

1962

Melvin Bradshaw v. J. G. Miller et al : Brief of Respondents

Utah Supreme Court

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In the Supreme Court of the State of Utah

MELVIN BRADSHAW,
Plaintiff and Appellant,

vs.

J. G. MILLER, MRS. J. G.
MILLER, BEAVER CITY
CORPORATION, a Municipal
Corporation; and BEAVER
COUNTY, UTAH, a Political
sub-division of the State of Utah,
Defendants and Respondents.

FILED
SEP 17 1962

Sup. Court, Utah
Case No. 9689.

RESPONDENTS' BRIEF

ON APPEAL FROM THE DISTRICT COURT OF
THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF UTAH, IN AND
FOR BEAVER COUNTY

HON. MAURICE HARDING, *Judge*

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In the Supreme Court of the State of Utah

MELVIN BRADSHAW,

Plaintiff and Appellant,

vs.

J. G. MILLER, et al.,

Defendants and Respondents.

Case No. 9689.

RESPONDENTS' BRIEF

STATEMENT OF THE CASE AND THE ISSUE INVOLVED

The complaint of plaintiff alleges in a very brief manner the following (Tr. 3-4):

(a) That he is the owner and locator of three placer mining claims in Beaver County, Utah, located by him in 1955, and that ever since said date he has performed assessment work on the claims, and has claimed the ground notoriously and openly; that the location notices were recorded and notice of assessment work was recorded;

(b) That because of the recording and location

monuments and notices, the defendants are on notice of his claims;

(c) That the defendant J. G. Miller, without knowledge or consent of plaintiff, "filed over plaintiff's claims";

(d) That Beaver County and Beaver City, with knowledge of the plaintiff's ownership of said claims, with the consent of Miller, and without the knowledge or consent of plaintiff, removed materials from the claims, and that plaintiff is therefore entitled to treble damages.

Answers were filed by all defendants setting forth that the complaint fails to state a cause of action, denying many of the allegations of the complaint, and setting forth numerous affirmative defenses, none of which affirmative defenses present any issues involved in this appeal.

A motion for summary judgment was filed by respondents (Tr. 15-16), supported by an affidavit and exhibits consisting of copies of plaintiff's notices of location as recorded. The affidavit, *uncontroverted*, shows that any lands located either five miles or ten miles westerly from the Manderfield mentioned in plaintiff's location notices are located in Township 28 South, Range 8 West, S.L.M., and are not and could not be located in any other township. (Tr. 17-18).

Respondents' motion for summary judgment was granted and a summary judgment was duly made and entered. (Tr. 44, 50).

Since respondents' motion was granted based upon the pleadings, exhibits and a supporting affidavit, and without any oral testimony, respondents are entirely unable to find anything in the record to support plaintiff's statement of facts (page 2 of plaintiff's brief) to the effect that defendant Miller was told of the deposit by plaintiff or was shown the deposit on the plaintiff's purported claims by associates of plaintiff. There is nothing in the record to show that Miller checked the recorder's office to see whether or not a recording of assessment work had been made. There is nothing in plaintiff's complaint or any pleadings, affidavits or otherwise to suggest any such facts. Concerning the locations claimed to have been made by plaintiff, his complaint fails in every particular to show any valid locations. True, the complaint alleges that claims were "located", which allegation is no more than a mere conclusion, and not one single act is pleaded showing any erection of a discovery monument, or any actual discovery, or posting of a discovery notice, or whether the ground was located or corner-staked, or located by such a reference as would identify it. The complaint fails to state a cause of action. At a later date and prior to the hearing on respondents' motion for a summary judgment, plaintiff filed an amended

complaint (Tr. 26-29), which is as deficient as his original complaint. Upon the hearing on respondents' motion for summary judgment, plaintiff made no request to file an amended complaint properly pleading valid locations, and so far as is shown by the record, has never had prepared and/or filed amended notices of locations properly describing the premises.

Since the summary judgment was granted largely, if not entirely, upon the legal premise that plaintiff did not have any valid locations, and for a proper understanding of the reason for the trial court's ruling granting the motion for summary judgment and the judgment, a copy of the complete location notice of one of the plaintiff's claims, The Sand Man, is set forth, with appropriate differences as shown by the other two location notices:

NOTICE OF LOCATION OF PLACER CLAIM
TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with sections 2329, 2330, 2331, of the Revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground situated in the Granite Mining District, Beaver County, State of Utah, viz.:

About *five* miles westerly from Manderfield and

northwesterly from Black Mountain connecting onto Clain No. 1 on the north side. (*Italics ours*).

Range 8 Township 29 Containing 40 acres

This claim is located upon a valuable deposit, bearing gold, and other precious metals, situated in Unknown District.

This claim shall be known as the SAND MAN, Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided share interest therein.

Located this 28th day of April, 1956.

Names of Locators

Drucilla G. Bradshaw

Melvin Bradshaw
(Tr. 19)

Notice of Sand Man No. 1 placer claim location is on the same form and in the same words as the above quoted Sand Man claim, excepting that the description with reference to some natural object or permanent monument as will identify it is as follows:

About *ten* miles westerly from Manderfield and west of Black Mountain, Range 8 W., Township 29. Containing 40 acres. (Tr. 20)

Notice of Sand Man No. 2 placer claim location is on the same form and in the same words as the above quoted Sand Man claim, excepting that the description with reference to some natural object or permanent monument

as will identify it is as follows:

About *five* miles westerly from Manderfield and north-westerly of Black Mountain. Connects on to Claim No. 1 on north side and east side. Range 8 W. Township 29., containing 40 acres. (Tr. 21)

After a hearing upon the motion for summary judgment the court granted the motion and duly made and entered an order on the motion for summary judgment (Tr. 47-49) setting forth in detail the factual situation, the issues involved and the court's reasons for its holding. Thereupon a summary judgment was made and entered (Tr. 50), "that defendants are entitled as a matter of law to a summary judgment and that plaintiff have and recover nothing by his complaint."

ARGUMENT

POINT I.

PLAINTIFF'S NOTICES OF LOCATION ARE FATALLY DEFECTIVE

Appellant's Point No. 1 states "*the memorandum of decision*" is in error in declaring claims of plaintiff void. * * * * The trial court did prepare and file a written memorandum of decision, but this memorandum is not properly before this court. The designation of record prepared by appellant (Tr.) does not include such memorandum. However, if we consider point No. 1 directed against the order on motion of defendants for

summary judgment, then appellant fails to designate why or in what manner the making of such order is "improper on motion of summary judgment," as stated by plaintiff in his brief.

Actually the issue that was before this Honorable Court is as stated in the trial court's order on the motion for summary judgment (Tr. 48) as follows:

"Does the plaintiff have the ownership and right of possession of the placer claims by reason of having made valid locations thereof."

In the order granting the motion for summary judgment the trial court made this statement which directs attention to the problem involved:

"Substantially, the action in its commencement, involves the validity of the placer mining locations claimed by plaintiff, and if such notices of location are void then plaintiff does not have perfected locations and nothing can be claimed thereunder."

In the order granting respondents' motion for summary judgment the trial court found as follows (Tr. 48):

"The location notices, as recorded in the office of the County Recorder of Beaver County, Utah, set forth that the claims are located in the Granite Mining District of Beaver County, Utah, and presumably in Township 29 South, Range 8 West (no mention is made in the notices of location as to the Base and Meridian). Each claim is for forty acres without any specification as to shape or boundary

lines, and with no reference to any specific section. Two of the claims are stated to be located about 5 miles westerly from Manderfield and northwesterly from Black Mountain, the other claim is stated to be located about ten miles westerly from Manderfield and west of Black Mountain, yet all are stated to join each other in one group. *There is no identification shown by monuments on the ground.*' (Italics ours).

Then the court made the statement: "The Court is unable, under these circumstances to determine within an area several miles square where such locations have been made." (Tr. 48).

The uncontroverted supporting affidavit shows that any lands located either five miles or ten miles westerly from the Manderfield mentioned in plaintiff's notices of location, are located in Township 28 South, Range 8 West, Salt Lake Meridian, and are not and cannot be located in any other township than Township 28 South.

It will be observed that the only reference whatsoever in plaintiff's notices of location as to actual location of the placer claims, in order to identify them, is a statement that they are located about five and ten miles, respectively, from Manderfield and northwesterly from Black Mountain.

It goes without saying that such a reference, and particularly the difference between five and ten miles, covers a huge area of territory.

Each of the notices, as recorded, refer only to Range 8, Township 29. No mention is made of the meridian. No mention is made of whether the range is east or west, or the township north or south. In all fairness we concede that it can properly be held the reference to Granite Mining District of Beaver County, Utah, would put any person on notice that Range 8 would of necessity be west, and Township 29 south of Salt Lake Meridian. However, any specific township and range includes thirty-six sections of 620 acres in each section, or a total of 22,320 acres, which, to say the least, permits a locator a latitude of a very, very considerable acreage in which at a later date to attempt to validate his claims. A person referring to the plaintiff's notices of location, in order to determine what ground was intended and covered thereby, would be required to scout out and inspect over twenty-two thousand acres of land in Township 29, or if he had any reason to believe this was an erroneous township description, he would be required to scout out and inspect over twenty-two thousand acres of land in the adjoining township on the north,- and a similar acreage of adjoining land on the south. Even though a specific section of land was mentioned in the location notices, with a *correct* township and range, a subsequent locator would be required to cruise over six hundred and forty acres to determine what particular forty acres was claimed under the plaintiff's location. Without some legal subdivision of a section being set forth in the location notice, such de-

scription is indefinite, there being sixteen forty-acre tracts in each section. To sufficiently identify a placer claim the legal subdivision should be specified, or at least some attempt should be made to specify the location of the discovery monument and some indication should appear as to whether the forty acres is in a square area, or a rectangular area, in order to provide notice to the world of the location of a claim.

One of the very important necessities for monumenting a claim by corner and/or end stakes, is to prevent a locator at a later date from "floating" his lines and boundaries. In the case at bar the record does not show, either by notices of location, or by plaintiff's complaint, or affidavits, or in any other manner, that plaintiff did comply with *Section 40-1-3, U.C.A. 1953*, which provides:

"Mining claims and mill sites *must* be *distinctly* marked on the ground so that the boundaries thereof can be readily traced."

The trial court found in its order granting the motion for summary judgment (Tr. 48) *that there is no identification shown by monuments on the ground*. Failure to comply with the foregoing section prevents the perfection of a mining location, whether lode or placer, even though the notice of location is sufficient. No complaint is made by appellant to the court's finding above quoted, and it must be conclusively presumed to be correct.

Location notice of Sand Man claim states it is

located about *five* miles westerly from Manderfield and northwesterly from Black Mountain, *connecting onto Claim No. 1 on the north side*. Location notice of Sand Man No. 1 states it is located about *ten* miles westerly from Manderfield and west of Black Mountain. It would be impossible from any notice imparted by the location notices of plaintiff to know whether these claims are located five or ten miles westerly from Manderfield or northwesterly from Black Mountain.

A correct manner of locating a placer claim—in fact the statutory and necessary manner, is to describe the ground by subdivisions. (*See U.S.C.A. Title 30, Sec. 35*). By so doing, the lines and boundaries cannot be “floated” and cannot be changed, excepting in some proper instances, by proper amended location notice. And most certainly, if not designated by legal subdivision, the ground should be staked and the notice of location should contain a metes and bounds description, to show the exterior boundaries. Defendant Miller’s notices of location (Tr. 22-44) show that the claims he located, and which plaintiff now contends conflict with and invade plaintiff’s claims, are located in $N\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Sec. 10; and $S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Sec. 3, Township 28 South, Range 8 West, S.L.M. This location places the claims at least six, and perhaps twelve miles northerly from the plaintiff’s locations in Township 29 South, depending on whether plaintiff’s locations in Township 29 South are in the northerly or southerly portion thereof. With no section

number designated in plaintiff's notices, no one can determine what ground is claimed by him.

It might be sufficient to locate a placer claim by reference to some natural object or permanent monument as will identify it, by referring to a number of miles from Manderfield and from Black Mountain, providing some additional information is given concerning the location, either by reference to a legal subdivision of a section, township and range, or by a tie to a patented claim, or by reference to a discovery monument, and showing the boundaries by reference to corner and/or end stakes. But respondents contend that a reference to an object alone, the location of which could extend over a distance of many miles, is not sufficient. It cannot be presumed that a prospective locator could know whether "Manderfield" refers to a village or town, or some locality many miles in any given direction, or whether "Black Mountain" is a mountain ten or twenty miles in length, and whether the five (or ten miles) referred to in plaintiff's notices commenced from the north, south, east or west portion of the so-called natural objects.

Respondents are fully aware of the fact that courts have long held a punctilious compliance with the exact letter of the law is not necessary to sustain a valid location; and that locators are not held to exactitude or niceties of description in preparing location notices. However, as stated in *Lindley on Mines, 3rd Ed., Sec 381,*

page 903—"the object of any notice at all being to guide the subsequent locator and afford him information as to the extent of the claim of the prior locator; whatever does this fairly and reasonably should be held to be a good notice." Can it be said that the notices of plaintiff do fairly and reasonably guide a subsequent locator and afford him information as to the extent of the claim?

Respondents challenge appellant to find and cite one single case in which descriptions as indefinite and confusing as those set forth in appellant's notices of location have been upheld as sufficient to sustain a valid location.

Appellant cites but few cases to sustain his position. However, none do so. In the case of *Fuller vs Mountain Sculpture*, 6 Utah 2d 385, 314 P2d 842, the factual situation is entirely different than the one in the case at bar. There the placer claims apparently embraced lands confined within a narrow canyon or gulch and which lands embraced topographical abnormalities. Therefore the locator made every studied effort to conform to United States land surveys and to anchor his lines as definitely as possible in order to give notice to the public. He described the ground according to its contours; he described in considerable detail the commencement point upon which the location notice was placed, and described in considerable detail the directions in which the boundaries ran, with a given number of feet between each monument. How different that is from the location no-

tices of appellant, which mentions no sub-division or even a section. It mentions an erroneous township, and makes no mention of whether the acreage is in a square tract or otherwise, and in no manner advises anyone how or where to identify the ground.

This Court, speaking through Justice Crockett, observed that the purpose of the statutory requirements is obviously to mark the locator's claim *as definitely as possible* and give notice thereof to the public. It was held in the Fuller case that because of physical conditions Fullers claim was laid out in a compact and substantially rectangular form and comes as close as possible to conforming to the United States land surveys and true points as is reasonably practicable. Can that be said of plaintiff's claims?

Plaintiff cites as the second case in support of his position *Cranford vs Gibbs*, 123 Utah 447, 269 P2d 870. This case does not sustain plaintiff's position. No mention is made in that case of the descriptions contained in the notices of location and this Court merely ruled upon the sufficiency of the evidence to sustain the trial court's findings. Involved in the Cranford case was an assertion that the original locator had floated his claim several miles from their point of original location to a present and more lucrative location. The question of sufficiency of descriptions in the original notices was not before the Supreme Court. The Cranford case is a classic example

of litigation that could follow from the plaintiff's locations, which are so indefinite in description that plaintiff could float his lines in any direction and miles distant from the present location when and if a more lucrative location could be determined.

Even a casual reading of the cases cited by appellant will convince the reader that the factual situations are entirely different from those in the case at bar, and that these cases have no application to the problem before this Court.

The trial court properly held that plaintiff's notices of location are fatally deficient.

United States Code Annotated, Title 30, Sec. 35, provides:

“Where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands. And where placer claims are upon surveyed lands and conform to the legal subdivisions, no further survey or plat should be required, and all placer mining claims located after the 10th day of May, 1872, shall conform as nearly as practicable with the United States system of public land surveys. * * * ”

It has not been contended by plaintiff that conforming to the legal subdivisions was not practicable, and the notices of location refer to lands that obviously have been previously surveyed by the United States.

Sec. 40-1-2, Utah Code Annotated, 1953, provides as to contents of a notice of location as follows:

“Subdivision 5. If a placer or mill site claim, the number of acres or superficial feet claimed, and such a description of the claim or mill site, located by reference to some natural object or permanent monument, as will identify the claim or mill site.”

The case of *Strickland vs Commercial Mining Co.*, 104 P2d 965 (Ore) is directly in point. It was held:

“It further appears that when this notice was given, the land embraced within the Summit claim had been surveyed by the general government but that the claim, as now laid out, did not conform with the lines of the public survey as required by the act of Congress. The reason assigned by the locator for departing from such direction is that prior locations of other claims and the peculiar conformation of the ground, necessitated the location of the Summit in such a manner * * * * *.” An inspection of the recorded notice imparts no information to interested persons of the definite location of any claim.”

Actually the notice of location in the Strickland case above cited was far more definite than the one in the case at bar.

“The act speaks of making survey for the placer claims conform as nearly as possible with the rectangular subdivisions of the public lands, but under the early practice in the Land Office it was utterly disregarded—so much so as to allow patents to issue in fantastic shape obviously intended to secure the bed of streams or other irregular ad-

vantages. But later, strict compliance was required, the entry being confined to contiguous blocks of not less than ten acres each and a rectangular piece of ground when on unsurveyed land. By a later decision some of the previous holdings were overruled and modified and the ruling now is that where strict conformity is impracticable, it will be sufficient if the ground located by some one or two persons, can be entirely included within a square forty-acre. *Morrison's Mining Rights, 16th Ed, pages 264-5.*"

The case of *Young vs. Papst, 37 P2d 359 (Ore)* illustrates the difference between a totally insufficient notice, and one where it is held that the law does not contemplate that notices should show precise boundaries of placer claims but are sufficient if they contain directions which taken in connection with such boundaries would enable persons of reasonable intelligence to find claims and trace their lines. In this case the notice was held sufficient by a reference to monuments and natural objects. The notice described the ground as follows:

"Beginning at a point 100 feet south of a monument of rock, situated near the junction of Briggs creek and Elkhorn creek, in *Section 24, Township 36 South, Range 9 West*; thence 600 feet in an easterly direction to the SE corner; thence 1320 feet in a northerly direction to the NE corner; thence 660 feet in a westerly direction to the NW corner; thence 1320 feet in a southerly direction to the point of beginning and the SE corner."

The court held the beginning point in the above de-

scription was definite and certain. In the case at bar, no directions are given, no section of land is mentioned, and no statement as to whether the acreage is in a square, or rectangular tract, etc.

It will be observed from *Lindley on Mines, Sec. 448, page 1044, 2nd Vol., 3rd Ed., as follows:* (as to conditions of locations)

- “1. The unit or individual location is 20 acres.
2. That not more than 20 acres may be embraced within one location by an association of persons of which there must be at least eight.
3. That the location, if upon surveyed lands, *must conform as near as practicable to the lines of public survey.*”

Then it is said in *Lindley* (page 1049):

“The land department has held: In this case where the entry of a location described as the W one half of Lot 1”, the same does not conform to the rectangular or legal subdivision of the public land survey of the *section* or township in which said lot is situated. While said Lot 1 is in itself a legal subdivision of said survey the department is not aware of any rule or provision of law whereby the subdivision of said lot into smaller legal subdivisions under the system of public land surveys may be recognized. It is therefore not only necessary that an official survey of the land located and claimed should be made as required for the purpose of proper description and identification in the patent, but such survey appears to be plainly demanded by the statute itself.”

Lindley also makes this observation (page 1049): "Succinctly stated the rules are as follows: The location upon surveyed lands must conform to the subdivisions of the public surveys. Exception to this rule may be permitted where by reason of prior patents or other recognized segregations a tract of vacant land of irregular form is vacant and subject to appropriation."

An early Utah case on the sufficiency of a location notice is that of *Darger vs Le Sieur*, 8 Utah 160, 30 Pac. 363. In that case the notice of location was considerably more definite than the plaintiff's notices in the instant case. The notice in the Darger case described the claim as follows:

"1500 feet in length on this ledge * * * and 300 feet on each side of the center of location and as running 300 feet and west 1200 feet from monument, the ledge being situated up near the head of the right-hand fork of what is known as Tie Canyon and about 5 miles from the Denver and Rio Grande Railroad tracks in Utah County, Utah."

The court held such a notice to be fatally defective and that valid locations could not be claimed under such a notice.

Brown vs Loran 16 Pac 661 (*Ida*) states:

"From these authorities (and many are cited) it is evident that it has become the settled law of the land that Sec. 2324 Rev. St. US must be complied with, to-wit: That all records of mining claims shall contain such a description of the claim located by reference to some natural permanent

monument as will identify the claim. In this case the notice stated the claim was located 'on the north side of Willow Creek'. This portion of the reference is, of course, so indefinite and uncertain that it amounts to no reference at all when taken alone. It is indefinite as the reference of the Mary Belle claim in *Darger vs La Sieur*, 8 Utah 160, 30 Pac 363, which described the claim situated about five miles from the D. & R. G. track, near the head of the right-hand fork of what is known as Tie Canyon."

In every case we have been able to find, and particularly the Utah cases, where a notice was held sufficient as to description and reference to a natural object or permanent monument, the description set forth in the notice of location was far more definite than the plaintiff's notices.

For instance, see *Wells vs. Davis*, 62 Pac 3, 22 Utah 322. *Wilson vs. Triumph Consolidated Min. Co.*, 56 Pac 300, 19 Utah 66. *Bonanza Consolidated Min. Co. vs. Golden Head Min. Co.*, 80 Pac. 736, 29 Utah 159.

POINT II

KNOWLEDGE THAT A PERSON IS IN
POSSESSION OF GROUND WITHOUT A
COMPLIANCE OF THE LAW CONFERS
NO RIGHT AGAINST A SUBSEQUENT
LOCATOR

In his brief, appellant squints at the fact that his

notices of location should be upheld as sufficient, and he is entitled to prevail over defendants, merely because the subsequent locator, Miller, knew that plaintiff was in possession of ground included in the Miller locations. It may be contended in the oral argument presented to this Court that knowledge of possession of ground by one claiming under a notice of location, in effect cures any and all deficiencies, and that a subsequent locator cannot successfully contend that the location is fatally defective. Numerous cases hold that minor deficiencies and irregularities cannot be relied on by one having knowledge of possession by a prior locator, this on the theory that such subsequent locator has not been misled and cannot claim uncertainty by determining what ground is claimed under the notice. Such is not the situation in this case where the notices are clearly and fatally defective by failure to show any adequate descriptions.

Possession alone, confers no right as against a subsequent location, and the fact that a subsequent locator is aware of such possession does not change the rule.

To set the matter at rest we present the following authorities:

The very early case of Hopkins and others vs Noyes and others, 2 Pac. 280 (Mont) which lays down the rule followed consistently since then. It is here stated.

“Possession of a mining claim without compli-

ance with the law and the rules of the mining district, gives no valid title or right of possession and is valueless against a location made and sustained in compliance with the law. In other words, possession without a location carries no title. Possessory titles do not live upon possession alone. They must be supported by proof, a compliance with the law that gives the right to and sustains the possession."

The case of *Sweet vs Webber*, 4 Pac 752 (Colo). provides:

"The provisions of Sec. 2324 of the Revised Statutes requiring the location of a mining claim to be distinctly marked on the ground so that its boundaries may be readily traced, and a record of the claim to be made in manner set forth, are equally applicable to placer and lode locations. In the language of Chief Justice Waite in *Belk vs. Meagher*, 104 U.S. 284, it is said: 'The right to possession comes only from a valid location; consequently, if there is no location, there can be no possession under it. Location does not necessarily follow from possession, but possession from location. A location is not made by taking possession alone.'"

Copper Globe Min. Co. vs Allman, 23 Utah 410, 64 Pac. 1019, holds:

"A mining location is not perfected until all of the essential statutory requirements are performed. A locator of a mining claim only acquires exclusive right to the possession of the claim when all of the necessary requirements of a location are observed; and, if he neglects to perform any necessary requirements within the time prescribed by statute

his attempted location is of no avail as against an intervening location peaceably and regularly made and covering the same ground, altho he shall have performed the neglected requirements after the inception of the second location."

See also Wilson vs Triumph Con. Mng. Co. 19 Utah 66, 56 Pac 300; *Oliver vs. Berg, et al.*, 58 P2d 245, at page 256 (*Ore*) holds:

"But as we have heretofore shown, the mere occupancy of unpatented mining ground and even work being done thereon by the one in possession, in the absence of a previous location of the ground is not sufficient to prevent its relocation by a qualified locator provided that the location is made peaceably and without force."

"The peaceable adverse entry by the locator, coupled with the perfection of his location, operates in law as an ouster of the prior occupant. *Lindley on Mines, 3rd Ed., Sec. 219, pages 491-2.*"

CONCLUSION

Clearly, where the notices of location as shown by the records, covering purported placer claims claimed by plaintiff, do not comply with the statutory requirements and are clearly insufficient to sustain a valid location, a summary judgment in favor of defendants is properly made and entered. Rule 56(d) Utah Rules of Civil Procedure provides for such procedure.

The rule is intended to promote the expeditious dis-

position of cases and avoid unnecessary trials, where no genuine issues of fact are raised; and to enable the court to give judgment on the issues of law where no disputed issues of fact are found.

The summary judgment should be sustained.

Respectfully submitted,

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