interest in the Titaniium.*

*Consider this and before I leave for
Cedar City I will come to your office
before I go any further.*

*Yours truly
Rex Holland*

P-25
97249-A

MORETON, CHRISTENSEN & CHRISTENSEN
ATTORNEYS AT LAW
JUDGE BUILDING
SALT LAKE CITY, UTAH

ARTHUR E. MORETON
E. R. CHRISTENSEN
RAY R. CHRISTENSEN

December 18, 1951

Mr. Rex Holland
Wilson Hotel
Salt Lake City, Utah

Dear Mr. Holland:

I received your letter of the 16th. I was indeed sorry to receive a letter of this character from you. What you say in your letter of course makes no sense at all in view of the many written documents and letters in my files and in the files of Columbia Iron Mining Company.

The enclosed photostats are of three of the many signed documents which are in both my files and the files of the Columbia Iron Mining Company, which indicate the true facts and your full knowledge of the same.

Apparently now, years later, you do not wish to recall the fact that when I entered the picture on the M & H claims you three had an option outstanding to Walt Lunt for the purchase of the entire interest in the mining claims for \$5,000.00, which would have been your full share had I not come into the picture. Apparently you have also forgotten that Bob Arthur claimed a half interest in these claims by location notices of record.

Probably you are not aware of the fact that Dr. Mathesius showed me the letter which you wrote him several weeks before the closing of the transaction on these claims, in which you stated you believed that the M & H claims contained four million tons at 25¢ per ton. This demonstrated your belief and knowledge as to price per ton and also indicated a highly inflated idea of the tonnage. The original of this letter is in the files of the Columbia Iron Mining Company and I have a copy.

It was after that, that you and your co-owners, of an undivided three-fourths interest in these claims made and signed your separate offer and separate transaction with the company for the sale of your three-fourths interest.

Because of my long association and friendship with your father and my friendship with you, I hate to see you put yourself in a position of attempted extortion. As you should know, extortion is a crime in which both the state authorities, the F.B.I. and the postal authorities are interested.

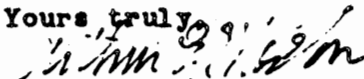
If I hear anything further of this matter as expressed in your letter of October 16th, I shall have no alternative but to

MORETON, CHRISTENSEN & CHRISTENSEN

-2-

turn the matter and your letter over to the proper prosecuting authorities. However, if I hear nothing further from you on this matter, I shall forget that I ever received the letter.

Yours truly,



ARTHUR E. MORETON

AEM:pc

United States Department of Justice

UNITED STATES ATTORNEY

DISTRICT OF UTAH

SALT LAKE CITY 1, UTAH

SMM:BB

January 16, 1952

Mr. Rex Holland
125 South 300 East
Cedar City, Utah

Dear Mr. Holland:

I have your communication dated January 10, 1952 with the enclosures.

I have examined the file rather carefully and it appears that the first question you ask is whether your letter dated December 16, 1951 to a party unknown to me is in violation of a Federal law, as indicated by the letter of said party to you dated December 18, 1951. The answer is definitely "no".

The next question is, I believe, whether the answer of December 18, 1951 to your letter is in violation of a Federal law. I question whether even this is in violation. However, there are phases of this which might justify an investigation. If you wish this pursued and will furnish me the name of the party, I will turn it over to the Postal Inspectors.

As to your question with respect to your civil rights under the agreements; this, of course, is a matter for consultation with a private attorney. I am not quite clear whether you desire to employ me as counsel to advise you in this matter. I would appreciate having you make your wishes known. If you should employ me, I would have to be furnished with further information as to conferences had. I would also have to confer with you at length before answering the very important question as to whether there is "a legal way to have that amount divided among the four owners, as was the intent in the agreement of ownership."

Very truly yours,

Robert M. Matheson
Robert M. Matheson,
United States Attorney

Exhibit P-69
Case No 97299-A

Cedar City, Utah
January 23, 1962

Scott M. Matheson
United States Attorney
Salt Lake City, Utah

Dear Sir:

I wish to acknowledge receipt of your letter of Jan. 16, 1962 in reply to questions I sent you and to thank you for your replies to these questions.

I am going to try again to get this man to make a more equal division of the money received from this sale. This I believe he will do. So I choose that nothing more is done until after I have met with him.

Could you give me an idea of on what terms and conditions you would take the case providing I don't get any satisfaction from him.

Thanking you again for your help in this I remain

Yours truly

125 So. 300 East
Cedar City, Utah

Exhibit P-70
Case No. 77280-1

Salt Lake City, Utah

February 18, 1952

Mr. Rex Holland
125 South 300 East
Cedar City, Utah

Dear Rex:

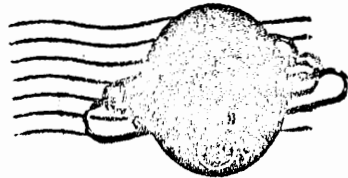
I have your letter of January 23, 1952 in which you state you wish to make another try at solving your problem.

You ask if I could give an idea of the terms on which I might serve you in a legal capacity in connection with these matters. I frankly know so little about the situation that I could not give you an estimate from here. If a situation develops which suggests that you confer with me about the matter, I will be highly pleased to discuss it with you.

Sincerely,

Scott M. Matheson
Scott M. Matheson

Scott M. Matheson
200 Federal Bldg.
Salt Lake City, Utah



Mr. Rex Holland
125 South 300 East
Cedar City, Utah