

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.  
(In Three Volumes.)

---

THE PACIFIC COAL AND TRANSPORTA-  
TION COMPANY, a Corporation, and M. D.  
McCUMBER,

Appellants,

VS.

PIONEER MINING COMPANY, a Corporation,

Appellee.

---

VOLUME III.

(Pages 545 to 799, Inclusive.)

---

Upon Appeal from the United States District Court for  
the District of Alaska, Second Division.

---

FILED

SEP 18 1912



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

Transcript of Record.

*(In Three Volumes.)*

---

THE PACIFIC COAL AND TRANSPORTA-  
TION COMPANY, a Corporation, and M. D.  
McCUMBER,

Appellants,

VS.

PIONEER MINING COMPANY, a Corporation,

Appellee.

---

VOLUME III.

*(Pages 545 to 799, Inclusive.)*

---

Upon Appeal from the United States District Court for  
the District of Alaska, Second Division.

---



(Testimony of Francis M. Warsing.)

Q. All right, you were out there with Billy Brittner, in September, 1903, near this ground, will you swear that you were?     A. No, I will not.

Q. Will you swear that you were out there with Billy Brittner in the month of September, in the neighborhood of this ground on the fraction, in the month of October, I mean?

A. No, I would not, I might be mistaken. (Continuing:) I never saw Stevenson or any men for the Pioneer Mining Company working on this ground in September, 1903, that is all I can say. I am pretty familiar with the Grant claim. I did not know the Gadd brothers. I did not see them working on the ground in 1902 in the summer and fall. I was around the claim in the late summer of 1902. We started to work there early in [317] the fall of 1902. I did not see anybody working there in the fall of 1902 that I didn't know. It is possible that I might have seen them but I don't think so. I have heard of the Anvil Tundra Mining Co. I don't know Mr. Gadd, its manager.

I have no interest in the Grant claim. I did have occasion to watch that claim specially. Captain Hill was of that nature that he wanted to pry into everybody's business around. I was not inquisitive but I was paid for prying into everybody's business during the prospecting in that vicinity. There was no actual mining carried on at that time on the Grant claim because there never was anything found.

(Testimony of Francis M. Warsing.)

Redirect Examination.

(By Mr. GILMORE.)

By saying that nothing was ever found, I meant what you would call good pay in quantities. The going rate of wages at that time was \$3.00 a day and board. Board was worth \$1.50 per day. I would estimate the work done on the ground in controversy, between February, 1902, and the spring of 1905, estimating the labor of all men I saw working there at the going rate of wages to be about \$2500.00.

Mr. GILMORE.—I now offer in evidence a general power of attorney from the defendant Pacific Coal & Transportation Company to Captain West, bearing date the 7th day of July, 1903, executed by the corporation, with its corporate seal, duly acknowledged and certified.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 32. [318]

Mr. GILMORE.—I now offer in evidence a certified copy of a written lease from the defendant Pacific Coal & Transportation Company, to W. A. Hopkins and John Belvail, bearing date the 2d day of September, 1903, of the Grant claim, covering the ground in controversy executed on his behalf by Captain West, attorney in fact.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 33.

Mr. GILMORE.—We now offer in evidence a certified copy of an agreement bearing date October 20, 1904, between J. C. Muther and W. A. Hopkins, with John Rieck, pertaining to the Grant claim and

covering the ground in controversy.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 34. [319]

**[Testimony of Nicholas R. Barge, for Defendants.]**

NICHOLAS R. BARGE, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Nicholas R. Barge; I am a miner and have been mining in the Nome vicinity since 1899. I am acquainted with a certain claim in the Nome district known as No. 1 Bench or Grant claim, near Moonlight Springs. I first knew that claim in 1901 or 2. I mined in that vicinity on No. 4 and 5 Below on Anvil and No. 5 Cooper. No. 5 Cooper is a little less than a mile to the east of the Grant claim. We hauled water over there to our camp for two winters from Moonlight Springs. Part of the time I worked for myself on a lease and part of the time I worked for a man by the name of Peters. In the latter part of the summer or in the fall of 1901, I observed some men working on the Grant claim within the boundaries of the Grant claim. I assisted Surveyor Dan Jones in chaining at the time he surveyed the Grant claim during this month. I know where the boundaries of the Grant claim are on the ground to-day. I could not say positively that I was familiar with its boundaries before that. The men that I saw working on the Grant claim in the fall of 1901, were working about one hundred or one hun-

(Testimony of Nicholas R. Barge.)

dred and fifty feet, I should say, to the eastward of the southwest end of the Grant claim. From the surveying we did there this month I became familiar with the boundaries of the conflict area in this lawsuit. Those men that I observed in the summer or fall of 1901, were, I believe, working within the ground in conflict. I was upon the Grant claim in the fall of 1902. I know Mr. Howard and Mr. Doverspike. In 1902, I saw men working on the southwest end of the Grant claim, practically in the same place that the men were working [320] in the fall of 1901. During the winter of 1903 I was upon the Grant claim lots of times. Men were engaged in mining in that part of the Grant claim at that time. They had a windlass and were taking out a dump. Their work was visible to anyone passing along the surface towards Moonlight Springs. I knew Messrs. J. C. Muther and W. H. Bard. I observed them working on the Grant claim. I knew the men that were working for them. I remember one, his name was Emil Prosteeon, or something like that. Muther and Bard had cabins on the Grant claim. I saw them in 1904. The cabins were a little northeast, about four hundred feet, I guess, from the southwestern corner of the claim and on the ground in controversy. The cabins stood just off to the eastward toward the railroad track.

Q. Now, describe to the Court, will you, the buildings that were on the claim in the year 1904, as fully as you can recall them?

A. There were two small buildings, one of them



(Testimony of Nicholas R. Barge.)

painted white or a very light building anyway. (Continuing:) They were doing work there at the time, sinking shafts and taking out a little dump. In 1904 and 5 there was a dump there that was very close to the line, as I remember it now; I would not say exactly. I was familiar with the Grant claim in 1905. At that time I arranged with my partner who was going out on the same boat, to get a lease from the owner outside; he told me to go back on the ground. We had some papers drawn up. In 1905 I made an investigation of the Grant claim with a view to getting a lease on it. I thought there might be a paystreak and I wanted a lease on the ground.

I have no interest whatever in the case. [321]

Cross-examination.

(By Mr. COCHRAN.)

I did not say I was very familiar with the boundaries. We were on No. 2 East Fork surveying around that vicinity for two days. The lower dam was on No. 2 East Fork. It was very close to the line. The railroad wasn't put through there on that claim in 1902. [322]

[**Testimony of Charles Olsen, for Defendants.**]

CHARLES OLSEN, a witness for defendants.

Direct Examination by Mr. GILMORE.

My name is Charles Olsen. I live at the present time out on Anvil Creek opposite No. 5, about six hundred feet to the north of Banner Station. I am a claim owner in that vicinity and have been interested in my claim off and on since 1901. I am mining at

(Testimony of Charles Olsen.)

the present time. I know the Grant claim in the vicinity of Moonlight Springs. I first saw that claim in 1899. I was across the claim at that time. I observed the initial stake, in September, 1899. As near as I can recall, the initial stake was about three hundred feet east of the railroad track, where the railroad track first was placed. The railroad track was in that locality running in from Anvil Creek along discovery claim, running east of the boundary line of Discovery claim. I was on the Grant claim in 1900. I passed by there several times. I was in the locality of the initial stake of the Grant claim in 1900. I know where the Grant claim is marked to-day in that locality. In September, 1900, there were three men there at the time I passed. Two of the men seemed to be working and one looking on. I know a man by the name of Kingsbury, I knew him in Nome at that time. He was with the Corwin Coal Company. He was one of the men that I saw on the claim that day. I observe a map, Defendants' Exhibit 11, on the wall. I do not know what portion of the Grant claim is now in controversy in this lawsuit.

Q. Do you know where the railroad track crosses the Grant claim?      A. Now?

Q. Yes.      A. Yes, sir. [323]

Q. Do you know where the red cabin is where Captain Smith lives?

A. Yes. (Continuing:) I was in that cabin about ten days ago. I can point out on the map about where I saw the men at work in 1900. It was about

(Testimony of Charles Olsen.)

here between the figure 1 and the letter G in the word Grant on the map, Defendants' Exhibit 11. I know Hopkins was working on the Grant claim in 1903 with Muther. I didn't see Muther working but I saw him on the ground. Muther lived in a cabin standing about twenty feet east of the railroad track, where the railroad now stands. I knew him personally. I spoke to him on the ground out there several times. I did not see him mining; I saw him out there panning. There were two cabins connected there. There is one cabin there now. I don't know what became of Muther and Bard's cabins. I have no interest in the lawsuit.

Q. When you were on the claim about ten days ago, was Capt. Smith living there in a cabin?

A. Yes.

Cross-examination.

(By Mr. COCHRAN.)

I live about six hundred feet north of the Banner Station. I have lived there off and on since 1901. I have owned a claim there since 1900. I staked it. I have no conflict with the plaintiff, Pioneer Mining Company, over my ground. The reason I went across there in September, 1899, was a person by the name of Brown had a claim on Penny River. We passed up there when we went to Penny River, every time we went up. I don't own any ground there. There was a trail; the trail ran by the Grant claim, that is, everybody passed there. We crossed there first on Glacier and then on Boulder. I did [324] not own any ground over there in 1899. I don't own

(Testimony of Charles Olsen.)

any claims in the vicinity of Moonlight Springs, never made any locations there. I did know something about the ground in that vicinity in 1899. I was over it several times. I was in the employ of a man on Anvil, a man named Graham. I went with him and we saw the stakes there. I saw the Grant stakes in 1899. The initial stake was marked "Grant" claim, that was all I could see.

Q. And you just saw one stake?

A. That is all we took notice of.

Q. And that lay pretty near north of Moonlight Springs? A. No, about northeast.

Q. Northeast of Moonlight Springs?

A. Yes. (Continuing:) I said it lay about three or four hundred feet east of the railroad track, where the railroad track was in 1900. There was no railroad track there in 1899.

Q. Now, did you just see the word "Grant" written on the stake? A. Yes.

Q. That is all you ever saw on the stake?

A. Grant claim; yes.

Q. Just Grant claim? A. Yes.

Q. Was that written on there with a pencil?

A. Yes, with a lead pencil.

Q. What kind of a stake was it?

A. A willow, about two inches in diameter.

Q. How did you know that was the initial stake?

A. It must be because there was the name of the Grant claim.

Q. You just guessed at that?

A. No, I didn't guess it; the other party saw it.

(Testimony of Charles Olsen.)

We inspected [325] the Oakland Bench that stood there. (Continuing:) We just inspected the stakes that were there. There was nothing else on the stake that indicated that it was the initial stake except the name Grant claim. We were trying to locate some property. We saw lots of stakes out there. No, I do not mean to tell the Court that I remember all the stakes I saw. I remember this stake because in 1899 Brown and I went over there. We went to the springs and he looked at the stakes then and he says, "That stake is named after a great man." I never saw that map on the wall before I came here, nor one like it. I saw Kingsbury, he was one of the three men that was there, he was the one standing looking at the two that were working. At the time I was there I was going across over to Penny River. I saw lots of people working out in that vicinity but not the Pioneer. The Pioneer were working all along Anvil Creek. I did not see several men working around there, around Moonlight Springs. I knew Mr. Kingsbury then, had met him in town. I have been mining lately.

Q. Have you been convicted of misdemeanors here in Nome several times?     A. I have three times.

Recross-examination.

(By Mr. GILMORE.)

Q. These crimes were supposed to be the giving of liquor to natives?     A. Yes, sir.

Q. Were you ever convicted of any other crime than the three you have spoken of?

A. No, I was accused of things but I am not guilty.

(Testimony of Charles Olsen.)

Q. Were you ever accused of any crime affecting your truthfulness?     A. No. [326]

**Testimony of Sidney Moore, for Defendants.**

Direct Examination.

(By Mr. GILMORE.)

My name is Sidney Moore. I am employed by W. J. Rowe, teaming. I first came to the Nome district in 1901. I have been engaged since that time in mining and teaming most of the time. I know the Grant claim; I also know the Napa near Moonlight Springs. I first got acquainted with the Napa claim in September, 1902. I worked on the Napa claim. I had a lay there from A. G. Kingsbury. I was engaged in mining on the Napa in 1902 under that lease, with A. G. Applegath. Applegath is now in Portland, Oregon. I recall Arthur Gibson surveying the Napa and Grant claims out there on or about the 30th of September, 1902. Mr. Applegath and I were on the ground at the time Mr. Gibson made the survey.

Mr. Applegath and I acted as chain men for Gibson. We erected the stakes and carried the chain. I cannot say that I know a man by the name of C. L. Spanggard. Mr. Kingsbury, Applegath and myself and one other man were present with Gibson at the time of the survey. I wouldn't want to say just how long the other man stayed there with us. I think he was there most of the time in that vicinity while we were surveying the ground, the Grant and Napa claims. My recollection is that he didn't have anything to do with the chaining or assisting the surveyor. I visited the Grant claim at Mr. Gilmore's

(Testimony of Sidney Moore.)

request to observe the corners, about two weeks ago. I was accompanied by Dan Jones, the surveyor, at the time I went to the corners of the Grant claim.

Q. Where did you find the marks at the time you surveyed with Mr. Gibson, with reference to where you found them [327] when you were out there with Mr. Jones, two weeks ago?

A. I should judge in the same place.

Q. At the time you were out there in September 30, 1902, state whether or not the Grant claim was well marked.

A. It was. (Continuing:) It was marked with five stakes. In surveying the claim we did not put any stakes down, we just surveyed the stakes that were up. On the Napa we put stakes down, I remember that. In 1902 and 3 we lived a little ways below, just below the break in the hill there a little south of the Grant claim.

I knew C. T. Howard and George Doverspike and Fred Williams, but I did not know Schue. Williams and Howard and Doverspike lived in a cabin on No. 2 East Fork Moonlight, in the winter of 1902 and 3. I observed those gentlemen working on the Grant claim in 1902 and 3 on the southwest portion. They were engaged in sinking some shafts and doing rock-ing in the hole. I was acquainted with Mr. Kings-bury, I had a lease from him in 1902 on the Napa. My home in 1902, in Nome, was below the Standard Oil, adjoining the property of the Pacific Coal & Transportation Co. that Mr. Kingsbury had charge of.

(Testimony of Sidney Moore.)

I have no interest whatever in the result of this lawsuit.

No cross-examination. [328]

**Testimony of Ai Brown, for Defendants.**

AI BROWN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Ai Brown; my business is mining. I have mined most of the time since 1901 in the vicinity of the Grant claim. I am acquainted with the ground in the vicinity of Moonlight Springs. I first got acquainted with the ground out in that vicinity in the summer of 1904. I know the biggest part of the Grant claim. I was out in that vicinity in the spring of 1905. I know a man by the name of J. C. Muther. He was mining on the west end of the Grant claim in 1905. I indicate on Defendants' map, Exhibit 11, by the figures "69" with a circle around it, where I saw Muther working in the spring of 1905. He was working there in the month of April. During that time I was living in a cabin on No. 2 East Fork, Moonlight, owned by the Caribou Mining Co. in charge of Roland Sutherland. Roland Sutherland was living in the cabin with me. Muther was engaged in sinking shafts and stoping out. The work they were doing at that time was open and visible to anyone crossing the claim in that vicinity. The work that Muther and his men were doing was plainly visible to us from where we were living on



(Testimony of Ai Brown.)

No. 2 East Fork Moonlight. We were up about five or six hundred feet away from where they were working. I performed work myself in 1905 on the Grant claim for Muther and Bard. I worked about twenty-five or twenty-six days, the last of March or first of April. I sank two shafts and worked under ground stoping out the running drifts. I know now where the ground in controversy in this lawsuit is situated. The work done by Mr. Muther and Mr. Bard in 1905, was within the conflict area, or ground in controversy, and the work done by Mr. Muther was within [329] the ground in conflict. Mr. Muther and his men lived, in 1905, in a cabin just east of the railroad track, where the railroad track now is. The cabin is about twenty-five or thirty feet somewhere around there, east of the track. There were two cabins there. The cabins were visible from our cabin on No. 2 East Fork. There was a small dam right close to the cabins. I don't know who built that dam of my own knowledge.

Q. During the time you worked there in the month of March and April, 1905, did the Pioneer Mining Company or anyone, on its behalf, make any claim, while you were working there, that they claimed the ground you were working on?

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I know Oscar Margraf

(Testimony of Ai Brown.)

and John Rieck. I observed them working on a portion of the Grant claim in 1904. They were sinking shafts and running a tunnel. I was in the tunnel they were working in once. I don't remember the date. The tunnel was about four feet wide and possibly four feet high, and about 65 or 70 feet long.

I knew a claim out there in 1904 called the Jerome Fraction. It joined the west end of No. 2 East Fork and lay southwest of the Lyng claim, and Grant claim. During the years 1905 and 6, I observed someone working on the Jerome Fraction. They were strangers to me and I did not know them. I was out there in the fall of 1905 and spring of 1906, in that vicinity. In the fall of 1905 there were some Russians working out there. I don't know the exact length of time they continued to work [330] on the Grant claim. They were sinking shafts when I saw them. They were quite close to where Muther was working. I knew one of them, I don't know his last name, his first name is George. He is now here in the courtroom.

I have no interest whatever in this lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

I was living on No. 2 East Fork Moonlight. I had a lease from Roland Sutherland at that time on the claim, and I worked there under my lease. There was no one else working there upon the claim at that time that I recall. In the year 1904 and 5 there was no one else in possession while I was there. I could

(Testimony of Ai Brown.)

not state the number of feet of conflict between No. 2 East Fork and the Grant claim. There was one cabin on the Grant claim when I first went out there. I don't know who put it there. There was one cabin on the Grant claim and one on the Caribou claim. The Grant cabin was on the west end. It was on the ground in controversy, on the Grant claim. I was familiar with the stakes of No. 2 East Fork or Caribou claim at that time. They were the stakes that I was interested in. I didn't pay any attention to the marks of the other claims. I worked for Muther about 25 days on the Grant claim.

Redirect Examination.

(By Mr. GILMORE.)

Q. Will you please step to this exhibit, Defendants' Exhibit 11, and point out as near as you can where the cabin was on the ground when you first went out to the Grant claim in that locality, show about where it was when you first went out?

A. In here (indicating). [331]

Q. Now, if the ground in controversy is marked by the dotted line up to points 8 and 9, state whether or not that cabin you first observed when you went to the Grant claim was within the ground in controversy. A. Yes, sir. [332]

**Testimony of Everett Sutherland, for Defendants.**

EVERETT SUTHERLAND, a witness on behalf of defendants, being first duly sworn, testified as follows:

## Direct Examination.

(By Mr. GILMORE.)

My name is Everett Sutherland. My business is prospecting and mining. I have lived in the Nome District since 1902, engaged in mining and prospecting since that time. I am acquainted with the claims in the vicinity of Moonlight Springs. I got acquainted out in that vicinity in the fall of 1904 at that time. I lived on No. 2 East Fork Moonlight, in the Caribou cabin. Roland Sutherland was the superintendent in charge of the Caribou Mining Company. He is my cousin. I lived in a cabin with Mr. Ai Brown and Mr. Hall. We lived in plain sight of the Grant claim, I should say two or three hundred feet from the Grant claim. In the winter of 1904 and spring of 1905, I observed men working on the Grant claim. Mr. Bard and Mr. Muther, Margraf and Rieck. I could not say how big a crew they had. I wasn't there when they started taking out their dump. They were prospecting when I observed them, sinking shafts and running drifts. I was personally acquainted with Rieck and Margraf. I knew a claim out there at that time called the Jerome Fraction. It joined the No. 2 East Fork or Caribou claim on the west. It lay a little southwest of the Grant claim as near as I can remember.

Mr. GILMORE.—If the Court please, I offer in evidence certified copy of the notice of location.

The COURT.—It may be received in evidence and marked Defendants' Exhibit "35"; said exhibit being as follows: [333]

**Defendants' Exhibit No. 35.**

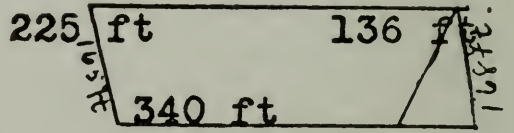
#14558.

**NOTICE OF LOCATION—PLACER CLAIM.**

Notice is hereby given, that I, the undersigned, a citizen of the United States of America, having complied with the requirements of the Revised Statutes of the United States and all local customs, rules and regulations, and having on this 1st day of January 1902, discovered gold within the limits of the ground hereinafter described claim by virtue of said discovery and location as placer mining ground the following described premises, situate, lying and being in the District of Alaska, in the Cape Nome Mining District on what is known to me as East Fork Moonlight Creek, a tributary of Anvil Creek, the said mining claim being and lying within the following described lines to wit, Beginning at my initial stake or place of beginning where the original copy of this notice is posted which stake is situated at the eastern boundary of end of the said claim, and as follows with reference to the natural objects or permanent monuments viz: and running from said initial stake in an northerly direction 225 feet, to a stake marked No. 2 being N. E. corner number one, thence at right angles, in an westerly direction 165 feet, more or less, to a stake marked No. 3, being N. W. corner number two, thence at right angles in an southerly direction

340 feet more or less to a stake marked No. 4 being S. W. corner number 3, thence at right angles in an easterly direction 168 feet more or less to a stake marked No. 5 being S. E. corner number 4, thence at right angles in an northerly direction 136 feet more or less to the initial stake or place of beginning.

a fraction



as per diagram.

Bounded on east No. 2 East fork Moonlight on the North by the Grant claim. west " 1 " South " Winter Fraction.

[334]

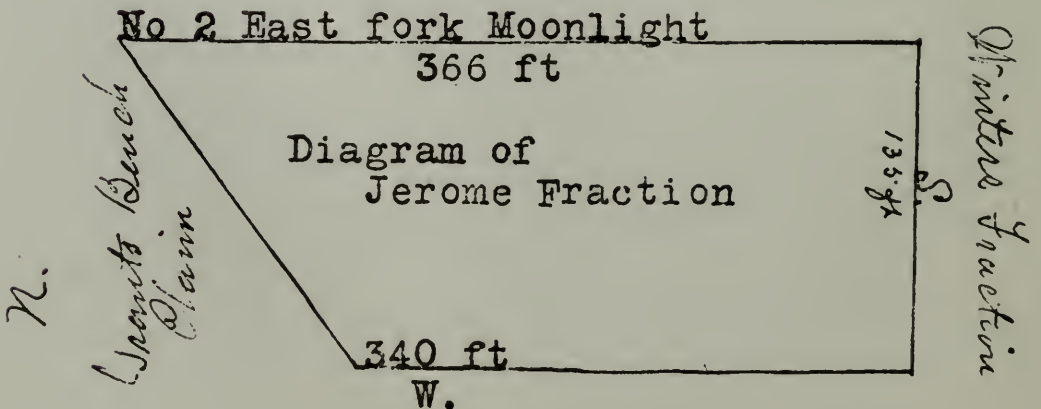
The area within the said lines being in shape, and in extent less than twenty acres my intent and purpose being to locate and claim the above described property of the aforesaid East Fork Moonlight Creek for mining purposes, more particularly described per marginal notes— This claim shall be known as *The Jerome Fraction Placer Mining Claim on East Fork Moonlight Creek* Located the first day of January, 1902.

GEORGE CRAWFORD,  
G. O. REILLY,  
Locators.

Witnesses:

W. D. SHUE.  
FRED WILLIAMS.

-E-



No. 1 E. fork Moonlight.

Above figures are more or less.

Filed for record 11:50 A. M., March 29, 1902.

Request of Fred Williams.

T. M. REED,  
Recorder.  
W. W. Sale,  
Deputy.

(Recorded in Vol. 103, page 394.) [335]

Mr. GILMORE.—I have here an amended location notice of the Jerome Fraction, bearing date May 31, 1902, by the same locators, giving a survey description of the Jerome Fraction and I ask leave of the Court to have it marked for identification for further reference.

The COURT.—It may be marked Defendants' Exhibit 36 for Identification; said exhibit being as follows:

**[Defendants' Exhibit No. 36.]**

“ #14936.

**AMENDED LOCATION NOTICE.**

We the undersigned, do hereby amend our original location notice of placer claim known as the 'Jerome Fraction' on the East Fork of Moonlight Creek, Cape Nome Recording District, Alaska, according to survey of said claim.

Commencing at stake No. 1, which is identical with the initial stake of placer claim No. 2 on East Fork of Moonlight Creek thence N. 27° E.—249.4 ft. to stake No. 2; thence S. 77° 50 W.—305.6 ft. to stake No. 3; thence N. 89° 32' W.—626.3 ft. to stake No. 4; thence

(Testimony of Everett Sutherland.)

S. 63° E.—791.2 ft. to stake No. 5; thence N. 28° 32' E. 223.8 ft. to stake No. 1 or place of beginning containing 3.86 acres. Magnetic variation 19° 40' E. This claim is bounded towards the east by 'No. 2 on East Fork of Moonlight Creek,' towards the north by 'Grants Claim' and 'Reparia' also known as 'No. 1 Moonlight Creek' and towards the South by 'Winters Fraction.'

Nome, Alaska, May 31st, 1902.

GEORGE CRAWFORD,  
TOM O'REILLY.

Filed for record 11.08 A. M., June 3, 1902. Request of T. O'Reilly.

T. M. REED,  
Recorder.  
E. Whittard,  
Deputy.

(Recorded in Vol. 105, page 128.)" [336]

Cross-examination.

(By Mr. COCHRAN.)

I saw those parties doing some prospecting over there on the Grant claim. I was there all winter up until March, I think, March, 1905. They were not prospecting during March. Margraf left sometime the first of the year and went down to Little Creek. Muther and Bard were there all winter. Hopkins left there sometime about the first of the year, but Muther was there all winter. Muther was prospecting himself.



(Testimony of Everett Sutherland.)

Redirect Examination.

(By Mr. GILMORE.)

Q. Mr. Sutherland during all of the time that you were out there, the times you have testified, did you ever hear or know of a claim called Bench No. 1 Moonlight?      A. No, I did not.

Recross-examination.

(By Mr. COCHRAN.)

Q. Did you have any reason to know or hear of it?

A. No, I did not. [337]

**Testimony of George Konchenka, for Defendants.**

GEORGE KNOCHENKA, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is George Konchenka. My business is mining. I have been mining around Nome since 1903. I know where the Grant claim is. I got acquainted with the Grant claim in 1905. I worked on the Grant claim for Bard and Muther. I started to work in January, 1905, working down in a drift with a pick and shovel. Working for wages. Sometimes they had five men and sometimes more, more times seven men at work. John was the name of the boss, I don't know his last name. Men were working in two places on the ground, working in shafts. In one place they were working down in a shaft hoisting up dirt to make a tunnel. I worked a couple of days on the tunnel. The shafts were about sixteen or seventeen feet deep. They took out dumps that

(Testimony of George Konchenka.)

year. I don't know the size of the dump; they were hoisting all winter.

Q. Now, did some more Russian boys work there during the winter of 1905?

A. Yes. (Continuing:) I worked with them that winter. I worked something like about three months. I started sometime in October or September and worked until after Christmas. In January I sold out.

Q. What were the Russian boys doing there, did they have a lease? A. Yes.

Q. From whom?

A. From Bard and Muther. [338]

Q. How many of the Russian boys besides you?

A. Two besides me.

Q. How many men were there working, do you know? A. Yes, four men were working.

Q. You had one extra man?

A. Yes. (Continuing:) In the winter of 1905 I was prospecting and found just a little pay, not very much. We took out a small dump. I sold out in January, 1905. That winter we lived in two small cabins close to the railroad. They were those cabins that Bard and Muther used while they worked there. After I sold out I returned later on to the claim, in the spring-time. The other Russian boys continued to work after I left, prospecting, and did some other work. They worked a couple of months after I sold out. In the summer of 1906 they sluiced that small dump, sometime in the spring or summer. I was working at that time over on Dexter.

(Testimony of George Konchenka.)

Q. Where are those Russian boys now that worked there sluicing in 1906, if you know?

A. One is dead and the other has gone to Siberia. (Continuing:) When I was working for Bard and Muther for wages I worked on the dam and the tunnel. I helped fix up the dam, helped build it. Some of the other men were working down in the shaft.

I know where the ground in controversy in this lawsuit is. The place where I worked for Bard and Muther is indicated on Defendants' map, Exhibit 11, by the figures 69 with a circle around them. The Russian boys with myself, after we got our lease in the fall of 1905, worked a little bit further up towards the point 1 some place. We had a lease for three men, and we had one extra man working, four altogether. We did some prospecting and sinking holes and hoisting pay-dirt. We [339] found one place of good pay. The wages that winter were \$3.00 a day and board. Board was valued that winter at \$2.00 or \$2.50 per day.

I know Mr. Stevenson and Charlie Johnson of the Pioneer Mining Company.

Q. Did anybody connected with the Pioneer ever claim that ground where you Russian boys were working at that time?

A. No. (Continuing:) I heard of a claim called Bench No. 1 Moonlight while I was working out there. I just heard of it, I don't remember who I heard it from.

I have no interest in this lawsuit.

(Testimony of George Konchenka.)

Cross-examination.

(By Mr. COCHRAN.)

The first time I was out there was when I was working for wages in 1905 and while I was working there I heard of Bench No. 1. I don't know who it belonged to. Just when I worked there I heard it. I don't know that the Pioneer Mining Company claims the ground. I knew Bard and Muther; I don't know who the ground belonged to. [340]

**Testimony of August Carlson, for Defendants.**

AUGUST CARLSON, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is August Carlson and my business is mining. I have been a miner around Nome since the spring of 1899. I am acquainted with part of the Grant claim out around Moonlight. I first knew it in the winter of 1905. I was hired to go to work there somewhere about the middle of February, 1905. I was employed by W. H. Bard. I worked about a month, maybe a little more. We were sinking shafts, making tunnels and stoping.

Q. About how many dumps did you take out Mr. Carlson?

A. Three. (Continuing:) Two small ones and one good sized one. It was all pay gravel in all three of the dumps. They had nine men employed at the time while I worked there, including Mr. Muther. We lived in the cabins on the other side, east of the railroad track. I know the portion of the ground in controversy as shown on the map. We sunk three

(Testimony of August Carlson.)

shafts. One shaft here, near figure 66 and somewhere up here, three shafts we sunk. It was within the ground now in controversy. I know of a tunnel that was constructed out there at that time. I did not work in the tunnel but I was in the tunnel. I was in the tunnel about twenty or twenty-five feet. That was as far as I have ever seen it. I was over the Grant claim this fall.

I have no interest in the result of the lawsuit.

Mr. COCHRAN.—No cross-examination. [341]

**Testimony of Isaac J. Kortright, for Defendants.**

ISAAC J. KORTRIGHT, a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Isaac J. Kortright. I have been a miner since I have been in this country. I have experience in operating drills. I know a claim called the Grant claim in the vicinity of Moonlight Springs. I knew Captain Sperry very well. I think the first year I got acquainted with him was in the spring of 1907. He represented some company in Nome but I can't tell you the name of the company. He was working on the Grant claim.

Mr. GILMORE.—At this time I offer a certified copy of a general power of attorney from the defendant Pacific Coal & Transportation Company to Eugene Sperry, bearing date the 5th day of May, 1905.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 37.

(Witness continuing:) That is the same Sperry

(Testimony of Isaac J. Kortright.)

who had charge of the Grant claim. He was known as Captain Sperry.

Q. Do you know where Capt. Sperry is, Mr. Kortright?

A. No, only from hearsay. I have heard he was dead.

Q. Do you know where he died, did you ever hear?

A. On the coast of California some place, I don't know exactly where.

Q. He was drowned? A. Yes.

Q. Now, Mr. Kortright, did you ever do any work on that Grant claim for Captain Sperry, or anyone else?

A. I did the work, what I did I did for Red Wood, we called him Redwood. [342]

Q. He was drilling for Captain Sperry at the time?

A. He was drilling for Captain Sperry at the time. (Continuing:) Captain Sperry was there with us every day, doing the panning. Redwood was a nickname. I don't know his other name and I don't recall how long I worked there in the spring of 1907. It was after the break-up. I assisted Mr. Red Wood in removing the drill from the premises at that time, about the time of the break-up. I don't know now how long Mr. Wood had been drilling on the Grant claim.

Cross-examination.

(By Mr. COCHRAN.)

I worked on the Grant claim myself, four or five days, probably. It was something like 150 or 200 feet

(Testimony of Isaac J. Kortright.)

above the lower ditch as I called it at that time, where we worked at that time. There might be other ditches there; it was up on the first terrace. It was up on the first rise, raised ground. It wasn't so very far from the railroad. I saw Captain Aansen drilling there afterwards, but as to how much he drilled I don't know. That was in the spring of 1907. The drill belonged to a man that we called Redwood. In the spring of 1907, sometime, we took the drill down to Hastings.

Redirect Examination.

(By Mr. GILMORE.)

Captain Aansen was using another drill. The hole that was drilled while I was working there, was something like 60 feet in depth. I recall it was on the first plateau or bench. I don't recall that I was out in that vicinity after June, 1907. [343]

**Testimony of Albert Hartman, for Defendants.**

ALBERT HARTMAN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Albert Hartman. I reside in Nome and have lived in Nome and vicinity for six years. I know the Grant claim. I first knew it in 1907. I worked on the Grant claim for Louis Woods. He was working for Captain Sperry, drilling. I worked there two days. Mr. Wood had been drilling on the Grant claim prior to the time I went there, I don't know how long. There was no other drill there the

(Testimony of Albert Hartman.)

days that I worked there. I worked there the latter part of May, I don't remember the exact date. I was not working for Wood at the time Captain Aansen and Johnson were working on the east end with a drill.

I have no interest whatever in this lawsuit.

Mr. COCHRAN.—No cross-examination. [344]

### **Testimony of Eugene Miner, for Defendants.**

EUGENE MINER, a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Eugene Miner. My business is mining and prospecting. I have done a lot of mining in the Nome District out around Anvil. I have a lease out there on the other side of Moonlight, on the third tier opposite No. 2 Above on Anvil Creek. I know the Grant claim near Moonlight. I have been in the Nome District since 1899. I knew both Muther and Bard on the Grant claim. I have seen Muther on the Grant claim mining. I think it was in 1904 or 1905. He was at a cabin there. It was right near the railroad track. I can't recall but one cabin with a canvas shed to it. I saw some shafts there and dirt thrown out pretty near it, a dump thrown out.

I have no interest whatever in the result of this lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

Muther and his men were living west of where the railroad track is now. I can't tell you exactly where the cabin was then, but I think it was west of where



(Testimony of Eugene Miner.)

the railroad track was. I think the cabin burned down since. I was there in 1906 when three Russians were there, and the cabin burned down after that. That was the cabin they were living in. I never saw a cabin after 1906. [345]

**Deposition of S. D. Waysman, for Defendants.**

My name is S. D. Waysman. My business is mining and dredging. I have been engaged in mining in the Nome District for twelve years, since 1899, principally around Nome. I know most of the creeks and mining claims around Nome. I have also mined in the Solomon District. I am interested in dredging down there, in the Solomon Dredging Co. I am one of the directors of the Solomon Dredging Co. I know a claim in the Nome District called the Grant claim. I got acquainted with the claim in 1907 or 1906, I don't remember which. I drilled on it for Captain Sperry; he was prospecting it for mining purposes for himself. He told me he had a lease from the Pacific Coal & Transportation Company. I must have drilled there two weeks. I drilled with a man by the name of Woods, Louis Woods. We had a six-inch bit with gasoline power. I helped Mr. Wood drill six or eight holes, something like that, on the west end of the Grant claim. I know where the Moonlight Springs are. We drilled about two hundred feet from the springs. We hauled water from there to the drill. We were living out there at the time. We were living in a black cabin that stood east of us. At the time I was working there drilling I became acquainted with the cor-

(Deposition of S. D. Waysman.)

ners and monuments of the Grant claim. The black cabin we lived in was within the boundaries of the claim. I know where the railroad crosses the Grant claim. We drilled west of the railroad.

Q. Now, please examine this plat here, Mr. Waysman. On this plat you will see marked the Grant claim, being described on the plat by the letters in ink A-B-C-D and E. Please take a pen and indicate the place about where you drilled with the drill for Mr. Woods and Captain Sperry in the spring of 1907. [346]

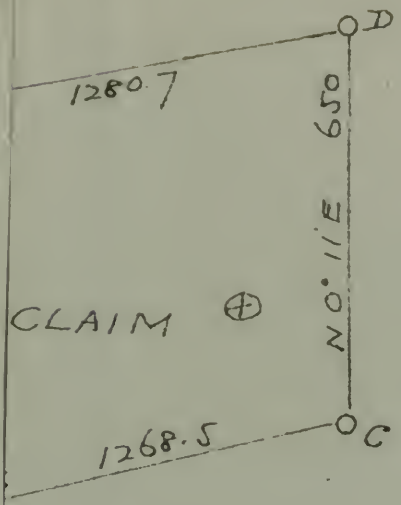
(Witness marks the plat with the figures 1-2-3-4-5.)

A. I don't know how many holes there were, but I think I drilled in about six places, six or eight holes.

(Witness continuing:) The mark X with a circle around it, on the map, shows approximately where the cabin stood that we lived in while we were drilling.

Mr. GILMORE.—We offer the plat in evidence, if the Court please, for the purpose of illustrating the evidence of the witness.

The COURT.—Let it be received in evidence and marked Defendants' Exhibit 38; said map being as follows: [347]

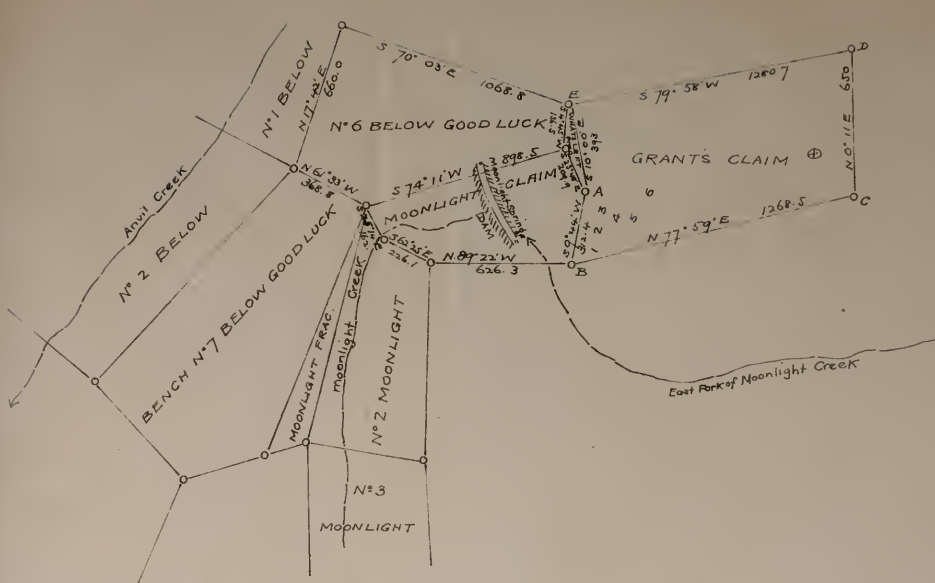


of Moonlight Creek

Little Creek

I





Defendant's Exhibit '38'



(Deposition of S. D. Waysman.)

(Witness continuing:) At the time we were drilling we found gold in the southwest corner of the claim. I found what I considered to be very good prospects with the drill. I wanted the ground but I wasn't panning it, it wasn't my duty to pan, but what I saw, and I didn't see it all, I knew I wanted it. I made an effort to get a lease on the ground at that time. At the time we were drilling there I did not see anyone else in possession other than Captain Sperry and Wood, or anyone else working within the boundaries of the ground, and no one else ever claimed the ground while I was working there. And no one made any objection or protest to our drilling on the ground at that time.

I have no interest whatever in the result of this lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

I did this drilling in 1906 or 1907 in the spring time. There was snow on the ground.

Redirect Examination.

(By Mr. GILMORE.)

I don't remember what month it was in, I could hunt it up in my books. It was along when it was thawing, about the time of the break-up. It was thawing at the time we commenced to drill out there. In my best judgment it was in May, 1907. [349]

**Deposition of W. H. Bard, for Defendants.**

My name is W. H. Bard; I am 49 years old and reside at Portland, Oregon. I have resided at Portland, Oregon, for eighteen months. I resided in

(Deposition of W. H. Bard.)

Alaska from 1899 to 1906 and was engaged in the practice of law at Nome. I am acquainted with the defendant, Pacific Coal & Transportation Co. I acted as attorney for the company from June, 1903, until June, 1906. I know the Grant claim. I became acquainted with the Grant claim about the latter part of June, 1903, and controlled the claim until 1906 for the Pacific Coal & Transportation Co. I had a lease in 1904 and 1905 with J. C. Muther. Muther and I mined the claim.

Q. Attached hereto is a blue-print marked Exhibit "A" to this deposition, showing the said claim as it is now marked on the ground and its relative position to the surrounding claims. Please examine the said blue-print and indicate by a circle the portion or portions of said placer claim upon which you or you and your associates performed mining work, if you answer that you did perform work.

A. Yes, I have marked the blue-print. (Continuing:) My associates and I extracted winter dumps on said claim and they were worked as on the blue-print indicated. I was not personally acquainted with W. N. Grant, and we were never upon the Grant claim together.

Q. If to some of the preceding questions you answer that you and your associates mined upon the westerly end of the said Grant claim in 1905 or 1906, state whether or not the Pioneer Mining Company, or anyone on its behalf ever made any protest against you or your associates [350] working on said portion of said claim, or made any adverse claim or



(Deposition of W. H. Bard.)

claims whatever of title thereto.

A. Yes, once. (Continuing:) I know a claim called the Bob Lyng claim upon which the Moonlight Springs are situated. Have known it since 1903. I know the claim called Bench No. 1 Moonlight, or the Jensen claim. I know of the claim up there but there were so many mines and so many people that attempted to point out the location of the Moonlight Bench No. 1 that I never was able to satisfactorily fix the boundary lines of said claim fully. I know that the Pioneer Mining Company claimed that the Jensen Bench claim No. 1 Moonlight conflicted with the westerly end of the Grant claim.

I cannot tell at this time how much gold was taken out and mined from the westerly end of the Grant claim, but there never was enough to pay expenses of working the property. The royalty was paid over to the Pacific Coal & Transportation Company. The Pioneer Mining Company never at any time claimed any part of the gold that was mined by me or my associates, or the laymen of the Pacific Coal & Transportation Company on the ground. Messrs. Howard and associates were working the westerly end of the Grant claim when the same was turned over to me as attorney or agent for the Pacific Coal & Transportation Co., and thereafter Margraf and associates had a lease on the property during the winter of 1903 and 4 and J. C. Muther and myself had a lease from 1904 to 1905. During the summer of 1905 a party by the name of Hopkins and Belvail worked the property during the summer. Before the com-

(Deposition of W. H. Bard.)

mencement of my time with the company, in 1903, I know nothing whatever of the claim. While I was agent and attorney for the company I executed leases. Leases were given to J. C. Muther and myself and to [351] Hopkins and Belvail and to Margraf and associates. All of them that I have named, with the exception of Margraf and associates, did all the work where I have indicated by pencil on the blue-print. Mr. Margraf and associates worked promiscuously all over the claim. The Pioneer Mining Company did not enter any protest so far as I know.

Q. During all of the years that you testify you were the attorney and agent for the defendant, Pacific Coal & Transportation Company, state whether or not at any time, to your knowledge, the plaintiff, Pioneer Mining Company, or any of its officers or agents, were ever in possession of any part or portion of the Grant claim, as marked and indicated on the blue-print, marked Exhibit "A" to this deposition.

A. No, with the exception of once or twice they went on the claim in the absence of myself or agent, and did some assessment work.

Q. State during which years, to your knowledge, the defendant Pacific Coal & Transportation Company was in the actual, physical possession of the westerly end of said Grant claim.

A. 1903, 1904, 1905 and 1906. (Continuing:) The Pioneer Mining Company, during the time that I was in charge of the Grant claim never tried to exercise any possession or ownership over said west-

(Deposition of W. H. Bard.)

erly half of the Grant claim as indicated by pencil marks on the blue-print, with the exception of once, I believe in 1904 when Mr. Lindeberg, president of the Pioneer Mining Company, sent over a man and informed me that Mr. Lindeberg had requested me to stop working, but in return I put the man off the claim and never heard anything more of it. [352]

I was not present when the Grant claim was staked, and only know where the stakes were located in 1903. The stakes of the Grant claim as pointed out to me, and as I understood, were where the stakes are indicated on the Grant claim, as per attached blue-print. The stakes were large, substantial stakes, plainly marked and indicated the center and corners of the Grant claim. These corners were marked by many stakes, indicating that the ground had been staked many times, but in 1903 there were stakes and indications that thoroughly marked and fixed the corners and center of the Grant claim, as per inclosed map. I examined the stakes very thoroughly many times in 1903.

I never have known definitely where No. 1 Bench Moonlight was located. I cannot say as to the whereabouts of the Nelson or Jorgensen claim because I never examined the stakes on that claim. I know that the people designated, however, had a claim in that vicinity, but I never examined the stakes at any time so far as I recollect.

Q. What knowledge, if any, did the Pioneer Mining Company, its agents or representatives have in regard to work done upon the Grant claim by you or

(Deposition of W. H. Bard.)

others? State the particulars of such knowledge, if any.

A. The Pioneer Mining Company knew that the claim was being worked by the Pacific Coal & Transportation Company. As a matter of fact, I was furnished water from the ditch of the Pioneer Mining Company to clean up within the spring of 1905. The managers of the Pioneer Mining Company have always known, during my time, that I was connected with the Pacific Coal & Transportation Co. [353]

Mr. GILMORE.—I offer in evidence the blue-print marked by witness, in evidence, for the purpose of illustration.

The COURT.—It may be received for that purpose and marked Defendants' Exhibit 39, said exhibit being as follows: [354]

**Testimony of S. Lynn Fox, for Defendants.**

S. LYNN FOX, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is S. Lynn Fox. My business is mining. I first came to Nome vicinity in 1904; been here off and on ever since. I know the Grant claim at the foot of Anvil mountain. I first got acquainted with that claim in 1908. I know the defendant, M. D. McCumber. I had some dealings with him with reference to that claim in 1908. I was one of those that entered into a contract with Mr. McCumber to do a certain amount of work on that claim. My associate was Ben Hersey. I contracted to sink a shaft 100 feet deep; we went upon the Grant claim that fall. In December, 1908, we sunk the shaft; we sank twenty-four feet in 1908. We were living at that time on the Grant claim. We continued the work in January, 1909. We sank the shaft 84 feet deep. On the top we had solid schist and below that we had solid rock. We dug through the rock. The first 18 feet we thawed, and after that we used the sledgehammer. It was 68 feet from the surface and then we put in a hand-drill and went 16 feet below that, making a total of 84 feet. Mr. McCumber paid us for the work. We started in on the 8th day of December, 1908, and worked until the 21st, inclusive, then we started in again on the 1st of January and worked until the 20th of April, working continuously. I executed an annual proof of labor for the

(Testimony of S. Lynn Fox.)

Grant claim for Mr. McCumber, for the year 1908, but I did not for 1909.

I know where the boundaries of the Grant claim are. I had been around them several times. [356]

Q. Was there anyone else occupying any portion of the Grant claim at the time you and Mr. Hersey were there? A. No, sir, not to my knowledge.

Q. Anyone claiming any part of the claim to your knowledge?

A. No, sir, not to my knowledge. (Continuing:) I have no interest whatever in the result of this lawsuit and I have been paid in full by Mr. McCumber for all work I did.

Cross-examination.

(By Mr. COCHRAN.)

I lived on the Grant claim while we worked there. We had a cabin we hauled there ourselves. Hauled it from over on the Submarine, about a mile from Nome. It was a tent, or double tent cabin on skids. There was no other cabin on the Grant claim when we went there. Ours was a double tent cabin. We did not haul it away from there when we got through. We left it there on the Grant claim. It was a double cabin on skids. The work we did was sinking shafts, prospecting they term it, looking for pay if there was pay there. [357]

**Testimony of Benjamin A. Hersey, for Defendants.**

BENJAMIN A. HERSEY, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Benjamin A. Hersey. I am working now for the U. S. Mercantile Co. I have done considerable mining in the Nome District. Have resided here since 1900. I know the Grant claim. I got acquainted with the Grant claim in 1908; I had heard of it before, but never was on it. At the time I got acquainted with it I became familiar with its boundaries and its markings on the ground. I worked on the Grant claim for Mr. McCumber. We went to work on the Grant claim on the 8th day of December, 1908, and worked fourteen days. Mr. Fox was working with me. We were living on the Grant claim. In 1909 we worked from the first of January until the 20th of April, sinking a shaft most of the time. The shaft was 68 feet deep and was some thawed ground and some rock. The first 18 feet was thawed and we had to use points; the balance was in rock; we had to blast. At the 68-foot level we struck water and we wanted to get through the slide, if we could, and so we got a hand-drill, and then we went down 16 feet from the bottom of the shaft. While we were sinking that shaft personally I did some other work on the Grant claim. Surface prospecting. It is pretty hard for me to state the exact amount of prospecting I did. While my

(Testimony of Benjamin A. Hersey.)

partner was in the hole drilling, getting ready for powder, I would go down with pick and shovel around on the surface to try and get some surface diggings. I know the portion of the Grant claim in controversy in this lawsuit. I know where the railroad crosses the west end of the claim. I [358] am familiar with the map, Defendants' Exhibit 11. Between where the railroad crosses and the points 1 and 2, I did very little prospecting, but between the point 9 and the railroad track I did considerable prospecting. Our cabin was right near 9, and I went down from the cabin towards the railroad track. The character of the work I did there was such as you make a ditch like and dig beneath the sod so as to see if there was any surface diggings there. I had to dig away considerable snow to do my prospecting.

I have no interest in the result of this lawsuit whatever, and I have been paid in full for my work.

Cross-examination.

(By Mr. COCHRAN.)

The shaft we sunk was a little above the figure 9. In fact, I think just about where 9 is located on the map, as near as I can recall. It was without the ground in controversy, and our cabin was also without the ground in controversy. The work we did there was prospecting. Our idea was to get down beneath the slide and drift in. We did prospecting, we did what our contract called for, as near as we could. We did not find pay.



(Testimony of Benjamin A. Hersey.)

Redirect Examination.

(By Mr. GILMORE.)

The surface prospecting work that I did was within the bounds of the ground in controversy.

Q. During all of the time that you worked out there, and during the time you were doing this surface work, was there anyone else living on or in actual possession of any part of the ground in controversy? [359] A. No, sir.

Recross-examination.

(By Mr. COCHRAN.)

The surface work that I did out there was not in the contract. I intended to get a lay if I found anything that was encouraging. I intended to get a lay on the claim. I did this prospecting on my own account. I did it for McCumber. He paid me for sinking the shaft, but there was nothing in the contract for my surface prospecting. He did not pay me for my surface work, and I did not receive any pay for it. [360]

**Testimony of Steve Johnson, for Defendants.**

STEVE JOHNSON, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Steve Johnson. My business principally from my boyhood up has been a sailor. At the present I am down on the beach doing a little work, hauling out boats, etc., beach work. I know the Grant claim. I first got acquainted with it in about 1907, in the fall, I think it was. I knew Cap-

(Testimony of Steve Johnson.)

tain Sperry. I know a man by the name of Captain Aansen. Captain Aanson and I did some work on the Grant claim in 1907, with a drill. We drilled on the upper end of the hillside, toward the northeast corner of the claim. We drilled a hole about 104 feet deep. We were paid \$2.00 a foot for the work by Eugene Sperry. At the time we were drilling there, there was another drill on the lower end of the claim which we called Red Woods' drill. I don't know the man's initial name. He was drilling pretty much in the southwest corner of the claim. Wood had been drilling on the claim a month or so before we went to work. I don't know exactly how long of my own knowledge. He was there when we went to work on the claim. I know Mr. Waysman. I know that he worked for Woods. I have no interest in the result of this lawsuit. [361]

Cross-examination.

(By Mr. COCHRAN.)

We drilled a hole on the Grant claim at the point where the word "drill" is written on the map. We started one hole and we didn't get very deep with one hole and then we started another. There was some panning done. I don't know whether the drilling was done for prospecting purposes or not. Eugene Sperry did the panning. I could not tell exactly how many days we were out there. We may have been ten, maybe twenty, days at work. We broke down with the gasoline engine and had to come to town to get it fixed. I had been out there before that time. I was out there in February when we got

(Testimony of Steve Johnson.)

the contract from Captain Sperry. We drilled the latter part of April and first of May. I went out in February to get the contract. I know that Woods had been drilling here a month because I was very much interested in the work. He was down there with the drill when we went on the claim. I didn't see him drilling then. [362]

**Testimony of Ole Anson, for Defendants.**

OLE ANSON, a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Ole Anson. My business is prospecting and mining. I know the Grant claim. I have known it since the spring of 1907. I worked on the Grant claim, put a hole down there to bedrock on that property. We drilled a six-inch hole with a Kelly & Callaghan drill. I was assisted by S. S. Johnson, the witness that just testified. We did the work for Eugene Sperry. At the time we were drilling, there was another drill on the ground. Mr. Woods' drill was standing down towards what is called the southwest corner, in the direction of Moonlight Springs. I know that Mr. Wood had a drill on the southwest corner of the claim. I was there at that time. I was down on the Martin Bench and I was up and saw him drilling. I do not know exactly how long he drilled there; I could not place the dates. He drilled there anyway during the time that I put down two holes on the Martin Bench, another party was helping me on the Martin Bench, he put down three holes. I could not state exactly how

(Testimony of Ole Anson.)

long Woods drilled there on the Grant claim, but somewhere about three weeks, because I was supposed to be on the Grant claim on the first of March, that was my contract, and I couldn't be there on the 1st of March on account of the Martin Bench, so Mr. Woods took the contract up and went there. He drilled two holes previous to the time I got in there. I knew Eugene Sperry personally. He was on the Grant claim working there while I was there. He was there every day while Woods was drilling there. Captain Sperry did [363] the panning himself. Johnson and I drilled a hole 150 feet deep.

Q. During the time that you were working the claim, during the time that you were there, when Mr. Wood and Mr. Sperry was working there, did you observe anyone else working or living within the boundaries of the Grant Claim other than them and you?

A. No, sir. (Continuing:) I have no interest in the result of the lawsuit and I have been paid for my work.

Cross-examination.

(By Mr. COCHRAN.)

I was living on the Grant claim at that time. There was no cabin excepting an old shack on the northeast corner at that time, when I was on the claim. That was in 1907. The cabin was not habitable, that I know of. I know where a ditch runs across the lower end of the Grant claim. Captain Sperry showed me. I think it finishes up somewhere around Cooper Gulch. The claim was covered with

(Testimony of Ole Anson.)

snow and slush when I did my prospecting, and I could not tell where the lower ditch was, but there were two ditches on the ground. A portion of the ground rises up from Moonlight Springs. I did not see Mr. Wood drilling above that ditch. He never drilled on the easterly portion. He drilled on the westerly portion below where I drilled. He drilled on the westerly portion, because he lost the pay there in that hole. I know where the penstock of the ditch is opposite the railroad track, near the westerly corner. Woods was drilling up near there when he lost the pay, but he drilled a little bit down in the southwest, what I would call the southwest, that is where we found that little pay. [364] I could not state how much drilling he did up in the northwest portion of the claim; I was then up on the Martin Bench. We were all prospecting for money.

Redirect Examination.

(By Mr. GILMORE.)

The Martin Bench that I speak of is south of the Kiora. It is located towards Little Creek, not very far away from Portland Bench.

I said that Woods found some pay in his drilling. I saw the pannings. It was on what I call the northwest corner of the claim. Mr. Sperry showed the gold to me.

Q. This cabin that you speak of wasn't habitable, you don't know whether anybody lived in it or not?

A. No, not at that time. We pulled by it when we moved in there with a drill, but I forget whether it was habitable or not, but I don't think it was.

(Testimony of Ole Anson.)

Recross-examination.

(By Mr. GILMORE.)

I saw the pannings from Woods' drilling in the first two holes, right at the drill. Captain Sperry panned them. I saw him pan them. When he finished panning he passed it to me and asked me to look; I saw about eight or nine cents, I should judge. Sperry said, it is pretty good, if it wasn't in water. That is the remark he passed. It was all water there. [365]

**Testimony of Adolph Meyer, for Defendants.**

ADOLPH MEYER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Adolph Meyer. I am a machinist and miner. I first came to Nome country in 1906. I know Mr. McCumber. I know a claim called the Grant claim. The first time I got acquainted with it was on the 3d of November, 1909. I know where the monuments and stakes of the Grant claim are. I am familiar with the map, Defendants' Exhibit 11, and I understand where the corners of the Grant claim are represented on the map, and also the railroad. I moved a cabin on the Grant claim on the 3d of November, 1909. It was a red cabin. The cabin is still there and has been on the claim ever since I put it there on that date. I put it where it is now in the one place and it has been there all the time since, and has not been moved off.

Q. Will you step up to the map, Defendants' Ex-

(Testimony of Adolph Meyer.)

hibit 11, and show the Court where the cabin is on the ground?

A. The cabin is about here, about where the surveyor has it marked on the map. (Continuing:) I know the part of the Grant claim that is in controversy in this lawsuit.

Q. Is the red cabin on that part of the Grant claim that is now involved in this lawsuit?

A. Yes, on the same part. (Continuing:) Mr. McCumber employed me to go out there on the 3d of November, 1909, and I put the cabin on the ground for him. A fellow by the name of Theo. Pelitsch was with me. After we got the cabin fixed up we did some mining, sinking a shaft and prospecting. Pelitsch and I [366] dug the holes. It was below the railroad track towards Moonlight. The first we dug was between the point 1 and the railroad track, as shown on the map. We dug the hole about seventeen feet deep. We dug other shafts afterwards. In the southwest corner we dug a hole about 11 feet deep and struck slide. It was in between points 1 and 2 on the map. We dug several shafts there, about 16 feet deep. We struck water. We continued to work from the 3d of November, 1909, all winter. Besides Pelitsch a man named Fitzlaff was working there for wages, and John Kobovich. After Pelitsch quit I had a partner by the name of Louis Kern. Albert Miller also worked there. Also John Alderhall; Leo Wilhelm and a Russian named Malkoff, and a man by the name of Herman Fleming. Mr. Henry Kern also worked

(Testimony of Adolph Meyer.)

there a while after February. We dug more shafts. We dug one shaft  $3\frac{1}{2} \times 5\frac{1}{2}$  feet to 28 feet deep. We used a six H-P boiler and 2 inch pump. It was a stationary pump. The shaft was dug in thawed ground.

Q. State whether or not you found any gold there in paying quantities, in that shaft. A. Yes.

Q. And from the work that you did, state whether or not you determined there was or was not a channel at that point.

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained: To which ruling of the Court the defendants then and there excepted and the exception was allowed. [367]

(Witness continuing:) I have had considerable experience in mining. I am now mining on Center Creek. I had mined at other places before I went out to the Grant claim. I know channel wash when I see it.

Q. In sinking holes do you know when you get into what is called the river bed or channel?

A. Yes, this was a river bed.

Q. State whether or not the wash at the bottom of the hole indicated a channel.

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) That was the first time



(Testimony of Adolph Meyer.)

we struck anything. The only good thing. The next morning the shaft caved in there was only one-inch boards there, timber, and it opened out and dropped down. We fixed the shaft but the water pressure was too strong. We couldn't handle the water. We dug another shaft at that point, a little above, ten feet away, towards the southwest corner stakes. It was a big shaft. I was working at it about a month. We timbered that shaft. There was lots of men working there with me. My partner, Louis Kern, was starting with me to sink the shaft, after that the Russian Malkoff and Henry Kern both worked there.

Q. You speak of your partner, what arrangements did you have with Mr. McCumber about doing that work?

A. I had an arrangement to dig 150 feet, shaft 150 feet, if I struck pay I would get a sublease on 150 feet of the ground for one year. Mr. McCumber was interested in digging that last shaft with me, and also Louis [368] Kern. McCumber employed men to work on that shaft with me and paid them.

Q. Who worked on the last shaft?

A. On the last hole was Kobovich, Louis Kern, Henry Kern, Albert Miller, Markoff and John Alderhall and Herman Fleming. (Continuing:) The men were living at Little Creek roadhouse, while I lived in the red cabin. Defendants' Exhibit 22 is a photograph of the red cabin that I put on the Grant claim and lived in while I was digging those shafts. The machinery we used while sinking

(Testimony of Adolph Meyer.)

the last shaft was a four-inch pump. I took it over from the Wild Goose. The first pump I had was a two-inch pump, and that pump would not go right. I couldn't handle the water. Mr. McCumber got it from the Wild Goose company. It was a sinking pump. I know Louis Stevenson of the Pioneer Mining Company; he was there at the shaft while we were digging it, he was there four or five times; he looked at the gravel and said it was channel. He said the channel run across the claim up towards the railroad track, coming from Anvil.

Q. Did Mr. Stevenson make any objection to your working there?     A. No.

Q. On that ground?

A. No, none at all. (Continuing:) We worked on that shaft the last one that we timbered, about a month. We started in on the 10th of March and quit on the 22d of April, 1910.

Q. When you finished work there on that shaft in April, 1910, what did you do with your tools?

A. I left them there in the cabin.

Q. And did you state when you left the cabin?

A. The 12th of May, 1910. (Continuing:) After we finished work [369] down there at the shaft where we were pumping, I did some other work. I put boards on top of the cribbing and covered the shaft all up.

Q. Why did you cover that shaft up?

A. I covered the shaft because I wanted to save it until the next winter so that it wouldn't cave in.

Q. State whether or not it was your intention to

(Testimony of Adolph Meyer.)

go back and work in the same shaft again when you returned to the claim.

A. Yes, it was. (Continuing:) That shaft was 35 feet deep.

Q. Did you get to bedrock?

A. No, I was very close to bedrock, about two or three feet.

Q. What was the character of the dirt, the gravel that you found in the bottom of that shaft?

A. It was red gravel.

Q. And did you pan it?      A. Yes.

Q. Did you find gold?

A. Yes, I found the first gold I got at 29 feet. Went down for 29 feet and that was the first pay we struck, from three cents to \$1.50 a pan.

Q. And from the 29-foot level state whether or not it was pay gravel sufficient to take out and mine.

A. It was all pay gravel.

Q. Did you pan from the 29-foot level to the 35-foot level?

A. Yes, I was panning, never found anything for 29 feet.

Q. After you found pay at the 29-foot level, did you pan all the way down until you got to the 35-foot level?      A. Yes.

Q. State to the Court what you got. [370]

A. Four pennyweights, I weighed that in the scale, that would be \$2.55 in money. (Continuing:) The biggest pan I had at the 29-foot level was twenty cents. I know positively it was about three feet to bedrock, from the 35-foot level.

(Testimony of Adolph Meyer.)

Q. Now, during the summer, from the time in May when you speak of the 12th of May, up until the fall of 1910, were you on the claim?

A. Yes. I was living where I would be coming out. (Continuing:) I was coming out and was by the ground. I had charge of the claim that summer for Mr. McCumber.

Q. State whether or not you had anything in the cabin that summer. A. Yes.

Q. What did you have there?

A. I had there winter bedding, a bag, an axe and saw, and powder.

Q. And how many times were you in that cabin or on the claim from the 12th of May up until the fall of 1910?

A. Sometimes I was there four or five times a week on the ground. I passed often. I had charge and care of the Grant claim for Mr. McCumber that summer.

Q. When did you go back, if you went back, when did you go back to the claim?

A. The 27th of October.

Q. That was last fall? A. Yes.

Q. How did you go out there, what way?

A. Along the Bessie.

Q. Did you have a team?

A. No, I had a dog team. [371]

Q. What did you do on the claim on the 27th of October, 1910?

A. I was bringing out the stuff and moved that old stove out, and put it in and took the old rusted stove out.

(Testimony of Adolph Meyer.)

Q. How long were you on the claim the 27th of October, on the Grant claim?     A. About an hour.

Q. When were you next back on the Grant claim, after the 27th of October?

A. On the 29th of October, I moved out grub. I moved out stove-pipes and building paper. (Continuing:) I was there on the 29th about a couple of hours. At that time I was bringing out stuff for working in the winter, and living there.

Q. Now, when were you next on the claim after the 29th of October, 1910?

A. The next day, the 30th.

Q. What did you do on the 30th?

A. I took a few coal sacks and dishes, a big bucket and small barrel I put them in the house there, the cabin. (Witness continuing:) I was out on the claim on the 30th about three-quarters of an hour. I was on the claim again the next time the 31st of October. I moved out some lumber for fixing up the cabin. That was 2x4 pieces, 1x6, 1x3, 2x8 and two pieces 3x4. I got that lumber at Mr. McCumber's yard. I was next on the claim on the 2d day of November, 1910. I moved out a sack of coal, took it out with my dog team. I was on the claim that day about an hour. I was next on the claim on the 3d of November, 1910. On that day I brought out a windlass drum, cribbing and a cable. The cable for sinking a shaft. The windlass drum also for sinking a shaft. [372]

Q. What was it your intention to do—what were you out on the claim to do?

(Testimony of Adolph Meyer.)

A. Looking after the rim. (Continuing:) It was my idea that the rim was broken down and I wanted to find out where the pay streak ran. I was going to sink a new shaft. I was next on the claim on the 4th of November. I brought out my bedding and the rest of the coal sacks and the big boiler. I came back to town and came back to the claim the next day on the 5th of November. On the 5th of November I brought out my grub. I did some work on the 5th. On the 5th of November I brought out some stove-pipes. I brought out six-inch pipe and caps for the top on the roof and I brought the stove-pipe in and wanted to make it smaller and put it in, that was what I was engaged in doing that day. After that I brought the water and started a fire, and then I was living there.

Q. That was the 5th of November?

A. 5th of November.

Q. When you were fixing your stove-pipe, state whether or not you were on the roof of your cabin.

A. Yes, I was on the roof.

Q. State whether or not anyone passing could have seen you, were you in plain sight, plain sight of people passing there? A. I didn't watch them.

Q. You said you went to bring water, where did you go for water?

A. Down to Moonlight Springs.

Q. State whether or not you slept on the claim the night of the 5th of November, 1910.

A. Yes, I was there.

Q. Where? A. In the red cabin. [373]

(Testimony of Adolph Meyer.)

Q. Where were you on the 6th of November?

A. I was there in the cabin.

Q. Did you do any work on the 6th of November?

A. Brought a little water for breakfast, and after that I went down to the shaft and broke up a few boards.

Q. Which shaft?

A. The new shaft, the last one I dug.

Q. State whether or not that shaft was in the same condition as when you left it.      A. No.

Q. What had happened to it in the meantime?

A. That shaft there, 3x4 boards broke in pieces, and where the timber was held in the shaft that was broke in two pieces, 5x6. (Continuing:) I cannot tell you how it was broken. Defendants' Exhibit 23 is a picture of the shaft that we dug in the spring of 1910, where we found the pay. During those days along up to the 5th and 6th of November, I put the building paper on the cabin, on the northeast side. The cabin was broken, and it was too loose for the big storm, and there was too much wind coming in, and I fixed that. I was engaged in carpenter work on the cabin, hammering and driving nails. I did some work down around the shaft in the southwest corner on the 6th of November. On the 6th of November, I fixed up the cabin on the inside and outside and after I went on the roof I started to put on the building paper. The wind was blowing too strong and I put on the paper, it was so cold.

Q. Where did you stay the night of the 6th?

A. In the red cabin.

(Testimony of Adolph Meyer.)

Q. And where were you on the 7th of November?

A. I was on the Grant claim.

Q. What did you do there on the 7th, if anything?

[374]

A. Fixing up the stove and putting building paper on.

Q. State whether or not you were on the Grant claim all day, the day of the 7th of November, 1910.

A. Yes, I was most all day out around the cabin all day.

Q. During any of the days prior to the 7th of November, did you do any work around the old shaft at point 2?      A. No, none at all.

Q. During the times you have just mentioned, between the 27th day of October, and the 7th day of November, 1910, did you see Mr. Louis Stevenson in that vicinity?      A. No.

Q. Did you see anyone working on or about the 6th or 7th of November, 1910, near by where you were living?      A. Yes.

Q. Will you step to the map and point out where they were working?

A. They were working down here, close to the railroad track, five or six hundred feet toward Little Creek.

(Witness continuing:) I started to sink a hole about the 11th or 12th.

Q. Where did you sleep the night of the 7th of November?

A. I slept in the red cabin on the Grant claim.



(Testimony of Adolph Meyer.)

Cross-examination.

(By Mr. COCHRAN.)

I knew Louis Stevenson. When I was moving out in 1909 on the 30th of November, I met him. Theo. Pelitsch and me met Mr. Stevenson on the road. We wanted to go to the Grant claim, the driver lost the way and Mr. Stevenson showed him the way. Theo. Pelitsch is working on Glacier Creek. I don't know [375] where he is now. After we moved the cabin on there in 1909, we went to work there the second of November, sinking a hole near the railroad track. I saw Louis Stevenson after we started work in 1909. Mr. Stevenson came over to where we were working. He asked me if we were prospecting there or what we were doing there. He never told us we were on his ground. He asked me what we were doing there and I told him we were prospecting. He didn't say anything more. He never told me that we were working on Bench claim No. 1 Moonlight. I was a stranger at that time, I did not know anything about Bench No. 1 Moonlight. I moved the cabin on where it is now. I saw stakes but I did not examine them. I did not know there was a stake in the bunch of stakes marked Moonlight. I lived in the cabin from November 30th, 1909. Mr. McCumber showed me the Grant claim stakes and I know where the Grant stakes are. I saw stakes but I did not examine them. There was about four feet of snow there when I went there and you could not see the stakes very well, down where I was working.

Q. Now, on the 29th of October, 1910, you moved

(Testimony of Adolph Meyer.)

some grub, stove-pipe and building paper out to this cabin? A. Yes.

Q. Where did you get the building paper from?

A. McCumber gave it to me, I don't know where he got it from, I never asked him. It was a quarter of a roll. I got the grub from the Northwestern Commercial Company. I paid cash for it. I got the stove-pipe from McCumber. Five lengths of stove-pipe, 6-inch pipe and a stove. I got them from McCumber's house. I did not know where McCumber got the stove or stove-pipe. There was no one with me on the 29th of October. The [376] first time I saw anyone working near the Grant claim was on the 6th of November. There was somebody working there prospecting. I first went out there on the 27th of October. I am not sure what day of the week it was.

Q. How do you know it was the 27th?

A. I figured all of them in my book.

Q. Where is your book?

A. I lost it a long time ago. (Continuing:) It was a little memorandum-book. I was paid wages and I had to pay my freight. McCumber paid one-half and I paid one-half.

Q. You lost that time-book, you say?

A. Yes, that was the time I fell in the shaft.

Q. Have you lost your time-book?

A. Not at that time, that time-book was lost this spring. I fell in the shaft this spring and it fell out. Sometime in March, I lost it.

Q. You know it was the 27th of October because

(Testimony of Adolph Meyer.)

you wrote it down?

A. Yes, I am sure it was the 27th. (Continuing:) Mr. McCumber paid me for my time and I am sure it was the 27th of October, I lost my time-book at Center Creek, where I worked. Mr. McCumber paid me in cash at the postoffice. He paid me on the 5th of November. And the 3d of November he paid me \$1.75 for wages.

Q. How do you remember that your wages were going on from the 3d of November?

A. From the 3d of November my time was going on. (Continuing:) I saw somebody working near there, they had a little boiler there and a small tent, and they were working there.

Q. They were there when you first went out there?

A. I never saw them, I was too busy. [377]

Q. When you first went out there that cabin didn't have a stove in it?

A. That stove was not in the cabin.

Q. And the pipe was down?

A. The pipe was too little on top of the roof, it was tied with four wires and fell over. (Continuing:) It had fallen over sideways. I did not fix the stove and stove-pipe until the 5th of November. I did not sleep in the cabin until I fixed the stove and pipe, after I put up the stove. I could not stay in the cabin until I fixed the stove, it was too cold.

Q. When you first went out there to stay, the first thing you did was to go on the roof and put on the stove-pipe so you could make a fire?

A. No, just took the scissors and made it smaller

(Testimony of Adolph Meyer.)

instead. That pipe was a little bit long and I put, cut the pipe around about that much and after that I made it a little larger and went up and put that stove-pipe up, and tied it up with the wires; that was two o'clock in the afternoon, on the 5th of November.

(Continuing:) I did go up and put up the stove-pipe on the 5th of November. The building paper was there about five days before that. I took the stove out on the 27th of October.

Q. Where did you say you saw those two men working with that boiler?

A. Down toward Little Creek, about four hundred feet from the Grant claim. Four or five hundred feet, something like that.

Q. And you saw them when they started work?

A. Yes. (Continuing:) I know where the stakes of the Grant claim are. I know where the southeasterly line of the Grant claim is. My cabin is on the hill just northeast from where [378] the boys worked. The boys worked across the railroad track, on the other side. The two men were there with a boiler and windlass. I can't tell about the name of the claim. Whether they were working on the Carlson Fraction or not, I don't know. The only thing I know was the Grant claim. I saw the men working there but they never talked to me. I never saw Louis Stevenson out there while the men were working.

Q. Did you start a fire in this cabin on the 5th of November? A. That afternoon.

Q. In the afternoon? A. Yes.

(Testimony of Adolph Meyer.)

Q. And you had a fire from that time on?

A. Yes.

Q. And were living in it?      A. Yes.

Q. Did you shovel the snow away from the door so you could get in?

A. There wasn't much snow there.

Q. There wasn't much snow there?

A. No, there wasn't much snow there.

Q. I thought you said there was four feet of snow?

A. That was the year before.

Q. You are now speaking of 1910?

A. Yes. (Continuing:) There was not much snow to speak of on the 5th of November; I was cooking dog feed for my dogs.

Q. Now, don't you know you were not out there until the 20th of November?

A. I know I was there all the time.

Q. Whose dogs did you have?      A. My dogs.

Q. Did you have anyone else's dogs?      A. No.

[379]

Q. Anybody else out there with you?      A. No.

Q. On the 2d of November you moved a sack of coal out there?      A. Yes.

Q. Where did you get that sack of coal?

A. My cabin; I got three sacks at home. (Continuing:) I don't remember buying anything at any of the stores at that time besides the grub at the Northwestern Commercial. I did not have to buy a pick and shovel or powder, those were all there. The lumber I got from McCumber. The windlass drum was mine. I bought it in 1907 on Buster Creek.

(Testimony of Adolph Meyer.)

When I got through at Buster Creek I brought it to my cabin in Nome, I took it from there to the Grant claim. At that time I was living next to the Stipek house, in Nome. I got the cable from McCumber. It was old cable. I don't know where McCumber got it. I had it for the last three years. On the 1st of October, 1910, I was longshoring in Nome, working on the docks. While I was in Nome I stayed in my cabin. I am a machinist but I have never worked as a machinist in Nome. I moved the red cabin onto the Grant claim. I was familiar with the boundaries of the Grant claim. When I moved the red cabin on, there was another cabin on there where the two boys had been working. That was away up in the north-east corner. I don't know how deep they sunk their hole. Their cabin was close to their shaft. I mark the place on the map by the letter "Y" where their cabin stood. It was on the Grant claim. I had nothing to do with their cabin. I know the ground that is involved in this lawsuit.

Q. The red cabin you say has not been moved from the place where you put it?

A. No, just the same place.

Q. Why don't you know that cabin has been moved down over near point 9? [380]

A. That cabin where I was was never moved.

(Witness continuing:) There was a tent there near the point 9. It belonged to the two fellows that were working there, Fox and Hersey. There was no other tent or cabin when I went there in 1909. McCumber paid me cash all the time. I did not keep a bank account.

(Testimony of Adolph Meyer.)

Q. You say you were cooking dog feed out on this claim on the 5th of November?

A. Cooking dog feed.

Q. Where did you get the dog feed?

A. Cooking house.

Q. Where did you get it?

A. Northwestern Company.

Q. Who did you buy it from?

A. From the manager, Mr. Hesler, I think, I am not sure.

Q. You claim an interest in this lease with Mr. McCumber, do you?     A. Yes.

Q. And you still claim that interest in a lease with McCumber?     A. Only the first year.

Q. Have you still got that interest?     A. No.

Q. You haven't any interest in this ground?

A. No, I had an interest only for that winter up to the 1st of July.

Q. Have you any interest now?

A. No, not at all, I am working on Center Creek for myself.

Q. *Do expect* to go back to work here?

A. I don't know.

Q. Do you expect to go back to work on the Grant claim?

A. I don't know, I can't tell, maybe and maybe not. [381]

(Witness continuing:) If Mr. McCumber wins the lawsuit, I expect to go back there. If he wins the lawsuit I expect to go back to work for him maybe, and maybe not. It is hard to tell. McCum-

(Testimony of Adolph Meyer.)

ber has never asked me about it and I have never asked him.

Redirect Examination.

(By Mr. GILMORE.)

McCumber never said he would give me any interest in the ground. If I go to work, I would go to work for wages. The first time I ever saw the Pioneer boys working south of the Grant claim in the fall of 1910, was on the 6th of November.

Q. Did you ever see them there before that time?

A. I am not sure. The boiler was there I never was looking for anybody, if anybody was working there. I know nothing at all but what I found out on the 8th of November, after the lawsuit. (Continuing:) While I was out there I was at the Little Creek roadhouse. I had a drink there and went home. I was there many times.

Q. Mr. Meyer, where were you on the 8th of November, 1910?

A. The 8th of November, I was here in town. (Continuing:) I went back to the cabin after that for good. I got a good deal of oil and lumber and went out to see Mr. Pelitsch. After that I was living on the claim to about the 13th day of March. I was working there too, sinking a hole and hunting for the rim. I sank five holes. I did not determine where the rim was. I struck slide. I was there every day up until the 13th of March, 1911, and after that I went up on Center Creek and started work on Center creek.



(Testimony of Adolph Meyer.)

Q. After the 13th of March were you back on the claim again?

A. Every night. (Continuing:) I worked out on Center Creek [382] but returned every night to my cabin. I slept there until the 13th of April and from the 13th of April I was there every week two or three, up until the first of May.

Recross-examination.

(By Mr. COCHRAN.)

There was nobody with me when I went out there to fix up the cabin the first time in 1910, on the 27th of October.

Q. Was there any snow out there for sledding on the 27th of October, 1910?

A. No, not very much sledding on the road, I went up over the tundra the 3d Beach line. (Continuing:) I do not know a little fellow named Fritz. He was not with me. I know a hardware firm by the name of E. W. Carlton & Co. I bought some stuff there but not for my camp. The quarter of a roll of building paper that I took to the Grant claim I got from McCumber.

Q. Now, didn't you buy that at Carlton's Hardware Store yourself and take it to McCumber's?

A. That had nothing to do with it, I used it for my house here in town, that was not for camp. (Continuing:) I am not sure whether Mr. McCumber bought it or myself. I am not sure whether he bought it or not.

Q. What else did you get from Mr. Carlton?

A. I don't know.

(Testimony of Adolph Meyer.)

Q. Building paper, that was so you could fix up your house here in town? A. Yes.

Q. And you bought that the 6th day of December, 1910?

A. I don't know, I don't know for sure.

Q. What did you want that building paper for on your house, if you were living out there on the camp, on the 6th of November? [383]

A. I wanted to move my cabin out in the spring, in March or April, and I wanted to fix it. (Continuing:) I am not sure whether I bought anything else or not, I think I bought some nails.

Q. Did you, at the time you bought the building paper and nails, buy a tin cap for the stove, at the same time, and have it charged?

A. That was not for the Grant claim. (Continuing:) I cannot tell; I bought it, maybe, I am not sure.

Q. Don't you know that it was on the 6th of December that you went out and took the building paper to this claim, the Grant claim, instead of the 6th of November; don't you know that is a fact?

A. I don't know it was a fact. The 6th of December I was living there just one month in the camp-house.

(Witness continuing:) I was living right along after that. The building paper I bought on the 6th of December was for my house here in town. I used it for that in the spring. I saw those boys there the first time on the 6th of November. I saw them there six or eight days on the Moonlight side of the rail-

(Testimony of Adolph Meyer.)

road track. I saw a boiler and a tent, a little tent.

Q. This tin cap for the stove was for the Grant claim, wasn't it? A. It was not.

Q. You didn't use any tin cap on your own cabin?

A. Yes, I did.

Q. The tin cap you bought was for your own cabin here in town?

A. I bought it for the same place. I don't know, I think so, I put it on the house; I don't know for sure. [384]

(Witness continuing:) That was charged to McCumber.

Redirect Examination.

(By Mr. GILMORE.)

I continued to work for Mr. McCumber that winter, after the lawsuit was started.

Q. Were those things that Mr. Cochran has asked you about, that you bought in December at Carlton's store in town, did those things have anything to do with the Grant claim, or were they bought for the Grant claim?

A. No, not for the Grant claim. [385]

**Testimony of J. Allison Bruner, for Defendants.**

J. ALLISON BRUNER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

I hold a general power of attorney for the defendant Pacific Coal & Transportation Company and have since April, 1911. Since becoming their agent I have made efforts to ascertain whether or not the

(Testimony of J. Allison Bruner.)

defendant, Pacific Coal & Transportation Company has the original proofs of forfeiture that were testified to by Mr. Kingsbury. I was not able to ascertain the whereabouts of the same. I do not know where the proofs of forfeiture are. I have made every inquiry. I went to Mr. McCumber, I knew he kept files of papers; I went to the "Nome Nugget" and talked the matter over, and was unable to get copies. I know of my own knowledge that the "Nome News," the paper mentioned by Mr. Kingsbury, is not now in business. The paper has not been published for several years. The defendant was not able to furnish me with the originals. They referred me to Mr. Kingsbury.

Cross-examination.

(By Mr. COCHRAN.)

I do not think there was a statutory agent residing in Nome at the time. John T. Reed and W. H. Bard were statutory agents but they are not residing in Nome at this time, and were not here when I made the inquiry. They have not been in Nome since I have been appointed agent of the company. Mr. Bard is in Portland, and Mr. Reed is in Seattle. Mr. Bard has not been here since 1909 and Mr. Reed left in 1909. That is my recollection. [386]

**Testimony of M. D. McCumber, for Defendants.**

M. D. McCUMBER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE,)

My name is Menzo D. McCumber; I am one of the

(Testimony of M. D. McCumber.)

defendants in this action. I know A. G. Kingsbury. I have made inquiry in this vicinity with reference to ascertaining about the original copies of proof of forfeiture, testified to by Mr. Kingsbury. I made inquiry from Mr. Kingsbury himself, the "Nome Nugget," who were the successors of the "Nome News," the Arctic Brotherhood, the Pioneers of Alaska, the Eagles, R. W. J. Reed and two or three others. I have been in Nome since 1900. I was here in 1902. I knew a paper called the "Nome News." H. G. Steel was the publisher. I knew several of the boys that were engaged with him, W. B. Kurtz, George Maynard and J. W. Wright. They are all outside except George Maynard. Maynard is now on the "Nome Nugget." I made inquiry with reference to the notices in the "News" from Mr. Maynard. I have been unable to obtain any copies and I was not able to obtain the original forfeiture notice and proofs of forfeiture.

Mr. GILMORE.—I now offer the following evidence from the deposition of Mr. A. G. Kingsbury, commencing on page 30. It was omitted at the time of the former reading.

The COURT.—You may proceed. [387]

#### **Deposition of A. G. Kingsbury.**

Q. Now, in the year 1902, state whether or not on behalf of the Pacific Coal & Transportation Company, you did anything else or caused anything to be done with reference to the forfeiture of Mr. Grant, or any of his associates.

A. I advertised them out in the local paper.

(Deposition of A. G. Kingsbury.)

Q. What paper?

A. The "News." (Continuing:) I caused to be published a forfeiture notice. I have not a copy of that notice in my possession. The defendant, Pacific Coal & Transportation Company has it, or should have it. It is hard to tell whether they have or not. I have been unable to get you a copy of it. I do not remember exactly the time I advertised Grant and his associates out. I published the forfeiture notice the regulation time, three months. It was addressed to W. N. Grant and assigns and copartners, and was signed by the Pacific Coal & Transportation Company. I drew the notice up myself, copying the forms that I found in the paper, but inserting the proper names and dates. The notice was in the usual form of such forfeiture notices published at that time in the papers. It was published in the "News," a paper published in Nome. It was the nearest point to the claim where a paper was published. I advertised them out for the years 1901 and 1900. Mr. Grant or his assigns never proffered or offered the defendant, Pacific Coal & Transportation Company, their proportionate share of the expenditures, neither during the ninety days succeeding the notice or at any other time, and by virtue of the forfeiture notice so published the defendant, Pacific Coal & Transportation Company, claimed the interests of its co-owners in the Grant claim, aside from the deed that they already had. [388]

Mr. GILMORE.—I now offer in evidence certified copy of proof of labor for the year 1900 on the Grant

claim, signed by A. G. Kingsbury, bearing date the 15th day of September, 1900.

The COURT.—It may be received and marked Defendants' Exhibit 40; said exhibit being as follows:

**Defendants' Exhibit No. 40.**

2660

**PROOF OF LABOR.**

Nome, Alaska, September 15th, 1900.

Before me, the officer before whom the oath hereinafter referred to was taken, personally appeared A. G. Kingsbury for the Corwin Trading Company, who, being duly sworn first, says that the following described labor and work of sluicing, sinking shafts, ditching and otherwise mining, preparing to mine and improving the hereinafter named and described mining claims and being not less than one hundred dollars (\$100.00) worth of labor or improvements were performed and made upon each one of the following named claims: #1 on western base of Anvil Mountain second bench from Discovery on Anvil Creek and near the head of Moonlight Creek. #1 East end of American Gulch, second bench from #4 on Anvil Creek. The "Ingersoll" claim located by E. L. Howard; same being second bench on Northwestern side of #9 on Anvil Creek. #5 Twin Mountain Creek. #9 above on Boulder Creek. #2 on Lookout Creek. #1 North fork of American Gulch. #2 below on Butterfield Canyon. #1 Webber Gulch. #3 Jorosa Creek. #1 Miller Gulch. #4 on Bangor Creek. #1 Pine Tree claim Snake River. The E. L. Howard claim on Nome River,

about three [389] miles above its mouth, located by E. L. Howard. All above-described claims, not otherwise specified were located by Woodford N. Grant.

All above-named claims are situated in Nome Mining District, Alaska. Such expenditure and labor was made and performed by the Corwin Trading Company during the year above written for the purpose of holding said claim and extracting the minerals therefrom.

A. G. KINGSBURY.

Subscribed and sworn to, before me, this 15th day of Sept., 1900.

[Notarial Seal]

A. E. WILLIAMS,

Notary Public in and for the District of Alaska.

Filed for record 2 P. M. Sept. 15th, 1900.

R. N. STEVENS,

Recorder.

Frank W. Swanton,

Deputy.

(Recorded Vol. 54, page 181.)

Mr. GILMORE.—I now offer in evidence certified copy of proof of labor for the year 1901 on the Grant claim, bearing date the 7th day of October, 1901, Pacific Coal & Transportation Company by A. G. Kingsbury. I offer it for the purpose of showing a *bona fide* claim on behalf of the defendant company to the ground in controversy.

Mr. COCHRAN.—I object to the alleged proof of labor on the ground that it is incompetent and immaterial for any purpose whatever; second, because it does not anywhere describe the Grant claim, but



refers to the claim as No. 1 Bench Moonlight Creek, there being no such claim under the evidence of this case being identical with the Grant [390] claim; third, that it does not state whom the work was performed for; fourth, that the alleged proof of labor is signed Pacific Coal & Trans. Co., per A. G. Kingsbury.

Mr. GILMORE.—I am not offering it, as your Honor is well aware, as proof that he did any work out there; he testified himself that he did and told the names of the men that he had. I am offering it simply as a badge of good faith, as a fact tending to show the *bona fides* of the defendant's claim to the ground. The fact that he calls it Bench No. 1 does not make any difference. He testified himself, that the Grant claim was known by three or four names.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like to have the instrument marked for identification.

The COURT.—It may be marked Defendants' Exhibit 41 for Identification; said exhibit being as follows:

**Defendants' Exhibit No. 41.**

12414

**PROOF OF LABOR.**

1901 Nome, Alaska, Oct. 7th.

KNOW ALL MEN BY THESE PRESENTS,  
That I, the undersigned, have done and caused to be done labor on the following named [391] placer claims during the present season of 1901, An amount

of labor on each and every claim of not less than one hundred dollars Fully complying with the law in reference to annual assessment work on placer mining ground.

The nine placer claims lying and being situate about  $\frac{3}{3}$ ths of a mile north of Bering Sea and about three miles East of Fort Davis; as described and recorded in Cape Nome Mining District, District of Alaska; Book 86, Pages 440 to 444 inclusive. Also #5 Twin Mountain Creek; #2 Butterfield Canyon, #1 bench Moonlight Creek, #9 above on Boulder Creek—#4 below on Bangor Creek, #1 North Fork American Gulch & #1 East end of American Gulch, #3 Jorosa Creek, #1 Miller Gulch, #1 Webber Gulch; #2 Lookout Creek The "Ingersoll" which is 2d bench on North western side of #9 below on Anvil Creek.

PACIFIC COAL AND TRANSPORTATION CO.

Per A. G. KINGSBURY. ( )

United States of America,  
District of Alaska,—ss.

Subscribed and sworn to before me this 7th day of October, A. D. 1901.

[Notarial Seal]

L. THOMPSON,

Notary Public in and for the District of Alaska.

Filed for record, 10:25 A. M. Oct. 7, 1901.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded Vol. 87, page 307.)

Mr. GILMORE.—I now offer, if the Court please, certified copy of the proof of labor on No. 1 Bench on Moonlight, as it is called, for the year 1902, bearing date the 23d of [392] October, 1902, signed by A. G. Kingsbury, for the same purpose of showing the *bona fides* of the defendants of their claim to the ground in controversy.

Mr. COCHRAN.—Objected to on the ground that it is wholly incompetent and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like to have it marked for identification.

The COURT.—It may be marked Defendants' Exhibit 42 for Identification; said exhibit being as follows:

**Defendants' Exhibit No. 42.**

#18173.

United States of America.

District of Alaska,—ss.

Know All Men By These Presents, That I, the undersigned have performed and caused to be performed labor on the following described placer claims located in Cape Nome Mining District, District of Alaska, during this season of 1902, an amount of labor on each and every claim of exceeding one hundred dollars in value, thereby fully complying with the law in reference to annual assessment work on placer mining ground; No. 5 Twin Mountain Creek. No. 2 Butterfield Canyon; No. 9 above on Boulder Creek: No. 4 below on Bangor; No.

1 bench on Moonlight Creek: No. 3 Jerosa Creek: No. 1 Miller Gulch: No. 1 Webber Gulch: No. 2 Lookout Creek: No. 1 North Fork of American Gulch and No. 1 East end of American Gulch: The "Ingersol" which is second bench on Northwestern side of No. 9 below on Anvil Creek.

A. G. KINGSBURY. [393]

Subscribed and sworn to before me this 23d day of October, A. D. 1902.

[Notarial Seal]

J. SULLIVAN,  
Notary Public for Alaska.

Filed for record at the request of A. G. Kingsbury at 12:17 P. M., October 23d, 1902.

T. M. REED,  
Recorder.  
W. W. Sale,  
Deputy.

(Recorded in Vol. 100, page 453.)

Mr. GILMORE.—We now offer in evidence certified copy proof of labor for the year 1903 on the Grant claim, bearing date the 14th day of October, 1903, signed by B. G. Simmons and J. Bunt.

Mr. COCHRAN.—We object to the offer of the alleged proof of labor for the year 1903 on the ground that it is wholly irrelevant and immaterial, no reference being made to the claim except Grout claim on Moonlight. It does not say Grant, this is Grout.

Mr. GILMORE.—It is very evident that the letters "an" in the word have been miscopied by the recorder as "ou," I should like to have the instrument

marked for identification and I will offer proof later.

The COURT.—It may be marked Defendants' Exhibit 43 for Identification; said exhibit being as follows: [394]

**Defendants' Exhibit No. 43.**

“#24038        PROOF OF LABOR.

United States of America,  
District of Alaska,  
Second Division,—ss.

Before me, the officer before whom the oath hereinafter referred to was taken, personally appeared B. G. Simmons and J. Bunt, who, being first duly sworn, says that the following described work and labor, viz.: Sinking Shafts and running cuts &c. on the following Placer Mining Claim, to-wit:

No. 1 North Fork American Gulch or Creek.

No. 1 East End American Gulch or Creek.

No. 1 on Lookout Creek.

No. 1 on Lynn Creek.

*Grout* Claim on Moonlight Creek.

2nd tier Bench opposite No. 9 Below on Anvil Creek, Right Limit, and being not less than \$600.00 worth of labor or improvements, were performed and made upon the above-mentioned claims situated in the Cape Nome Recording and Mining District of Northwestern Alaska; said work was done between the first day of August and the 13th day of October, 1903.

Such expenditure was made at the expense of Pacific Coal and Transportation Company owners of

said claims, for the purpose of holding said claims.

B. G. SIMMONS.

J. BUNT.

Subscribed and sworn to before me, this 14th day of October, 1903.

[Notarial Seal]

W. H. BARD,

Notary Public in and for the District of Alaska.

Filed Oct. 27, 1903, 1:50 P. M., request of W. H. Bard.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded Vol. 128, page 118.) [395]

**Testimony of Geo. D. Schofield, for Defendants.**

GEORGE D. SCHOFIELD, a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is George D. Schofield. I am a lawyer. I am now U. S. Commissioner and ex-officio Recorder at Nome. I have held the position since October, a year ago and as such recorder I have the care and custody of the records of the Cape Nome Mining District. I am not familiar with the claims in the vicinity of Moonlight Springs.

Q. Did you ever hear of a claim in that locality called the Grout claim?

A. I don't recall ever having heard of a claim of that name. (Witness continuing:) I have looked the records up with reference to some claims in that vicinity. I have examined Defendants' Exhibit No.

(Testimony of Geo. D. Schofield.)

43. I looked at it just a moment ago. I certified it as commissioner, personally. I could not say whether or not there is an error in it in copying the record.

Q. Why was the word underscored when you made the certified copy?

A. Because the record so shows the original record undoubtedly, it wouldn't be underscored otherwise in that certified copy.

Q. What does the underscoring of the word in the original record in your office mean ordinarily?

A. That the party transcribing the record doubts the correctness of the name. [396]

Mr. GILMORE.—I now offer certified copy of proof of labor for the year 1906 on the Grant claim, signed by W. H. Bard and bearing date October 13th.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 44; said exhibit being as follows:

**Defendants' Exhibit No. 44.**

#39192.

**PROOF OF ANNUAL LABOR.**

United States of America,  
District of Alaska,—ss.

W. H. Bard, being first duly sworn, upon his oath, says that at least \$100.00 worth of work, consisting of operating the claim by mining and sluicing was performed, or made upon the placer mining claim known as the *G R A N T* Claim situate on Moonlight Creek, a bench claim off Number One Moonlight

Creek situate in the Cape Nome Mining District, District of Alaska, during the year ending December 31st, 1906. Such expenditure was made by, (or at the expense of) PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, owner of said claim, for the purpose of holding said claim.

W. H. BARD.

Subscribed and sworn to before me this 13th day of October, 1906.

[Notarial Seal]

JOHN T. REED,

Notary Public in and for the District of Alaska, Residing at Nome.

Filed for record Dec. 22, 1906, 1:50 P. M. Request of Eugene Sperry.

F. E. FULLER,

Recorder.

F. R. Cowden,

Deputy.

(Recorded in Vol. 175, page 51.) [397]

Mr. GILMORE.—I now offer in evidence certified copy proof of annual labor, bearing date June 11, 1907, signed by Eugene Sperry.

The COURT.—It may be admitted and marked Defendants' Exhibit 45; said exhibit being as follows:





was performed at various times from January to June 1907.

EUGENE SPERRY.

Subscribed and sworn to before me, this 11th day of June, A. D. 1907.

[Notarial Seal] JOHN T. REED,  
Notary Public in and for the District of Alaska, Re-  
siding at Nome.

Recorded Mar. 28, 1908, 10:00 A. M., at request of  
John T. Reed.

F. E. FULLER,  
Recorder.  
F. R. Cowden,  
Deputy.

(Recorded Vol. 185, page 45.)

Mr. GILMORE.—I now offer in evidence certified copy proof of annual labor on Grant Claim, bearing date January 2d, 1909, signed by B. E. Hersey and S. Lynd Fox.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 46; said exhibit being as follows:

**Defendants' Exhibit No. 46.**

#47570.

**PROOF OF ANNUAL LABOR.**

United States of America,  
District of Alaska,  
Second Division,—ss.

B. E. Hersey and S. Lynd Fox, being first duly sworn, says:

That during the year ending December 31, 1908, at

least one hundred dollars' worth of labor was performed and improvements made on or for the benefit and development of BENCH CLAIM NUMBER ONE (1) situate at the westerly base of Anvil [399] Mountain, also known as *an* called the "MOONLIGHT" or "Grant" Claim being the same claim located by W. N. Grant on January 9, 1899, Notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District District of Alaska, in Book 3 at page 59, which said claim is situate in the Cape Nome Mining and Recording District, District of Alaska;

That fourteen days' work was done on said claim consisting of sinking a shaft twenty-four feet deep, and about 8x8 feet wide and long for the first eighteen (18) feet, which work was done through frozen ground; and about 4x5 feet wide and long for the remaining six (6) feet, which six (6) feet was through slide rock, requiring blasting.

That said work was done on the following dates, to-wit: December 8-9-10-11-12-13-14-15-16-17-18-19-20- and 21, 1908, and was done by affiants, B. E. Hersey and S. Lynd Fox, and was of the value of more than one hundred dollars;

That said work was done and improvements were made at the instance of M. D. McCumber, lessee of the owner of said claim, the Pacific Coal and Transportation Company, a corporation, and was done for the benefit of the said Pacific Coal & Transportation Company the said owner, in accordance with the terms and conditions of a lease from said Pacific

Coal & Transportation Company to said M. D. McCumber, dated August 15, 1908.

That the actual amount paid for said work and improvements was one hundred & fifty dollars, and that said amount was paid [400] by said M. D. McCumber who is lessee of the owner of said claim.

(Signed) B. E. HERSEY.

(Signed) S. LYND FOX.

Subscribed and sworn to before me this 2d day of January, 1909.

[Notarial Seal]

JOHN T. REED,

Notary Public in and for the District of Alaska, Residing at Nome, Alaska.

Recorded January 6, 1909, 11:50 A. M., at request of John T. Reed.

(Recorded Vol. 185, page 461.)

F. E. FULLER,

Recorder.

F. R. Cowden,

Deputy.

Mr. GILMORE.—We next offer in evidence certified copy of annual labor for the year 1909 on the Grant claim, bearing date October 28, 1909, signed by B. E. Hersey.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 47; said exhibit being as follows:

**Defendants' Exhibit No. 47.**

#50201 PROOF OF ANNUAL LABOR.

United States of America,  
District of Alaska,  
Second Division,—ss.

B. E. Hersey, being duly sworn says:

That during the year ending December 31, 1909, at least [401] one hundred (\$100.00) dollars' worth of labor was performed and improvements made on or for the benefit and development of that certain placer mining claim and ground, situate in the Cape Nome Mining and Recording District, District of Alaska, known as and called Bench Claim *NUMBER ONE (1) AT WESTERN BASE OF ANVIL MOUNTAIN*, also known as and called "*MOONLIGHT*" or "*GRANT*" claim being the same claim located by W. N. Grant, on January 9, 1899, notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District, District of Alaska, in book 3, page 59,

That two hundred and twenty (220) days work was done on said claim consisting of sinking about sixty (60) feet in a shaft through solid rock. That said work was done from January 1, 1909, to April 20, 1909, both dates inclusive, and work was done continuously between those dates, and was done by deponent and one, S. Lynde Fox, and was of the value of upwards of one thousand (\$1,000.00) dollars.

That said work was done and improvements made

at the instance of M. D. McCumber, lessee of the owner of the said claim, the Pacific Coal and Transportation Company, a corporation, under and by virtue of a lease from the said company, as lessor, to said McCumber, as lessee; by the terms of which lease, the said McCumber was to do the assessment work for the year 1909, and payment for said work was made to deponent by said McCumber, and the work was done for the benefit and development of said claim, and was done for the benefit of the owner of said claim, the Pacific Coal and Transportation Company, a corporation.

B. E. HERSEY.

Subscribed and sworn to before me this 28th day of October, 1909.

[Notarial Seal] M. L. PETERSON,  
Notary in and for the District of Alaska, Residing  
at Nome, Alaska. [402]

Recorded October 29, 1909, 2:10 P. M. at request of John T. Reed.

J. F. HOBBS,  
Recorder.

F. R. Cowden,  
Deputy.

(Recorded in Vol. 187, page 340.)

Mr. GILMORE.—I next offer proof of annual labor for the year 1910, signed and sworn to by M. D. McCumber, and bearing date the 27th of March, 1911.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 48; said exhibit being as follows:

**Defendants' Exhibit No. 48.**

#53709.

**PROOF OF ANNUAL LABOR.**

United States of America,  
District of Alaska,—ss.

Menzo D. McCumber being first duly sworn, says:

That during the year ending December 31, 1910, at least one hundred dollars worth of labor was performed and improvements made on or for the benefit and development of the *No. 1 BENCH*, otherwise known as "MOONLIGHT" or GRANT Claim placer mining claim, situate on east fork of Moonlight Creek, east of and adjoining "Moonlight" claim otherwise known as the Robert Lyng claim, in the Cape Nome Recording District, District of Alaska;

That ——— days' work was done on said claim, consisting of one shaft 4x6 ft. and 26 ft. deep; situated about 20 ft. from westerly line and about 50 ft. from south line of said claim. Also one shaft, 4x6 ft. and 34 ft. deep situated about 30 ft. [403] from west line and 40 ft. from south line of said claim.

That there was paid for labor in doing said work the sum of \$601.00, for rent of pumps, boilers, etc., the sum of \$139.00. For Groceries, Board and lodging, coal, freight, etc., the sum of \$889.90. That the total thereof was of the value of \$1629.90 Dollars.

That said labor was done and expenses incurred between January 1st, 1910, and the 1st of May, 1910.

That said work was done and improvements were made at the instance of the Pacific Coal and Trans-

portation Company, the owner of said claim, by affiant, its lessee.

That the actual amount paid for said work and improvements was \$1629.90 Dollars, and that said amount was paid by affiant who is lessee of the owners of said claim.

MENZO D. McCUMBER.

Subscribed and sworn to before me this 27th day of March, 1911.

[Notarial Seal] J. ALLISON BRUNER,  
Notary Public in and for the District of Alaska, Residing at Nome, Alaska.

Recorded Mar. 28, 1911, 10:50 A. M., at request of J. A. Bruner.

GEO. D. SCHOFIELD,  
Recorder.  
W. W. Sale,  
Deputy.

(Recorded in Vol. 192, page 413.)

Mr. GILMORE.—I next offer in evidence, if the Court please, certified copy of amended water right location notice, bearing date July 17, 1905, by Pacific Coal & Transportation Company, by W. H. Bard, Agent. It is for the purpose of showing dominion of the claim by defendants, over the water as well as other parts of the surface in that locality of the Grant claim. [404]

Mr. COCHRAN.—We object to the offer as wholly immaterial for any purpose.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.



Mr. GILMORE.—We should like to have it marked for identification.

The COURT.—It may be marked Defendants' Exhibit 49 for Identification; said Exhibit 49 being as follows:

**Defendants' Exhibit No. 49.**

#31124.

**AMENDED WATER RIGHT.**

Notice is hereby Given.

That the undersigned, a corporation incorporated under the State law *of* Maine, with articles of incorporation duly recorded for the purposes of doing business in the District of Alaska, having complied with all the requirements of the Revised Statutes of the United States, and with the local customs, laws, rules and regulations of the Cape Nome Mining District, District of Alaska, by right of prior right of appropriation and priority of possession, do hereby claim, locate and appropriate all the water running in its natural courses on through or by the claim known as the Grant Claim Situate on Moonlight Creek in the Cape Nome Recording Precinct District of Alaska, Starting at the Northerly and Easterly part of said claim and running in a south-Easterly direction to the outlet which is on the Southwest corner of said claim, such water is to be conducted by ditch, pipe and under ground tunnels to place of outlet, that the ground through which said water way runs belongs to [405] the locator of this water right said water right appropriates all the water upon the surface and also all water be-

neath said surface in the gravel and bedrock as well.

Located and appropriated first location September 2d, 1902. Recorded 17th day of September, 1902.

Amended location made this 17th day of July, 1905.

The party here to do not loose any of its prior rights by making this amended location.

PACIFIC COAL & TRANSPORTATION  
COMPANY,

By W. H. BARD,  
Agent.

Witness:

EUGENE SPERRY.

Filed for record at request of W. H. Bard July, 18, 1905, at 55 min. past 11 o'clock A. M.

T. M. REED,  
Recorder.

W. W. SALE,  
Deputy.

(Recorded in Vol. 126, page 202.) [406]

**Testimony of Louis Kern, for Defendants.**

LOUIS KERN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Louis Kern. I am a brewer and a miner. I have mined in the Nome District. I know the Grant claim out near Moonlight. I worked on that claim from the 12th day of February to about the 5th of May, 1910, with Adolph Meyer. I attended

(Testimony of Louis Kern.)

to the boiler and to the pumps, as engineer. While I was working on the Grant claim I lived in the Red cabin. We worked in the southwest corner of the Grant claim, about fifty or sixty feet from the corner, right near the line. We dug a 3½x5 foot shaft, about 27 feet deep, or a little over, I don't know exactly. I worked on the first shaft that was dug. It was a 4x8 shaft. We had a pumping station down in it, a stationary pump. We had an Emerson pump. We first had a steam pump. We had two pumps in the shaft all the time. One was a stationary pump and the other was a steam pump. It was thawed ground and we had to pump because there was too much water to work without pumping. We pumped day and night. The second shaft was about 35 feet deep. No one molested us while we were working there.

Q. Did the Pioneer Mining Company, or anyone on its behalf, make any claim of the ground while you were there?

A. Not while we were there. I never knew Mr. Stevenson, the first time I knew Stevenson was here. (Continuing:) I do not remember seeing him on the ground. I lived in the red cabin on the Grant claim in the spring of 1910, from the 12th of January to the 5th of May. [407]

Cross-examination.

(By Mr. COCHRAN.)

I was pumping out there. I knew that the Pioneer Company was pumping on the Portland Bench.

(Testimony of Louis Kern.)

I know when they quit working on the Portland Bench.

Q. And you were drowned out when they quit working on the Portland?

A. No, we weren't drowned out, our pump broke.

Q. That was the reason you quit because you were drowned out?

A. No, we didn't quit on that account, our pump broke.

Redirect Examination.

(By Mr. GILMORE.)

Q. Mr. Kern, do you know what followed, if anything, the pumping that you were doing there out on the Moonlight Springs?

A. It had a little effect, the springs was out, we hauled our water from there and the Moonlight Springs was out.

Q. What do you mean by "out," disappeared, couldn't get water?

A. Couldn't get any water any more.

Q. Were you down in the bottom of the shaft?

A. Yes, I was down there fixing the pump and cable.

Q. Do you know from your observations there, whether or not the work done there developed the channel?      A. It looked like a channel.

Recross-examination.

(By Mr. COCHRAN.)

We had an engineer from the Portland Bench. When our [408] pump broke we fixed it up. We

(Testimony of Louis Kern.)

couldn't handle the water when we had the pump and boiler.

Redirect Examination.

(By Mr. GILMORE.)

I have had experience as an engineer. I worked in Harrisburg, Pa., in 1881, and attended fifty-ton boilers.

Q. Are you familiar with boilers?

A. Yes, that is my trade.

Q. If your pump had not broken on you out there, could you from your experience—state whether or not you could have handled the water.

A. I could handle it when I had the right pump. We couldn't get it. We had the right kind of a pump but the valves were out of order. The pump was not in good order. We had to close down a couple of days. [409]

**Testimony of Henry Kern, for Defendants.**

HENRY KERN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Henry Kern. My business has been brewer and mining. I am a brother of Louis Kern who has just testified. I have been in the Nome District since the 4th of July, 1901. I know the Grant claim in the vicinity of Moonlight Springs. I got acquainted with it in the year 1904 and 5. I worked on the Grant claim in 1910, from the last of March until the 27th or 28th of April. I worked for Mr. McCumber and Adolph Meyer. I worked

(Testimony of Henry Kern.)

on top, handling a windlass, and also did some other work besides. We worked on the southwesterly corner about fifty feet to the north and near the line, sinking a shaft. My brother, Louis Kern, Adolph Meyer and Albert Miller worked there at the time I did. I worked on both shafts dug there. The machinery we used in sinking those shafts were three boilers and four pumps altogether. We used one two-inch pump, steam pump, and one four-inch steam pump, three-inch discharge, and one steam, a hanging pump, and then an Emerson pump. The first shaft was 27 feet, the second one about 34 or 35 feet deep. I worked on the surface. I observed the character of the gravel that was extracted. While we were operating those pumps I observed that the Moonlight Springs stopped running. While we were pumping the Moonlight Springs Water Company had trouble, they couldn't get any water from their springs. The character of the gravel taken from the 35-foot shaft was what I would call ground up quartz, a fine gravel, natural channel wash. There were coarse boulders and bog rocks in it. While I worked there I lived in Nome. I don't remember exactly the number of [410] days I worked there, I think nineteen or twenty days.

Q. Now, state whether or not anyone else was on any part of the Grant claim other than you men that were working there in the southwest corner, while you were there. A. No, sir, not anybody.

Q. Did the Pioneer Mining Company or anyone on its behalf, make any claim to you or to anyone

(Testimony of Henry Kern.)

else, in your presence, that they owned the Grant claim or the ground you were working, during the time you were working?

A. No, sir, not while I was there. (Continuing:) I have no interest in the result of the lawsuit. I was paid in full by Mr. McCumber. I first knew the Grant claim in 1904 and 5. I passed by there in 1904 and 5. Mr. Muther was working the ground. I knew him. He had a pan and was panning.

Cross-examination.

(By Mr. COCHRAN.)

I do not know where Moonlight Bench claim No. 1 was while I was working up there. I was in the red cabin several times while I worked there, but I slept in Nome. I might have seen some stakes near the cabin, but I didn't pay any attention to them. I knew where the Grant claim was, I did not know exactly where the boundaries were. I knew that the red cabin was on the Grant claim. The stakes of the Grant claim were pointed out to me from the cabin. I knew where the Grant claim stakes were near where we were sinking the shaft. I didn't pay any attention to the others. I never went up to the other stakes. I know where the Portland Bench claim is now. I didn't know whether the pumping of the Portland Bench claim in 1909 dried up the Moonlight Springs or not. I knew that the Pioneer [411] was pumping on the Portland Bench while we were working on the Grant claim. I don't know whether the ground is thawed between the Portland Bench and the Grant claim or not. The ground is

(Testimony of Henry Kern.)

covered with willows but I don't know whether it is frozen or not. I knew Mr. Stevenson by sight for quite a number of years, but I did not know him by name. I worked there for about twenty days for Mr. McCumber. The Grant claim is about four miles from Nome, somewhere around that. [412]

**Testimony of Albert Miller, for Defendants.**

ALBERT MILLER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE:

My name is Albert Miller. My business is mining. I have been a miner for ten years and have mined in the Nome vicinity for about six years. I was four years in the Council district. I know the Grant claim near Moonlight Springs. I got acquainted with it in 1910. I performed labor on the Grant claim, for Mr. McCumber, in March and April, 1910, sinking shafts. The first shaft was 27 feet deep and the second one 35 feet. I worked down in the hole. The character of the ground at the bottom of the 35-foot shaft was chicken-feed gravel and big boulders. I have had a large experience in digging shafts. Have dug a great many in different parts of the Nome District.

Q. From your experience as a miner and the experience you had in that shaft, are you able to state whether or not that shaft was in what is considered an old channel?

Mr. COCHRAN.—Objected to as leading and upon the further ground that the witness has not shown himself qualified to answer.



(Testimony of Albert Miller.)

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I did not do any panning in the shaft. We used three boilers and four pumps in our work. There were five other men who worked there while I was there, they were Henry Kern, Louis Kern, Adolph Meyer, Williams, and two Russians; I don't know their names. While I worked there I stayed at Little Creek. [413] There was a red cabin on the Grant claim while I was working there, near the railroad track. I have not been on the Grant claim recently. I know where the ground in controversy in this lawsuit is. I know it since the suit was commenced, but not before. At the time I worked on the Grant claim there was no one else in possession of the Grant claim, or any part of it, other than the men that were working with me. I know where the boundaries of the Grant claim are. There was no one within those boundaries other than myself and the men that were working with me at the time I worked there. I know where the southwest corner is. We were working from eighty to one hundred feet from that corner. It was close to the figure "2" on the map, Defendants' Exhibit 11. I know Mr. Stevenson. I knew him at the time I worked there. I have worked for him. I worked for the Pioneer Mining Company when Mr. Charlie Johnson was manager. I worked for the Pioneer Mining Company both before and after I worked on the Grant claim. I did not see Mr. Stevenson on the

(Testimony of Albert Miller.)

Grant claim while I was there. I worked down below in the shaft. I have no interest in the result of the lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

Q. How did you know there was nobody else living on the Grant claim or not.

A. There was nobody at that time.

Q. Nobody when you were there?

A. No, sir. [414]

**Testimony of James Walter Charles, for Defendants.**

JAMES WALTER CHARLES, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is James Walter Charles. My business is mining and prospecting. I am interested in some mining claims in the vicinity of Moonlight and Anvil Mountain, northeast of Nome. I know the Grant claim. I first knew it in 1904 and 5. Mr. Muther was working on the claim then. He was working in a hole I should judge about twenty feet east of the railroad track, close to the dam. There were cabins on the Grant claim in 1904 and 5. They were east of the railroad track about thirty feet and about twenty feet from the dam northeasterly. I was on the Grant claim during the summer of 1911. I worked on the Grant claim at that time, in June.

Q. When did you go to the Grant claim?

A. The first of May, 1911.

Mr. COCHRAN.—Objected to, if the Court please,

(Testimony of James Walter Charles.)

and move to have the answer stricken out as being wholly irrelevant and immaterial.

Mr. GILMORE.—It is for the purpose of showing, if the Court please, that Mr. Charles succeeded Adolph Meyer and lived there during the summer of 1911, and that we had possession of the disputed area not only at the time the suit was started, but since.

Mr. COCHRAN.—I don't see how it could affect the right of the plaintiff in this case.

The COURT.—I think you have to produce some more proof; I can't see that it has anything to do with it. It may be stricken. [415]

To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to prove by the witness that he resided on the claim for Mr. McCumber, as an employee of Mr. McCumber, from the first day of May, 1911, until sometime in the month of July, until the 7th of July, 1911. That during that time he lived upon the ground in controversy in this lawsuit and during the greater part of the time was engaged in work thereon. We offer it for the purpose of showing actual physical possession of the ground in controversy as occupied by us and continued to be so occupied after the lawsuit started.

Mr. COCHRAN.—We resist the offer on the ground that it is wholly incompetent and immaterial.

The COURT.—Objection to the offer is sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [416]

**Testimony of S. Johnson Bakke, for Defendants.**

S. JOHNSON BAKKE, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is S. Johnson Bakke. I am manager of the Moonlight Water Company and have been such manager for the last five years. I knew the Moonlight Water Company prior to that time.

Q. Where does the Moonlight Water Company keep its office or maintain its office in the Town of Nome?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

Mr. GILMORE.—The purpose is to show that the Moonlight Water Company is a subsidiary company of the Pioneer Mining Company, and has maintained its office with the Pioneer Mining Company in the town of Nome for the past several years; that this witness as manager of the Moonlight Water Company knows these facts to be true and I expect to show by the witness as part of our estoppel, that we have plead, bringing home notice to the Pioneer Mining Company that *it stood idly by* during the period of litigation that we alleged took place without interceding on behalf of their title, and to show that they had absolute notice of it. I want to show that the two companies, the Moonlight Water Company and the Pioneer Mining Company office together in the town [417] of Nome and that the plaintiff, the Pioneer Mining Company, controlled

(Testimony of S. Johnson Bakke.)

the other company, the Moonlight Water Company, and its management.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Who employed you as manager of the Moonlight Water Company?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. Bakke, have you a written agreement between yourself and the Moonlight Water Company?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you ever have any transactions between Mr. Lindeberg, president of the Pioneer Mining Company, and yourself with reference to the management of the Moonlight Springs Water Company?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer to prove by the witness in order to get it in the form of an offer, that ever since the year 1906, since the [418] Moonlight Water Company was organized, it had maintained its office with the Pioneer Mining Company and has been managed directly by Mr. Lindeberg,

(Testimony of S. Johnson Bakke.)

the president of the Pioneer Mining Company through this witness as the manager. I offer it for the purpose of showing that during the time of the litigation, which the plaintiff in its reply admits took place that the Pioneer Mining Company stood by during all those years and didn't assert title to the ground in controversy, that was then being litigated.

Mr. COCHRAN.—We resist the offer on the ground that it is incompetent and immaterial.

The COURT.—Objection to the offer sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [419]

Mr. GILMORE.—I now offer in evidence the deposition of Thomas D. Jensen, taken on the 30th of October, 1911.

The COURT.—Proceed.

**Deposition of Thomas D. Jensen, for Defendants.**

My name is Thomas D. Jensen. My age is thirty years. My business is mining. I have been mining since 1900 in the Nome District in the locality of Anvil Creek, Jess Creek and Rabbit Creek. I am familiar with claims in this vicinity. I have been outside three winters during that time. I know Andrew Jensen; he is my father; he is now residing at Buffalo, N. D. I know the Grant claim in the vicinity of Moonlight Springs. I am not very well acquainted with the Moonlight claim, or Moonlight Springs claim. I know of it. I also know of a claim called Bench No. 1 Moonlight in that vicinity.

Q. State whether or not you have had any correspondence with your father, Andrew Jensen, during

(Deposition of Thomas D. Jensen.)

the fall of 1910 and spring of 1911, with reference to the ground in controversy in this action.

A. I have. (Continuing:) I understand where the ground in controversy is between the two claims. I began the correspondence with my father with reference to the ground in controversy at the instance of Mr. McCumber. I recall that I wrote two letters to my father. I cannot give the exact date, but the first letter was written the very first days of November, 1910, and the last one a little before the middle of December, 1910.

Q. I hand you a paper marked at the top Exhibit "B," dated December 12, 1910. Will you just glance at that and state whether or not you know what that is? [420]

A. Yes, I know what that is.

Q. What is the instrument?

A. It is approximately a copy of the letter I wrote to my father. I could not say it was exactly, but in the main it is. (Continuing:) I have not the original. I know that my father received it. I received a reply to each of my letters. It was the latter part of January or first part of February when I received an answer to the first one, and the other one about the first of March.

Q. Where are those letters, do you know; have you them? A. No, I have not.

Q. Now, in the subpoena you were cited to bring them with you.

A. I did not have them; one I destroyed and the other I could not find. I thought I left it out on Jess

(Deposition of Thomas D. Jensen.)

Creek, but I could not find it.

Q. Why did you destroy one of them, Mr. Jensen?

A. Because I did not wish to introduce them as evidence in this case.

Q. Then, you have not got them with you at the present time? A. No, I have not.

Q. Did you destroy them, Mr. Jensen, under the advice of counsel or anyone, or did you do it of your own inclination?

A. Of my own inclination. (Continuing:) I destroyed them without the knowledge of anyone but myself. I thought it would be asked for and I did not want to have it. I think one of the letters was in my sister Katie's handwriting; the other one I am not sure about. The one I destroyed was in my sister's handwriting. [421]

Q. State whether or not the letter informed you that it was written at your father's dictation.

Mr. COCHRAN.—Objected to as irrelevant and immaterial and not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Tom, I ask you to examine the exhibit I hand you here commencing, Council, March 28; examine it and state, if you know, what it is.

A. I believe it is the letter I wrote you last winter from Council. (Continuing:) That is my handwriting; that is the letter I sent you from Council City.

Q. State whether or not the quotation in that is a



(Deposition of Thomas D. Jensen.)

correct quotation from the letter you destroyed with reference to the matter in controversy in this action.

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial and hearsay and self-serving.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. You copied from the other letter in writing this, the part that is in quotations?

Mr. COCHRAN.—Objected to as immaterial, irrelevant, hearsay and self-serving.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [422]

Mr. GILMORE.—We offer in evidence, if the Court please, the letter referred to in the deposition as Exhibit "C" and marked by the Notary.

Mr. COCHRAN.—Objected to as being irrelevant and immaterial for any purpose whatever, and self-serving.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like now to have Exhibit "C" to the deposition marked for identification.

The COURT.—It may be marked Defendants' Exhibit 50 for identification; said exhibit being as follows:

**Defendants' Exhibit No. 50.**

## Exhibit "C."

Council Mch 28, 11.

Mr. W. A. Gilmore

Nome, Alaska.

I recd a letter from home a couple of days ago. This was written before he had received the map and letter which I sent out together. I wrote to my father previous to that at Mr. McCumbers request. You can see in this sketch what relation his No. 6 bench on which is written the word "spring" and his "moonlight bench" bear to each other. No. 1 Below on Anvil Creek is also shown.

He says in explanation of the map as follows: "Enclosed find a raw draft of my bench claim on Anvil Creek. It starts from the lower half of No. 1 below on Anvil then butting against Lindbloms Moonlight claim and then following along Moonlight claim towards Anvil mountain ending not very far from the base of the Mountain. Grants claim starts right from where mine ends up the side of Anvil Mountain; there is a vale in Anvil Mountain and Grants claim runs up that vale. At the time I staked the bench on Anvil there was a spring on my claim. *My Bench on Moonlight* you will see in the drawing was staked the [423] full length towards Little Creek bounded on the end by the upper half of Lindbloms Moonlight claim. You can figure the directions out from the drawing. My Moonlight claim was not so very far from the base of Anvil Mountain possibly 100 feet."

(Deposition of Thomas D. Jensen.)

I expect to hear from my father again soon as there was in the last mail a receipt for that map and letter which was registered. I will then write you again.

Very truly,

THOS. D. JENSEN.

P S I send you this map not to be used as any evidence in the controversy but simply to throw any light it may to your own satisfaction.

T D J.”

Q. Now, just examine this exhibit beginning, Council, Alaska, April, 1911, and state, if you know, what that is.

A. Yes, it is a letter I sent you last spring from Council. (Witness continuing:) It is in my handwriting.

Q. State whether or not that correctly quotes the language in your father's letter with reference to the ground in controversy, the second letter received from him.

Mr. COCHRAN.—We object to that on the ground that it is wholly irrelevant and immaterial, and purely hearsay.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to prove by the witness that it is in substance an exact copy of the letter received by him from his father with reference to the matter in controversy.

The COURT.—Objection sustained. To which

(Deposition of Thomas D. Jensen.)

ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, in the first letter that you received from your father it stated in substance, "Enclosed find a rough draft or drawing." State whether or not there was enclosed in that letter a drawing purporting to show the [424] claims in controversy.

A. There was.

Q. Please examine the instrument I hand you, marked Exhibit "A" at the top, and state if you know what that is.

A. That is the drawing I received from my father. (Continuing:) I received it in his letter, in that letter.

Q. State whether or not, Tom, that is your father's handwriting. A. I think it is.

Q. Are you familiar with his handwriting?

A. Yes, I believe it is.

Q. State whether or not that is the drawing enclosed in the letter received from him. A. It is.

Q. State whether or not it was received by you in one of the letters you have previously testified to.

A. It was.

Mr. GILMORE.—I now offer in evidence Exhibit "A" attached to the deposition, being the plat or map referred to.

Mr. LOMEN.—That is objected to as incompetent, irrelevant and immaterial, no proper foundation laid.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Deposition of Thomas D. Jensen.)

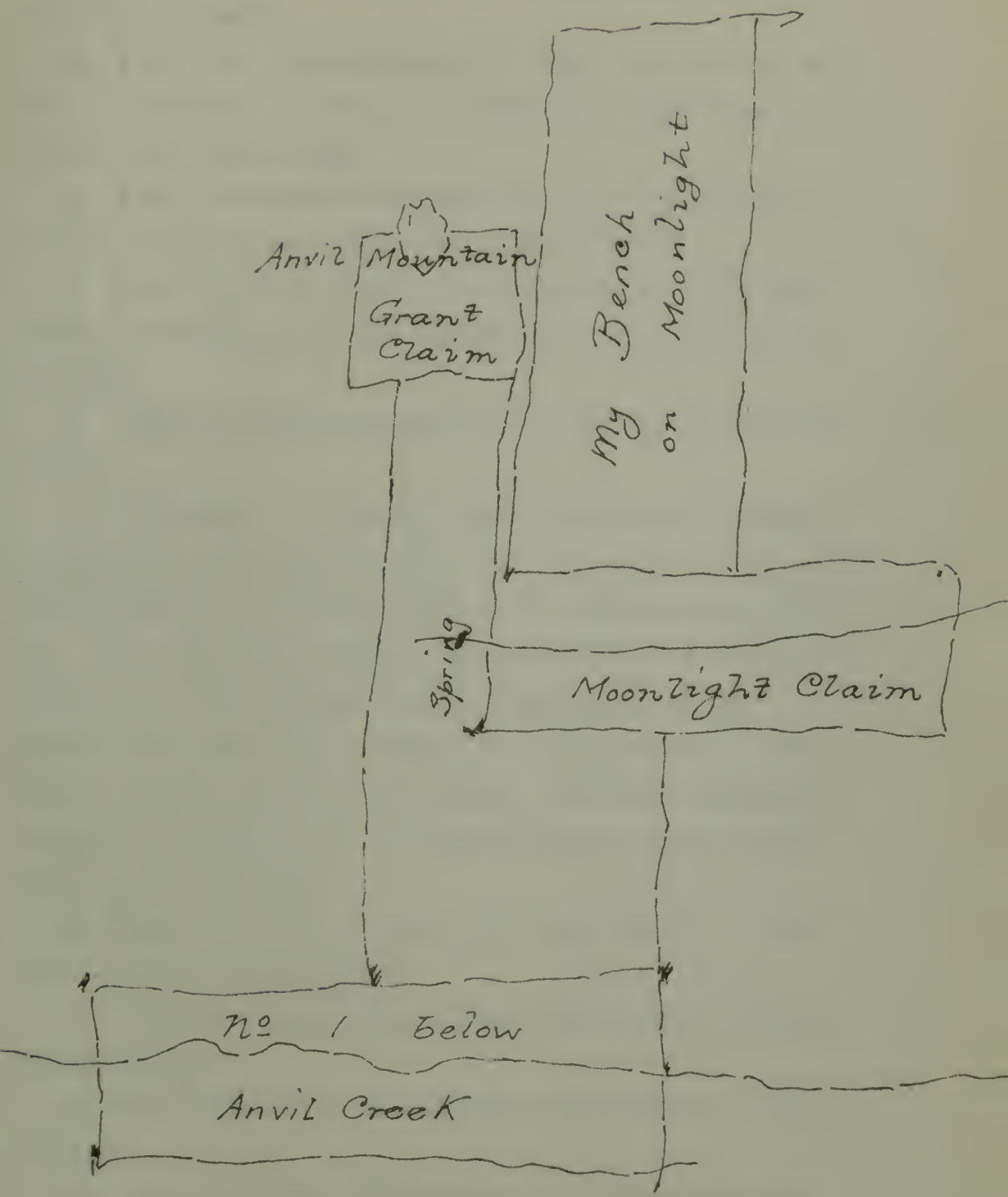
excepted and the exception was allowed.

Mr. GILMORE.—I would like to have the exhibit “A” to the deposition, being the plat referred to, marked for identification.

The COURT.—It may be marked Defendants’ Exhibit 51 for Identification; said exhibit being as follows: [425]



Exhibit "A"  
Exhibit 'A'



Defendants' Exhibit '51' for Identification.





(Deposition of Thomas D. Jensen.)

Q. Is it your intention, Tom, to leave the District of Alaska soon?

A. Yes, sir. (Continuing:) This afternoon on the "Victoria." I will be absent for some time; at least until June, 1912.

Q. Tom, when was the first time you ever heard of a claim known as Bench No. 1 Moonlight?

A. In the fall of 1899. (Continuing:) The first time I ever heard of the Grant claim was in the fall of 1899.

Q. Who, if anyone, was with you on the ground in 1900?

A. My father. I am not sure whether my father pointed out the stakes that time or not. I do not know where the initial stake of the Bob Lyng claim is. The first time that I was on what is known as Bench No. 1 Moonlight was in the spring of 1900. I know where the Grant claim is on the ground to-day and I know where the Pioneer Mining Company claims the Bench No. 1 claim to be on the ground, also, approximately.

Q. Did you ever see any of the stakes of this Bench No. 1 Moonlight?

A. I think I saw some of the stakes but I do not recall whose.

Q. What time did you become interested in the claim?

Mr. COCHRAN.—Objected to as assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Deposition of Thomas D. Jensen.)

excepted and the exception was allowed.

Q. And from whom did you get that interest?

Mr. SCHOFIELD.—Objected to as assuming something not in evidence. [427]

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not the title stood in your name or your father's. A. In his name.

Q. Under what arrangements did you own it?

Mr. SCHOFIELD.—Objected to as assuming something, not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you have a deed of it from him or did it stand in his name?

Mr. SCHOFIELD.—Objected to as not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer to prove by the answers to the different questions just offered and ruled out, in substance, that the witness stated he had a half interest in the claim; that he got it from his father under an arrangement with his father, the title to stand in his father's name but his father executed a power of attorney to him so he could convey it to whomever he pleased.

(Deposition of Thomas D. Jensen.)

Mr. SCHOFIELD.—Objected to as not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [428]

Q. To whom did you sell it? A. D. W. McKay.

Q. When?

A. In the spring of 1902, I gave him an option in 1901.

Q. And for what consideration, do you remember? A. Five hundred dollars.

Q. And what other interest?

A. A half interest in No. 6 Below Good Luck. I think that was all.

Q. Were you on the ground from the time you became interested in it up to the time you sold to McKay? A. I think I was there over the ground.

Q. At the time you were an owner from 1900 to 1902, until you sold to McKay, where did you claim the placer claim No. 1 Moonlight to lie?

Mr. SCHOFIELD.—Objected to as immaterial where he claimed it to lie.

Mr. COCHRAN.—Also assuming that he owned it.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Where did you claim it to lie when you were an owner?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Deposition of Thomas D. Jensen.)

excepted and the exception was allowed.

Q. What direction from Moonlight Springs did you claim your claim to be?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there [429] excepted and the exception was allowed.

Q. What direction from Bob Lyng's claim?

Mr. COCHRAN.—Same objection, wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer to prove in substance by the answers of the witness to the various questions I have just asked, that while he was an equitable owner of the claim, from 1900 to 1902, the date when he sold to McKay, that he claimed the placer claim No. 1 Bench now claimed by the plaintiff in this lawsuit to be in an entirely different position and south of where the plaintiff now claims it, and that that claim was made in full knowledge of himself on the ground at the time.

Mr. SCHOFIELD.—The offer is objected to as immaterial.

The COURT.—The testimony of the witness has been to the contrary so far. The objection is sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, you never, at any time you were an owner

(Deposition of Thomas D. Jensen.)

of the claim claimed that it conflicted with the Grant claim?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. [430] To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not during all the time you were an owner of a half interest in the claim, from 1900 to 1902, that you ever claimed it to conflict with the Grant claim as marked on the ground.

Mr. SCHOFIELD.—Objected to as assuming that he owned an interest in the claim.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not, during all of the time that you were an owner of the claim, that you claimed that it conflicted, during 1901 and 1902, with the Grant claim as then marked on the ground, in 1901 and 1902.

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there objected and the objection was allowed.

Q. Did you ever claim that there was a conflict, in 1901 and 1902?

Mr. SCHOFIELD.—Same objection, immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Deposition of Thomas D. Jensen.)

Mr. GILMORE.—I now offer to prove by the witness in substance, by his answers to the questions, that during all of the times he was an equitable owner of a half interest in No. 1 Bench, claimed by the plaintiff, in [431] 1901 and 1902, that he never knew that it conflicted in any way with the Grant claim.

Mr. COCHRAN.—I object to the offer, the answer says, “I don’t know exactly where the claim was.”

Mr. GILMORE.—The answer says, “I never knew that it conflicted.” It couldn’t be any plainer than that.

Mr. SCHOFIELD.—Counsel should not make the offer contrary to evidence.

Mr. COCHRAN.—We object to the offer as being irrelevant, immaterial and not binding upon the plaintiff.

The COURT.—The objection is overruled, if counsel will endeavor to prove what he says.

Mr. GILMORE.—Very well, if I don’t it can be ruled out.

Q. State whether or not all of the time you were an owner of one-half interest in the claim in 1902, that you ever claimed that it conflicted with the Grant claim.

Mr. COCHRAN.—Just a moment, we move to strike it out.

The COURT.—Let him prove the offer.

Mr. GILMORE.—“A. No, sir, I never knew that it conflicted.”

Mr. SCHOFIELD.—I move to have it stricken

(Deposition of Thomas D. Jensen.)

out as not in conformity with the offer.

The COURT.—It may be stricken out, to which ruling of the Court defendants excepted and exception was allowed.

Mr. GILMORE.—“Q. As marked on the ground then, in 1901 and 1902?” “A. I don’t know exactly where the ground was marked. I don’t believe there ever was a conflict.” [432]

Mr. SCHOFIELD.—Move to strike out as not in conformity with the offer.

The COURT.—It may be stricken. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you claim there was a conflict in 1901 and 1902?

Mr. COCHRAN.—Objected to, your Honor having already ruled upon the offer and excluded it.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Directing your attention to the southerly side end stakes, being the side of the Lyng claim, next Little Creek. A. I know where those are.

Q. You know where that bunch of stakes are?

A. Yes.

Q. Did you ever examine those stakes to ascertain whether or not your father’s stakes were at that point?

A. I think I have examined them, but it was so long ago, so many years ago, I don’t remember whether there was any of his stakes there or not.

(Deposition of Thomas D. Jensen.)

(Continuing:) I don't remember the date I sold to McKay, I think the deed was given sometime the summer of 1902. I think the deed was recorded.

Cross-examination of Witness Offered by Mr. GILMORE for Defendants.

Q. Mr. Gilmore asked you whether or not you knew there was a conflict out there, during the years you were an owner.

A. I never knew there was a conflict.

Q. Then you never had any reason to claim there was a conflict?

A. I want to modify that a little. Sometime during the summer [433] of 1902 or thereabout I knew there was a conflict. (Witness continuing:) I never knew Mr. Kingsbury until this summer. I knew that Mr. Bard and Mr. Muther claimed the Grant claim at that time under a lease. Mr. Bard represented the owners, the Pacific Coal & Transportation Co. He never talked to me about the conflict.

Q. Now, while you were an owner in the claim, you never had occasion to question whether there was or was not a conflict between the Moonlight Bench and you Tom? A. I never did.

Redirect Examination by Mr. GILMORE.

I don't know who was working the ground in controversy in 1901 and 1902. I was out over the ground in 1901 in the vicinity of Moonlight Springs. I do not recall that I saw anyone working east of the Moonlight Springs on the ground now in conflict. I was over the ground before I sold it to McKay in the spring of 1902. I do not remember whether there



(Deposition of Thomas D. Jensen.)

was any evidence of work or not.

Q. State whether or not up to the time you sold to McKay in 1902, you had ever heard of any conflict between the Grant claim and Bench No. 1 off Moonlight.     A. No, I never did.

Recross-examination Offered by Mr. GILMORE for Defendants.

I have seen my father's deposition. I read what my father said. I did not see the plat attached to the deposition. I read that portion of the deposition where he stated the way he had staked the Moonlight Bench. [434]

Q. Now, do you know whether or not the Grant claim was moved down onto that portion of the ground as your father states that he staked it?

A. No, I do not know.

Q. You know the Grant claim as they claim it now reserves a part of the ground that your father claims he staked?     A. Yes.

Q. And you say you never knew, when you were an owner, that the claim located by your father was in conflict?

Mr. COCHRAN.—I object to that as assuming that he was an owner.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did any of the Grant claim owners ever make any claim to you that they conflicted with the ground staked by your father, during the time that you owned an interest in the ground?

(Deposition of Thomas D. Jensen.)

A. No, they never did. I did not know Mr. Grant.

Redirect Examination by Mr. GILMORE.

Q. Did you ever hear of a conflict between the Grant claim as marked on the ground and Bench No. 1 Moonlight, until after the Pioneer Mining Company bought the claim?

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [435]

Q. They took an option in 1901 and got their deed in 1903, according to Mr. Lindeberg's evidence. You are sure you never heard of a conflict prior to 1901?

A. Yes, I am positive.

Recross-examination.

I was on the Bench No. 1 Moonlight with my father in 1900. I did not see a place on the claim when I was there where he had worked on the ground. I do not know where my father made a discovery of gold on the claim.

Q. And were you up on the portion of the ground that Mr. Gilmore claims now is covered by the Grant location? A. Yes, I undoubtedly was.

Q. With your father? A. Yes.

Q. And did you see any evidence of any work that you recall?

A. Not that I recall. (Continuing:) I don't recall any. I do not recall that my father had work on this ground.

Q. Did you ever do the representation work on the

(Deposition of Thomas D. Jensen.)

claim while you were an owner of it?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you have or cause any work to be done on it?

Mr. COCHRAN.—Same objection, immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—The next two or three questions in the deposition are on the same line. Under the ruling of the Court I will omit them. [436]

Q. After 1900 when you were on the claim with your father, when were you out again on the ground?

A. Well, I was on it several times in 1900, and the next time I was on it, was the spring of 1901. (Continuing :) I have had occasion to go over the ground and pay attention to it since. I was over it this past summer once. I went at the request of Mr. Lindberg and once at the request of Mr. McCumber.

Q. And were you able to determine anything from those examinations with relation to the claims?

A. Yes.

Q. You were able to determine something?

A. Yes.

Q. And were you able to determine the lines of the Moonlight Bench? A. Not exactly.

Q. And were you able to determine the lines of the Grant claim, as originally staked?

(Deposition of Thomas D. Jensen.)

A. Not exactly.

Q. Do you recollect where the Moonlight Bench claim is marked now, as claimed to be marked by your father originally? A. I do.

Q. Do you know whether or not the lines are the same as when your father took you out there?

A. I don't believe they are. (Continuing:) To the best of my knowledge they are not. The first time I saw the Grant claim was when I was out there with my father in 1900. I would not say exactly, but it seems to me my father did point out a stake as the Grant stake; my impression is he did, but I may have got that impression from some other fact. I read my [437] father's deposition in relation to the Grant claim. I can't say positively that my father did point out a Grant stake. I can't recall positively that he did point out the Grant stake to me.

Redirect Examination.

(By Mr. GILMORE.)

Q. From the examination you made out there for Mr. Lindeberg and the second examination you made for Mr. McCumber the past summer, state whether or not you are able to state about where the Bench No. 1 lay at the time you and your father were there in 1900.

A. I can state approximately where I believe it was.

Q. State, then, as near as you can, where the claim lay at the time you and your father were out there in the year 1900.

(Deposition of Thomas D. Jensen.)

A. I believe the claim was a little further southeast than it is now.

Q. That is, so as to get it in the record, toward what object?

A. Toward Little Creek. (Continuing:) I am not sure what was the lengthwise direction of the claim.

Recross-examination.

(By Mr. COCHRAN.)

Q. You think that your father misstated the boundaries?

A. No, I don't think so. (Continuing:) I think if my father was on the ground he would probably see it different.

Q. Now, Tom, you have been very active in this case on behalf of the defendants? A. No, sir.

Q. You went out to the claim on their behalf?

A. I did. [438]

Q. And you wrote letters on their behalf?

A. Partly on their behalf and partly on your behalf.

Q. Now, you state in a letter marked Exhibit "B," "A couple of boys put several years' earnings into discovering the pay streak on the Grant claim"?

A. Yes, I wrote that.

Q. "Now, the Pioneer Company is jumping onto their necks and trying to take it away from them"; is that in the interest of the Pioneer Mining Company you wrote that? A. No, sir.

Q. Did you write that on behalf of the Pioneer Mining Company?

A. I did not write it in anyone's behalf.

(Deposition of Thomas D. Jensen.)

Q. "If these boys are entitled to the ground I would like to see them hold it," and you wrote that in behalf of the defendants? A. Yes, sir.

Q. Tried to persuade your father to—

A. I could not persuade my father; that would be out of the question.

Q. What did you mean by "help them out"?

A. If he knew of any facts he would be doing them a favor.

Q. You wrote this letter to your father to get facts to help out the defendants?

A. You have not read it all, Mr. Cochran.

Q. That is all, the period follows. Did you want to help out the defendants?

A. I know the rest of it too.

Q. You say you could not influence your father?

A. No, sir. [439]

Q. Why?

A. Because I know he could not be influenced; that is absolutely out of the question. (Continuing:) I know he would state the truth whatever he said.

Q. But now you doubt that he did tell the truth?

A. I do not.

Q. You think he did tell the truth in his deposition? A. I do.

Redirect Examination.

(By Mr. GILMORE.)

Q. When you say he told the truth, you think he told the truth as he recalled it? A. Certainly.

Q. You started to say that if he was on the ground,

(Deposition of Thomas D. Jensen.)

and Mr. Cochran shut you off, what addition did you wish to make?

A. I meant to say if he was on the ground the ground might look different out there, the actual ground, from what it looked on paper.

Q. And if I understood you correctly, you think he is mistaken when he puts the claim where the Pioneer claims it is?

Mr. COCHRAN.—Objected to as calling for an opinion of the witness.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Mr. Cochran asked you whether or not with reference to a degree of certainty in your mind as to whether the claim is where your father testified it was, and you replied that you were certain in your own mind. [440]

A. I know with a degree of certainty in my own mind—I always had believed it to be No. 1 Moonlight, my father's claim, I always thought was further southeast from where it is now staked on the ground.

Q. And while you were an owner of the claim, state whether or not that is where you claimed it.

Mr. COCHRAN.—Objected to as immaterial, assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. With reference to writing these letters, had Mr. Cochran or Mr. Lomen, on behalf of the Pioneer

(Deposition of Thomas D. Jensen.)

Mining Company, asked you to write to your father?

A. They asked me if I knew anything of the Grant claim, or if I thought my father knew.

Q. State whether or not that was before you wrote the letters.

A. That was after I wrote the first letter, and the one that Mr. Cochran was reading.

Q. Now, was it your intention, or did you intend by writing these letters to your father, to influence him in the slightest degree?

A. I wished him to understand that there was considerable importance attached to the answer he would give to the questions and so that he would pay some attention to them for that reason.

Q. Now, speaking of "a couple of boys" who put in several years' work, to whom did you refer?

Mr. COCHRAN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling [441] of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not you knew it to be a fact that they had done what you wrote.

Mr. COCHRAN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. And is it not a fact that you knew they had spent considerable money out there?

Mr. COCHRAN.—Objected to as incompetent, ir-



(Deposition of Thomas D. Jensen.)

relevant and immaterial.

Mr. GILMORE.—I wish to show that he did not write anything that was untrue. That he had no interest whatever in the correspondence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Recross-examination.

Mr. COCHRAN.—We waive it.

Mr. GILMORE.—I offer it in evidence then.

The COURT.—Proceed.

Q. You just took their word for it?

Mr. LOMEN.—Objected to as immaterial, incompetent and irrelevant.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [442]

Q. Did you go to see what prospecting they had done?

A. Yes, I went there over the ground and I saw that they had done considerable work.

Q. Did you do any panning? A. No, sir.

Q. Did you know they located a pay-streak?

A. I know they said they did. (Continuing:) I said in answer to Mr. Gilmore's question that if my father was on the ground it might look lots different.

Q. And it might not look any different?

A. It might not.

Q. That is just pure guessing on your part?

A. No, it is not guessing exactly; I am reasonably sure of it.

(Deposition of Thomas D. Jensen.)

Q. You are reasonably sure it might look different?

A. Yes. (Continuing:) I could not say where the original southerly stakes were. I might know Mr. Spanggard, but I am not sure. I have heard my father speak of him, but I am not sure I have met him. I did not know Mr. Kingsbury until this summer. I know Otto Scheuler very well. I know where Otto Scheuler located a claim out there. I don't know where the Depue Bench is. Neither do I know where the Carlson Bench or Nelson Bench is.

Q. Now, Tom as I understand it, you didn't have any occasion to pay any attention to that ground after 1902 until you went out there last summer.

A. No, not since I sold it to McKay.

Q. You have had no occasion to think about it?

A. I have always thought about it off and on.

Q. Not in the sense of having any interest in it?

A. No.

Q. In your mind it was a lost opportunity?

A. Yes. [443]

(Witness continuing:) I had occasion to pay attention to the claim and was over the ground until Mr. McKay took up the option. I walked over it up until 1902. I had occasion to pay attention to the claim afterwards, before this summer. I recall to mind that I used to be interested with the "Lost Treasure" claim that conflicted with the Grant.

Q. And did it have stakes, the Lost Treasure?

A. Yes.

Q. And were they in on the Grant claim?

(Deposition of Thomas D. Jensen.)

A. Yes.

Q. Did you understand that the Grant claim ran in on the Lost Treasure, or the Lost Treasure ran in on it?

A. Well, at the time I was interested in the Lost Treasure I claimed that the Grant claim ran in on it.

Q. And did the Lost Treasure have any stakes in on the Grant claim as it is staked now?

A. Yes, I think it did.

Q. And when did the Lost Treasure have stakes in there?

A. I can't recall at the present time.

Q. When was the Lost Treasure located, do you know?

A. I know the locator, Ike Powers. It was located in—I am not positive which year; I think it was after 1901; I am almost positive it was after 1900. The Grant claim was not a floater, as I understood it. I know there was a conflict with the Lost Treasure claim, and I did not understand that the Grant people had moved their stakes.

Redirect Examination.

(By Mr. GILMORE.)

Q. This Lost Treasure was located by Ike Powers in 1900, was it? [444]

A. I think it was later than that, but it might be as late as 1901.

Q. And the south portion of the Lost Treasure claim conflicted with the north portion of the Grant claim, did it? A. It did.

Q. State whether or not you were out there a num-

ber of times. A. I was.

Q. And where did the Grant claim lie with reference to the Lost Treasure?

A. It conflicted with the south boundary of the Lost Treasure.

Q. And lay in what direction? A. South.

Mr. GILMORE.—I now offer in evidence, if the Court please, Exhibit “B” attached to the deposition of Thomas D. Jensen, being the letter referred to by the witness, dated December 12, 1910, to his father, Andrew Jensen.

The COURT.—It may be received in evidence and marked Defendants’ Exhibit 52; said exhibit being as follows:

**Defendants’ Exhibit 52.**

(Exhibit “B” to Deposition.)

Nome, Alaska, December 12, 1910.

My dear father:—

I wrote you sonetime since in regard to some litigation there was coming up in regard to your Bench No. 1 on Moonlight. The Pioneer Mining Company now holds your title to that ground. You remember the ground Grant located, you were a witness on his location notice. According to his location notice his claim joins to some extent Bob Lyng’s Moonlight claim. You know whether it did or not? Did Grant’s claim take in some of the willows or flat ground or was it entirely on the rock pile? [445]

I am sending you a map which shows your No. 6 Bench the Lyng Moonlight Claim and your No. 1 Moonlight Bench which the Pioneer people now

claim take the best portion of the Grant claim; that part which I have lined in red ink. Now if I remember correctly your Moonlight Claim was farther away from your No. 6 Bench and came quite a ways from touching it. Your No. 6 Bench on this map is well established and recognized. Now I wish you would trace on the inclosed map what you believe is the correct boundaries of the No. 1 Moonlight Bench Claim.

A couple of boys have put several years earnings in to discover the pay streak on the Grant Claim, now the Pioneer Company is jumping onto their necks and trying to take it away from them. If these boys are entitled to this ground as the Grant Claim I would like to see them hold it and you would be doing several people a considerable favor if you could help them out. If they are not entitled to it the sooner that they find it out the better for them.

I wish you would answer this by return mail and also send back the map. You do not need to fear that this will involve you in any way. Please write immediately so that your reply will come in by the winter mail.

Very truly your son,

TOM."

Mr. GILMORE.—I also offer in evidence Exhibit "D," identified by the witness, and attached to the deposition, being the letter from the witness, Tom D. Jensen, to myself, dated April 11, 1911, from Council City.

Mr. LOMEN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendant then and there excepted, and the exception was allowed.

Mr. GILMORE.—I should like to have it marked for identification.

The COURT.—It may be marked Defendants' Exhibit 53 for Identification; said exhibit being as follows:

**Defendants' Exhibit 53.**

(Exhibit "D" to Deposition.)

Council Alaska April 11, 11

Mr. W. A. Gilmore

Nome

Dear Gilmore— [446]

My Fathers letter arrived a few days ago, he writes as follows. "Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My bench on Anvil so far as I remember was staked along the lower half of No 1 below Discovery on Anvil Creek running 1320 feet towards Anvil Mountain but not the whole width because after running some distance towards moonlight creek I struck Robert Lyngs claim on Moonlight. Then I followed the Moonlight then again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No 1 below. I dont remember how many feet the upper end of my claim was, tho I think it was several hundred.

Now Grants location stake was set right beside

mine at the upper end of Moonlight claim, running up Anvil Mountain. There was some flat ground between the mountain and our stakes so Grants claim takes in some of the flat ground between the end of my claim and the base of Anvil Mountain.

*My Bench on Moonlight* was some distance from the upper end of my Anvil Bench How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyngs claim, taking in the willows on a kind of high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyngs stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you.”

My father returned the map but he did not do any writing on it as it did not seem very clear to him. If I can help to explain the map to you that I sent I will do so when I come over which will be in about 5 weeks.

Very truly

THOS D. JENSEN.

P. S. Congratulations on being Mayor.

TOM. [447]

**Testimony of Fred Cowden, Recalled by Defendants.**

Direct Examination by Mr. GILMORE.

I am deputy recorder of the Cape Nome recording precinct.

Q. I hand you here a volume, will you state what it is?

A. Vol. 108 of the records of deeds of the Cape Nome Recording District. (Continuing:) It is one of the original books of record of public instruments or documents. On page 230 of Vol. 108 is recorded the deed from T. O'Reilley to W. D. Shue and Sufus Sorenson, of an undivided one-half interest in the Jerome Fraction on the east fork of Moonlight Creek.

Mr. GILMORE.—I offer the instrument in evidence, if the Court please, being instrument No. 7306, as of record on pages 230, 231, 232 and top of 233, Vol. 108, original records.

Mr. COCHRAN.—Is that the Jerome Fraction?

Mr. BRUNER.—Yes.

Mr. LOMEN.—Objected to as incompetent and immaterial.

Mr. GILMORE.—We offer this to show the Court that the ground now claimed by plaintiff as Bench No. 1, and to which they testified they hold possession and did work on, was not held as Bench No. 1, but held under an adverse title. As the record shows it is a chain of title between the locator of the Jerome Fraction and the plaintiff, Pioneer Mining Company.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there



(Testimony of Fred Cowden.)

excepted and the exception was allowed. [448]

Mr. GILMORE.—I ask leave of Court to file a certified copy of this exhibit, and have it marked for identification.

The COURT.—You may file such a copy and the same may be marked Defendants' Exhibit 54 for Identification.

Q. Now, Mr. Cowden, examine this volume and tell me if you know what it is.

A. Vol. 124, records of deeds Cape Nome Recording District of Alaska. (Continuing:) It is the original record book of deeds. On page 381 is recorded deed from W. D. Shue to Sufus Sorenson, for an undivided one-fourth interest in the Jerome Fraction on the East Fork of Moonlight.

Mr. GILMORE.—I now offer that in evidence, if the Court please, being instrument identified by the witness as instrument No. 22,570, recorded in Vol. 124, pages 381-382 of the records of the Cape Nome Mining District.

Mr. LOMEN.—For the same purpose?

Mr. GILMORE.—For the same purpose as stated in the previous offer.

Mr. LOMEN.—Objected to for the same reason and on the same ground.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have certified copy of this marked for identification.

The COURT.—You may, and the same may be

(Testimony of Fred Cowden.)

marked Defendants' Exhibit 55 for Identification.  
[449]

Q. Referring now to the same volume, 124, which you have just identified, turn to page 283 and tell me what instrument is recorded on that page.

A. Deed from George Crawford to Sufus Sorenson of an undivided one-half interest in the Jerome Fraction on the East Fork of Moonlight.

Mr. GILMORE.—I offer the record of that instrument, being Instrument No. 22,571, deed from George Crawford to Sufus Sorenson, of an undivided one-half interest in the Jerome Fraction.

Mr. COCHRAN.—We object to the offer for the reasons stated in the two preceding offers.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to file certified copy of that instrument for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 56 for Identification.

Q. Now, refer to Volume 127; what is that?

A. Vol. 127 of Deeds of the Cape Nome Recording Precinct. The original book of entries of the records.

Q. Turn to page 47 and tell me what instrument is recorded there.

A. Instrument No. 23,520, being deed from Sufus Sorenson to Caribou Mining Company for that certain placer mining claim known as Jerome Fraction.

Mr. GILMORE.—I offer that instrument in evi-

(Testimony of Fred Cowden.)

dence, if the Court please, for the same purpose as the preceding offers, connecting the title of the Jerome Fraction with the Pioneer [450] Mining Company.

Mr. LOMEN.—Same objections as before.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have certified copy of the instrument marked for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 57 for Identification.

Q. I hand you another volume, Mr. Cowden, will you tell me what it is?

A. Vol. 136 of the records of deeds of the Cape Nome Recording District. (Continuing:) It is one of the original record books of deeds. On page 164 is recorded instrument No. 26,156, being a deed from the Caribou Mining Company to the Pioneer Mining Company for that certain placer mining claim known as the Jerome Fraction, on East Fork Moonlight Creek.

Mr. GILMORE.—I now offer that instrument in evidence, being instrument No. 26,156, and being a deed from the Caribou Mining Company to the Pioneer Mining Company for the whole of the Jerome Fraction, being the southerly portion of the ground now claimed by the plaintiff, the deed bearing date June 21, 1904.

Mr. LOMEN.—Same objection.

The COURT.—Objection sustained. To which

(Testimony of Fred Cowden.)

ruling of the Court the defendants then and there excepted, and the exception was allowed. [451]

Mr. GILMORE.—I ask leave to have certified copy of this instrument marked for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 58 for Identification.

Q. Now, Mr. Cowden, please examine this volume and tell me, if you know, what it is?

A. Vol. 141 of proofs of labor of the Cape Nome Recording District, District of Alaska. (Continuing:) It is the original book of records. On page 443 is recorded instrument No. 29,095, being proof of labor of the year 1904, of the Jerome Fraction, situated on the East Fork of Moonlight Creek, commencing on page 443 and extending to and including page 446.

Q. Signed and sworn to by whom?

A. By L. Stevenson.

Mr. GILMORE.—I now offer the instrument in evidence, if the Court please, being proof of labor bearing date December 31, 1904, for the assessment work on the Jerome Fraction. The offer is made for the purpose of showing that the alleged possession held by the plaintiff of a part of the ground south of the ground in controversy was held under the title now plead and relied on by them under another different claim, to wit, the Jerome Fraction; and also for the purpose of showing that by reason of their ownership of the Jerome Fraction they ratified and identified the lines of the Grant claim and the Lyng claim. [452]

(Testimony of Fred Cowden.)

Mr. LOMEN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to substitute in the record a copy for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 59 for Identification.

Q. Mr. Cowden, please examine this volume, 158, and tell me what it is.

A. Vol. 158 of the records of proof of labor. (Continuing:) It is one of the original books. On page 152 and the following pages is recorded instrument No. 23,513, being proof of labor for the year 1905 on the Jerome Fraction, East Fork, Moonlight.

Q. Signed and sworn to by whom?

A. By L. Stevenson, May 31, 1905, before Roy G. Hudson, Notary Public.

Mr. GILMORE.—I offer the instrument in evidence for the same purpose as stated in the last preceding offer.

Mr. LOMEN.—Same objection with the additional objection that this proof of labor being prior to March 2, 1907, before the Waskey Act.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [453]

Mr. GILMORE.—I ask leave to file a certified copy in lieu of the original.

The COURT.—You may do so, and the same may

be marked Defendants' Exhibit 60 for Identification.

Mr. GILMORE.—I now offer in evidence the original complaint of Cause 921 in this court, entitled Jafet Lindeberg et al., plaintiffs, vs. George Dover-spike et al., defendants, being complaint in a suit brought in this court with reference to a controversy between the Moonlight Water Co. and the laymen of the Pacific Coal & Transportation Company, in the year 1903. This is offered for the purpose of showing that Jafet Lindeberg, Eric Lindblom and John Brynteson, who are admitted in the evidence to be the principal stockholders of the Moonlight Company, organizers and copartners doing business under the firm name and style of Moonlight Springs Water Co., prior to the organization of the Moonlight Water Company now operating. It is offered in support of our 7th affirmative defense.

Mr. LOMEN.—We object to that for the reason that the complaint shows on its face that it is not between the same parties or any of them that are parties to the present action; and for the further reason that the cause of action set up in the complaint now offered in evidence, is upon wholly different grounds.

[454]

Mr. COCHRAN.—We interpose the further objection that the facts plead in the 7th affirmative defense do not constitute an estoppel.

The COURT.—What was the date of that suit?

Mr. COCHRAN.—Just about the time of the break-up in 1903.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the exhibit marked for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 61 for Identification, said exhibit being as follows:

**Defendants' Exhibit 61.**

*In the United States District Court for the District  
of Alaska, Second Division.*

JAFET LINDEBERG, ERICK O. LINDBLOM and  
JOHN BRYNTESON, Copartners Doing  
Business Under the Firm Name and Style of  
"The MOONLIGHT SPRINGS WATER  
COMPANY,"

Plaintiffs,

vs.

GEORGE DOVERSPIKE, GEORGE CRAW-  
FORD, FRED WILLIAMS, JOHN DOE,  
RICHARD ROE and PETER COE,

Defendants.

**Complaint.**

Come now the plaintiffs in the above-entitled ac-  
tion, and for cause of action against the above-named  
defendants allege: [455]

1.

That the true names of the defendants John Doe, Richard Roe, and Peter Coe are unknown to the plaintiffs, and they are therefore designated by the fictitious names of John Doe, Richard Roe, and Peter

Coe, and pray that when their true names are ascertained this complaint and all proceedings herein may be amended accordingly.

2.

That plaintiffs are and were at all times herein mentioned copartners engaged and doing business under the firm name and style of "THE MOONLIGHT SPRINGS WATER COMPANY."

3.

That the City of Nome is and was at all times since the month of April, 1901, a city or town duly incorporated as municipal corporation under the act of Congress entitled "An Act making further provisions for a civil government for Alaska, and for other purposes," approved June 6th, 1900; that said city of Nome was prior to said April, 1901, and since June, 1899, has been a permanent town and settlement of a population of upwards of two thousand inhabitants. That said town or city of Nome ever since the year 1899 has been and now is a town or city of upwards of two thousand permanent inhabitants.

4.

That the grantors and predecessors in interest of these plaintiffs in the year 1899 and 1900 located and appropriated and diverted for domestic and culinary and other uses the waters of certain springs of pure water known as Moonlight Springs situated about four miles northwest from the said Town or City of Nome; that during the year 1900 the grantors and predecessors in interest of plaintiffs at the expense of upwards [456] of \$20,000 built and constructed



from said springs to the City of Nome a pipe-line more than ten inches in diameter and more than four miles long for conducting said water to said town or city of Nome, and plaintiffs and their grantors and predecessors in interest have since the year 1900 furnished to said town or city of Nome and its inhabitants through said pipe-line and from said springs pure spring water for domestic, culinary and other purposes useful. That said water so furnished by plaintiffs is and was at all said times the only water supply of said city of Nome and its inhabitants. That said Moonlight Springs are situated at the foot of Anvil Mountain, and the locality of said springs are and have been since the year 1900 well known to the defendants and all other persons from the construction thereto of plaintiffs' pipe-line; that plaintiffs, their grantors and predecessors in interest, are the original and prior and only appropriators of the waters of said springs, and ever since the year 1900 have diverted and appropriated the waters thereof to the uses and purposes aforesaid.

## 5.

That said Moonlight springs are formed by water issuing from the earth at the southern base of Anvil Mountain and flow from well-defined subterranean channels and sources forming a creek or watercourse known as Moonlight Creek. That the plaintiffs and their grantors and predecessors in interest have since the year 1900 diverted and appropriated the waters of said Moonlight Springs by building an artificial dam at the head of said Moonlight creek immediately below where the waters of said springs naturally

collect and from the channel of said Moonlight Creek, and by there diverting said water into said pipe-line and conveying the same to said town or city of Nome. That said [457] water so diverted and appropriated by plaintiffs and their grantors and predecessors in interest is now being actually conveyed from said Moonlight Springs and Moonlight Creek through said pipe-line of plaintiffs to said Town or City of Nome and there used by the said town or City of Nome and its inhabitants for domestic and culinary purposes. That by the sale of said water so appropriated and diverted by plaintiffs to the said town or city and its inhabitants the said plaintiffs derive a revenue and profit of over four thousand dollars yearly.

## 6.

That the amount of water so appropriated and diverted by the plaintiffs and their grantors and predecessors in interest from said Moonlight Springs and Moonlight Creek exceeds 400 cubic feet per minute and the diversion and appropriation thereof by plaintiffs in manner and for the uses aforesaid has been since the year 1900 uninterrupted and continuous so far as the climate conditions will permit.

## 7.

That the plaintiffs are now the owners of said pipe-line and said springs and the waters thereof, and they and their grantors and predecessors in interest are the original and prior and only locators and appropriators thereof; that the ownership of said plaintiffs in and to said waters extends to all the waters of said Moonlight Springs and Moonlight Creek to

the full capacity of their said pipe-line, and the appropriation and diversion of the *of the* same was originally made and ever since has been made with the knowledge and permission of [458] the owners of the ground upon which said springs are situated; that at all times during the year 1900 the lands and premises upon which said springs are situated were owned and possessed by one Robert Lyng as an unpatented placer mining claim, and the said Robert Lyng did then and there consent to the diversion and appropriation by plaintiffs and their grantors and predecessors in interest of the waters of the said Moonlight Springs and Moonlight Creek in the manner and form and to the extent and for the uses and purposes hereinbefore alleged, and did by his certain deed and conveyance in writing convey to plaintiffs' grantors and predecessors in interest all the waters of said Moonlight Springs and Moonlight Creek and the right to divert and appropriate the same and to build on his said placer claim all necessary dams and to maintain thereon said pipe-line and all other necessary works or structures to divert and appropriate said waters for the uses and purposes aforesaid. That said dam of plaintiffs is actually constructed on said placer mining claim, and the said waters of said Moonlight Springs and Moonlight Creek are and were at all times actually diverted and appropriated by plaintiffs and their grantors and predecessors in interest wholly within the boundaries of said placer mining claim.

8.

That the defendants and their agents, servants and

employees have been for several days last past and nor are actually engaged in mining and sluicing large quantities of dirt and gravel near to said Moonlight Springs and upon ground adjacent and higher in elevation, and have during said time and are now discharging and causing to flow upon and into said [459] Moonlight Springs and Moonlight Creek above plaintiffs' said dam large quantities of mud, dirt, tailings, and impure and muddy water and debris, and have thereby rendered the waters of said springs and said creek muddy, impure and entirely unfit for domestic or culinary purposes. That said wrongful acts of defendants have continued to the present date, and the defendants refuse to desist therefrom and have threatened to and will unless restrained and enjoined therefrom continue the commission of said wrongful acts aforesaid. That the waters of said Moonlight Springs and Moonlight Creek at the point where the same are diverted by plaintiffs as hereinbefore alleged are by the aforesaid wrongful acts of defendants rendered so muddy and impure as to be entirely unfit for domestic use and the use of the same for domestic purposes is and will be dangerous to the health of all persons using or drinking the same.

## 9.

That the water from said Moonlight Spring and said Moonlight Creek is in its natural state pure and clear and peculiarly adapted for domestic and culinary purposes, and its use therefore is an absolute necessity for said city of Nome and its inhabitants. That said city and its inhabitants have no other sup-

ply whatever of water fit for domestic or culinary purposes, and the stoppage or pollution of the said supply of water from said Moonlight Springs and Moonlight Creek is dangerous to the health of the inhabitants of said town or city and causes irreparable injury, damage and inconvenience to said city and its inhabitants. [460]

## 10.

That the said wrongful acts of the defendants will if continued force the plaintiffs to discontinue the diversion and appropriation of said water through said pipe-line to said town or city of Nome and to discontinue supplying said water to said town or city and its inhabitants and plaintiff will thereby be damaged in excess of the sum of \$10,000. That plaintiffs have by the said wrongful acts of said defendants already been damaged in excess of the sum of one thousand dollars.

## 11.

That the wrongful acts of said defendants hereinbefore alleged are and will continue to be a public nuisance and a private nuisance.

## 12.

That plaintiffs have for the prevention of said continued wrongful acts of defendants no adequate or any remedy at law and are in the premises entirely remediless except by an injunction to issue out of this honorable court.

WHEREFORE, plaintiffs pray that an injunction issue herein restraining and enjoining the defendants and their agents, servants and employees from discharging or causing to flow upon or into Moonlight

Springs or Moonlight Creek above the impounding dam of plaintiffs any mud, dirt, tailings, impure or muddy water or debris, and enjoining and restraining the defendants, their agents, servants and employees from in any manner muddying or polluting the waters of said Moonlight Springs or Moonlight Creek above the said dam of plaintiffs, [461] and that upon the final hearing said injunction be made permanent. Plaintiffs also pray for all other relief to which they may be in equity entitled, including costs.

IRA D. ORTON,  
Attorney for Plaintiffs.

United States of America,  
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:—

That he is the attorney in fact for the above-named plaintiffs; that he makes this verification on behalf of plaintiffs for the reason that plaintiffs are not within the District of Alaska; that he has read the foregoing complaint, knows the contents thereof, and the same is true as he verily believes.

[Seal]

IRA D. ORTON.

Subscribed and sworn to before me this 18th day of May, 1903.

JAS. W. BELL,  
Notary Public in and for the District of Alaska, at  
Nome.

Mr. GILMORE.—I offer the answer of the defendants in the same cause, being action No. 921, wherein

the defendants in said action assert their title, to wit, a written lease on the premises now in controversy, by virtue of the title of the defendant, Pacific Coal & Transportation Company.

Mr. COCHRAN.—Same objection. Wholly incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have it marked for identification.

The COURT.—It may be marked for identification, Defendants' Exhibit No. 62, said exhibit being as follows: [462]

**[Defendants' Exhibit No. 62.]**

*In the United States District Court for the District of Alaska, Second Division.*

JAFET LINDEBERG, ERICK O. LINDBLOM  
and JOHN BRYNTESON, Copartners Doing Business Under the Firm Name and Style of the MOONLIGHT SPRINGS WATER COMPANY,

Plaintiffs,

vs.

GEORGE DOVERSPIKE, GEORGE CRAWFORD, FRED WILLIAMS, JOHN DOE, RICHARD ROE and PETER COE,

Defendants.

**Answer.**

Come now the defendants Frank Doverspike, whose name appears in plaintiffs' complaint as

George Doverspike, C. T. Howard sued under a fictitious name, George Crawford and Fred Williams, defendants in the above-entitled action, and for answer and defense to plaintiffs' complaint admit, deny and allege as follows:

## I.

Admit paragraphs 1, 2 and 3 of plaintiffs' complaint.

## II.

Answering paragraph 4 the defendants deny that the grantors or predecessors in interest of the plaintiffs in the years 1899 and 1900 located or appropriated or diverted for domestic or culinary or other uses the waters of certain springs of pure water known as Moonlight Springs, situated about four miles northwest of the town or city of Nome, except as hereinafter alleged in defendants' affirmative answer. And [463] deny that during the year 1900 the grantors or predecessors in interest of the plaintiffs at an expense of upwards of \$20,000 built or constructed from said springs to the city of Nome a pipe-line more than ten inches in diameter and more than four miles long for conducting said water to said town or city of Nome, and deny that plaintiff or their grantors or predecessors in interest have since the year 1900 furnished to said town or city of Nome or its inhabitants through said pipe-line or otherwise or from said springs pure spring water for domestic or culinary or other purposes useful, save and except as set forth in defendants' further and separate answer. Deny that said water so furnished by plaintiffs is or was at all the said times the only



water supply of said city of Nome or its inhabitants. Admit that said Moonlight Springs are situated at the foot of Anvil Mountain, but deny that the locality of said springs are or have been since the year 1900 well known to the defendants or all other persons from the construction thereto of plaintiffs' pipe-line, and defendants deny that plaintiffs' said pipe-line is built or constructed to said springs or any of them; that as to whether or not the plaintiffs or their grantors or predecessors in interest are the original or prior or only appropriators of the waters of said springs or ever since the year 1900 have diverted or appropriated the waters thereof to the uses or purposes aforesaid, defendants have not sufficient knowledge or information to form a belief, and therefore deny the same.

### III.

Answering paragraph 5 of plaintiffs' complaint defendants allege: That as to whether or not said Moonlight Springs [464] are formed by water issuing from the earth at the southern base of Anvil Mountain and flow from well-defined subterranean channels or sources forming a creek or watercourse known as Moonlight Creek, defendants have not sufficient knowledge or information to form a belief, and therefore deny the same. Deny that the plaintiffs or their grantors or predecessors in interest have since the year 1900 diverted or appropriated the waters of said Moonlight Creek or Moonlight Springs by building an artificial dam at the head of said Moonlight Creek immediately below where the waters of said springs naturally collect or from the

*the* channel of said Moonlight Creek, or by there diverting said water into said pipe-line or conveying the same to said town or city of Nome, except as alleged in defendants' further and separate answer and defense. Deny that said water so diverted or appropriated by the plaintiffs or their grantors or predecessors in interest is now being actually conveyed from said Moonlight Springs or Moonlight Creek through said pipe-line of the plaintiffs to said town or city of Nome, or there used by the said Town or City of Nome or its inhabitants for domestic or culinary purposes, except as alleged in defendants' further and separate defense. That as to whether or not by the sale of said or any water so appropriated or diverted by plaintiffs to the said town or city or its inhabitants the said plaintiffs derive a revenue or profit of over four thousand dollars yearly defendants have not sufficient knowledge or information to form a belief and therefore deny the same.

## IV.

That as to the matters alleged in paragraphs 6 and 7 of plaintiffs' complaint defendants have not sufficient knowledge or information to form a belief, and therefore deny the same. [465]

## V.

Answering paragraph 8 of plaintiffs' complaint defendants admit that the defendants and their agents, servants and employees were for several days prior to the filing of plaintiffs' complaint sluicing large quantities of dirt and gravel near to said Moonlight Springs and upon ground adjacent and higher in elevation, but deny that during said time

defendants were or are now or at any time were discharging or causing to flow upon or into said Moonlight Springs or Moonlight Creek above plaintiffs' said dam large quantities of mud or dirt or tailings, or impure or muddy water or debris, or have thereby rendered the waters of said creek muddy or impure or entirely unfit for domestic or culinary purposes. Deny that said alleged wrongful or other acts of the defendants have continued up to the present time, or that the defendants refuse to desist therefrom or *or* have threatened to or will unless restrained or enjoined therefrom continue the commission of said alleged wrongful acts aforesaid, save and except as set forth in defendants' further and separate defense. Deny that the waters of Moonlight Springs or Moonlight Creek at the point where the same are diverted by the plaintiffs as hereinbefore alleged are by the aforesaid alleged wrongful acts of defendants rendered so muddy or impure as to be entirely unfit for domestic use or the use of the same for domestic purposes, is or will be dangerous to the health of all or any persons using or drinking the same, and defendants deny that any of their acts in mining, washing and sluicing upon the ground near and adjacent to Moonlight Creek, and Moonlight Springs, has been or is wrongful. [466]

## VI.

Answering paragraph 9 of plaintiffs' complaint defendants admit that the water from Moonlight Springs and Moonlight Creek is in its natural state pure and clear, and peculiarly adapted for domestic and culinary purposes, but deny that its use therefor

is an absolute necessity for said city of Nome or its inhabitants. Deny that the city of Nome and its inhabitants have no other supply whatever of water fit for domestic or sulinary purposes, or that the stoppage or pollution of the said supply of water from said Moonlight Springs or Moonlight Creek is dangerous to the health of the inhabitants of said town or city of Nome or causes irreparable injury or damage or inconvenience to said city or its inhabitants.

## VII.

Defendants deny paragraph 10 of plaintiffs' complaint and each and every portion, part and allegation thereof.

## VIII.

Defendants deny paragraphs 11 and 12 of plaintiffs' complaint and each and every part and portion thereof.

And for a further and separate affirmative defense to plaintiffs' complaint defendants allege:

## I.

That the Grant Placer Mining Claim, upon which the defendants were mining and sluicing at the date of the filing of the Complaint in this action, was located as a placer mining claim on the 9th day of January, 1899, by one —— Grant, and the same has been ever since said date a valid and subsisting [467] location of the ground contained within the exterior boundaries thereof. That the boundaries of said claim were at said date markes upon the surface of the ground by permanent stakes and monuments, and have ever since said time been so marked, so that they could and can be readily traced.

II.

That the defendants' lessors and their grantors and predecessors in interest are now, and have been ever since said 9th day of January, 1899, the owners of said Grant placer mining claim.

III.

That the said Grant Placer Mining Claim adjoins the Moonlight Placer Mining Claim, upon which the said Moonlight Springs are situated, and is upon ground higher in elevation than the said Moonlight Claim or the said Springs.

IV.

That location of the Grant Placer Mining Claim, under which the defendants claim the right to work, mine and operate the same was located long prior to any appropriation of the waters of Moonlight Springs or Moonlight Creek for the purposes set forth in plaintiffs' complaint, either by the plaintiffs or their grantors and predecessors in interest.

V.

That the plaintiffs during the year 1900 constructed their said pipe-line from the town or city of Nome to a point about 300 feet below the said Moonlight Springs, and at said latter point constructed a mud dam about 300 feet long in a low, [468] flat, marshy place; and that said dam so constructed, operated and maintained by plaintiffs received the waters from Moonlight Springs, Moonlight Creek, and also all the surface water from the Grant Placer Mining Claim above described and all of the surface and seepage water from a large scope of ground around the southerly slope of Anvil Mountain, and

all of said surface water flows down the natural watershed of Anvil Mountain into plaintiffs' said dam, and commingles with and pollutes and contaminates the waters of Moonlight Springs and Moonlight Creek.

## VI.

That the plaintiffs can, by extending their said pipe-line for a distance of about 200 feet, secure an ample supply of good, pure spring water, uncontaminated by any surface water, sufficient to fill their said pipe-line and to supply the inhabitants and city of Nome, and for all other purposes for which the plaintiffs have appropriated said water. And that the plaintiffs can by digging wing ditches on each side of their receiving reservoir, as it is now constructed, operated and maintained, prevent the waters from the Grant placer mining claim and the other surface water from the watershed of Anvil Mountain from flowing into their said dam and contaminating and polluting the waters of Moonlight Springs, and that said pipe-line can be so extended or said wing ditches so constructed as aforesaid at an expense not exceeding \$300.00.

## VII.

That the mining claim upon which the defendants were working and sluicing at the date of the filing of plaintiffs' [469] complaint, is so situated on ground higher in elevation than the said dam of plaintiffs, that it is impossible for them to work and mine said ground or to wash out the gold contained in the dump thereon, without permitting the muddy water, after using the same to flow down its natural

sources into the dam of the plaintiffs, thereby mingling with the waters in said dam and discoloring the same. That the plaintiffs can as set forth in paragraph 6 of defendants' further and separate defense prevent the said water, discolored by defendants' use of the same, from flowing into the dam of the plaintiffs or interfering with their water right or their appropriation of the waters of Moonlight Springs or Moonlight Creek. That said water used by the defendants was and is surface water, caused from the melting of snow on the slope of Anvil Mountain, and that the same is not fit for domestic or culinary purposes whether used by the defendants for mining purposes or not.

#### VIII.

That the defendants were, at the time they were restrained and enjoined by virtue of the preliminary restraining order in this action, working and sluicing out their dump of pay-dirt and gravel on said Grant Placer Mining Claim, in the usual and ordinary methods of mining.

#### IX.

That defendants' right to work said mining claim by virtue of the location and appropriation of the same by the lessors under whom they claim and their grantors and predecessors in interest is long prior in time and right to any appropriation of the waters of Moonlight Spring or Moonlight Creek [470] by the plaintiffs or their grantors and predecessors in interest, and by reason thereof, and by reason of the manner in which the dam or receiving reservoir has been conducted, operated and maintained by the

plaintiffs, plaintiffs are estopped from claiming or asserting that they have been or are damaged or injured by the working and operating of said mining claim by the defendants.

WHEREFORE, defendants pray that they may go hence dismissed with their costs and disbursements.

PACKWOOD & GRIMM,  
Defendants' Attorneys.

United States of America,  
District of Alaska,—ss.

I, C. T. Howard, being first duly sworn, depose and say: I am one of the defendants in the above-entitled action; that I know the contents of the foregoing answer, and the same is true as I verily believe.

C. T. HOWARD.

Subscribed and sworn to before me this 18th day of June, 1903.

[Seal]

E. GRIMM,  
Notary Public Dist. of Alaska.

United States of America,  
District of Alaska,—ss.

Due and legal service of the within Answer is hereby acknowledged this 19th day of June, 1903.

IRA D. ORTON,  
By JAS. W. BELL,  
Attorneys for Plaintiffs. [471]

Mr. GILMORE.—I also offer the reply of the plaintiffs in the same action, No. 921, verified on the 12th day of January, 1904, for the same purpose, showing what the issues in that action were and



showing that the Pioneer Mining Company stood by and did not litigate its title or assert its title at that time.

Mr. COCHRAN.—Objected to for the same reason as stated in the offer to the answer.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the exhibit marked for identification.

The COURT.—It may be marked Defendants' Exhibit 63 for Identification; said exhibit being as follows:

**Defendants' Exhibit No. 63.**

*In the United States District Court for the District  
of Alaska, Second Division.*

JAFET LINDEBERG et al.,

Plaintiffs,

vs.

GEORGE DOVERSPIKE et al.,

Defendants.

**Reply.**

Come now the plaintiffs in the above-entitled action and for reply to the further separate and affirmative defense [472] to plaintiffs' complaint set forth in defendants' answer allege and deny as follows:

I.

Deny that they, or any of them, have any knowledge or information sufficient to form a belief as to the allegations of paragraphs I and II of said sepa-

rate and affirmative defense, and therefore deny each and every allegation of each of said paragraphs.

## II.

And upon like ground plaintiffs deny all the allegations of paragraph III of said separate and affirmative defense, except the allegation that the alleged Grant Placer Mining Claim is upon ground higher in elevation than said Moonlight Springs.

## III.

Deny all the allegations of paragraph IV of said separate and affirmative defense.

## IV.

Answering paragraphs V and VI of said separate answer and defense the said plaintiffs deny that their said pipe-line is constructed only to a point about 300 feet below said Moonlight Springs, but on the contrary allege that said dam is constructed immediately below the point where said Moonlight Springs collect together to form Moonlight Creek; deny that the dam of plaintiffs is constructed from mud and that the same is built in a low or marshy place. Plaintiffs admit that said dam, so constructed, operated and maintained by plaintiffs, receives the waters from Moonlight Springs and Moonlight Creek but deny that the same receives all the surface and seepage water from the Grant Placer Mining Claim. Plaintiffs allege that from unavoidable natural causes some surface and seepage [473] water from the southern slope of Anvil Mountain does flow into Moonlight Creek and thence into the reservoir made by plaintiffs' dam, but plaintiffs deny that any of the surface or seepage water which naturally flows

into said reservoir is in its natural state impure, discolored or unwholesome or that the same pollutes or contaminates the waters of Moonlight Creek or Moonlight Springs.

V.

Plaintiffs deny each and every allegation of paragraph VI of said separate and affirmative defense.

VI.

Plaintiffs deny each and every allegation of paragraph VII of said separate and affirmative defense except the allegation that the "said water used by defendants was and is surface water, caused from the melting of the snow on the Slope of Anvil Mountain," but deny that the same is not fit for domestic or culinary purposes.

VII.

Deny each and every allegation of paragraph IX of said separate and affirmative defense.

Further replying to said separate and affirmative defense, plaintiffs allege that their said reservoir is constructed at the only possible point on said Moonlight Creek where the waters of said springs can be collected at one point; that its dam is properly constructed and only of sufficient length and height to impound the waters of said creek and [474] springs. That the defendants can, at small cost, by constructing ditches, flumes and sluice-boxes of sufficient length convey their muddy, discolored and polluted water, tailings and debris to a point where the same will flow away from plaintiffs' dam.

IRA D. ORTON,  
Attorneys for Plaintiffs.

United States of America,  
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:

That he is the attorney for the plaintiffs in the above-entitled action; that he has read the foregoing reply and knows the contents thereof and believes the same to be true and the reason why this affidavit is made by affiant instead of by one of the plaintiffs personally is because the plaintiffs are all absent from the District of Alaska and for that reason unable to make the same.

IRA D. ORTON.

Subscribed and sworn to before me this 12th day of January, 1904.

[Seal]

VIOLA C. ORTON,

Notary Public, District of Alaska.

Mr. GILMORE.—I also offer in evidence the decree in the same cause, No. 921, bearing date February 21, 1904. I offer it for the purpose of showing that it was adjudicated and decreed by the Court that the defendants were the owners by virtue of a leasehold estate from the defendant, Pacific Coal & Transportation Company to the ground in controversy.

Mr. COCHRAN.—We object to it for the same reason stated to the previous offers of the complaint, [475] answer and reply, that it is wholly irrelevant, immaterial and incompetent and not binding on the plaintiff.

The COURT.—Objection sustained. To which

ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the exhibit marked for identification.

The COURT.—It may be marked Defendants' Exhibit 64 for Identification; said exhibit being as follows:

**Defendants' Exhibit No. 64.**

*In the United States District Court for the District of Alaska, Second Division.*

JAFET LINDEBERG, ERIC O. LINDBLOM  
and JOHN BRINTESON, Copartners, Doing  
Business Under the Firm Name and Style  
of the MOONLIGHT SPRINGS WATER  
COMPANY,

Plaintiffs,

vs.

GEORGE DOVERSPIKE, GEORGE CRAW-  
FORD, FRED WILLIAMS, JOHN DOE,  
RICHARD ROE and PETER COE,

Defendants.

**Decree.**

On this day this cause came on to be heard upon the motion of the defendants C. T. Howard, George Doverspike, George Crawford and Fred Williams, for a decree herein according to the opinion of the Court on file and of record in this cause, the plaintiffs appearing by Ira D. Orton their attorney, and the defendants appearing by William H. Packwood their attorney, and the Court having on the 23d day of February, 1904, made and filed his opinion in writ-

ing herein, which said opinion fully sets forth the facts and conclusions of law upon which the same [476] is based, and the Court having heard the testimony in said cause, and the argument of counsel for the respective parties, and being at this time fully advised in the premises,

It is hereby CONSIDERED, ORDERED, ADJUDGED and DECREED that the plaintiffs are not entitled to an injunction herein restraining and enjoining the defendants or either of them from working, mining and sluicing upon that certain placer mining claim known as the Grant Placer Mining Claim, situated above and adjoining the Moonlight Placer Mining Claim, in the Cape Nome Mining and Recording District, in the District of Alaska, and which said claim is situated above the Moonlight Springs and water right of the plaintiffs.

It is therefore CONSIDERED, ORDERED, ADJUDGED and DECREED that the plaintiffs' application for an injunction in this cause be and the same is hereby denied, and the cause dismissed, and it is further considered, ordered and adjudged that defendants have judgment against the plaintiffs for their costs and disbursements herein taxed at \$——, and that execution issue therefor.

It is further CONSIDERED, ORDERED and ADJUDGED that this decree be entered *nunc pro tunc* as of the date of the filing and entry of said opinion and findings, to wit, the 23d day of February, 1904.

ALFRED S. MOORE,  
United States District Judge.

(Testimony of M. D. McCumber.)

Mr. GILMORE.—It is admitted in the reply in the present action that the subsequent litigation took place as alleged in our answers and we will not offer any further proof on that point. [477]

**[Testimony of M. D. McCumber, for Defendants  
(Recalled).]**

M. D. McCUMBER, recalled, testimony for defendants.

Direct Examination by Mr. GILMORE.

I am one of the defendants in this case. I am assistant postmaster at Nome, Alaska. At the present time I am acting postmaster. I know the Grant claim. I have performed and caused work to be performed on the Grant claim in the years 1908, 1909, 1910 and 1911. I first caused work to be performed on the Grant claim in 1908 under a contract with S. L. Fox and Ben Hersey. I know of my own knowledge what work was done by them there. They sunk a shaft through frozen gravel about 18 feet, and they sank into slide rock about six feet and did some prospecting down in the southwestern corner. The southwestern corner is in the ground in controversy in this action. Fox and Hersey continued to work for me on the Grant claim until the spring of 1909. I paid them for their work. I was working on the Grant claim under a written lease from the defendant, Pacific Coal & Transportation Company. I caused further work to be done on the Grant claim in the fall and winter of 1909. Adolph Meyer and Theodore Pelitsch had a sublease on 150

(Testimony of M. D. McCumber.)

feet square in the southwest corner. They sank several shafts in the southwest corner. They placed a cabin on the Grant claim at my request. It was a frame cabin. It is a red cabin and stands out on the claim at the present time. It is indicated on defendants' map, Exhibit 11, by the word "cabin." The cabin was placed in November, 1909, where it is now, within the ground now in controversy. I have been on the Grant claim many times since November 30, 1909. I could not tell how many times, a good many. That red cabin has never been moved from where it was first placed on the 30th day of November, 1909, to the present time. It was placed there by [478] W. J. Rowe, in the fall of 1909. Meyer and his associates sank several shafts for me in the southwest corner; they averaged from eleven to sixteen feet in depth. In the spring of 1910, between January and May, there was a great deal of work done in the southwest corner of the Grant claim. The work was done by Adolph Meyer, Albert Miller, Captain Anson, Henry Kern, Louis Kern, a Russian, and one or two other men, I can't recall their names. The general character of the work done by these laborers was sinking shafts. In the spring of 1910 they dug two shafts in the southwest corner within the ground in controversy. I was present on the ground a great many times during that time. The first shaft was about 27 feet, and the second one was 34 feet deep. The machinery that they used was three boilers and four pumps. The machinery used was visible to anyone passing



(Testimony of M. D. McCumber.)

across the ground in that vicinity. They ceased work on those shafts about the last days of April, to my recollection. It was about the breaking-up time of the season; the spring was coming on. Thawing had set in, the roads were going to pieces and the water was coming and so on. It was not practicable to continue the work that they were doing at that time.

Q. What was done, if you know of your own knowledge, with reference to your shaft or shafts at that place, with reference to preserving them, if anything was done?

A. Well, after the machinery was removed, I had Mr. Meyer timber the shaft over for protection.

Q. For what purpose?

A. Why, to have it in shape so we could continue the following fall. (Continuing:) I know of my own knowledge that pay was found in the shaft; I panned there myself, and found all the way from five to ten cents; when we got down to the 29 [479] foot level, up to \$1.50 to \$2.00 a pan at the lower level. The only actual pan that I absolutely know is one that I brought in and had Mr. Kolash weigh, that was approximately \$1.40. That was the only one I weighed, the rest I guessed at only. The pumps were not the kind that I wanted; they were second hand, some of them, and we couldn't handle the water. They were simply borrowed or rented pumps to use there at the time. Mr. Allison Bruner was the agent of the Pacific Coal & Transportation Company, looking after their ground during the summer and fall of

(Testimony of M. D. McCumber.)

1910. I made arrangements with him that I could cease operations until November, 1910.

Q. State whether or not you made any arrangements to resume work on the 1st of November, 1910.

A. I did.

Q. What did you do, Mr. McCumber, towards resuming your work?

A. Let me understand the question.

Q. What arrangements did you make to resume your work before the first of November—did you send anybody to the ground or cause anybody to go to the Grant Claim?

A. I caused a man to go to the ground.

Q. Who? A. Adolph Meyer.

Q. Do you know what day he went to the ground?

A. I do.

Q. When? A. The 27th day of October, 1910.

Q. How long did he continue out there representing you on the ground, the Grant claim?

A. All that winter and the next spring. (Continuing:) I believe it was April 30, 1911, when he ceased. [480]

Q. Who, if anyone succeeded him?

A. J. W. Charles.

Q. Is anyone living on the ground in controversy to-day?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

Mr. GILMORE.—We take the position, if the Court please, we have a right to inform the Court of the question of possession up to the time of the

(Testimony of M. D. McCumber.)

trial, because one of the very material things the Court will have to consider is who was and is in possession of the ground in controversy. If your Honor deems, after hearing all the evidence, that you have jurisdiction of the case, certainly we have the right to show that we had possession on the day they instituted this suit, and maintained actual, physical possession from that time on to this day, and are to-day actually living on the ground in controversy at the time of this trial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—So as to get it in the record I would like to make an offer, briefly. I offer to show by the witness that the witness, Adolph Meyer, was representing this defendant on the ground till the first day of May, 1911; that he was succeeded by J. W. Charles who lived in the red cabin on the ground in controversy until the 7th day of [481] July, whereupon he was succeeded by Capt. George Smith who has ever since the 7th of July, and up until the present time, and now is, living on the ground in controversy; all this evidence offered for the purpose of showing our continued possession since and at the time and prior to the institution of this suit; and during that time we have carried on mining operations within the ground in controversy.

Mr. COCHRAN.—We object to the offer on the ground that it is wholly immaterial.

The COURT.—Objection sustained, to which rul-

(Testimony of M. D. McCumber.)

ing of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Mr. McCumber, do you know Mr. Louis Stevenson?     A. I do.

Q. Did you know him the latter part of October, 1910, just prior to the 1st day of November, 1910?

A. Yes, sir. (Continuing:) I had a conversation with him in November, 1910, in the postoffice in Nome, with reference to the ground in controversy. The conversation was just prior to the first day of November, 1910. It was just before this suit was instituted. We talked about the ground in controversy. Mr. Stevenson came into the post-office and he spoke to me and said: "I see you started operations." I said, "Yes" and then he said, "Mr. Lindeberg was coming in to see you before he left about that matter." I said, "Mr. Lindeberg has not been in to see me." And then we talked with reference to my operations, what I was contemplating doing, using the pump, and I told him so. I told him I was going to freeze the ground and [482] use a pump. He seemed surprised that Mr. Lindeberg had not seen me.

Q. Now, Mr. McCumber, how do you fix the date as being prior to the 1st of November, 1910?

A. Because I got a little suspicious and had my lease recorded.

Q. And when did you record your lease?

A. The first day of November.

Q. Just examine the instrument I hand you and state, if you know, what it is.

(Testimony of M. D. McCumber.)

A. Yes, it is a lease from the Pacific Coal & Transportation Company to myself. (Continuing:) It is the original lease. That is my signature and the signature of John T. Reed; also the signatures of Mr. John F. Smith and F. J. Kolash the witness. The original lease was modified and the modification was in writing and was attached to the original lease, being the last page. Those are the original signatures of the parties named in it.

Mr. GILMORE.—I offer the lease and the modification attached to it, together with the filing marks of the recorder.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 65; said lease being as follows:

**Defendants' Exhibit No. 65.**

**MINING CLAIM LEASE.**

THIS INDENTURE, made and entered into this fifteenth day of August, A. D. 1908, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Maine, and [483] doing business in the District of Alaska, party of the first part, hereinafter called the lessor, and MENZO D. McCUMBER, of Nome, District of Alaska, party of the second part, hereinafter called the lessee:—

WITNESSETH: That the said lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, has granted,

demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, that certain mine and mining property situate in the Cape Nome Mining and Recording District, District of Alaska, and more particularly described as follows, to wit:—

Bench claim number one (1) at Western base of Anvil mountain, also known as and called “MOON-LIGHT” or “GRANT” claim, containing twenty (20) acres, being the same claim located by W. N. Grant, on January 9, 1899, notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District, in Book 3, page 59, Together with the appurtenances, and rights and privileges to prospect the same for gold, precious metals and minerals, and to mine and extract the same, and reduce the same to any commercial value.

TO HAVE AND TO HOLD, unto the said lessee for the term of three (3) years from the first day of October, A. D. 1908, expiring at noon on the first day of October, A. D. 1911, unless sooner forfeited or determined through the violation of any covenant hereinafter against the said lessee reserved.

And in consideration of the said lease, demise and privileges, the said lessee does hereby covenant and agree with the said lessor, as follows, to wit:

To enter upon said mining claim and premises and work the same mining fashion, in manner necessary to good economical mining, so as to take out the greatest amount of gold, precious metals and minerals possible with due regard to the safety, develop-

ment and preservation of the said premises as a workable mine.

To work and mine said premises as aforesaid as steadily and continuously from the date of this lease as weather and the season of the year will permit.

To keep all sluices, ditches, drains, waterways and passageways cleared of loose rock and rubbish, and to do all things necessary to promote the usefulness of said mining property as a workable mine, and to develop the same and do no act thereon during the term of this lease, which would impede mining operations or impair the operating condition of said mining claim, and generally to so conduct operations as to conform to the laws of the United States and the District of Alaska, and the local rules and regulations of miners in said mining district, and to do no act and suffer no default which might in any manner involve the said lessor or its ownership in said mining property, in liability of any kind or character.

To not locate or record said mining property, or allow the same to be recorded by anyone except the said lessor or its agent. To not allow or permit any person or persons, except the said lessee, his agent or workmen, to take or hold possession of said premises, or any part thereof, under any pretense whatever. [484]

To not assign this lease, or any interest thereunder and to not sublet the said premises, or any part thereof, without the written consent of said lessor, or John T. Reed, its agent, in Nome, Alaska.

To pay and deliver to said lessor, as royalty and

rent twenty-five (25) per cent of all gold, minerals and precious metals to be extracted from said premises during said term, of like assay as that retained by said lessee, at such place as said lessor or its agent shall direct, and to allow said lessor or its agent or representative to be present at each and every cleanup, and to inspect and examine the same.

To deliver up to said lessor the said premises with the appurtenances and improvements, except machinery, buildings, tools and implements placed thereon by the lessee, to the said lessor in good order and condition and the mine in all points ready for continued working (accidents not arising from negligence alone excusing) without demand or further notice, on said first day of October A. D. 1911, at noon, or at any time previous, upon demand for forfeiture.

The lessee hereby agrees to do at least one hundred dollars' worth of work during the year 1908, as assessment work for said year 1908, upon said claim, hereby leased.

The right is hereby reserved by the lessor or its agent or representative, to enter upon and over said property hereby leased, at all reasonable times for the purpose of inspection.

Finally, upon the violation or failure to perform by said lessee, or any person or persons under him, of any covenant or covenants hereinbefore reserved, the term of this lease, and all the rights and privileges thereunder, shall, at the option of said lessor, expire and the same and said premises with the appurtenances shall at once become forfeit to said



lessor, and the said lessor or its agent or representative may thereupon, at the demand of possession in writing to be delivered to said lessee, or in his absence by posting said demand in a conspicuous place on said leased premises for the term of three days, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or, at the option of said lessor, the said lessee and all persons found in occupation may be proceeded against as trespassers from the beginning of said term, both as to realty and the metals and minerals severed therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors, administrators and successors of all parties hereto; and to the assigns or successors of said lessor; and as said lessor may elect to the assigns of said lessee.

IN WITNESS WHEREOF, the said parties hereto, lessor and lessee, have hereunto set their hands and seals, to duplicates hereof, the day and year first above written.

PACIFIC COAL & TRANSPORTATION  
COMPANY. [Seal]

By ALBERT MERRILL,  
President.

And ALONZO ELLIOTT,  
Treasurer.

MENZO D. McCUMBER. [Seal]

Signed, sealed and delivered in the presence of

JOHN T. REED,

As to Menzo D. McCumber. [485]

United States of America,  
District of Alaska,  
Second Division,—ss.

On this fifteenth day of August, A. D. 1908, before me, the undersigned, a Notary Public in and for the District of Alaska, residing at Nome therein, appeared the within named MENZO D. McCUMBER, to me known to be the identical person mentioned in and who executed the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial seal, the day and year in this certifietae first above written.

[Seal] JOHN T. REED,  
Notary Public in and for the District of Alaska, Residing at Nome, Alaska.

For and in consideration of the sum of One (\$1.00) dollar to the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, lessor in the foregoing lease, paid this first day of May, 1909, by MENZO D. McCUMBER, LESSEE therein, the receipt whereof is hereby acknowledged, and in further consideration of the said Menzo D. McCumber doing at least One hundred (\$100.00) dollars' worth of work upon said leased premises during each of the years 1909, 1910, 1911, 1912, and 1913, as assessment work thereon for each of said years, and furnishing said lessor, or John T. Reed,

its agent in Alaska, with duly verified proof thereof, the term of the foregoing lease with all its terms and conditions and all the rights and privileges thereunder, save as hereinafter modified, is hereby extended for the period of two (2) years from the first day of October, 1911, expiring at noon on the first day of October, 1913, unless sooner forfeited or determined through the violation of any covenant in said lease against the same lessee, M. D. McCumber, reserved.

IT IS HEREBY AGREED, that the said Menzo D. McCumber, lessee in said lease may, if he so desires, cease operations on said mining claim from this first day of May, 1909, until the fifteenth day of November, 1909, on which latter date he shall resume operations on the mining ground and premises mentioned in the foregoing lease, to wit: the "Moonlight" or "Grant" mining claim, and continue operations thereon according to the terms and conditions of the said lease.

IN WITNESS WHEREOF, the parties hereto, lessor and lessee, have hereunto set their hands and seals, this first day of May, 1909.

PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation. [Seal]

By JOHN T. REED, .

Its Agent in Alaska.

M. D. McCUMBER. [Seal]

Signed, sealed and delivered in the presence of

JOHN F. SMITH.

F. J. KOLASH.

(Testimony of M. D. McCumber.)

Filed for record at request of M. D. McCumber, Nov. 1, 1910, at 40 minutes past 2 o'clock, and recorded in book 181, page 309, Records Cape Nome Recording District, Alaska.

GEO. D. SCHOFIELD.

By W. W. Sale,  
Deputy.

15 Folios, 3 Ind., \$7.25 paid. [486]

Q. Now, Mr. McCumber, please examine this exhibit which I hand you and state, if you know, what that is.

A. It is an extension of the original lease. (Continuing:) That is my signature and the signature of Mr. Bruner as attorney in fact for the defendant Pacific Coal & Transportation Company.

Mr. GILMORE.—I offer this in evidence, if the Court please, being the extension of the original lease.

Mr. COCHRAN.—Objected to as being incompetent and no authority is shown in J. Allison Bruner to execute the instrument.

The COURT.—I think if you have the means at hand of proving the authority, Mr. Gilmore, you should do so before offering it.

Mr. GILMORE.—I will ask to have the instrument identified and produce the proof later.

The COURT.—It may be marked Defendants' Exhibit 66 for Identification.

Q. Who, if anyone, did you have on the Grant claim on and prior to the 7th of November, 1910, within the ground in controversy?

(Testimony of M. D. McCumber.)

A. Adolph Meyer. (Continuing:) The work that I caused to be done in 1908 and 1909 by Hersey and Fox, was of the value of one thousand dollars.

Q. What was the value of the work done by you, if you know, between the 30th day of November, 1909, and the time of the institution of this suit, November 7th, 1910, on the ground in controversy in this action?

Mr. COCHRAN.—Objected to as irrelevant and immaterial, the witness not showing himself competent or qualified to answer. [487]

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. McCumber, do you know the amounts of money that were paid for the work done by you or caused to be done by you on the Grant claim between the 30th of November, 1909, and the 7th of November, 1910, do you know the value of the labor and whatever items of expense were expended during that time? A. Well, something like.

Q. Just yes or no; do you know of your own personal knowledge how much?

A. Why not exactly, if that is what you mean.

Q. Who paid the bills? A. I did.

Q. And how much did you expend in money on the ground in controversy during that period for labor, supplies, material and other things, approximately? A. \$1800.00.

Q. Do you remember the occasion, Mr. McCumber, of the purchase of some building paper on or about

(Testimony of M. D. McCumber.)

December 6th, 1910, at Carlton's hardware store in Nome?

A. I remember that Mr. Meyer wanted to get some building paper, and I told him to go and get it.

Q. Do you know whether or not that paper had anything whatever to do with the ground in controversy?

A. Not to my knowledge. I don't know what he did with it, he might have used it there or somewhere else for all I know.

Q. Do you remember the occasion of Mr. Meyer taking a stove to the Grant claim? [488]

A. I do.

Q. On October 27, 1910? A. I do.

Q. What did you have to do with it, if you remember?

A. I helped lift the stove on the sled. (Continuing:) It was on the 27th of October, at noon. Meyer got the stove at my house.

I know Arthur Gibson. I knew him in 1908. I was upon the Grant claim with him at that time. At that time on the ground in controversy Gibson stated to me in substance as follows: "I can't understand how No. 1 Bench Claim could overlap the Moonlight claim, the Good Luck Claim and the Jerome Fraction is there too." (Indicating with his hand while he spoke.) He made that statement voluntarily to me.

Q. Did he state to you at that time, Mr. McCumber, words to this effect: "I told him to stay off the ground in controversy and save his money?"

(Testimony of M. D. McCumber.)

A. No, sir, he did not make that statement. He said I would have trouble if I went down on the lower corner and did any work.

Cross-examination.

By Mr. COCHRAN.—Now, what were you and Mr. Gibson doing out there in 1908?

A. Well, sir, I wasn't sure as to the corners of the Grant claim. (Continuing:) And Mr. Gibson had surveyed it and when I had my lease I wanted to be absolutely sure that I was all right on the ground, within the boundaries of the Grant and I knew Mr. Gibson could show me exactly. I spoke to him about it and he said he was going out there in a few days and would let me know when he went so I could go along with him at that time. He showed me where the boundaries of the Grant [489] claim were. He showed me where he said I would have trouble if I went to work. I think he showed me the Moonlight Bench stakes upon the Grant claim, the upper stakes within the boundaries of the Grant claim as marked. I think I saw them and knew at that time where they were. That was in September, 1908. I did not ask Mr. Gibson about the conflicting claims more than what was said. We talked about the conflict of No. 1 Bench. I didn't know about any conflict with No. 1 Bench until that time. That was before I had done anything at all upon the Grant claim. I believe Mr. Gibson made a plat showing the conflicts of the mining claims with the Grant claim, at the request of John T. Reed. I suppose it was for my benefit. I got the plat, I think I have

(Testimony of M. D. McCumber.)

it over in my office. The plat shows the conflict of No. 1 Bench with the Grant claim. I got that plat about the 25th of July, 1908. It was about the time I got the lease. It was before I did any work on the claim. I think the date was July 25th. I was not on the claim in the month of October, 1910. I cannot recall whether I was there in November or not. I don't think so but I made many trips out there after the suit was commenced. The suit was begun on the 7th of November, 1910. I was out there prior to that time; I was out there two or three times during the summer. I made a point of going out there once or twice a month and looking it over. I was not there during the month of October.

Q. You don't know of your own knowledge whether Adolph Meyer was there or not?

A. I have every reason to believe he was. (Continuing:) I wasn't on the ground, if that is what you are getting at, I didn't see him there between the 7th of October and the 7th of November. I hired him to be there and paid him for it. I didn't see him on the ground. I paid for the building paper [490] Adolph Meyer got on the 6th of December, at Carlton's. I don't know whether that was for his personal account or not.

Q. Now, you talked with Mr. Stevenson in the post-office? A. Yes, sir.

Q. And Mr. Stevenson said, "I see you have commenced operations on the claim," did he?

A. Yes, sir.



(Testimony of M. D. McCumber.)

Q. You hadn't commenced operations on the claim?

A. Yes, I had; I had sent Meyer out; he had been there for two or three days, for Stevenson knew it.

Q. Isn't it a fact that Stevenson asked you whether you were going to commence work?

A. He didn't say any such thing.

Q. He told you that he saw you had commenced work?

A. He said: "I see you have commenced work out there," meaning the Grant claim.

Q. And you told him that you had?

A. Yes, sir.

Q. Did you give me all that conversation that you had with Mr. Stevenson in the postoffice?

A. Well, we talked about my putting a plant out there; I was going to freeze the ground, was negotiating for pumps. (Witness continuing:) I told him I was contemplating it. He did not tell me that they would not let me do it. I did not ask Mr. Stevenson for Mr. Lindeberg's address. He was in the postoffice in the spring a couple of times. It was in April, perhaps. I asked him then for Mr. Lindeberg's address. I was thinking of wiring him.

Q. Of wiring to him to see if you couldn't get a lease from the Pioneer Mining Company on its ground in controversy? [491] A. A lease?

Q. Yes?

A. No, I couldn't take a lease from them.

Q. Didn't you ask Mr. Stevenson for a lease?

(Testimony of M. D. McCumber.)

A. No, sir, I didn't ask Mr. Stevenson for a lease.

Q. Didn't you state to Mr. Stevenson at the time you had this conversation, that you asked him for Mr. Lindeberg's address, saying that you wanted to wire Mr. Lindeberg and see if you couldn't get a lease on this ground in controversy, and put the royalty in escrow? A. No, sir, not at that time.

Q. Did you have such a conversation prior to the commencement of this suit?

A. Positively I did not. I couldn't recognize any other title under my lease. (Continuing:) The expenditures that I have testified to were made in trying to get down to the pay; they were not made in taking out pay. We had three boilers on the ground; they were rented and they are not there now. We had four pumps out there. They were borrowed or rented pumps and we returned them.

Q. So there is nothing out there now except prospect holes?

A. I think there are some other tools out there, picks and shovels, buckets and such things as that.

Q. You have got some picks and shovels stored in the cabin? A. Yes.

Q. That is all the tools you got?

A. Yes, such things as that, that is all.

Adolph Meyer had a sort of a sublease for a short time. He was interested with me at that time. He was interested with me from 1909 until the first of July, 1910. The expenditures that I estimated include the actual expense, including the time of the workmen. I paid one-half of Meyer's time. [492]

(Testimony of M. D. McCumber.)

It was all included in the \$1800.00 that I mentioned. Gibson told me that I would have some trouble; he didn't say Bench claim No. 1; he said the lower part of the Grant claim. Referring to the part in controversy.

Q. You never went to see Mr. Lindeberg or any officer of the Pioneer Mining Company as to what they claimed or what they asserted to own in the ground?

A. I didn't think I had to. (Continuing:) I don't know whether I looked at the records of locations or not. I didn't look at the records of Bench No. 1. I didn't think it was necessary. The thousand dollars expense that I mentioned was spent on a rock shaft that was sunk about 84 feet deep. That was not on the ground in controversy, it was near figure 9 on the map; it was near the ground in controversy.

Redirect Examination.

(By Mr. GILMORE.)

Q. Now, Mr. McCumber, you were telling counsel about negotiations for some pumps and work at the time this suit was instituted, and they didn't give you a chance to finish, what negotiations were you having at that time?

A. I was negotiating with Mr. Brower and George Walker about drilling and freezing, putting on a freezing plant, and then putting on a Cornish pump. Mr. Brower was to go on and he assured me he could handle all the water that was running there and do

(Testimony of M. D. McCumber.)

it much cheaper than I had pumped the year previous.

Q. Were these negotiations prior or subsequent to the bringing of this suit?

Mr. COCHRAN.—Objected to as irrelevant and immaterial. [493]

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Mr. McCumber, did you hear Adolph Meyer testify with reference to getting some building paper from you along the latter part of October or first of November? A. Yes, sir.

Q. State whether or not you did furnish him some building paper at that time. A. I did.

Q. Had that anything to do with the paper purchased at Carlton's hardware store, if any was purchased there, on the 6th of December?

A. No, absolutely not.

Q. Please state to the Court whether or not the Pioneer Mining Company ever, through any of its agents, attempted to buy your title to the ground in controversy, prior to the institution of this suit.

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the witness that the Pioneer Mining Company attempted to buy the defendants' title to the ground in controversy, prior to the 7th day of November, 1910, the date

(Testimony of M. D. McCumber.)

upon which this suit was instituted, thereby recognizing the defendants' title to the ground in controversy.

Mr. COCHRAN.—We object to the offer as irrelevant and immaterial.

The COURT.—Objection sustained. [494]

**Testimony of J. Allison Bruner, for Defendants.**

J. ALISON BRUNER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is J. Allison Bruner.

Q. Mr. Bruner, please examine this exhibit I hand you and tell me, if you know, what it is.

A. Yes, sir. (Continuing:) It is a power of attorney received by me from the Pacific Coal & Transportation Company. It is the original that was signed, executed and delivered to me.

Mr. GILMORE.—I offer it in evidence, if the Court please, being general power of attorney, Pacific Coal & Transportation Company to the witness J. Allison Bruner, dated December 31, 1910.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 67; said exhibit being as follows:

**Defendants' Exhibit No. 67.**

KNOW ALL MEN BY THESE PRESENTS, That the Pacific Coal & Transportation Co., a corporation organized and existing under the laws of the State of Maine, and located at Portland in the County of Cumberland, in said State, hereby consti-

tutes and appoints J. Allison Bruner of Nome, Alaska, its true and lawful Attorney for it and its name and stead, to commence, prosecute, or enforce, or to defend, answer, or oppose, all actions or legal proceedings touching any of the matters in which said Pacific Coal & Transportation Co. is or may hereafter be interested or concerned; and also, if he shall deem best, to compromise, refer to arbitration, or submit to judgment in any such actions or proceedings; and generally to act as its attorney or agent at Nome or in any other part of Alaska aforesaid in relation to any and all matters in which said Pacific Coal & Transportation Co. may be interested or concerned, and on its behalf to execute all such instruments, and to do all such acts and things, as fully and effectually in all respects as said Company could do.

And said Pacific Coal & Transportation Co., its successors and assigns, ratify and confirm, and agree to ratify [495] and confirm, whatsoever its said Attorney may do by virtue of these presents.

IN WITNESS WHEREOF, the Pacific Coal & Transportation Co. has caused these presents to be executed in its behalf by Albert Merrill, its President, hereunto duly authorized, and its corporate seal to be hereto affixed this 31st day of December, in the year of our Lord one thousand nine hundred and ten.

[Corporate Seal]

PACIFIC COAL & TRANSPORTATION CO.,

By ALBERT MERRILL,

President.

(Testimony of J. Allison Bruner.)

Personally appeared the above-named Albert Merrill, and acknowledged the foregoing instrument by him signed to be his free act and deed, and the free act and deed of the Pacific Coal & Transportation Co.

State of New Hampshire,  
Hillsborough,—ss.

I, John C. Bickford, Clerk of the Police Court of the City of Manchester, hereby certify that said Court is a Court of Record in and for said County and State and that John C. Bickford before whom the annexed instrument was executed is a Notary Public for said State, duly commissioned and sworn according to law and all his official acts as such are entitled to full faith and credit, and I verily believe that his signature written thereon is genuine, that he is duly authorized by law to take such acknowledgment.

In witness whereof I hereunto set my hand and affix the seal of said Court this 31st day of December, 1910.

[Seal]

JOHN C. BICKFORD,

Clerk of Police Court, City of Manchester.

Q. Will you examine this instrument, extension of the McCumber lease, which has been marked for Identification, is that your signature?

A. Yes, sir. (Continuing:) I executed that on behalf of the Pacific Coal & Transportation Co.

Mr. GILMORE.—I now reoffer in evidence the extension of the McCumber lease heretofore marked for Identification.

The COURT.—It may be received in evidence marked Defendants' Exhibit 66; said exhibit being as follows: [496]

**Defendants' Exhibit No. 66.**

**MEMORANDUM OF AGREEMENT.**

MEMORANDUM OF AGREEMENT, Made and entered into this 28th day of April, 1911, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, party of the first part, and MENZO D. McCUMBER, party of the second part, WITNESSETH:

WHEREAS, the party of the first part did on August 15th, 1908, make, execute and deliver unto the party of the second part a certain indenture of lease demising, leasing and letting to said second party all of that certain placer mining claim known as and called BENCH CLAIM No. 1, at the western base of Anvil Mountain, also known as and called "MOONLIGHT" or "GRANT" claim, containing about twenty (20) acres, being the same claim located by W. N. Grant on January 9th, 1899, the certificate of location of said claim being of record in book 3, page 59, and the amended certificate of record in volume 95, page 223 of the Cape Nome Mining & Recording District, District of Alaska, in which said precinct said claim is situated; and

WHEREAS, said party of the first part did extend thereafter, on the first day of May, 1909, by written instrument between the party of the first part and party of the second part, the term of said lease for a period of two (2) years, ending and expiring at noon on the first day of October, 1913; un-



der the terms and conditions of said written lease and said written extension; and

WHEREAS, since said last-mentioned date a certain suit has been commenced and is now pending in the District Court for the District of Alaska, Second Division, by the Pioneer Mining Company, a corporation, against both of the parties to this agreement, claiming in said action the ownership of most of the valuable portion of said placer claim above described; and

WHEREAS, said second party hereto represents that he is in possession of and has under his control certain evidence necessary and valuable to the successful defense of the said litigation for the purpose of establishing title to the whole of said claim in the party of the first part hereto; and

WHEREAS, it is the desire and intention of the parties hereto to modify the terms of said written lease and said written extension thereof above mentioned;

NOW, THEREFORE, for and in consideration of the mutual promises herein expressed and other considerations, it is agreed between the parties hereto as follows:

First. That said party of the second part shall secure the services of at least two (2) attorneys to assist in the preparation for and trial of said case above mentioned, or any other litigation that may arise involving the title to said claim during the lifetime of said lease, at his own expense and cost.

Second. That the party of the second part shall at his own expense and cost seek out and produce

at the trial of said cause such testimony, by deposition, documentary evidence or otherwise, as may be within his knowledge or control, or that may hereafter come within his knowledge or control. [497]

Third. That party of the first part agrees that said written lease and written extension thereof above mentioned shall be modified so that the same shall be and remain in full force and effect for a period of three (3) years after the termination of the aforesaid litigation, or after the final termination of the settlement of the title between said Pioneer Mining Company and party of the first part, and free of all litigation that may hereafter arise.

Fourth. That said party of the first part shall and will accept from said lessee, party of the second part, fifteen per cent (15%) of the gross amount of all gold and gold-dust taken and extracted from the said claim as royalty from the first forty thousand Dollars (\$40,000.00) of gold or gold-dust extracted therefrom, and thereafter twenty-five per cent (25%) of the gross amount of all gold or gold-dust taken or extracted from said claim during the lifetime of the lease.

Fifth. That in view of the fact that a vigorous prosecution of mining and mining development on said placer claim at the present time would entail a large expenditure of money by the lessee and while hampered by litigation and without benefit to the party of the first part, it is hereby agreed that the covenant in said written lease requiring said second party "to work and mine said premises as aforesaid, as steadily and continuously from the date of this

lease as weather and the season of the year will permit" is hereby waived by the party of the first part until the termination of the litigation between said Pioneer Mining Company and the party of the first part, and until the said title of the party of the first part to said placer claim is fully settled. That thereupon said second party shall, at any time between October 15th, and June 1st of each year, immediately commence mining operations upon said placer claim and prosecute the same vigorously and in the manner provided in said lease.

Sixth. That in all other respects said lease shall be and remain operative between the parties hereto.

Seventh. This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

PACIFIC COAL & TRANSPORTATION  
CO. [Seal]

By J. ALLISON BRUNER,  
Its Attorney in Fact.

MENZO D. McCUMBER. [Seal]

Signed, sealed, and delivered in presence of

ELWOOD BRUNER.

WILLIAM A. GILMORE.

United States of America,  
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 28th day of April, 1911, personally appeared before me the undersigned [498] Notary Public in and for the

District of Alaska, Menzo D. McCumber, personally known to me to be the person named and described in the foregoing instrument, who executed the same and acknowledged to me that he executed the same for the uses and purposes therein mentioned.

Also at the same time and place appeared J. Allison Bruner, known to me to be the attorney in fact of the Pacific Coal & Transportation Company, a corporation, who executed the foregoing instrument by signing the name of the said Pacific Coal & Transportation Company, a corporation, as principal and his own name thereto as attorney in fact and acknowledged to me that he executed the same as such for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial seal the day and year first above written.

[Seal]                      WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska, Re-  
siding at Nome.

Mr. GILMORE.—Defendants rest.

**Plaintiff's Rebuttal.**

**Testimony of Levi Mathieson for Plaintiff  
(Recalled).**

(By Mr. LOMEN.)

Q. You were in court when Adolph Meyer was testifying?

A. Yes, sir, I was. (Continuing:) I recognized him as being a man I had seen before by the way he walked. I saw him going up by the railroad track to the red cabin, on the 20th or 25th of November, 1910. When I say the red cabin I mean the red

(Testimony of Levi Mathieson.)

cabin on the Grant claim. It was along about the 20th or 25th of November. He came from down from the direction of Little Creek roadhouse. He came along the railroad track. I don't know where he came from, he was about 250 feet away from the railroad track, approximately, I was about 250 feet approximately 250 feet from him. He had a fellow with him. There were two of them. To the best of my knowledge I think they had five dogs. They had a sled and a load on the sled. He had something in the sled. I didn't notice whether he carried anything himself; he was walking ahead of the dogs part of the [499] way and going up over the railroad track to the cabin he was walking in front of the dogs. The other man was handling the sled. At that time there was a very little snow on the ground.

Q. On the 6th of November, when you were out there, how were the snow conditions?

A. Very little snow on the ground, very little.  
[500]

**[Testimony of Arthur Gibson, for Plaintiff  
(Recalled).]**

ARTHUR GIBSON, Recalled on Rebuttal.

Direct Examination by Mr. LOMEN.

Q. You testified that you made a survey in 1902, I think it was, for Mr. Kingsbury?

A. I did. (Continuing:) On September 30, 1902. I was on the Grant claim and saw Mr. Kingsbury at that time. Mr. C. L. Spanggard, A. W. Lane, and there was one or two other men that I did not get their names there at that time. I was pres-

(Testimony of Arthur Gibson.)

ent when Mr. Kingsbury's deposition was taken in this case. I heard the questions that were asked him and the answers that he made with reference to the surveying done at that time.

Q. What, if anything, was said by you in the presence of Mr. Kingsbury and others at the time you were upon the claim with reference to the surveying of No. 1 Bench Moonlight?

Mr. GILMORE.—Objected to as calling for hearsay evidence and not binding upon the defendants.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I told Spanggard about Bench No. 1 overlapping the Moonlight claim, and he answered that he knew it overlapped the Moonlight claim some, but he did it to take in all of the vacant ground between the Nelson Bench and Moonlight Bench. (Continuing:) That was in the presence of Kingsbury, he was with us all the time; we were all together. Kingsbury said: "How can it be that Jensen was locator of No. 1 Bench and at the same time be a witness on his location?" or words to that effect.

Q. I will ask you if at the time of making that survey, Mr. Spanggard, in the presence of Mr. Kingsbury, identified [501] any of the corner stakes of the Moonlight Bench No. 1 Claim?

Mr. BRUNER.—Objected to as being irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there ex-

(Testimony of Arthur Gibson.)

cepted and the exception was allowed.

A. He did. (Continuing:) He identified the southwest corner and the northwest corner, and told the place where the southeast should be, and the northwest by approximate distance from other stakes on the ground, distances and directions.

Q. Were the stakes and corners pointed out by Mr. Spanggard at that time in the places surveyed by you and as shown on the map, Plaintiff's Exhibit "A"?

Mr. GILMORE.—Objected to as not rebuttal and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. They were.

Q. Aside from being a civil engineer and surveyor what official employment have you?

A. I am Weather observer for Nome. (Continuing:) My superior officer is the U. S. Weather Bureau at Washington. I have been co-operative observer from July 1st, 1906, to April 1st, 1907; since then I have been special observer in the winter time.

Q. Have you the records of the precipitation on the 27th of October, 1910? A. I have. [502]

Q. Here at Nome?

A. Yes, sir. (Continuing:) On the 27th of October there was just a trace of snow, snow flurries.

Q. Had there been any snow in the fall of 1910 before that date?

A. There was a 1/2 inch of snow, when it was 32

(Testimony of Arthur Gibson.)

degrees; it didn't stay on the ground.

Q. I asked you if there was any snow before that?

A. There had been previously some rain and snow together, and on the 31st of October was rain and snow, at a temperature of 34° above zero.

Q. Now, read from that on down until such time as you will find that there was snowfall sufficient in your notion to make sleighing.

A. November 1st rain and snow fall, a temperature of 34°. On the 2d, rain and snow falling at a temperature of 36° above zero. On the 3d, first snow falling under a temperature of 32°; the following day the temperature was 35° above zero; then there was some rain and snow falling on the 8th and 9th; both days the temperature was 28°. Water freezes at 32°. I gave the temperature of all of the days between the 27th of October and the 10th of November, but I did not give the precipitation. On the 27th of October the maximum temperature was 32° above, minimum 28; on the 28th the maximum 28 above, and minimum 18; on the 29th 26 above maximum and 14 above min. On the 30th, max. 30 above, min. 13; on the 31st, max. 35 above min. 24 above.

Q. Go on.

A. On Nov. 1, max. 34 above, min. 24; on the 2d max. 36 above, min. 32 above; 3d of November max. 32 above, min. 26 above; on November 4th, max. 35 above, min. 22 above; on Nov. 5th, max. 27 above, min. 14 above; [503] on the 6th, max. 28 above, min. 10 above; on the 7th, max. 22 above, min. 10 above; on the 8th, max. 28 above, min. 22 above; on



(Testimony of Arthur Gibson.)

the 9th of November max. 28 above, min. 22 above.

Cross-examination.

(By Mr. GILMORE.)

Q. Now, Mr. Gibson, there was a half inch of snow on the 26th of October, according to your record in Nome? A. Yes, sir.

Q. All of those records that you have read were taken at your place of business down on Front Street? A. Yes, sir.

Q. Did you make observations out in the country or along the trails between here and the Grant claim?

A. No.

Q. Now, is it not a fact that often when there is no snow on the streets of Nome visible around Nome, that there is quite a little snow between here and the foot-hills? A. There is very little difference.

Q. Is there not often snow when you are out surveying, is there not often an inch of snow or two inches out in the country when there is none around town?

A. No, not that much difference except in the spring of the year and the breakup.

Q. When the first snow falls, is it not a fact that the fall is often heavier in the foothills than it is around Nome?

A. It is up on the hills but not on the tundra.

Q. When did the freeze-up come in the fall of 1910, what date? [504]

A. Well, sluicing was stopped on the 3d of October.

Q. And the ground froze up solid then?

(Testimony of Arthur Gibson.)

A. It was frozen then but it thawed out again because the temperature was warmer. (Continuing:) It might not have thawed out as much as it froze. I could not tell about that. I think the ground was frozen solid about the 26th of October.

Q. Now you know from your experience, do you not, that it is customary for men handling dogs to use them on the ground as soon as the ground freezes in the fall, they don't always wait until it snows again?

A. If they are hauling a load they certainly do.

Q. I am not asking about loads; isn't it a fact that they commence using their dogs as soon as the freeze-up comes, you know that to be a fact from the custom of the country? A. I am not a dog man.

Q. You know it to be a fact of your own knowledge by reason of your going around the country?

Mr. SCHOFIELD.—Objected to as not cross-examination.

The COURT.—I don't believe he is qualified as a dog expert. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Was there a solitary day between the 26th of October and the 10th of November, when the minimum temperature was not below freezing, 32°?

A. It was 32° on the 2d of November the minimum.  
[505]

Q. All other days during that period it was below 32°, the freezing point? A. Yes, sir.

Q. How many times a day did you read the tem-

(Testimony of Arthur Gibson.)

perature in your official business?

A. Once, in the evening at seven o'clock.

Q. And Mr. Gibson, is it also a fact that many times when you make an observation that in a few hours thereafter the temperature drops, or varies constantly?

A. Yes, but I keep a record of that. (Continuing:) I have two thermometers, one maximum and one minimum, the maximum shows the highest, the temperature has been during the preceding twenty-four hours, and the minimum shows the lowest. The temperature varies some throughout the Seward peninsula; around Nome, the tundra and the foothills it stays about the same, and I have tried that at both the Little Creek roadhouse and the Bessie roadhouse.

Q. Is it not a good deal colder out there a times than it is at Nome, only three miles away?

A. I have never adjusted the thermometer out there.

Q. Did you ever take any observations at the Bessie roadhouse or on the Grant claim?

A. At the Bessie when they were mining out there, and at the Little Creek roadhouse, but not over on the ground in controversy. [506]

**[Testimony of J. Allison Bruner, for Plaintiff  
(Recalled in Rebuttal).]**

J. ALLISON BRUNER, recalled in rebuttal, as a witness for plaintiff.

Direct Examination by Mr. COCHRAN.

Q. Mr. Bruner, you are deputy clerk of this court-

A. I am.

(Testimony of J. Allison Bruner.)

Q. State whether or not a corporation known as the Corwin Trading Co. has ever filed any Articles of Incorporation in the office of the clerk of the District Court for the District of Alaska, or copies of Articles of Incorporation.

Mr. GILMORE.—Objected to, if the Court please, as wholly irrelevant and immaterial and incompetent for any purpose.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I find no record of any such.

Q. Have they ever filed any designation of an agent upon whom service of process might be had?

Mr. GILMORE.—Objected to as immaterial, incompetent and irrelevant.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I find no such files.

Q. Have they ever filed any corporate statement of any character with the clerk of the District Court of this division?

Mr. GILMORE.—Same objection, wholly irrelevant. [507]

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I find no such filing.

Q. Has the Pacific Coal & Transportation Co. ever filed any certified copy of its Articles of Incorporation?

(Testimony of J. Allison Bruner.)

tion with the clerk of this court?

Mr. GILMORE.—Objected to as irrelevant, immaterial and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. It has.

Q. When did it first file its Articles of Incorporation?

Mr. GILMORE.—Objected to as immaterial and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. February 8th, 1904.

Q. State whether or not they ever filed any corporate statement with the clerk of this court.

Mr. GILMORE.—Objected to as wholly immaterial, irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [508]

A. The record shows a statement filed June 4, 1904, in the index.

Q. When did it first file an appointment or designation of resident agent upon whom service of process might be had?

Mr. GILMORE.—Objected to as wholly incompetent, and immaterial.

The COURT.—Objection overruled.

A. February 8, 1904.

(Testimony of J. Allison Bruner.)

Q. And who was the agent?

Mr. GILMORE.—Same objection.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. W. H. Bard.

Mr. COCHRAN.—I now offer in evidence the designation of agent, testified to as having been filed February 8, 1904, appointing W. H. Bard statutory agent and the consent of such agent.

Mr. GILMORE.—Objected to as wholly immaterial, incompetent and immaterial for any purpose.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—The said exhibits may be marked Plaintiff's Exhibits "N" and "O"; said exhibits being as follows: [509]

**Plaintiff's Exhibit "N."**

State of New Hampshire,  
Hillsborough,—ss.

November 11th, 1903.

KNOW ALL MEN BY THESE PRESENTS,  
That the Pacific Coal and Transportation Company,  
a corporation duly established by law, having its  
principal office or place of business in the City of  
Portland, County of Cumberland and State of Maine,  
District of America, and doing business in the city  
(town) of Nome, District of Alaska, and having filed  
in the office of the Secretary of the District of Alaska,  
a duly authenticated copy of the charter of said cor-

poration in compliance with the Code of Alaska relative to foreign corporations, hereby appoints W. H. Bard of said Nome its lawful agent with full power and consent of said corporation to be sued and to accept service of process in the courts of the District of Alaska upon all causes of whatever nature and kind that may arise against said corporation.

[Corporate Seal]

PACIFIC COAL & TRANSPORTATION CO.,

By ALBERT MERRILL,

President.

By ALONZO ELLIOTT,

Secretary.

State of New Hampshire,  
Hillsborough,—ss.

November 11th, 1903.

Personally appeared the above-named Albert Merrill and Alonzo Elliott, who being duly sworn did say that they are respectively the Vice-president and Secretary of the Pacific Coal & Transportation Company and that the seal hereunto affixed to this certificate is the corporate seal of the said corporation and that the said certificate was signed and sealed in behalf of said corporation and the said Albert Merrill and Alonzo Elliott severally acknowledged the above certificate to be the free act of said corporation.

Subscribed and sworn to before me,

[Notarial Seal] HARRY W. SPAULDING,

Notary Public.

HARRY W. SPAULDING.

State of New Hampshire,  
Hillsborough,—ss.

I, John C. Bickford, Clerk of the Police Court of the City of Manchester, hereby certify that said Court is a Court of Record in and for said County and State and that Harry W. Sapulding, whose name is written on the margin hereof is a Notary Public for said State, duly commissioned and sworn according to law and all his official acts as such are entitled to full faith and credit, and I know that his signature thereon written is genuine.

In witness whereof I have hereunto set my hand [510] and affix the seal of said Court this 11th day of November, 1903.

[Court Seal]                      JOHN C. BICKFORD,  
Clerk of Police Court, City of Manchester.

**Plaintiff's Exhibit "O."**

United States of America,  
District of Alaska.

To the Clerk of the United States District Court in  
and for the District of Alaska, Second Division,

This is to certify that in accordance with Sec. 226, Chapter XXIII of the Civil Code for the District of Alaska, I do hereby consent to act as agent for the Pacific Coal and Transportation Company, a corporation, incorporated under the laws of the State of Maine, in accordance, under and by virtue of my appointment by the authorized officers of said corporation on the 11th day of November, A. D. 1903.

W. H. BARD.



Dated at Nome, District of Alaska, this 6th day of February, 1904.

Q. State whether or not the Pacific Coal & Transportation Co. subsequent to the 8th day of February, 1904, appointed any other or different resident agent upon whom process might be had.

Mr. GILMORE.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. They did.

Mr. COCHRAN.—I offer the appointment of and consent of agent of Pacific Coal & Transportation Co., filed in the clerk's office Feb. 18, 1907.

Mr. GILMORE.—Objected to as wholly irrelevant and incompetent. [511]

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—Said exhibit may be marked Defendants' Exhibit "P"; said exhibit being as follows:

**Plaintiff's Exhibit "P."**

KNOW ALL MEN BY THESE PRESENTS: That the PACIFIC COAL AND TRANSPORTATION COMPANY, a corporation duly organized and existing under *tha* by virtue of the laws of the State of *Ma* Maine, having its principal or registered office in the city of Portland, in the State of Maine;

and also having a business office in the city of Manchester, in the State of New Hampshire and also having a business office in the city of Nome, in the District of Alaska, hereby consents to be sued in the courts of the District of Alaska, upon all causes of action arising against it in said District, and hereby designates and appoints JOHN T. REED, residing in the City of Nome, in the District of Alaska, as its Agent for said District of Alaska, upon whom service of summons and all other legal process may be had and made in all actions or proceedings against said corporation, in any of the courts of said District of Alaska, according to the statutes in such case made and provided.

The said corporation hereby designates the city of Nome, in the District of Alaska, as its principal place of business within the said District.

IN WITNESS WHEREOF, the said PACIFIC COAL AND TRANSPORTATION COMPANY, a corporation, has, by its President, thereunto duly authorized, caused these presents to be signed, and sealed with its corporate seal, at the city of Manchester, in the State of New Hampshire, on this 28th day of November, 1906.

PACIFIC COAL AND TRANSPORTA-  
TION COMPANY,

By ALBERT MERRILL,

President.

Attest: ALONZO ELLIOTT,

Secretary. [512]

State of New Hampshire,  
County of Hillsborough,—ss.

I, WILLIAM G. BERRY, a Notary Public in and for the County and State aforesaid, do hereby certify, that on the day in this certificate last mentioned, Albert Merrill and Alonzo Elliott, personally appeared before me in said County, and each being by me duly sworn, did severally depose and say: That he, the said Albert Merrill is the President of the Corporation described in the above and foregoing instrument, and that he, the said Alonzo Elliott, is the Secretary of the said Corporation therein described; and that they as such officers, respectively, were duly authorized by said corporation, to execute and acknowledge the above and foregoing instrument; and that the seal affixed to said instrument is the corporate seal of said Corporation; and that said instrument was signed, sealed and executed by them respectively, on behalf of said corporation, as its act and deed, and for the uses and purposes therein expressed, and they severally acknowledge said instrument to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 28th day of November, 1906.

[Notarial Seal]            WILLIAM G. BERRY,  
Notary Public in and for the State of New Hampshire, Residing at Manchester.

I, JOHN T. REED, residing in the city of Nome, in the District of Alaska, having been designated and appointed by the PACIFIC COAL AND

TRANSPORTATION COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, as the person residing in the District of Alaska upon whom service of summons and all other legal process may be had and made in all actions or proceedings against said corporation, in any of the courts of the said District of Alaska, according to the statutes in such case made and provided, do hereby consent to said designation and appointment, and hereby accept the same.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of February, 1907.

JOHN T. REED.

United States of America,  
District of Alaska,  
Second Division,—ss.

On this 18th day of February, 1907, before me, the undersigned, a Notary Public in and for the District of Alaska, appeared the within-named JOHN T. REED, to me known to be the identical person named in and who signed the foregoing designation and appointment, and acknowledged to me that he signed the same for the purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

[Notarial Seal] C. S. HANNUM,  
Notary Public in and for the District of Alaska, Re-  
siding at Nome. [513]

Q. Were there any other appointments of agents?

(Testimony of J. Allison Bruner.)

Mr. GILMORE.—Objected as immaterial and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. That was the last one. There were no other statements.

Mr. COCHRAN.—I offer in evidence certified copies of Articles of Incorporation of the Pacific Coal & Transportation Co., filed in the office of the clerk of this court on June 4, 1904.

Mr. GILMORE.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—The exhibit may be marked Plaintiffs' Exhibit "Q"; which said exhibit is as follows:

**Plaintiff's Exhibit "Q."**

To the Hon. Byron Boyd,  
Secretary of State,  
Augusta, Maine.

I hereby certify that at a meeting of the stockholders of the Pacific Coal and Transportation Company, properly called for that purpose, and held at its office, 185 Middle St., Portland, Maine, on the eighth day of August, 1901, it was voted by unanimous vote of all the stock present and represented at the meeting, being all the stock issued and outstanding, That the par value of the shares of stock be changed from one hundred dollars, to twenty-five

dollars per share, making the number of shares forty thousand instead of ten thousand shares, the total amount of the capital stock remaining the same.

[514]

That the Clerk be authorized to file the proper certificate of such change with the Secretary of State.

P. J. LARRABEE,

Clerk.

Maine,

Cumberland,—ss.

August 8, 1901.

Personally appeared P. J. Larrabee, clerk of said corporation and made oath that the above certificate by him signed is true.

M. P. FRANK,

Justice of the Peace.

State of Maine.

Office of Secretary of State.

Augusta, Aug. 9, 1901.

Received and filed this day.

Attest: S. J. CHADBOURNE,

Deputy Secretary of State.

Recorded Vol. 2, Page 245.

STATE OF MAINE.

CERTIFICATE OF ORGANIZATION OF A  
CORPORATION UNDER THE GENERAL  
LAW.

The undersigned, officers of a corporation organized at Portland, Maine at a meeting of the signers of the articles of agreement therefor, duly called and held at the office of Frank and Larrabee in the City of Portland, Friday, the twenty-sixth day of July, A. D. 1901, hereby certify as follows:

The purposes of said corporation are to purchase, take on lease, or otherwise acquire any mines, mining rights and land in Alaska or elsewhere, and any interest therein, and to explore, work, develop, and turn to account the same; to quarry, mine, dress, and prepare for market coal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the Company's objects; to buy, sell, and deal in coal and coal plants, machinery, implements, and provisions and things capable of being used in connection with mining operations, or required by workmen and others employed by the Company; to construct, maintain, improve, manage, work, control and superintend any roads, ways, bridges, reservoirs, water courses, aqueducts, wharves, mills, hydraulic work, works, factories, warehouses and means for the transportation of its products and other freight connected with its business, and for the purposes thereof, and other works and conveniences incidental thereto which may seem directly or indirectly conducive to any of the objects of the Company, and to contribute to, subsidize, or otherwise aid or take part in any such operations; to hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures, or other evidences of indebtedness [515] created by other corporation or corporations, and while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon; to construct, hire, purchase and operate steamships and other vessels of any class, and to es-

establish and maintain lines or regular service of steamships or other vessels, and generally to carry on the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods and merchandise by any means, either by its own vessels and conveyances or by or over the vessels and conveyances of others; to construct, purchase, take on lease, or otherwise acquire and work any wharf, pier, dock, buildings or works or means or methods of conveyances capable of being advantageously used in connections with and for the purpose of such business; and in connection with any of the objects hereinbefore mentioned, to acquire concessions or licenses for the establishment and working of lines of steamships or sailing vessels between any ports of the world, or for the formation or working of any wharf, pier, dock, or other works, or for the means of any conveyances for the purposes of its business; to conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property in or out of this state and to conduct its business in any state or territory or colonial possession or territorial acquisition of the United States, and in any foreign country or place, but subject always to the laws thereof, to borrow money, to make and issue promissory notes, bills or exchange, bonds, debentures, and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, and to secure the same by mortgage, pledge or otherwise; to do any or all of the things in this certificate set forth as objects, purposes, powers or



otherwise, to the same extent, and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise, with all the powers now or hereafter conferred by the laws of Maine upon corporations under the provisions of Chapter forty-eight of the Revised Statutes of said State and the acts and laws amendatory and additional thereto, but not contravening the same.

This corporation shall not have the right within the State of Maine to do the following kinds of business, to wit: to construct or operate any railroad, telegraph or telephone lines nor aid in the construction thereof, nor to make, generate, sell, distribute or supply gas or electricity for lighting, heating, manufacturing or mechanical purposes or either of them.

The amount of capital stock is One million dollars.

The amount of capital stock already paid in is Four hundred dollars.

The par value of the shares is One Hundred dollars.

The names and residences of the owners of said shares are as follows:

Name.	Residences.	No. of Shares.	
		Common.	Preferred.
A. W. Mansur	Boston, Mass.	One	
P. J. Larrabee	Portland, Maine	One	a
Henry C. Houston	“ “	One	
F. W. Huestis	Boston, Mass.	One	

The balance of the stock nine thousand nine hundred and ninety-six shares remain in the Treasury unissued and the property of the Company. [516]

Said corporation is located at Portland in the

County of Cumberland, Maine.

The number of directors is three and their names are A. W. Mansur, F. W. Hustis and Henry C. Houston.

The name of the clerk is P. F. Larrabee and his residence is Portland, Maine.

The undersigned, A. W. Mansur is president; the undersigned, F. W. Huestis is treasurer; and the undersigned, A. W. Mansur, F. W. Huestis and Henry C. Houston are in a majority of the directors of said corporation.

Witness our hands this twenty-sixth day of July, A. D. 1901.

A. W. MANSUR, President.  
F. W. HUESTIS, Treasurer.  
A. W. MANSUR,  
F. W. HUESTIS,  
HENRY C. HOUSTON,  
Directors.

Maine,  
Cumberland,—ss.

Aug. 1, 1901.

Personally appeared Henry C. Houston and made oath to the foregoing certificate that the same is true.

P. J. LARRABEE,  
Justice of the Peace.

Massachusetts,  
Suffolk,—ss.

Boston, July 31, A. D. 1901.

Then personally appeared A. W. Mansur, President and Director, F. W. Huestis, Director and

Treasurer, and severally made oath to the foregoing certificate, that the same is true.

[L. S.]

Before me,

LEONARD G. ROBERTS,

Notary Public.

STATE OF MAINE.

Attorney General's Office, August 1st, A. D. 1901.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

GEO. M. SEIDERS,

Attorney General.

COPY.

(Name of Corporation.)

Pacific Coal and Transportation Company.

Cumberland,—ss.

Registry of Deeds.

Received August 1, 1901, at 12 h. 6 m. P. M.

Recorded in Vol. 21, page 487.

Attest: NORMAN TRUE, Register.

A true copy of record.

Attest: NORMAN TRUE, Register.

STATE OF MAINE.

Office of Secretary of State,

Augusta, Aug. 2, 1901.

Received and filed this day.

Attest: S. J. CHADBOURNE,

Deputy Secretary of State.

Recorded in Vol. 34, page 217. [517]

STATE OF MAINE.

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy from the records of this office.

IN TESTIMONY WHEREOF, I have caused the seal of the State to be hereunto affixed.

GIVEN under my hand at Augusta, this fourth day of January in the year of our Lord one thousand nine hundred and four and in the one hundred and twenty-eighth year of the Independence of the United States of America.

[Seal of State]

BYRON BOND,  
Secretary of State.

Mr. COCHRAN.—I offer the corporate statement filed on June 20th, 1905.

Mr. GILMORE.—Objected to as wholly immaterial, and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—The exhibit may be marked Plaintiff's Exhibit "R"; said exhibit "R" being as follows:

**Plaintiff's Exhibit "R."**

**STATEMENT OF THE PACIFIC COAL &  
TRANSPORTATION COMPANY.**

In compliance with the requirements of the Code of Alaska relative to foreign corporations doing business within the District of Alaska, the Pacific Coal & Transportation Company hereby submits the following statement in regard to its financial standing to be filed in the office of the Secretary of the Dis-

trict of Alaska together with a copy of its Charter, and also to be filed in the office of the Clerk of the District in which said corporation may be doing business. [518]

1. NAME OF CORPORATION.

The "Pacific Coal & Transportation Company" organized under the laws of the State of Maine and having its principal office in the City of Portland, County of Cumberland, in said state of Maine and having its principal office within the District of Alaska in the city (town) of Nome.

2. CAPITAL STOCK.

The amount of capital stock is \$200,000.

3. CAPITAL STOCK PAID IN IN MONEY.

The amount of capital stock paid in in money is not shown by the books or records of said coporation.

4. CAPITAL STOCK NOT PAID IN IN MONEY.

The amount of capital stock not paid in in money consisting of lands and the buildings thereon, machinery, tools, etc., in the District of Alaska and a Steamship plying between Nome, Alaska and Seattle, State of Washington to the value of, \$200,000.

5. The assets are made up as follows, to wit, property, real, personal and mixed, including: Eleven Lots or parcels of land situated in the District of Alaska near the Arctic Ocean, one lot or parcel of land with the buildings thereon situated in or near the Town of Teller, fourteen placer mining and quartz claims, more or less, situated in the Cape Nome District, one-half of the "Ingersoll Claim" so-called, situated on Anvil Creek near Nome City, two

or more parcels of land with the buildings thereon situated in the Town of Nome, the Steamship "Corwin" so-called, together with masts, bow, sprit, *slais*, boats, anchors, cable, tackle, furniture and all other necessaries appertaining and belonging to said vessel, and all the stores, stock, merchandise, tools, machinery, etc., now in use in the District of Alaska to the value of \$700,000

The cash value of the above enumerated property is not shown by the books of record of this corporation.

#### 6. LIABILITIES.

Capital Stock, \$200,000

Twenty year interest bearing bonds issued September 2nd, 1901 and payable at the office of the American Loan & Trust Company in the City of Boston, Commonwealth of Massachusetts, \$500.000

This bond issue is secured by first mortgage of property to said American Loan & Trust Company as Trustee.

ALBERT MERRILL, President.

A. ELLIOTT, Secretary. [519]

State of New Hampshire,  
Hillsborough,—ss.

On this 25th day of May, 1905, before me appeared Albert Merrill and Alonzo Elliott to me personally known, who being by me duly sworn did say, that they are respectively the Vice-president and Secretary of the Pacific Coal & Transportation Company, a corporation, duly established by law, and made oath that in their behalf the above statements by them subscribed, are true, according to the records of said

corporation as kept by the Secretary in a book for that purpose, and that the seal hereunto affixed to this instrument, is the corporate seal of the said corporation.

Attest:

ALBERT MERRILL,  
A. ELLIOTT,  
W. G. AFRIED,  
C. F. FLANDERS,

Directors of the Pacific Coal & Transportation Company.

[Corporate Seal]

Before me

WILLIAM G. BERRY, [Seal]

Notary Public. [520]

**[Testimony of Louis Stevenson, for Plaintiff.]**

LOUIS STEVENSON, recalled, witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. COCHRAN.

Q. You heard the testimony of Mr. McCumber, yesterday, in relation to conversation had with you prior to the 1st day of November, 1910, wherein he stated that you said to him: "I see you have begun to work on the Grant Claim," or words in substance to that effect,—did you hear that testimony?

A. I did.

Q. Did you ever have that conversation wherein you stated to him anything like that? A. No.

Q. What was the conversation?

A. I went to McCumber. I heard that he was going to go to work out there and I went to McCumber

(Testimony of Louis Stevenson.)

and asked him if he intended to go out there and freeze the ground and work it that way, and he offered to show me some books they had regarding the subject and I told him I didn't believe he could work it that way, and then I stated to him that we had the older title and I would try to stop him if he went to work, as we had the older title.

Q. Is that the substance of the conversation?

A. That is part of the conversation.

Mr. COCHRAN.—We rest.

Mr. GILMORE.—No sur-rebuttal. [521]

BE IT FURTHER REMEMBERED that the said cause was thereupon argued to the Court by counsel for the plaintiff and counsel for the defendants, and duly submitted on the 27th day of November, 1911, and thereafter on the 5th day of February, 1912, the Court rendered its opinion, finding for the plaintiff and against the defendants, and directed plaintiff to prepare findings of fact and conclusions of law and a decree.

AND BE IT FURTHER REMEMBERED, that thereafter, on the —— day of March, 1912, the plaintiff prepared, served and filed the following findings of fact and conclusions of law: [522]



*In the District Court for the District of Alaska,  
Second Division.*

No. —.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. Mc-  
CUMBER, JOHN DOE AND RICHARD.  
Defendants.

**Findings of Fact and Conclusions of Law.**

This cause coming on regularly to be heard before the Court without a jury, on the 13th day of November, 1911, and the trial thereof continuing from day to day, except Sundays, to November 27th, 1911; the plaintiff appearing by G. J. Lomen, O. D. Cochran and Geo. D. Schofield, its attorneys, and the defendant The Pacific Coal & Transportation Company appearing by its attorney Elwood Bruner, and the defendant M. D. McCumber appearing in person and by William A. Gilmore his attorney; witnesses on behalf of the plaintiff and the defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence; and the Court having heard the argument of counsel for the respective parties and having heretofore rendered and filed its written opinion herein, and being now fully advised in the premises, makes the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT.

## I.

That the plaintiff, Pioneer Mining Company, is now and during all of the times mentioned in plaintiff's complaint, [523] was a corporation duly organized, created and existing under the laws of the State of Washington, and doing business in the District of Alaska.

## II.

That the defendant, The Pacific Coal & Transportation Company, is, and was, during all the times mentioned, in plaintiff's complaint, a corporation duly organized, created and existing under the laws of the State of Maine, and doing business in the District of Alaska.

## III.

That the defendants, John Doe and Richard Roe, are fictitious names of persons upon whom no service of summons was made in the above-entitled action.

## IV.

That the ground and premises described in plaintiff's complaint as Placer Mining Claim known as Bench Claim No. 1 on Moonlight Creek near Moonlight Springs, situated in the Cape Nome Mining and Recording District, District of Alaska, was, prior to the 3d day of January, 1899, vacant, unappropriated and unoccupied mineral land belonging to the Government of the United States, and that on said 3d day of January, 1899, said ground and premises were appropriated and located as a Placer Mining Claim, by one Andrew Jensen, under the mineral land laws of the United States; that said

Andrew Jensen on said date, marked the said mining claim by substantial stakes so that its boundaries could be readily traced upon the ground, and did, upon said 3d day of January, 1899, or prior thereto, make a discovery of gold within the exterior boundaries of the mining claim so marked by him, and did thereafter and on the 17th day of January, 1899, cause a notice of location of such claim to be [524] duly recorded in the Records of said Mining District, and performed each and every act required by law, necessary to a valid mineral location.

## V.

That on the 16th day of September, 1903, the plaintiff, Pioneer Mining Company, by and through mesne conveyances from the said Andrew Jensen, became, now is, and ever since said date has been the owner of said placer mining claim known as Bench claim No. 1 on Moonlight Creek near Moonlight Springs in the said mining district, and which said claim is more particularly described by metes and bounds as follows:

“Commencing at stake No. 1 or the southwest corner which is identical with the southwest corner of Robert Lyng’s Moonlight Claim and the northeast corner of Placer Claim No. 2 on Moonlight Creek; thence S. 60° 12’ E. 714.5 feet to stake No. 2 or the SE. corner which is identical with the SW. corner of the Carlson location; thence N. 40° 01’ E. 986.8 feet to stake No. 3 or the NE. corner which is identical with the NW. corner of the Carlson Location; thence

N.60° 12' W. 600 feet to stake No. 4 or the NW. corner; thence S. 47° 51' W. 1021.3 feet to stake No. 1 or place of beginning.

All bearings refer to the true Meridian, Magnetic variation 19° 30' E."

VI.

That the plaintiff, Pioneer Mining Company, was, on the 7th day of November, 1910, the date of the commencement of this action, and for a long time prior thereto had been, in the actual occupancy and exclusive possession of the whole of said mining claim, and that the defendants were not, nor were either of them, in possession of any portion of said mining claim on the said 7th day of November, 1910, nor had they or either of them been in the occupation or possession of any part of said mining claim for a long time prior thereto.

VII.

That on the 9th day of January, 1899, and subsequent [525] to said location made by said Andrew Jensen, one W. N. Grant located the so-called Grant claim, claimed by defendants, immediately north of and adjoining the said Bench claim No. 1 on Moonlight Creek; that said claim as originally located by said Andrew Jensen and said W. N. Grant, did not conflict with or overlap each other, that at some time subsequent to the said location made by the said Jensen and the said Grant, but when and by whom does not appear, the markings of the said Grant claim were so changed that the said Grant claim as then marked upon the ground overlapped a part of the said Bench claim No. 1 on

Moonlight Creek at the northern end thereof, said overlap being the ground in controversy in this action.

### VIII.

That the plaintiff, Pioneer Mining Company and its predecessors in interest, have, ever since the 3d day of January, 1899, been in the peaceful possession of said Bench claim No. 1 on Moonlight Creek as above described, and from time to time and during each year since said date did, they have actually occupied said premises and used and claimed the same as and for a placer claim, and except as hereinafter mentioned, the whole thereof.

That the defendant, The Pacific Coal and Transportation Company, and its lessees, with full knowledge of the rights of the plaintiff, and with full knowledge of the location and boundaries of said Bench No. 1 on Moonlight, have from time to time entered upon and prospected the ground embraced within the overlap above mentioned, but that said several entries and acts of said Pacific Coal & Transportation Company and its lessees were wholly acts of trespass and not continued for more than a few months at any one time, and that such occupancy [526] or possession was neither uninterrupted or exclusive for the period of seven years.

### IX.

That the defendant, The Pacific Coal & Transportation Company, is not now, nor has it been at any time, the owner in fee nor at all, of any part of the mining claim or premises described in plaintiff's complaint, by virtue of any location made by one

W. N. Grant on the 9th day of January, 1899, or otherwise.

## X.

That the defendant, The Pacific Coal & Transportation Company, its grantors or predecessors in interest, or the lessee, have not nor has either of them ever since the 9th day of January, 1899, been in the uninterrupted, sole, exclusive or notorious possession of any portion of the said placer mining claim Bench No. 1 on Moonlight Creek, and that all entries made upon any portion of the said Bench claim No. 1 on Moonlight Creek by the said defendant, The Pacific Coal & Transportation Company, its predecessors in interest, its lessees, agents or representatives, were entries made without any right whatever and that such entries were acts of trespass.

## XI.

That the defendant, The Pacific Coal & Transportation Company, was not, on the 15th day of August, 1908, in the sole, quiet, exclusive, uninterrupted or notorious possession of any portion of the said placer mining claim No. 1 Bench on Moonlight Creek, hereinbefore specifically described, nor has its lessee, the defendant, M. D. McCumber, since the said date been in the exclusive possession of any portion thereof. [527]

## XII.

That the defendant, The Pacific Coal & Transportation Company, or its grantors, predecessors in interest and lessees have not nor has any other person in its or their behalf, since the 9th day of January, 1899, been in the uninterrupted, adverse, notorious

or exclusive possession under color or claim of title of any portion of the said placer mining claim No. 1 Bench on Moonlight Creek, specifically hereinbefore described.

### XIII.

That the defendant, M. D. McCumber, was not on the 7th day of November, 1910, the date upon which this action was instituted, or for a long time prior thereto, in the open, notorious or exclusive possession of the ground and premises herein in dispute, or any portion of the said placer mining claim No. 1 Bench on Moonlight Creek, nor has he since been in such possession, nor was the said defendant M. D. McCumber on said date, or for a long time prior thereto, engaged in mining thereon or in prospecting thereon, nor had he any mining equipment thereon except a small unoccupied cabin of little value.

### XIV.

That it is not true that the defendant, M. D. McCumber, and his lessor, The Pacific Coal & Transportation Company, its predecessors and grantors, have been engaged for seven years in operating, mining or developing any portion of the said placer mining claim Bench No. 1 on Moonlight Creek, or the ground and premises in conflict in this action, with knowledge or notice on the part of the plaintiff or without any objection, interruption, or complaint, or that the defendant, The Pacific Coal & Transportation Company or its lessees have expended [528] large sums of money, in mining prospecting or developing the same without objection or complaint from or on behalf of said

plaintiff, since the 9th day of January, 1899, or at all.

## XV.

That it is not true that the defendant, The Pacific Coal & Transportation Company, its grantors or predecessors in interest, or its lessee, the defendant M. D. McCumber, were in the actual, open, exclusive, notorious, uninterrupted or adverse possession of any portion of said mining claim No. 1 Bench on Moonlight Creek, on the 7th day of November, 1910, the date when the plaintiff commenced the above-entitled action, or for ten years prior thereto or at all.

## XVI.

That the plaintiff, Pioneer Mining Company, has, ever since the year 1903, been in the possession of the ground and premises involved in this action, and have, ever since said time, maintained ditches, penstocks, and pipe-lines upon the same, of the value of several thousands of dollars, and have, each year since said date, expended upon said pipe-lines, penstocks and ditches situated upon the said ground and premises involved in this action, to exceed the sum of eight hundred dollars, and have, for several years past, been actively engaged in mining upon the lower portion of the said placer mining claim No. 1 Bench on Moonlight.

## XVII.

That the defendants, The Pacific Coal & Transportation Company, its grantors and predecessors in interest, and the defendant, M. D. McCumber, have not nor has either of them at any time had the



uninterrupted, adverse or notorious possession, under color or claim of title, of the ground or premises [529] involved in this action, for the period of seven years, or at all.

XVIII.

That the allegations contained in the plaintiff's complaint and replies to the separate answers of the defendants, The Pacific Coal & Transportation Company, and M. D. McCumber are true.

CONCLUSIONS OF LAW.

And as Conclusions of Law from the foregoing facts the Court now finds and decides:

I.

That the plaintiff Pioneer Mining Company is the owner and entitled to the possession of the whole of the placer mining claim as described in its complaint and known as "Bench Claim No. 1" on Moonlight Creek as definitely described in the foregoing Findings of Fact as against the defendants and each of them, and all persons claiming or to claim the same or any part thereof under them, the said defendants or either of them and that said defendants have not, nor have either of them any right, title or interest in or to said mining claim or any part thereof.

II.

That the plaintiff is entitled to a decree as prayed for in its complaint to quiet its title to said mining claim and the whole thereof against said defendants, The Pacific Coal & Transportation Company and M. D. McCumber, and each of them, and all persons claiming or to claim the same or any part thereof

under or through the said defendants or either of them.

III.

That the plaintiff is further entitled to a decree [530] perpetually enjoining said defendants and each of them from ever asserting any claim, right, title or interest in or to said mining claim or any part thereof, adverse to the plaintiff.

IV.

That this action should be dismissed as to the fictitious defendants John Doe and Richard Roe upon whom no service of summons was made.

V.

That the plaintiff is entitled to a judgment for its costs and disbursements to be taxed herein, against the said defendants, The Pacific Coal & Transportation Company and M. D. McCumber.

LET JUDGMENT AND DECREE be entered accordingly.

Done in open court this 13th day of April, 1912.

CORNELIUS D. MURANE,

District Judge. [531]

AND BE IT FURTHER REMEMBERED, that thereupon, within the time allowed by law, the defendants made, served and filed their objections and exceptions to plaintiff's said proposed findings of fact and conclusions of law, as follows: [532]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Objections and Exceptions to Plaintiff's Proposed  
Findings of Fact and Conclusions of Law.**

Come now, defendants, Pacific Coal & Transporta-  
tion Company, a corporation and M. D. McCumber,  
and make the following exceptions and objections to  
the proposed findings of fact and conclusions of law  
proposed by the plaintiff.

I.

They object to finding of fact number IV upon the  
ground and for the reason that the said finding is  
contrary to and against the preponderance of evi-  
dence.

II.

They object to the proposed finding of fact number  
V upon the ground and for the reason that the said  
proposed finding is contrary to and against the pre-  
ponderance of evidence.

III.

They object to proposed finding of fact number VI  
upon the ground and for the reason that said pro-

posed finding of fact is contrary to and against the preponderance of evidence and that said proposed finding was not supported by any evidence at trial.  
[533]

## IV.

They object to proposed finding of fact number VII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence, and upon the further ground that the same was not supported by any evidence at the trial.

## V.

They object to proposed finding of fact number VIII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at trial, and that the same was not supported by any evidence at the trial.

## VI.

They object to proposed finding of fact number IX upon the ground and for the reason that the same is contrary to and against the preponderance of the evidence offered at the trial.

## VII.

They object to the proposed finding of fact number X upon the ground and for the reason that the same is contrary to and against the preponderance of the evidence offered at the trial.

## VIII.

They object to proposed finding of fact number XI upon the ground and for the reason that the same is contrary to and against the preponderance of the evidence received at the trial.

## IX.

They object to the proposed finding of fact number

XII upon the ground and for the reason that the same is contrary [534] to and against the preponderance of evidence received at the trial.

X.

They object to proposed finding of fact number XIII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial.

XI.

They object to proposed finding of fact number XIV upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial.

XII.

They object to proposed finding of fact number XV upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial; and they further object to said finding because by the overwhelming weight of the evidence offered at the trial, the contrary appears to be true.

XIII.

They object to proposed finding of fact number XIV upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial.

XIV.

They object to proposed finding of fact number XVII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence offered and received at the trial.

XV.

They object to proposed finding of fact number XVIII upon the ground and for the reason that the same is contrary to [535] and against the preponderance of evidence offered and received at the trial.

XVI.

They object to proposed conclusions of law numbers 1, 2, 3, 4 and 5, upon the ground and for the reason that the same are not supported by the evidence offered and received at the trial and contrary to law.

Dated at Nome, Alaska, this 28th day of March, A. D. 1912.

ELWOOD BRUNER,

Attorney for Pacific Coal & Trans. Co.

WILLIAM A. GILMORE,

Attorney for M. D. McCumber. [536]

AND BE IT FURTHER REMEMBERED that at the same time, and within the time allowed by law, the defendants made, served, filed and tendered to the Court their request for the Court to make, sign and file the following findings of fact and conclusions of law: [537]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Defendants' Proposed Findings of Fact and  
Conclusions of Law.**

Come now defendants, Pacific Coal & Transporta-  
tion Company, a corporation and M. D. McCumber,  
and request the Court to find that from the pleadings  
and all the evidence in the case the Court is without  
jurisdiction to try and determine the issue of fact  
raised in said cause, and that said action be dismissed.

If the Court refuses to make and sign the fore-  
going finding of fact, then the defendants request the  
Court to make and sign the following

**FINDINGS OF FACT.**

**I.**

That the defendant, Pacific Coal & Transportation  
Company, is now and was at the time of the com-  
mencement of this suit, and for a long time prior  
thereto, the owner in fee subject only to the para-  
mount title of the United States, of the land and  
premises described and known as Bench claim No. 1  
at the base of Anvil Mountain, and also called Moon-

light or Grant Claim, under and by virtue of a valid location thereof at a [538] placer mining claim, made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises embraced within said location as hereinafter described, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States, and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim, under the mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as located by him was named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" Claim, and contained at the time of the original location thereof by the said Grant, an area approximately of twenty (20) acres, and was and is described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 41'$  W. 312.4 feet to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  E. 393 ft. to the initial stake or place of beginning.

## II.

That subsequent to the said 9th day of January,



1899, and after the location of said land as mineral land as above described, and while the same was a valid and subsisting placer location, by mesne conveyances from the said W. N. Grant and his grantees, the defendant Pacific Coal & Transportation Company became the owner in fee, subject only to the paramount title of the United States, of the whole of said claim and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the title acquired [539] by and from the said W. N. Grant, and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and lessees, have been in the uninterrupted, sole, exclusive, open and notorious possession of the whole of said placer mine.

### III.

That thereafter and on the 15th day of August, A. D. 1908, the defendant, Pacific Coal & Transportation Company, by a written, lease, let and demised the whole of said placer claim to the defendant, M. D. McCumber, who thereupon immediately entered into the *exclusive of the whole* of said claim and commenced to mine and prospect the same for gold, under the terms of his lease; and thereafter, on the 1st day of May, 1909, the said lease was extended in writing, and thereafter on the 28th day of April, 1911, the terms of said lease were again extended in writing; that ever since the said 15th day of August, 1908, the defendant, M. D. McCumber, has been in the exclusive possession of said mining claim under and by virtue of his said lease and extensions.

## IV.

That the alleged placer mining claim described in paragraph IV of plaintiff's complaint and called by plaintiff Bench Claim No. 1 Moonlight claim, covers and embraces an overlap of a large portion of the westerly end of the Grant claim above described, but that said plaintiff has no right, title, interest or estate in or to the said part or portion so claimed of said Grant claim, but wrongfully and unlawfully, without right, asserts title and ownership thereto; that the plaintiff has no [540] right, title, interest, ownership or title of, in or to any of the lands or premises embraced within the said Grant claim, as above described by metes and bounds; and the plaintiff has not now, and never has had, and did not have at the commencement of this action the possession or right of possession in or to any part or portion of said Grant claim as above described.

## V.

That ever since the 9th day of January, 1899, the defendant, Pacific Coal & Transportation Company, its predecessors in interest and its lessees, have been in the uninterrupted, adverse, open, notorious and exclusive possession of the whole of said Grant claim and particularly the portion known as the ground in controversy in this action, and claim the same under color and claim of title by reason of the said Grant location made as above stated, on the 9th day of January, 1899.

## VI.

That on the 7th day of November, 1910, and the date upon which the plaintiff instituted this suit, and

for a long time prior thereto, and ever since, the defendant, McCumber, by virtue of his written lease and its written extensions, from the defendant, Pacific Coal & Transportation Company was in the actual, physical, open, notorious and exclusive possession of the whole of the Grant placer claim, and particularly that portion described as the ground in controversy in this action, and the plaintiff was not in possession of any part or portion of said Grant claim, or the ground in controversy, at the time it commenced the said action. [541]

## VII.

That on the 7th day of November, 1910, the date upon which the plaintiff instituted this suit, the defendant, M. D. McCumber, was in the actual, physical possession of the ground in controversy and had at that time, and for a long time prior thereto, and at all the times since, a cabin within the ground in controversy containing mining tools, implements and mining equipment, and for a long time prior to said 7th day of November, 1910, and at and on said date, had an employee actually living upon the said claim and upon the ground in controversy; and that the plaintiff was not in the actual, physical possession of the ground in controversy on said date, or of any part or portion thereof.

## VIII.

That the defendant, Pacific Coal & Transportation Company, its predecessors in interest and its lessees, have been in the actual, physical, open, notorious adverse uninterrupted and exclusive possession of the whole of the said Grant claim, embracing the ground

in controversy in this action, for more than ten years prior to the commencement of this action.

## IX.

That the defendant, Pacific Coal & Transportation Company, its predecessors in interest, and its lessees, have been in the actual, physical, open, notorious adverse uninterrupted and exclusive possession of the whole of the said Grant claim and of the ground in controversy in this action, for more than a period of seven years prior to the commencement of this action. [542]

## X.

That on or about the —— day of ——, 1901, the plaintiff Pioneer Mining Company, was organized under the laws of the State of Washington; that for a long time prior thereto Jafet Lindeberg, Eric O. Lindblom and John Brinteson, the organizers and principal stockholders of the Pioneer Mining Company, were doing business at Nome, Alaska, as a copartnership known as and called the Cape Nome Pioneer Company and also the Pioneer Company and also Lindeberg, Brinteson & Lindblom, and were the grantors and predecessors of the Pioneer Mining Company to all of the lands and premises acquired by said Pioneer Mining Company at the time of its organization; that the said Jafet Lindeberg is now and has been at all times since the organization of the plaintiff corporation, the president and general manager of said Pioneer Mining Company; that between the years 1900 and 1904 the said Jafet Lindeberg, John Brinteson and Eric O. Lindblom were also copartners doing business under the firm name

and style of Moonlight Springs Water Company, and during the year 1903 were the owners and in possession of that certain placer mining claim known as and called the Moonlight claim and situated adjoining and west of the premises in controversy in this action; that on the 18th day of May, 1903, the said Moonlight Springs Water Company as then constituted, began an action in this court, being Cause No. 221, entitled Jafet Lindeberg et al., vs. George Doverspike et al., that the defendants in said action, Doverspike, Howard, Crawford and Williams, were lessees of the defendant, Pacific Coal & Transportation Company, under a written lease executed in the fall of 1902, expiring in the month of June, 1903, upon the lands and premises described herein as the Grant claim, and were working and mining the said claim and extracting [543] the gold from the same by means of mining, and depositing the same in dumps of pay gravel upon the surface of the westerly half of said claim, the ground in controversy in this action; that by said action so commenced the Moonlight Springs Water Company sought to enjoin the said lessee, Doverspike et al., from carrying on their mining operations on the ground in controversy, in order to prevent the said lessees from polluting the waters of Moonlight Springs, the source from which said Moonlight Water Company obtained its water supply; that in said action the said lessees filed their answer setting up the title to the ground in controversy in the defendant, Pacific Coal & Transportation Company, and setting forth their lease; that a temporary restraining order was issued in said

action on behalf of the Moonlight Water Company and against said lessees, and subsequently upon hearing, on the merits, was dissolved; that thereafter the said lessees, Doverspike et al., began an action in the above-entitled court, on the 29th day of June, 1904, against the said Jafet Lindeberg, Eric O. Lindblom and John Brinteson; that said action was litigated until sometime in October, 1909; that during all of the times herein mentioned while all of said litigation was pending, the said Jafet Lindeberg was the president and general manager of the plaintiff, Pioneer Mining Company, and had charge of all its business in the District of Alaska; that during all the time mentioned the Pioneer Mining Company did not assert any title to the ground in controversy and never claimed or asserted ownership or possession or title to any part or portion of the ground in controversy upon which the said lessees of the defendant, Pacific Coal & Transportation Company, were then mining and working, but that the said Jafet Lindeberg, the president and general manager of the Pioneer Mining Company, at all of said times recognized [544] in said litigation the said Pacific Coal & Transportation Company to be the owner of the said ground in controversy; that by reason of the facts herein set forth the plaintiff, Pioneer Mining Company, is now estopped from claiming or asserting title or ownership to the lands or premises in controversy.

## XI.

That the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, including the defendant, M. D. Mc-

Cumber, have since the date of location, on the 9th day of January, 1899, of said claim by the said W. N. Grant, expended large sums of money in prospecting, mining, working and developing the said ground in controversy, and have greatly increased and enhanced the value of said ground and that during all of said time the plaintiff, Pioneer Mining Company and its predecessors in interest, stood by and failed, refused and neglected to assert or claim title to the grounds in controversy; that ever since the year 1908 the defendant, M. D. McCumber, was in the actual, physical, open and exclusive possession of the ground in controversy, and since November, 1909, had a cabin on the ground in controversy and was engaged in mining, prospecting and developing the said ground in controversy, and expended thereon large sums of money and by his mining work discovered a valuable pay channel of pay-dirt and gravel running through said ground in controversy, thereby greatly increasing and enhancing the value of said ground; and that the defendant, M. D. McCumber, had an employee living and working on the said ground in controversy at the time this action was commenced, and said McCumber continued in possession and was in the possession of the ground in controversy at the time of the trial of this action.

[545]

That during all of said time the plaintiff, Pioneer Mining Company, was engaged in mining on ground adjoining, in that immediate vicinity, and did not attempt to stop, interfere or restrain the said McCumber in said mining and developing work, and did

not claim or assert title to said ground.

And as conclusions of law from the foregoing facts, the Court now finds and decides:

I.

That the defendant, Pacific Coal & Transportation Company, is the owner and entitled to the possession, subject to the rights of the defendant M. D. McCumber, of the whole of the placer mining claim as described in its answer and known as Bench No. 1 at the base of Anvil Mountain, otherwise known as "Moonlight" or "Grant" claim, and as definitely described in the foregoing findings of facts, as against the plaintiff and all persons claiming or to claim the same, or any part thereof under it. And that said plaintiff has not any right, title or interest in or to said mining claim or any part thereof.

II.

That the defendant, Pacific Coal & Transportation Company, is entitled to a decree perpetually enjoining said plaintiff from ever asserting any claim, right, title or interest in or to said mining claim, or any part thereof, adverse to the defendant, Pacific Coal & Transportation Company, and to a decree quieting its title as against the said plaintiff.

III.

That the defendants are entitled to a judgment for their costs and disbursements to be taxed herein against the [546] said plaintiff, Pioneer Mining Company.

Let judgment and decree be entered accordingly.

Done in open court this — day of March, 1902.

---

District Judge. [547]



AND BE IT FURTHER REMEMBERED that thereafter, and on the 13th day of April, 1912, the Court overruled and denied the defendants' said objections and exceptions to plaintiff's proposed findings of fact and conclusions of law, and to such ruling of the Court, an exception was taken and allowed; and also at the same time the Court refused to make, sign and file the defendants' said proposed findings of fact and conclusions of law, and denied the same, to which ruling of the Court the defendants then and there excepted and the exception was allowed; and at said time, over the objections and exceptions of the defendants, the Court signed and filed the said findings of fact and conclusions of law proposed by the plaintiff.

AND BE IT FURTHER REMEMBERED, that thereafter, and within the time allowed by law, the defendants made, served and filed in writing, their motion for a new trial, as appears in the records, files and transcript of this cause, which said motion was, on the 20th day of April, 1912, overruled and denied by the Court, to which ruling of the Court an exception was taken and allowed by the defendants. And thereupon on said 20th day of April, 1912, the Court made, signed and filed its decree in favor of the plaintiff and against the defendants, over the objection and exception of the defendants, which said decree was as follows: [548]

*In the District Court for the District of Alaska,  
Second Division.*

No. —.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, M. D. McCUMBER, JOHN DOE  
and RICHARD ROE,

Defendants.

**Decree.**

This cause coming on regularly to be heard before the Court without a jury, on the 13th day of November, 1911, and the trial thereof continuing from day to day, except Sundays, to November 27th, 1911; the plaintiff appearing by G. J. Lomen, O. D. Cochran and Geo. D. Schofield, its attorneys, and the defendant, The Pacific Coal & Transportation Company appearing by its attorney Elwood Bruner, and the defendant M. D. McCumber appearing in person and by William A. Gilmore, his attorney; witnesses on behalf of the plaintiff and the defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence; and the Court having heard the argument of counsel for the respective parties, and having heretofore rendered and filed its written opinion herein, and having made and filed its finding of fact and conclusions of law, and being now fully advised in the premises, and upon motion

of G. L. Loman, O. D. Cochran and Geo. D. Schofield, attorneys for the plaintiff, does now therefore, hereby

ORDER, ADJUDGE and DECREE, that the plaintiff have judgment as prayed for in its complaint herein, against the [549] defendants, the Pacific Coal & Transportation Company and M. D. McCumber, and each of them; that all adverse claims of the defendants and each of them, and all persons claiming or to claim the premises hereinafter described, or any part thereof, through or under said defendants or either of them, are hereby adjudged and decreed to be invalid and groundless; and that the plaintiff be, and it is hereby declared and adjudged to be the true and lawful owner of the placer mining claim and premises described in its complaint and hereinafter described, and the whole thereof; and that its title thereto is adjudged to be quieted against all claims, demands or pretensions of the said defendants or either of them, and the said defendants and each of them, are hereby perpetually enjoined and prohibited from setting up any claim or claims thereto or any part thereof. Said premises are bounded and described as follows:

That certain placer mining claim lying and being in the Cape Nome Mining and Recording District, District of Alaska, known as Bench claim No. 1 Moonlight Creek, near Moonlight Springs, and more particularly described as follows:

Commencing at stake No. 1 or the southwest corner which is identical with the southwest corner of Robert Lyng's Moonlight Claim and

the northeast corner of Placer Claim No. 2 on Moonlight Creek; thence S. 60° 12' E. 714.5 feet to stake No. 2 or the S. E. corner which is identical with the S. W. corner of the Carlson location; thence N. 40° 01' E. 986.8 feet to stake No. 3 or the N. E. corner which is identical with the N. W. corner of the Carlson location; thence 60° 12' W. 600 feet to stake No. 4 or the N. W. corner; thence S. 47° 51' W. 1021.3 feet to stake No. 1 or place of beginning.

All bearings refer to the true Meridian, Magnetic variation 19° 30' E.

And it is hereby FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff do have and recover its costs [550] and disbursements herein, hereby taxed at ———, against the said defendants, The Pacific Coal & Transportation Company and M. D. McCumber, and that execution issue hereon.

Done in open court this 20th day of April, 1912.

CORNELIUS D. MURANE,

District Judge. [551]

Now, within the time allowed by law, the defendants present this, their Bill of Exceptions, and pray that the same be settled and allowed by the Court.

Dated at Nome, Alaska, this 2d day of May, 1912.

ELWOOD BRUNER,

Attorneys for Defendant Pacific Coal & Transportation Company.

WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber.

The above and foregoing Bill of Exceptions having

been served, filed and presented for settlement within the time allowed by law, and being now found full, true and correct, containing all of the evidence introduced at the trial, the same is now settled and allowed by the judge who tried said cause.

Done in open court this 14 day of May, 1912, at Nome, Alaska.

CORNELIUS D. MURANE,  
District Judge.

Service of the above and foregoing Bill of Exceptions is hereby admitted, this 2d day of May, 1912.

G. J. LOMEN,  
Of Attorneys for Plaintiff. [552]

---

[Endorsed]: No. 2150. United States Circuit Court of Appeals for the Ninth Circuit. The Pacific Coal & Transportation Company, a Corporation, and M. D. McCumber, Appellants, vs. Pioneer Mining Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Second Division.

Filed June 24, 1912.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.