

May 15th, 1945

Mr. William A. Evans
c/o Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Morning Star

Dear Mr. Evans:

I am enclosing herewith two copies of account in connection with the Morning Star Trespass Suit.

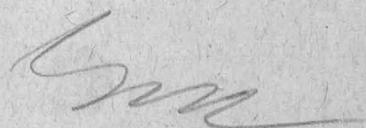
I am very sorry that this controversy has been so much more expensive than anybody anticipated, and in my own case I find that I put in just about 15 days in preliminary work, where I had anticipated that only 4 or 5 days' time would be required before the trial. I feel that we could not possibly have gone to Court with any chance of success if we had not prepared our side of the case much more thoroughly than was originally planned in view of the very elaborate preparations made by our opponents. I am sure you felt that my suggestion to bring Flagg into the picture was very well justified by the excellent appearance which he made at the Court.

I sincerely hope that a favorable decision will eventually be obtained from Judge Faires and would think it very unlikely that he should be reversed by the Supreme Court no matter which way he decides.

I trust that you will find the enclosed account to be in keeping with previous arrangements and that under the circumstances this will be approved by your clients. If they had been willing to let me make a more thorough examination in May of 1944 and take samples at that time, I think that our presentation of the case would have been much stronger and probably they would have saved money in the long run.

Yours very truly,

GMC/b
Enclosures



May 15th, 1945

STATEMENT OF ACCOUNT

Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

to

G. M. Colvocoresses

For services and expenses in re Forcey vs. Molson
(Morning Star Mining Company Trespass Suit).

Services:--

To services in preparation for trial as per letter
of November 1st, 1944 \$350.00

To attendance and testimony at trial
May 6 - May 12th. incl.. 7 days @ \$100.00 . . . 700.00

Expenses:--

To special expenses authorized in order to make
proper showing against the defendant

April 25,26,27. expenses of trip to mine
with Flagg 26.20

Tracing & printing maps, photos, etc. 49.00

Assay of samples 38.50

Expenses in connection with trial May 6 - 12

Car mileage, meals, etc. (Hotel bill paid
by Mr. Evans) 25.10

Total \$1,188.80

Credit:--

3/2 By check from Morning Star Co. \$125.00

3/20 By check from Ellinwood & Ross
(Mrs. Wood's share) 125.00

5/5 By check from Ellinwood & Ross 100.00

\$350.00 350.00

Balance due G. M. Colvocoresses \$ 838.80

June 7th, 1945

Mr. William A. Evans
Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Morning Star Trespass Suit
Forcey v. Molson

Dear Mr. Evans:

I have just received yours of June 6th enclosing check from your firm for \$419.40 for which I thank you very much.

I return herewith my statement dated June 5th, on the bottom of which I have acknowledged receipt of the above amount, which I understand was paid by Mrs. Wood as her share of the cost.

Should you desire any help in connection with the correction of the transcript or in the preparation of your brief on this matter, I trust that you will call upon me. Although I imagine that we cannot anticipate any decision for several months to come, I feel very hopeful that the outcome will be favorable.

Yours very truly,

GMC/b
Enclosure

LAW OFFICES OF
Ellinwood & Ross
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

EVERETT E. ELLINWOOD, 1862-1943
JOHN MASON ROSS, 1874-1944

WILLIAM A. EVANS
NORMAN S. HULL
DENISON KITCHEL
(WITH U. S. ARMY)
FRANCIS J. RYLEY
JOSEPH S. JENCKES, JR.

EVERETT M. ROSS
(WITH U. S. ARMY)
GEORGE E. WOOD
WILLIAM SPAID

June 6, 1945.

A 6/7
45

Mr. G. M. Colvocoresses,
Luhrs Tower,
Phoenix, Arizona.

Re: Forcey v. Molson

Dear Mr. Colvocoresses:

We enclose our firm check payable to your order for \$419.40 representing one-half of your statement for services and expenses in the above-entitled case.

This payment is being made on behalf of Mrs. Wood, as we have not yet received from the lessees their share of the costs. We will send the balance to you as soon as we receive it from the lessees.

Would you be kind enough to acknowledge receipt on the enclosed statement and forward the same to Mr. Darnell at Tucson.

Yours very truly,

ELLINWOOD & ROSS,

By

William A. Evans

WAE - GRH
Enc

cc: Mr. Darnell

June 21st, 1945

Mr. William A. Evans
c/o Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Forcey v. Molson
Morning Star Trespass Suit

Dear Evans:

Thank you for your favor of the 18th with which you enclosed check for \$419.40 entirely completing the payment of my account for services and expenses in accordance with the above litigation. I note that this last payment was made on behalf of the lessees.

I shall be much interested to learn of any further developments in connection with this matter, and you may perhaps wish me to check over the transcript of my testimony before you prepare your brief.

With personal regards.

Yours very truly,

GMC/b

LAW OFFICES OF
Ellinwood & Ross
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

EVERETT E. ELLINWOOD, 1862-1943
JOHN MASON ROSS, 1874-1944

WILLIAM A. EVANS
NORMAN S. HULL
* DENISON KITCHEL
FRANK J. RYLEY
* JOSEPH S. JENCKES, JR.
* EVERETT M. ROSS
GEORGE E. WOOD
WILLIAM SPAID
* IN MILITARY SERVICE

June 18, 1945

A. 6/18/45

Mr. G. M. Colvocoresses
Luhrs Tower
Phoenix, Arizona

Re: Forcey v. Molson

Dear Mr. Colvocoresses:

We enclose herewith our check to your order in the sum of \$419.40 in payment of the balance due for services in connection with Forcey v. Molson. Enclosed payment is being made on behalf of the lessees.

Very truly yours,

ELLINWOOD & ROSS

By *William A. Evans*

WAE:RLJ
Enc.

C O P Y

401 Chapman Building
Fullerton, California
October 16th, 1944

George R. Darnell
Tucson, Arizona

Dear Mr. Darnell:

Enclosed is the preliminary report of the Geological Survey on the Maudina and Morning Star Mines.

This report is not correct as far as the Pure Gold claim or the Maudina workings are concerned. Their cross section A*A' is the wrong geological set-up of the workings. Every engineer that has been on the property has agreed except these USGS Engineers. ?

The last work of the Maudina was to drive a thirty-two foot tunnel on our property and then make a seventy foot crosscut. Some .75% ore was taken out but their plant at Tucson could not handle the ore and the work has been stopped.

This report is unfavorable to us and it will mean more work. Maudina has recently been surveying their workings.

Very truly yours,

/s/ H. G. Henderson

November 1st, 1944

Mr. William A. Evans'
c/o Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Morning Star Mine
Forcey vs. Molson

Dear Mr. Evans:

Replying to your letter of October 31st on above subject with which you enclose Mr. Tubach's letter to you of October 30th, which is herewith returned, I will say that I can estimate fairly accurately the amount of time and expense involved in making a complete study of the conditions at the Morning Star Mine and preparing to give testimony in a suit involving the apex rights and trespass on the Morning Star property by the Maudina Mining Company. I will agree that for services and expenses as above my charges will not exceed the sum of \$350.00, but this does not include services and expenses which may be required in order to attend the trial of the case and testify. This latter undertaking I should only wish to accept on a per diem basis with charges of \$100.00 per day and expenses, since it is impossible to determine how long such a trial may last. Under ordinary circumstances I should assume that it would not require my presence for a period of more than two or three days, but from past experience I know that proceedings of this nature are often drawn out through no fault of the attorneys or witnesses and I assume that I may have to submit to a fairly lengthy cross-examination and also to give rebuttal as well as direct testimony.

I also acknowledge your letter to me of October 27th on the above subject, enclosing a copy of a letter written by H. G. Henderson to George R. Darnell, dated October 16th and with which there was enclosed a copy of the report of the U. S. Geological Survey similar to the one which I had already obtained from Washington and to which I referred in my letters to you of October 27th and October 7th. I agree with Mr. Henderson in believing that considerable work will be involved in preparing the case for the Morning Star Company as the issues are by no means simple and the geological conditions are decidedly complicated, altho I still see no reason to change my original opinion in respect to the rights of the owners of the Morning Star.

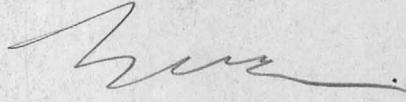
Should your clients desire to have me go ahead with the technical preparation of this case on terms outlined in my letter of October 7th, and modified in this present letter, I will endeavor to examine the property and complete my preparation some time between the 15th and 25th of this month, as the balance of my time is pretty well taken up with other work. I will ask that an advance fee of \$250.00 should be sent

Mr. William A. Evans
November 1st, 1944
Page 2

me to cover expenses and apply on my final account for services which will be rendered after the trial of the case has been completed.

I am enclosing an extra copy of this letter which you might wish to forward to Mr. Tubach. Also I am returning Mr. Henderson's letter to Mr. Darnell, of which a copy has been made in my office. For the time being I will retain the duplicate copy of the Geological Survey Report unless you desire to have me do otherwise.

Yours very truly,

A handwritten signature in cursive script, appearing to be 'W. A. Evans', written in dark ink.

GMC/b
Enclosures 3

February 20th, 1945

Mr. William A. Evans
c/o Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Morning Star
L. M. Forcey, et al. v. Molson

Dear Mr. Evans:

Referring to previous correspondence on above subject, especially your letter of February 16th, 1945, and also to our telephone conversation of this morning, I understand that your clients desire to have me prepare testimony for use at the trial of this case which very likely will take place during the latter part of March or early in April.

I further understand that the terms of my employment as set forth in the first paragraph of my letter to you of November 1st, 1944 are satisfactory and refer to my request in the said letter for an advance of \$250.00 on account since I expect to incur considerable expense and devote a substantial amount of time to this case in the near future.

It is my present intention to visit the Morning Star and Pure Gold Claims around the end of this month and to make a very careful investigation, including the checking of previous surveys and the taking of several photographs which I believe will prove valuable exhibits at the trial. I shall need the assistance of one man familiar with the property and have suggested to you that if one of the Riviera brothers is still living at or near the mine he would be very suitable, but anyone else who may be at present employed as a care-taker would probably meet my requirements.

As noted in the second paragraph of yours of February 16th, I well realize that the defendant claims to have apex rights which would permit him to mine additional ore from the Morning Star Claim beyond the limits of the present alleged trespass and I shall make special efforts to obtain evidence which will serve to disprove this contention.

Meantime I agree that it will be advisable if possible to obtain a Court Order requiring the defendant to furnish you with copies of surveys, geological maps, assay records and reports bearing on the said apex rights, but I have no knowledge as to the exact nature of

Mr. William A: Evens
February 20th, 1945
Page 2

Re: Morning Star

those documents, and I have in my file the maps and description of the Maudina and Morning Star Mine issued by the United States Geological Survey on February 18th, 1944. I understand that E. N. Pennybaker has been employed by the defendant, but assume that his findings may not be available until he testifies at the trial. Mr. Pennybaker is a high-class geologist and probably will make an excellent witness, but in any event I believe that it is vitally important that our technical testimony should be thoroughly prepared in accordance with the program suggested in this and previous letters and such modifications as may seem to be in order.

It appears to me that it would be advisable to arrange for a conference with Mr. H. G. Henderson and any other parties who have information on this matter that might prove valuable at the trial and later on I shall be able to give you a complete outline of my own findings and proposed testimony and to obtain your opinion respecting the interpretation of certain sections of the Apex Law and Court Decisions as these apply to the case in issue.

Yours very truly,

GMC/b

I am enclosing a duplicate copy of this letter.

LAW OFFICES OF
Ellinwood & Ross
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

EVERETT E. ELLINWOOD, 1862-1943
JOHN MASON ROSS, 1874-1944

- WILLIAM A. EVANS
- NORMAN S. HULL
- * DENISON KITCHEL
- FRANK J. RYLEY
- * JOSEPH S. JENCKES, JR.

- * EVERETT M. ROSS
- GEORGE E. WOOD
- WILLIAM SPAID
- * IN MILITARY SERVICE

February 16, 1945.

*A 20
45*

Mr. G. M. Colvocoresses,
Luhrs Tower,
Phoenix, Arizona.

Re: Forcey, et al. v. Molson

Dear Mr. Colvocoresses:

It now appears possible that the above case will be tried some time in the latter part of March or early part of April and we have authority from our clients for you to make further investigations in preparation of your testimony for use at the trial. However, we are limited in the amount of expense we are authorized to incur and would, therefore, appreciate your keeping in touch with us as to the work you do so that we may stay within the limits prescribed.

As you appreciate from the pleadings, the defendant is claiming rights to a vein alleged to apex within the Pure Gold claim and to extend across the common side line into the Morning Star claim. It is our understanding from conversation with Mr. Fennemore that the defendant's claims involve considerably more than the rights to the "trespass" ore body. The suggestion was made that the action be dismissed, but this did not appear to interest the defendant, the reason being, according to Mr. Fennemore, that the defendant desired to have apical rights established which would permit him to mine a great deal more ore from the Morning Star claim. We would like to have you bear this in mind in connection with your investigations in order that we may be prepared to meet any contentions which the defendant might make. It might be possible to obtain a court order requiring the defendant to produce any maps he has showing the vein with respect to which he is claiming apical rights and samples, assay records, reports and

Mr. G. M. Colvocoresses,
February 16, 1945,
Page Two.

X other data which he intends to rely upon to support his contentions. It would be a good idea if you could let us know just what information along these lines might be helpful to you so that we can include the same in a motion requiring the defendant to produce.

Yours very truly,

ELLINWOOD & ROSS,

By *William A. Evans*
A.

WAE - GRH

cc: Mr. Darnell
Mr. McFall
Mr. Tubach

yes!

LAW OFFICES OF
Ellinwood & Ross
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

EVERETT E. ELLINWOOD, 1862-1943
JOHN MASON ROSS, 1874-1944

WILLIAM A. EVANS
NORMAN S. HULL
DENISON KITCHEL
(WITH U. S. ARMY)
FRANCIS J. RYLEY
JOSEPH S. JENCKES, JR.

EVERETT M. ROSS
(WITH U. S. ARMY)
GEORGE E. WOOD
WILLIAM SPAID

Star
February 28, 1945

Morning

C. L. Jones
3/1/45

Mr. G. M. Colvocoresses
Luhrs Tower
Phoenix, Arizona

Dear Sir:

We are enclosing a check of the Morning Star Mining Company for \$125.00 to apply on services rendered in the case of Forcey et al vs. Molson.

Very truly yours,

ELLINWOOD & ROSS

By *W A Evans*

WAE:DV

March 3rd, 1945

Morning Star

Mr. L. M. Forcey
Morning Star Mining Company
P. O. Box 23
Oracle, Arizona

Dear Mr. Forcey:

I acknowledge your letter of February 28th and very much appreciate the hospitality which both you and Mrs. Woods offer me at Oracle. Unless something very unforeseen prevents, Mr. Miller and I will arrive at the ranch-house sometime in the early afternoon of Tuesday, March 6th.

I wish to thank you for the Morning Star Mining Company's check for \$125.00 recently received through Mr. Evans.

Referring to the last paragraph of your letter I believe that I met one of the local engineers when I visited the mine before and I should be very glad indeed to have an opportunity to again discuss the situation with either one or both of them. I presume that we can discuss this matter on my arrival at the ranch. There is some work at the mine which I shall first want to carry out with the help of Mr. Miller and Philip Rivera, if you can arrange to have him present.

With personal regards.

Sincerely,

W. C. Miller

GMC/b

MORNING STAR MINING COMPANY

ORACLE, ARIZONA

GUY G. RICHARDS
MANAGER

P.O. BOX 23

Feb. 28th. 1945.

Handwritten: 3/3, 45

Mr. G. M. Colvocoresses,
1102 Luhrs Tower,
Phoenix, Ariz.

Dear Mr. Colvocoresses:

Replying to your letter of the 26th. inst. beg to assure you that we will be very glad to have you and Mr. Miller occupy Mrs. Woods house during your stay here. We received a message from Mrs. Wood informing us you going to do so.

At the present time I am alone, batching and it will a pleasure to have some one here to say good morning to for a few days at least.

We are trying to have Philip Rivera here to assist you but he is working at a place below Tucson and up to the present time have not been able to contact him.

Among my acquaintances in this vicinity are two engineers, one retired and one active, and would like you to please inform me if you think it advisable to have one or both of them to go over the situation with you.

Yours truly,

Morning Star Mining Co.

By *L. M. Forcey*
L. M. Forcey.

LAW OFFICES OF
Ellinwood & Ross
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

EVERETT E. ELLINWOOD, 1862-1943
JOHN MASON ROSS, 1874-1944

WILLIAM A. EVANS
NORMAN S. HULL
* DENISON KITCHEL
FRANK J. RYLEY
* JOSEPH S. JENCKES, JR.
* EVERETT M. ROSS
GEORGE E. WOOD
WILLIAM SPAID
* IN MILITARY SERVICE

March 19, 1945

Mr. G. M. Colvocoresses
Luhrs Tower
Phoenix, Arizona

Dear Mr. Colvocoresses:

We are enclosing a check for \$125.00 which is the amount advanced by Mrs. Wood to apply on your charges and which was received by this office today from the firm of Darnell & Robertson at Tucson.

Very truly yours,

ELLINWOOD & ROSS

By

W A Evans

HQ:V

*Please see item to which it refers &
tell him of progress.*

D

Morning Star *File*
May 4th, 1945

Mrs. Elizabeth L. Wood
Long Beach, Washington

My dear Mrs. Wood:

I have been intending to write you for the past week in order to again express my sincere thanks for the hospitality which was extended at your ranch when Mr. Flagg and I revisited the Morning Star Mine during the last week in April. Mr. Forcey was as usual extremely kind and we were made very comfortable. I only regretted that it was not possible to renew our very brief personal acquaintance.

Now I am in receipt of your communication relative to Lt. Lambert Wood. I had heard of his sad death from Earl Miller, and I take this opportunity to express to you my most sincere sympathy.

The saddest part of this war is the loss of so many of our fine young men who are needed so much, both in their homes and by the Nation at large. Many of our intimate friends have suffered a loss similar to your own. I can only feel very thankful that my only son who has been overseas for over three years, and is now a Major in the Engineers Corps has so far come thru all right in spite of having been twice wounded in North Africa. Apparently the fighting in Europe is almost over now so that we earnestly hope that he will be spared and returned to this country before long. But there are still many homes which will be saddened as the war in the Pacific continues to the bitter end.

I had noted Lambert's photograph at your ranch and have heard him spoken of in the highest terms by all who knew him. I can only trust that you find some consolation in knowing that he made such a splendid record during his short life and gave that up gladly as a sacrifice for his country.

I was particularly interested in looking over the many interesting objects at your home and the remarkably fine collection of books and to note how thoroughly these covered the early history of the western part of the country. The diagram of Puget Sound and the mouth of the Columbia River with the record of shipwrecks that had occurred there contained a notice that the U. S. S. Peacock was wrecked there in 1841. It happens that the Peacock was one of the four ships that sailed around the world under command of Commodore Wilkes. My grandfather, who was then a Jr. Lieutenant in the U. S. Navy, was serving on one of the other ships of that squadron and mentions the loss of the Peacock in his diary, which also gives an account of an over-land march

Mrs. Elizabeth L. Wood
May 4th, 1945
Page 2

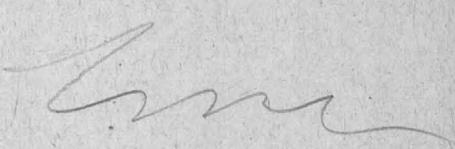
that was made by a small party from near Vancouver down to the present site of Sacramento where the officers were entertained by Captain Sutter. If your grandfather, Mr. Lambert, was living in Oregon as early as 1841 it seems quite possible that our grandfathers might have met. I would certainly enjoy an opportunity to talk over with you the early settlement of the West Coast and many other matters of mutual interest.

The trial of the Morning Star trespass suit will be held next week in Tucson and our preparations are all made. Of course, the outcome of any proceeding of this nature is bound to be more or less unpredictable, but I earnestly hope that we may be successful and eventually obtain a satisfactory settlement from Mr. Molson and his associates.

Trusting that you are enjoying a pleasant summer in Washington, I remain.

Yours very truly,

GMC/b



At our last meal together,
breakfast in Great Falls, Montana,
Lambert said, "You must be
prepared for anything. I am in
a dangerous game, but if I crack
up, I'll still go on flying, the
thing I best love to do."

Lambert's Grandmother



Lieutenant Lambert A. Wood
March 20, 1920 - November 10, 1944

Funeral services for 2d Lt. Lambert A. Wood, formerly of Portland, were held at J. P. Finley & Son at 1 P. M., Thursday, November 17, 1944, with internment at Riverview cemetery. He was killed November 10 in the crash of his pursuit plane at Brownsville, Tex.

Great-grandson of J. H. Lambert, pioneer Oregon orchardist and originator of the Lambert cherry, he was born in Philadelphia March 20, 1920. Adopted in 1924 by his grandmother, Mrs. Elizabeth Lambert Wood, northwest author, after the death of his mother. He was graduated from Ilwaco high school and University of Arizona.

Wood was commissioned at Terrell Field, Tex., June 17, 1944. He was in the ferry transport command before going to Brownsville.

He is survived by his father, Alexander B. Randall, Philadelphia, and Mrs. Wood, who lives at Long Beach, Washington.

(Reprinted from The Oregonian, November 15, 1944)



Last Two Letters From Lt. Lambert A. Wood to His Grandmother, Mrs. Elizabeth Lambert Wood, Long Beach, Washington

November 4, 1944.
Officer's Club
Army Field
~~Pocatello, Idaho.~~

Brownsville, Texas

Dearest Grandmother:

Today was one of the biggest and best of the flying days I've ever had. Today I took my first solo flight in a P51 "Mustang" fighter and also in the above ship, The Republic Thunderbolt or P47. The P51 North American Mustang is absolutely the sweetest airplane I have ever flown and it was a dream to fly. I only hated to have to come down to earth when the gas supply started to run low. She is smooth and sensitive and trim and streamlined and responds to the touch of a fingertip. Easy to control and take off and is in the air almost before you realize it. She climbs like a "homesick angel" at several thousand feet per minute. I climbed to 10,000 feet over the mouth of the Rio Grande where it empties into the Gulf of Mexico and put her through her paces in "lazy 8" and chandelles and steep turns and climbs. I'll bet no bird had more fun nor thrill than I did. She will dive to 400 miles per hour with the ease and grace of a swallow, and on landing I couldn't even feel when the wheels touched the ground—though the ground was going by pretty fast—120 miles per hour.

The P47 Thunderbolt pictured above is quite a contrast; she makes you feel like a maharaja riding on top of an elephant. It weighs seven tons and is massive and strong. The engine is smooth though it has nearly 2,000 h.p., but when you pull that airplane into the air you really know you are taking up something that is not a weakling but more like getting a railroad locomotive "air borne". When you cut the throttle on that baby she feels like an elevator going down as the nose drops and before you know it the air speed reads 250 to 300 miles per hour in a dive. However, it is quick on the controls and will turn on a dime and carries more armament than any of the others and will go higher which makes it the choice for combat work at high altitudes.

The landing practice we do the most of consists of a "circuit" or pattern square around the field in which all the planes fly awaiting their turn to land—very much as your old horse show days—for here is where we have to show our stuff or skill for we are graded on every landing. If you see you are making a bad approach or landing, it is your choice in the interest of safety to pull up and go around and await your turn again. We normally have about twelve to twenty ships in the pattern and it is really careful work to keep from hitting someone or making mistakes. All of Pan American, Brandiff, and Eastern Airlines, Commercial U. S. and Mexican ships as well as Navy and Army and Air Pursuit ships all use the same airdrome.

A big happy day for me but I'm tired and must get some rest. Tomorrow I'm Student Officer of the Day. All my love and may God bless you.

As always,

LAMBERT.

~~Care Field,
Seventh Ferrying Group
Great Falls, Montana.~~
Brownsville, Texas

Dearest Grandmother:

Another grand day. Have been flying pretty steadily. Flew the P47 Thunderbolt today—it truly is a wonderful ship. It's got plenty of power and armament and would really be the ship to go into combat with. It is lovely—zooming along in these blue, sunny skies with the Rio Grande, a muddy, silvery color, and the blue Gulf of Mexico underneath and surely gives me a thrill and makes you know God planned every detail of this beautiful world and how lucky I am to be viewing it from this grandstand seat at the controls of man's highest achievement in mechanical skill.

Everything is serene and smooth up there, away from the hustle and bustle and worries on earth. You are alone with God and wholly depend upon Him—you are in Heaven in my estimation up there and it's through God that you get there and you reluctantly come down only to taste the contrast to be eager to get back up into that serenity. All sounds queer, I guess, but that is the unexplainable something that makes me love to fly so much and something of the feeling you get while up there alone—speeding along at 250 miles per hour, free as the wind and master of the airplane which at a finger's touch can dive to over 400 miles per hour or climb thousands of feet or turn or zoom smoothly. I only hope that all goes well so that I can graduate in this class in the next ten days.

Today is Sunday and would have meant my afternoon off but I drew the job of Officer of the Day who is guard and responsible for things on the post. I'm just as glad to get this in off duty hours for I won't miss any school work this way and there is no attraction for me in Brownsville or Mexico.

The khaki pants and shirts arrived and thanks ever so much as I sure needed them and will send them back as soon as I leave here and some other things. Your letters are wonderful and I don't know what I would do without them—keep it up.

All my love and blessings on you and may you remain well and happy as you are.

Love,

LAMBERT.

Today I'm Officer of the Day—writing on duty.

Lt. Col. Crawford T. Johnson Jr.
Office of the Fiscal Director
Liaison Officer
Dallas 13, Texas

November 16, 1944

My dear Mrs. Wood-

.....

Young Lambert came into my life and I saw in him the qualities that were his Uncle Lambert's--sincerity, enthusiasm, frankness in appreciation almost to the point of embarrassment, love of home and family--a gracious, humble Christian.

How proud I was of his feeling toward me. How often I pray that I may be worthy of it. We are proud of him and we shall miss him just as we miss any loved one who goes away on a trip.

We look forward to our being reunited and while that loved one is away we try to carry on our own lives as he would have us and try to do those things that he would be doing if he were here.

With much love, I am

Sincerely,

Crawford

HEADQUARTERS, ARMY AIR FORCES
Office of the Commanding General
Washington 25, D. C.

November 29, 1944

My dear Mrs. Wood:

It is with keen regret that I have learned of the death of your son, Second Lieutenant Lambert Alexander Wood, which occurred on November 10, 1944, as a result of injuries he received in an airplane accident near Weslaco, Texas.

The excellent record of Lieutenant Wood, a graduate of the school at Terrell, Texas, has been brought to my notice and it is one of which you can be justly proud. He entered his Country's service determined to give his utmost to its cause, and the fine military reputation he enjoyed attests his seriousness of purpose and devotion to duty. Energetic and alert in the performance of all assignments, he was a credit to his command.

Your son was always faithful to the best traditions of the Army Air Forces, and we feel that his passing is a distinct loss to our organization. I hope the knowledge of this will afford you some measure of consolation, and I extend my heartfelt sympathy to you and other members of the family.

Very sincerely,

H. H. ARNOLD,
General, U. S. Army,
Commanding General, Army Air Forces.

Mrs. Elizabeth L. Wood,
c/o Southern Belle Ranch,
Oracle, Arizona.

Lt. Kenneth M. Scheibel
755 TK BN.
APO 464
New York, New York

ITALY 19 DEC. 44

Dearest Mrs. Woods:

Yesterday the letter came telling me about Lambert, my beloved brother.

Anything I could attempt to write or say, I know, would fall miserably short of its goal, in even trying to comfort, or praise of one we all loved dearly.

How could we help but welcome him to our hearts? His generosity, of himself and his material things, his courage, friendliness, his dislike of pretense and the artificial, modest unassuming charm that was Lambert endeared him to many--in all walks.

This is what we will miss. And this is what I aspire to. Lambert opened my eyes to many things. I learned a lot from him. To emulate him is to live the clean life, to fight the good fight. And more than one time I learned he was a fighter--physically, mentally and morally.

The world will miss the Lambert Woods, all the Lambert Woods, because it always has and always will. And it is the Lambert Woods, who will always be desperately needed, because it is they who seemingly make the sacrifice for their fellows. In the last generation, this one, the next one, until kingdom come, the Lambert Woods reach for the stars, and in so doing, lead and inspire the weak, the sick, the unrighteous, to steer their ships on the true course, to seek true friendship, to help the man who's down.

And because they lead others, they thus become a true yardstick in the measure of human worth. And also a mirror for the rest of us to reflect our own worth, or lack of it.

And Lambert, my dearest, truest friend, was all of this. My own blood relations, and myself, recognized and proclaimed this wherever we were with him--Oregon, Washington, Nebraska. When he was with us, he was one of us. Rough, gruff old men were disarmed in his presence and believed him one in a million.

But you know his values. I am a poor one to tell you what they are. I merely remind you that everyone, by the thousands, know that too. What a man's friends think of him, that he is.

May God grant that the rest of us are worthy to have called ourselves Lambert's friends, his loved ones, and the ones who spiritually follow him now, his knowing wisdom, sense of fair play, and search for the right and true--no matter how hard the fight.

So we carry on the struggle where Lambert gave us the mantle, now rededicated to all that he was, and is now, the right, the true, the kind, the gentle, and the Godly. In these, Lambert had no peer.

Kenneth

1607597 Sgt. Trussler R. J.,
Sgts. Mess,
R.A.F. Station,
Orby,
N R Leicester.

26 February 1945.

Dear Mrs. Wood:

The other day I had a letter from Lt. Bill Cooper of the U.S.A.A.F. and I was very grieved to hear of your great loss. Please forgive my writing like this but I felt I had to write and tell you how much the British boys who trained with your son came to like and respect him. To us he was regarded as the best type of American manhood and we are indeed proud to have been his friend. He was a gentleman, a sportsman and also a grand pilot. In jest it was often said to him that he was a good enough flier for the R.A.F., and altho' it was in fun he knew that we ranked him above all other things a first rate man.

So from all the lads still with me who knew Lambert please accept our very sincere sympathies. Please know that whenever we shall mention the U.S.A. Lambert will be that which we knew and loved best.

I remain,

Yours very sincerely,

Ron Trussler.

R. J. Trussler,
24 Homersham Rd.,
Ainstock-on-Thames,
Surrey,
England.

10/4/44

MEMO RE MORNING STAR MINE

Bill Evans of Ellinwood & Ross called this afternoon to say that trial of this case would probably be set in the near future and that the Morning Star people claimed that about 600 tons of ore had been illegally taken from their ground.

Called Evans' attention to an item in the "Mining Journal" of August 30th, page 20 which mentioned maps and technical report on the Maudina and Morning Star Mines recently completed and now on file in the office of the Arizona Bureau of Mines, University of Arizona, Tucson. This report was made by, or under the direction of Joralemon and copies should be obtained and examined. Evans will try to secure same thru their Tucson Attorney.

The Fennimore Firm of Phoenix represents the Defendants. Before case goes to trial and in preparation for same I should:--

- (1) Obtain patent survey notes from Land Office;
- (2) Examine above mentioned report;
- (3) Make another examination of the Mining Claims and carefully measure the excavation for which trespass is claimed and estimate tonnage of ore taken therefrom, also obtain if possible gross and net value.
- (4) Check reference to Apex Law, especially definition of "vein" and obtain illustrations from text books on geology or other publications.

In reference to legal points consult U. S. Mining Statutes annotated by Thompson, page ^{105^a} 131, Lawson vs U. S. Mining Co.; also page 132, 154,

Morning Star Memo
10/4/44

page 155, and 160.

Note also Bulletin 94, U. S. Bureau of Mines.

Scheelite is CaWO_4 ($\text{WO}_3 = 80.6$ $\text{CaO} = 19.4\%$)

Kemps' Classification of Ore deposits ^{as} ~~based on~~ Form (Based on work of Van Cotta and Prime); Ore Deposits of the U. S. & Canada by J. F. Kemp, 1906 Edition. *p. 451.*

I. Regular Deposits

- A. Beds
- B. Veins
 - a. True (fissure) veins
 - b. Bedded veins
 - c. Contact "
 - d. Lenticular "

II. Irregular Deposits

- C. ~~Suggestions~~ *Segregations*
 - a. Recumbent
 - b. Vertical
- D. Impregnation (Disseminations)

→ In describing certain replacement ore bodies ^(impregnations) J. P. Wallace in treatise on Ore Deposits says "The ore bodies are not found in veins at all" Oftentimes they succeed one another in depth with barren ground between" They vary greatly in size and shape" Sometimes they assume an irregular circular or dome-shaped form; at other times they are lens-like and not infrequently they are so erratic as to defy definition."

Apparently the Morning Star was the senior location or in any event it was patented long before the Pure Gold. There will probably be no serious dispute as to the locations of the side line nor as to the fact that the apex (i.e. highest point of that particular ore body) was found on the Pure Gold Claims, but the question as issue will be whether or not this ore deposit is a vein or lode within the legal meaning of the term or whether it is a kidney or pocket of irregular shape and without the true characteristics of a vein such as strike, dip or walls. This last will be my contention.

In U. of A. Bulletin Vol XII. #2 Eldred D. Wilson mentions on page 33 that there is a vein of scheelite ore on the Morning Star Claim with strike N 65° W and dip 50° to the southwest and he described the outcrop as having a length of 125' with a maximum width of 50 and says that the foot wall is a well defined fault fissure.

This vein is the location of the upper or east working on the Morning Star and its extension to the northwest would carry it past the trespass point some 200' to the south. Moreover its further extension (unless faulted or changed in course) would carry it across the north side line of the claim so that in the interpretation of any apex rights on that particular vein the side lines would become the end lines in accordance with decisions of the Supreme Court and would have to be drawn parallel and carried down vertically in which case Pure Gold could have no extra-lateral rights at the point of trespass.

This would be the defense in case the Pure Gold people contend that the trespass mining has been on that particular vein but otherwise we can contend that there is no connection between the said vein and the trespass workings since the vein cannot be traced for more than 125' and its "abrupt western termination is in the vicinity of the shallow shaft"-- to quote Wilson.

Date	Dry ton	Assay	Pupd per ton	net wt p. to	Pupd supp	Oly on hr 458 500
July 7, 44	178.172	1.055	24.00	13.24	2358.99	
5/20. 44	149.031	1.047	30.00	18.48	2753.52	"
5/20 "	138.	0.73	"	11.97	1651.78	"
5/20 "	142.23	0.84	"	14.22	2022.48	
5/27 "	147.42	0.753	"	12.42	1832.43	
6/15 "	137.09	1.713	24.	23.38	3205.21	
6/16 "	133.33	2.463	24	34.93	4657.36	
6/24 "	123.498	2.567	"	36.54	4512.63	
6/28 "	137.971	2.52	"	35.81	4940.74	
6/10 "	131.764	0.683	"	7.51	989.55	
6/10	131.538	0.73	"	8.24	1083.87	
6/10	130.518	0.563	"	5.67	740.04	
5/27	226.749	0.757	30.	12.52	2763.90	7600
5/27	140.513	0.810	24	9.47	1330.66	
5/27	135.867	0.797	24	9.28	1260.85	
5/27	145.207	0.98	24	12.09	1755.55	
Production for haul 44 w of 600 1.5043 & haul 30 40						
	1419.186	0.863				

MORNING STAR MINE

Molson et al (Campo Bonito Mines, Inc.) appear to have recently patented 29 claims in this area while Mrs. Wood has only 4 claims. Campo Bonito recently tried to interest the American Smelting & Refining Company in their property, but engineers for that Company would not recommend any purchase or further investigation until the question of apex rights was settled with the Morning Star owners.

Before this case goes to court it seems to me that Mrs. Wood and the lessees ought to sound out the possibility of selling their claims to the Campo Bonito Co. which would permit the latter to round out their holdings and obviate any litigation. So far as I can learn there are no showings of any kind of pay ore on the Morning Star Group other than the deposits of scheelite which have recently been operated by Forcey and associates.

In this connection I again refer to the damage to the surface of the Morning Star Claims, for altho this was not mentioned in the complaint at which time only about 100 sq. ft. of surface were involved, yet this surface trespass has now caved in close to 1000 sq. ft. and more will come at a later date. Some value can surely be given to this.

3/9/45

Sketches are drawn on the assumption that defendants prove to the satisfaction of the Court that the trespass deposit is a true vein rather than a pocket and that plaintiff proves that a portion of the apex extended over common side line to Morning Star which is the senior location.

According to maps and present indications the conditions would have been as shown in the two upper sketches with highest point of apex on Morning Star, but one of the defendants photographs showed a high bluff of ore. the top of which they may claim was higher than any other point along the outcrop and if they actually measured the elevation of the bluff (which has since been mined) they might be able to substantiate such a claim as to the legal force of which I am uncertain.

Am also uncertain as to whether the senior location would be entitled to claim all ore under the vertical projection of the side-line or whether the dividing line would be drawn parallel to the hanging wall of the vein and this might make a lot of difference

Decisions Which Might Bear on the Above are:--

Stevens vs. Williams. 23 Fed. Cas. 40 p. 43

St. Louis Mining Co. vs. Montana Min. Co. 104 Fed. p.664-668

Bunker Hill Min. Co. vs. Empire State. 106 Fed. p. 471

Last Chance Min. Co. vs. Bunker Hill Min. Co. 131 Fed.p. 579-588.

*Checked in
a clipped
for long*

A P E X

1. The tip, point, or angular summit of anything, as the apex of a mountain. The end, edge, or crest of a vein nearest the surface (Webster).

2. The highest point of a stratum, as a coal seam (Standard)

3. In geology, the top of an anticlinal fold of strata. This term as used in U. S. Revised Statutes, has been the occasion of much litigation. It is supposed to mean something nearly equivalent to outcrop.

4. The highest point at which the ore or rock is found in place or between the walls of the vein, and not a "blow-out" or part of the vein broken down outside the walls. In case the vein outcrops at the surface, any portion of such outcrop is the top, or apex. If the vein, does not reach the surface, then the highest point to which the vein, or lode, can be traced is the apex—not necessarily the nearest point to the surface, but the absolute highest point. It is reasonable to believe that the top or apex was used instead of the word "outcrop", in order to cover "blind lodes," which do not crop out. The conception of an apex, which is properly a point, was probably taken from the appearance of a blind lode in a cross-section, where the walls appear as lines and the upper edge as a point. The term may also have been intended to cover the imaginary case of an ore deposit; that terminates upward in a point. We may, however, dismiss from consideration the case of a simple point, and safely assume that the apex is the same as a top, and is either a line or a surface (Raymond).

no more

The top or apex of a vein, within the meaning of the law, is the highest point, of such vein where it approaches nearest to the surface of the earth and where it is broken on its edge so as to appear to be the

"Apex" (Continued)

beginning or the end of the vein. (Stevens v. Williams, 23 Federal Cas., p. 46).

The top or apex of a vein or lode is the end or edge or terminal of such vein or lode nearest the surface of the earth. It is not necessary that it should be on or near or within any given distance of the surface, but if found at any depth, and the locator can define on the surface the area that will enclose it, then the vein or lode may be held by such location. (Iron Silver Min. Co. v. Murphy, 3 Federal, p 373).

The apex or top of a vein is the point where it ceases to continue in the direction of the surface. (Sloss-Sheffield Steel and Iron Co. v. Payne, 64 Southern, 617.)

The apex of a vein or lode is not necessarily a point, but may be a line of great length, and if a portion is found within the limits of a claim it is a sufficient discovery to enable the locator to obtain title (Poplar Creek Consol Quartz Min. In re, 16 Land Decisions, p. 2; Larkin v. Upton, 144 U. S., p. 20; Debney v. Iles, 3 Alaska, p 451.)

An apex of a vein is that part or portion of the terminal edge of a vein from which the vein has extension downward in the direction of the dip and the definition involves the elements of terminal edge and downward course therefrom. (Stuart Min. Co., v. Ontario Min. Co., 237 U. S. p. 360).

{Additional cases are cited in U. S. Min. Stat. p. 105}.

MINING ACT OF 1872

Extralateral and intralimital rights.

The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on May 10, 1872, so long as they comply with the laws of the United States and with State or territorial regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges, throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, altho such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges.

MINERAL BEARING ZONE

(a) { A broad formation impregnated everywhere with mineral, but traversed by true fissures within itself, cannot be considered as the lode; the fissures within such zone are the lodes and the zone is the country-- Mt. Diabolo Co. v Callison, 5 Sawy. 439; 9 M.R. 616. Ore distributed generally, though unequally, throughout the entire mass of limestone of the mountain does not constitute a continuous lode such as may be followed beyond the lines of its location.-- Hynan v. Wheeler, 29 F. 347; 15 M.R. 519.

* * * * *

Where the mineralization of the alleged lode is not appreciably greater than the surrounding rock it does not constitute a vein. The absence of walls and want of continuity commented on.--Grand Central M. Co. v. Mammoth M. Co., 29 Utah 490; 83 P. 648.

In determining what is such a lode as has extralateral rights the geological conditions of the district are to be considered.-- Golden v. Murphy. (Nev.), 103 F. 394.

THE GRANT OF THE APEX RIGHT

R. S. Sec. 2322.--The locators of all mining locations *** shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, altho such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations.

LIMITATION TO PLANES OF PROJECTED END LINES

But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges.--Sec. 3, May 10, 1872.

to follow the lode upon its dip as well as upon the strike to so much thereof as its apex is found within the surface lines of the location.

U. S. MINING STATUTES ANNOTATED BY J. W. THOMPSON

Page 42:--

An impregnation to the extent to which it may be traced as a body of ore is as fully within the terms of the statute in reference to veins and lodes as any other form of deposit.

Hyman v. Wheeler, 29 Fed. 347, p. 353
Cheesman v. Shreeve, 40 Fed. 787, p. 795.

(d) bed f. l. s.
While a vein or lode must have boundaries it is not necessary that they must be such as can be seen; and it is sufficient if it can be determined by classifying it as a segregated or contact fissure vein, or as a bed or impregnation of ore; and it need not be separated from the country rock by planes or strata of such rock visible to the eye.

Hyman v. Wheeler, 29 Fed. 347, p. 353
Cheesman v. Shreeve, 40 Fed. 787, p. 795.

* * * * *

Page 43:--

(d) 1/2
In many ledges having distinct hanging and foot walls the country beyond either is more or less mineralized and at times even small deposits of ores are found beyond the limits of such walls, yet it can not be said that such mineralized country rock constitutes a part of the ledge.

Bunker Hill etc. Min. etc. Co. v. Empire State etc. Min. etc. Co.
134 Fed. 273.

* * * * *

WHAT DOES NOT CONSTITUTE.

Stevens v. Williams, 23 Fed. Cas. 40, p. 43.

(F) Where the apex of a vein is of such width as to be partly in one location and partly in another, the rights of the locators or owners will be determined by priority of location.

St. Louis Min., etc. Co. v. Montana Min. Co., 104 Fed., 664, pp: 667, 668
Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc.
Co., 106 Fed. 471.
Last Chance Mine. Co. v. Bunker Hill, etc., Min., etc., Co. 131 Fed.
579, p. 588.

There is a difference between a lode sufficient to validate a location and an apex giving extralateral rights.

Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah 490.
Approved in Mammoth Min. Co. v. Grand Central Min. Co., 213 U.S. 72
p. 77. See Lawson v. United States Min. Co., 207 U. S. 1.

The law contemplates that a location shall be on one vein, and while certain rights, attach to other veins whose tops or apexes are found within the surface boundaries, yet but one vein can be made the basis of a location.

Johnson, In re, 7 C.L.O. 35, p. 36.

The middle of a vein or lode must be ascertained by actual exploration and development, or the discovery shaft must, for executive purposes, be taken as the middle of the vein and the lateral measurements made therefrom.

Johnson, In re 7 C.L.O. 35, p. 36
See Hope Min. Co., 5 C.L.O. 116.

RIGHT MEASURED BY LENGTH OF APEX

(9) A miner having an apex in his location is entitled to as much length of the vein on the strike, no matter how deep he may go in the dip, as he has length of apex within his surface lines, whether the apex reaches the surface or is found beneath the same, within the planes of his exterior boundary lines extending downward perpendicularly.

Fitzgerald v. Clark, 17 Mont. 100, p. 116.

When a locator owns an apex, whether it extends through the entire or through but a part of his location he necessarily owns an equal length of such vein to its utmost depth.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p 851.

* * * * *

Page 107:--

SUBSURFACE VEIN AS BASIS OF LOCATION.

A valid location may be properly laid upon a vein though it does not crop out upon the surface. If it lies entirely beneath the surface, and the course of its apex can be ascertained by sinking shafts at different

Page 144:--

(6)

Where subsequent developments show that a mining claim as located contains little of the apex of the vein claimed, and such vein does not cross either end line and does not run parallel to the side lines of the location, but enters a side line and departs from the location at the same side, the locator is not entitled to any extralateral rights based on the ownership of the apex of such vein.

Catron v. Old, 23 Colo. 433, p. 441.

SIDE LINES MAY BE END LINES.

If a location is laid across the lode or the course of its apex at or near the surface, then the side lines will become the end lines for the purpose of determining the rights of the owners.

- Mining Co. v. Tarbet, 98 U. S. 463, p. 468
- Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.
- Del Monte Min., etc., Co. v. Last Chance Min. Co., 171 U. S. 55
- Tyler Min. Co. v. Sweeney, 54 Fed. 284, pp. 292, 293
- Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 546.
- Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.
- Del Monte Min., etc., Co. v. New York, etc., Min. Co., 66 Fed. 212, p. 214.
- Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848
- Tyler Min. Co. v. Sweeney, 79 Fed. 277
- Bonner v. Meikle, 82 Fed. 697, p. 705
- Empire Min. M. Co. v. Tombstone Min. Co., 100 Fed. 910
- Cosmopolitan Min. Co. v. Foote, 101 Fed. 518
- Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 589.
- Empire State, etc.; Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed., 591, pp 601, 604.
- Tombstone Min. Co. v. Way Up Min. Co., 1 Ariz. 426, p. 462.

* * * * *

A locator is not bound to lay his side lines perfectly parallel with the course or strike of the lode or vein so as to cover it exactly, and his location may so run that it crosses the vein, but in such event his end lines become his side lines and he can only pursue his vein to his side lines vertically extended as though they were his end lines.

Stevens v. Williams, 23 Fed., Cas. 40, p. 43.

The only exception to the rule that the end lines of a location as marked upon the surface of the ground establishes the limits beyond which he may not go in the appropriation of a vein on its course or strike is where it is developed that the location has been made across instead of along the course of the vein. In such case the law declares that what the locator called his side lines are his end lines.

points, such shafts may be adopted as indicating the position and course of the vein. In such case locations may be properly made on the surface, so as to secure a right to the vein beneath; but the act of Congress must be followed in laying claims and locations, where the vein does crop out along the surface, or it is so slightly covered by foreign matter that the course of its apex can be ascertained by ordinary surface exploration.

Mining Co. v. Tarbet, 98 U. S. 463, p. 469
Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131
Fed. 579, p. 589.

A vein or lode somewhat below the plane of the horizon is within the meaning of this section, and may be pursued beyond the side lines of the claim in which it has its outcrop.

Page 119:--

A general principle should pervade and control the various conditions found to exist in different locations, and its guiding star should be the preservation of the essential right given by the statute

CHARACTERISTICS OF A REPLACEMENT DEPOSIT

(d) Due to the condition of the formation of a replacement deposit, there is a usual absence of banding, and the ore-bodies are apt to be irregular, with ill-defined boundaries. Yet, since they usually follow some channel of strain and weakness, they may have definite extensions in one or more directions; and so may be classified, from the standpoint of form, either as disseminations, irregular masses, shoots (pipes or chimneys) beds, or veins.

* * * * *

SHAPE OF OREBODIES IN LIMESTONE

(d) On account of the easy replaceability of limestone by metallic sulphides, the shape of ore deposits in limestone is usually irregular. Generally, however, the trend and the extension of these irregular ore-bodies can be traced to a fissure, or series of fissures, along with the ore solutions have gained access, and from which they have spread out.

* * * * *

VEINS, LODES, & VEINDIKES

(d) Any body of ore which has a general zonal shape is called a vein or lode. In the U. S. the word lode is usually reserved, in common usage, for broad, ill-defined veins or a zone of veins. Thus the Mother Lode of California is a broad belt of veins extending for miles.

(d) Veins follow fractures or fissures; they may originate by replacement of the rock, or by the filling of spaces. Even when the vein has formed by replacement, the ore solution or ore magma from which it crystallized may have been a concentrated one and may have been suddenly injected. Many veins, however, have not formed by replacement, but the ore magma

(1) has filled open fissures which its own magmatic pressure has created, or which have opened due to some mechanical tension and have been immediately filled by the upwelling ore magma. Such veins have the same origin--the same mechanics of intrusion--as dikes. They have been called by the writer veindikes.

FISSURE VEINS

(2) The term fissure vein is an old one, and its meaning is not universally agreed upon. At any rate it is a vein that has formed along a fissure. Another characteristic is that it has more or less well-defined walls, and a definite direction of strike and of dip. All veindikes are fissure veins; but some veins which originate mainly by replacement along a clean-cut fissure zone (so long as this replacement follows strong fissure planes) are also to be classified as fissure veins.

METASOMATISM OR REPLACEMENT

(21)
Metasomatism is a partial or complete change in the chemical constitution of a mineral or rock. The same idea is expressed by replacement and substitution, and the three words will, therefore, be used here interchangeably. Metasomatism in veins is brought about through the action of mineralized waters and gases on adjacent country rock, and the process consists of an interchange of material between the solutions and the wall-rocks. In some cases each mineral removed is replaced by a different mineral, but like in form to the one removed. In other cases the minerals deposited do not conform in shape to the ones removed. The process, therefore, practically considered, is not restricted to a preservation of form. In most cases the waters come from below and were hot; they carried in solution certain earthy and metallic minerals. Some of these the waters sought to exchange for other and different minerals contained in the bounding walls of the fissure. An amicable agreement, so to speak, was entered into and an even up swap arranged for. The solutions, therefore, commenced carrying off certain minerals they wanted and in place thereof deposited certain of their own minerals.

* * * * *

W. Wallace

EPIGENETIC DEPOSITS

* * * * *

Replacement deposits in limestone are extremely irregular, although their form as a whole is often dependent upon the bedding, the fissuring, or the contact with other rocks.

* * * * *

SPECIAL RELATIONS OF VEINS

Veins are tabular or sheet-like masses of minerals occupying or following a fracture of a set of fractures in the enclosing rock; they have been formed later than the country rock and the fractures, either by filling of the open spaces or by partial or complete replacement of the adjoining rock, or most commonly by both of these processes combined.

Such alteration or replacement does not ordinarily extend far from the fissure. In regions where the vein-forming solutions have acted with unusual intensity a partial alteration may extend from the deposit over considerable areas.

No distinction can be drawn between the filled veins and replacement veins. If open spaces are available the metalliferous solutions which formed the veins in most cases found it easier to deposit their load in these spaces than to replace the country rock. Quartz is more likely to be deposited in the open paths, and likewise most of the heavy metals, unless the country rock is one particularly adapted for replacement, such as limestone. Gases like carbon dioxide and hydrogen sulphide penetrate the wall rocks with ease.

Many veins correspond closely to the old definition of a "true fissure vein" in which the ore occupies the once open spaces along the

the fracture, with some alteration spreading into the wall rocks.

* * * * *

L E D G E

(c) 1. In mining, ledge is a common name in the Cordilleran region for the lode or for any outcrop supposed to be that of a mineral deposit or vein. It is frequently used to designate a quartz vein (Century). A lode; a limited mass of rock bearing valuable mineral (Webster). See also Vein.

(b) 2. The term ledge is ordinarily applied to several beds of rock occurring in a quarry. In some instances, however, the term is applied to a single bed. (Buckley).

L O D E

(f) Strictly a fissure in the country-rock filled with mineral; usually applied to metalliferous lodes. In general miners' usage, a lode, vein, or ledge is a tabular deposit of valuable mineral between definite boundaries. Whether it be a fissure formation or not is not always known and does not affect the legal title under the U. S. Federal and local statutes and customs relative to lodes. But it must not be a placer, i.e., it must consist of quartz or other rock in place, and bearing valuable mineral. (Raymond).

(f) As used by miners, before being defined by any authority, the term "lode" simply meant that formation by which the miner could be led or guided. It is an alteration of the verb "lead;" and whatever the miner could follow, expecting to find ore, was his lode. Some formation within which he could find ore, and out of which he could not expect to find ore was his lode. (Eureka Cons. Min. Co. v. Richmond Min. Co., 4 Sawyer, p. 311. 8 Fed. Cas., p. 819; Ambergris Min. Co. v. Day, 12 Idaho, p. 115; 85 Pacific, p. 109; Harrington v. Chambers, 3 Utah, p. 94; 1 Pacific, p. 362.)

LODE (Continued)

Lode as used by miners, is nearly synonymous with the term vein,
as employed by geologists. The word should^{not}/be used for a flat or
stratified mass. See Ledge, l. Lead, l, Fissure, Fissure vein, Vein.
(Additional cases are cited in U. S. Min. Stat., p. 44).

MEMO RE MORNING STAR

RE SPLIT APEX

From Peele's Mining Engineer Handbook, 1941 Edition.

Chapter on Mining Law originally written by Horace W. Winchell and revised by Archibald Douglas of Douglas & Armitage.

Section 24. page 24:--

Wide Outcrops.

Where the apex of a vein on its course is split or divided by a boundary line of a location or where the vein is wider than the location itself, the U. S. Supreme Court has decided that the senior location is entitled to the extralateral rights of the entire vein, and the junior location takes it up after the rights of the senior are exhausted.

(Argentine Mining Co. vs. Terrible Mg. Co., 122 U.S.. 478; Lawson vs U.S. Mg. Co. 207 U.S. 1; Empire State Co. vs. Bunker Hill Mg. Co.. 114 Fed.. 417).

Morning Star is the Senior Location and it will follow that all ore lying to the south (left) of the line X Y belonged to the Morning Star and any ore mined from that area by the Pure Gold was trespass ore.

Assuming that the original conditions should be proved to have been in line with attached sketch representing a vertical cross section looking west. The outcrop (apex) of the vein extends from A to B with the highest point at C located on the Pure Gold Claim. The common side line is represented by X - Y. and while I cannot find any case in which exactly similar conditions were considered by the Courts, it does not seem to make any difference where the highest point of the outcrop is located since the entire width of same would be legally classed as the apex and the above quoted principle of law should apply.

Sketch

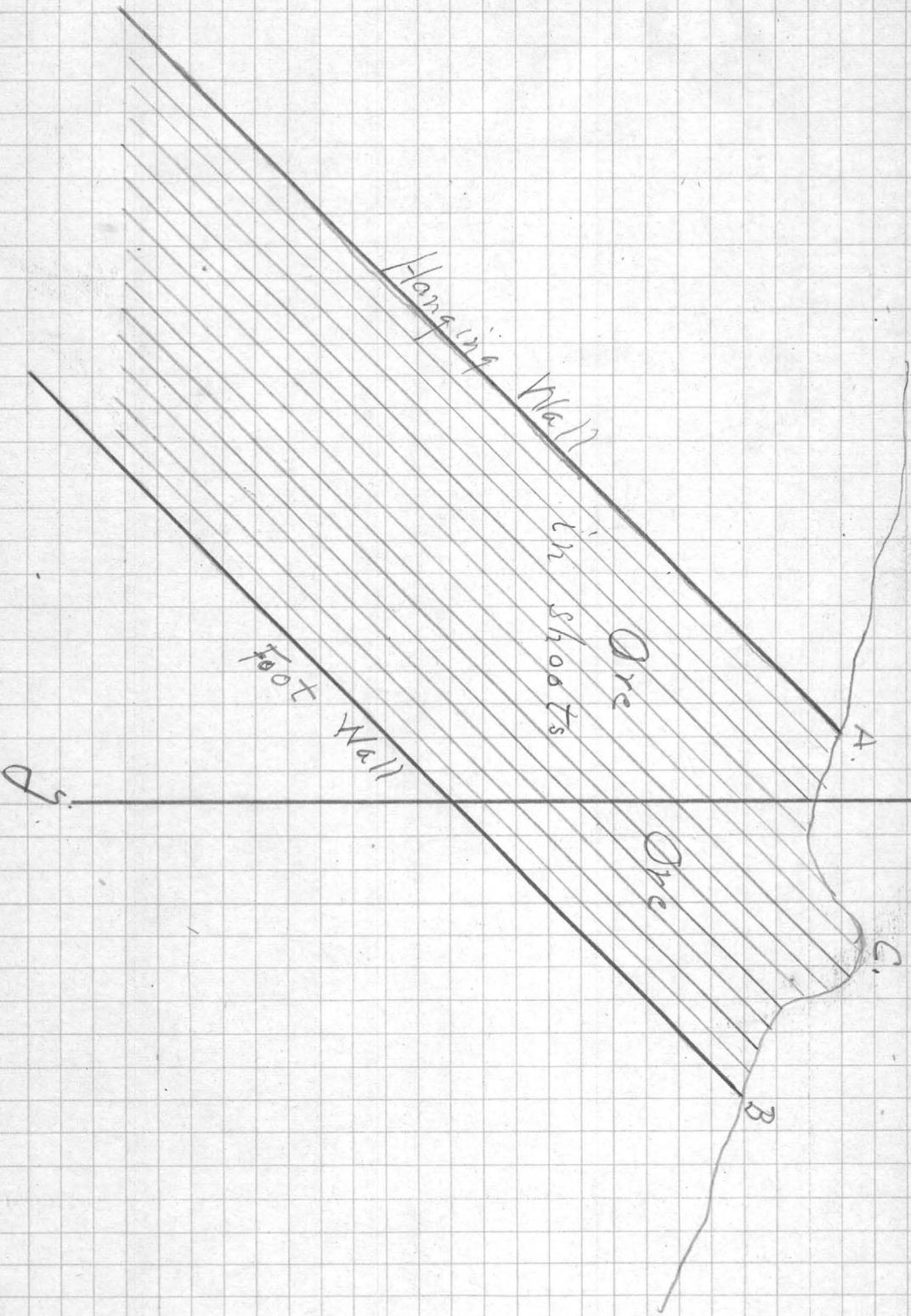
Scale about 10' = 1"

Historical Cross Section, Anthony Hill.

Morning Star

Pure Gold

S \rightarrow N



LAW OFFICES OF
Ellinwood & Ross
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

EVERETT E. ELLINWOOD, 1862-1943
JOHN MASON ROSS, 1874-1944

WILLIAM A. EVANS
NORMAN S. HULL
* DENISON KITCHEL
FRANK J. RYLEY
* JOSEPH S. JENCKES, JR.
* EVERETT M. ROSS
GEORGE E. WOOD
WILLIAM SPAID
* IN MILITARY SERVICE

April 13, 1945.

A. 4/16,
45

Mr. G. M. Colvocoresses,
Luhrs Tower,
Phoenix, Arizona.

Re: Forcey v. Molson

Dear Mr. Colvocoresses:

In your memorandum to me of April 9, 1945, you called attention to the fact that one of the defendant's photographs showed a high bluff or outcropping of ore, the top of which he may claim was higher than any other point along the outcrop, and you ask our opinion as to the legal effect of this.

A definition of an apex which we consider most applicable to this situation is to be found in Lindley on Mines, Third Edition, Vol. I, para. 309, reading as follows:

"The apex of the ideal vein within the location is a surface bounded by the walls of the vein and the end lines of the location. This surface is, of course, irregular. It may be higher at one place within the boundaries than it is at another; but mere elevation of the upper edge of the vein at different points within the location is of no moment. * * * The fact that the exposed edge of the vein is ragged, or that the surface of the outcrop is higher in one place above a given datum plane than it is in another, makes no difference in the principal."

Mr. G. M. Colvocoresses,
April 13, 1945,
Page Two.

Your attention is also directed to the following definition to be found in Stewart Mining Co. v. Ontario Mining Co., 59 L. Ed. 989 at 995:

"An apex is, on cited authority, defined to be 'all that portion of a terminal edge of a vein from which the vein has extension downward in the direction of the dip'".

In view of the foregoing, we believe the elevation of a particular outcrop is not of paramount importance in determining the area included in the apex if the lateral boundaries of the apex can be defined by the hanging wall and foot wall along the dip of the vein. However, it might be of importance should the defendant claim that what we identify as a part of the apex is instead ore encountered on the hanging wall contact with the dip of the vein.

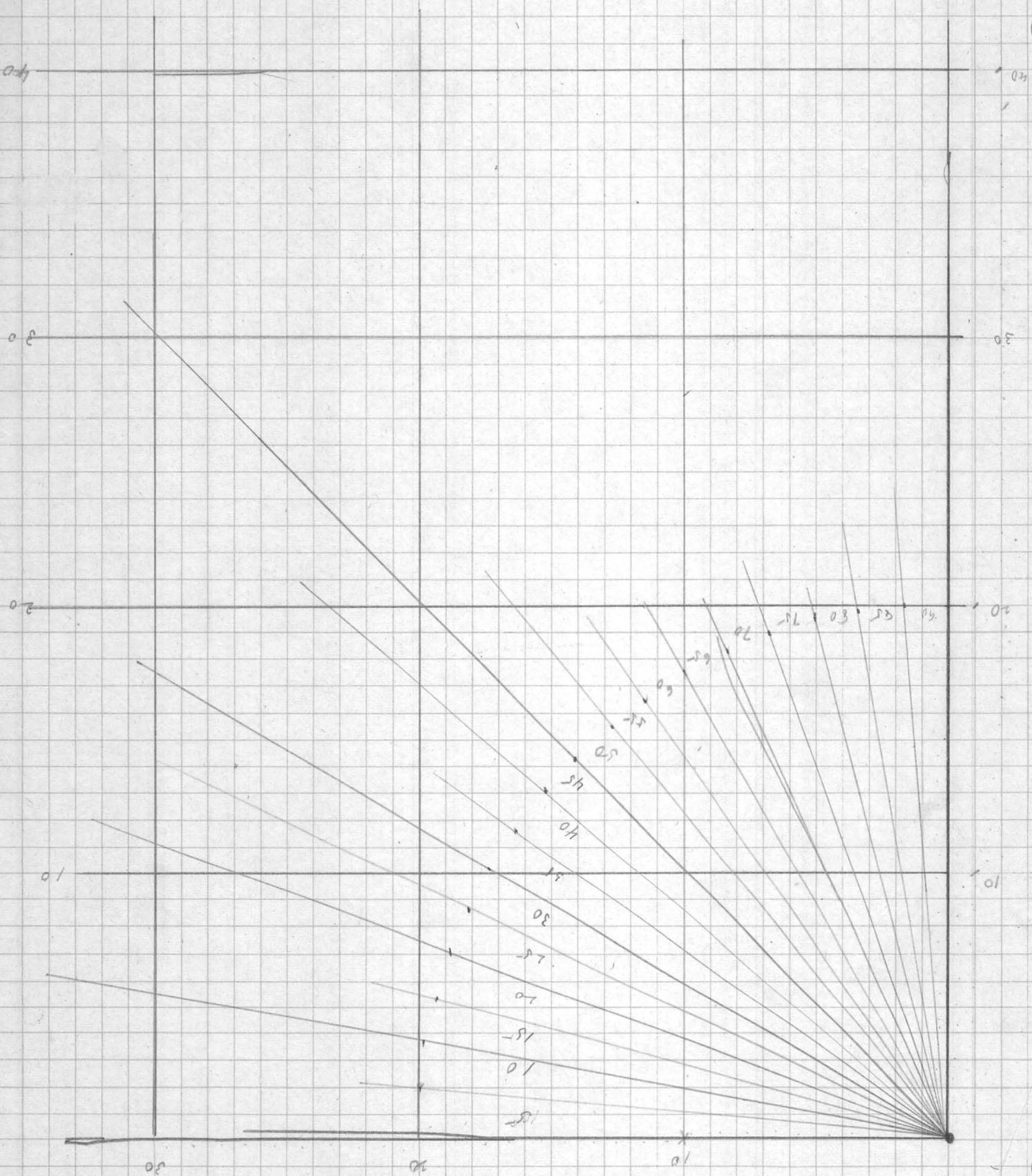
Yours very truly,

ELLINWOOD & ROSS,

By *William A. Evans*

WAE - GRH

cc: Mr. Darnell
Mr. McFall



Hand-drawn graph

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

L. M. FORCEY, WALTER S. TUBACH,
WILLIAM IVERSON, LESTER H. MURMAN,
HUBER C. WILSON and LOUISE A. WIL-
SON, his wife, GEORGE H. VEEH and
FLORENCE M. VEEH, his wife, and
FRANK P. BORCHARD and MYRTLE F.
BOCHARD, his wife, co-partners do-
ing business under the name and
style of Morning Star Mining Com-
pany, and ELIZABETH L. WOOD, a widow,

Plaintiffs,)

No. _____
C O M P L A I N T

- vs -

EDWARD H. MOLSON, doing business
under the name and style of Modina
Tungsten Mine,

Defendant.)

Come now the plaintiffs and for cause of action
against the defendant allege:

I

That Elizabeth L. Wood is a widow and is a citizen
and resident of the County of Pinal, State of Arizona. That all
other plaintiffs above named, and each of them, are and have been
at all times mentioned in this complaint non-residents of the
State of Arizona, and are, and have been at all times mentioned
herein, citizens and residents of the State of California.

II

That the defendant is and has been at all times
mentioned in this complaint a citizen and resident of the State
of Arizona and resides in the City of Tucson, Pima County, Ariz-
ona; that said defendant is, and at all times mentioned herein,
has been transacting business under the name and style of Modina

Tungsten Mine, in the Old Hat Mining District, Pinal County, Arizona, and operating and mining the claim known as the Pure Gold mining claim in said district.

III

That plaintiff Elizabeth L. Wood is the owner in fee simple of the Morning Star mining claim situate in the Old Hat Mining District, Pinal County, Arizona. That all the other plaintiffs herein named are co-partners in a mining partnership doing business under the name and style of Morning Star Mining Company and are owners of a leasehold interest in said Morning Star claim by virtue of a mining lease executed by plaintiff Elizabeth L. Wood on the 7th day of August, 1943, to plaintiffs W. S. Tubach and L. M. Forcey and to Guy G. Richards, the latter of whom has heretofore assigned all his rights under said lease to the plaintiffs herein named, except Elizabeth L. Wood, and has further assigned all right, title and interest to them in and to the assets of the said partnership and any and all moneys due and to become due to the said partnership as of the 29th day of May, 1944; and the said plaintiffs, doing business under the name and style of Morning Star Mining Company, now are and have been at all times mentioned herein, and through their said assignor, Guy G. Richards, entitled to mine, remove and sell, all ore on or in said Morning Star mining claim. That plaintiffs, operating under the name and style of Morning Star Mining Company, are entitled and have the right to the immediate possession of said property, and all ore, minerals and rock therein and thereunder.

IV

That the Pure Gold claim, operated by defendant, adjoins the Morning Star mining claim, and between the 7th day of August, 1943, and the date of the filing of this complaint, the defendant, his agents and employees, wrongfully, wilfully, maliciously, without

right, and without the consent of plaintiffs, or any of them, did enter upon said Morning Star mining claim and remove therefrom eight hundred (800) tons, more or less, of tungsten ores; that the reasonable value of said ore at the time of its removal from said Morning Star mining claim was the sum of Twenty-four Thousand Dollars (\$24,000.00).

V

That said defendant, although notified by plaintiffs not to do so, continues to trespass upon the said Morning Star mining claims and wrongfully, wilfully, and maliciously, without right, and without consent of the plaintiffs, is removing ore from said Morning Star claim belonging to said plaintiffs and is disposing of the same; that said defendant, further, refuses to withdraw from said claim although notified to do so by these plaintiffs and continues to occupy and mine a portion of said Morning Star claim, all without right and all despite the notification given to said defendant by plaintiffs not to enter upon said claim and not to remove any ore therefrom or do any work or pursue any operations whatsoever on said Morning Star claim and all to the damage of these plaintiffs.

WHEREFORE, plaintiffs pray judgment awarding plaintiffs the recovery of said premises from defendant, for damages against said defendant in the amount of Twenty-four Thousand Dollars (\$24,000.00), for restitution of the said land and premises, and for the sum of Five Thousand Dollars (\$5,000.00), damages for the withholding thereof, for plaintiffs' costs incurred in this action and for such other relief in the premises as to the court is just and legal.

ELLINWOOD & ROSS,

By JOSEPH S. JENCKES, JR.
A member of the Firm,
Title & Trust Building,
Phoenix, Arizona,
Attorneys for Plaintiffs doing business under the name and style of Morning Star Mining Company.

DARNELL & ROBERTSON

By GEORGE R. DARNELL
A Member of the Firm

and

C. R. McFALL

Valley National Building

Tucson, Arizona

Attorneys for Plaintiff Elizabeth

L. Wood, a widow.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

L. M. FORCEY, WALTER S. TUBACH,)
et al. :
Plaintiffs,)
and)
Counterdefendants, : No. 7327
- vs -) ANSWER AND COUNTER-
EDWARD H. MOLSON, doing business under : CLAIM
the name and style of Modina Tungsten)
Mine,)
Defendant :
and :
Counterclaimant.)

Comes now the defendant above named and for his answer to the complaint on file herein, alleges as follows:

I

Defendant admits the allegations of paragraph I of plaintiffs' complaint;

II

Defendant denies that he is a citizen and resident of the State of Arizona, and states that he resides at Los Angeles, California; denies that he has been transacting business under the name and style of Modina Tungsten Mine, but admits that he has been operating the claim known as the Pure Gold Mining Claim in the Old Hat Mining District, Pinal County, Arizona;

III

Defendant admits that Elizabeth L. Wood is the owner in fee simple of the Morning Star Mining Claim situate in the Old Hat Mining District, Pinal County, Arizona, but is without

sufficient knowledge or information to form a belief as to the truth of the allegation as to her relations with the other plaintiffs as alleged in said complaint. Defendant does not have sufficient knowledge or information to form a belief as to the truth of the averment that plaintiffs are and have been entitled to mine, remove and sell all ore on or in said Morning Star Mining Claim, except as to that portion of the ore thereon embraced in the area described in paragraph VI hereof, and as to that portion defendant denies that plaintiffs are entitled to mine, remove or sell the same;

IV

Defendant denies the allegations of paragraph IV of said complaint, except that defendant admits he has removed ore from said Morning Star claim as set forth in paragraph VI hereof;

V

Defendant denies the allegations of paragraph V of said complaint, except that defendant admits he will mine said claim to the extent specified in paragraph VI hereof;

VI

Further answering said complaint and as an affirmative defense thereto, defendant alleges that he is the owner of the Pure Gold Mining Claim, an unpatented lode mining claim, situate in the Old Hat Mining District, Pinal County, Arizona, location notice of which is of record in Book 1 at page 449 of the records of mining locations in the office of the County Recorder of Pinal County, Arizona, and since about the 6th day of August, 1942, has been in possession of and conducting mining operations on said mining claim; that adjoining said Pure Gold Mining Claim and lying to the south thereof is the Morning Star Mining Claim referred to in plaintiffs' complaint; that the south side-line of the Pure Gold Mining Claim is the north side-line of the

Morning Star Mining Claim, said side-line being common to both claims throughout its entire length;

That located within said Pure Gold Mining Claim and traversing the same easterly and westerly, and crossing the east end-line of said claim, is what is known as the Mogul Fault, containing valuable minerals, and also situated on said claim are numbers of veins, lodes or ledges containing valuable minerals traversing the same easterly and westerly and through and beyond its east end-line; that located within said Pure Gold Mining Claim and immediately south of the said Mogul Fault is the apex or top of a vein, lode or ledge containing valuable minerals, particularly scheelite or tungsten, which said apex is located within said Pure Gold claim in a northwest-southeast direction and intersects the common side-line of the Morning Star and Pure Gold claims at a point approximately 217 feet west of the southeast corner of the Pure Gold Mining Claim; that the course downward of said vein, lode or ledge from said apex within said Pure Gold Mining Claim lies in a southwesterly direction and said vein, lode or ledge in its course downward extends through the common side-line of said Pure Gold and Morning Star Mining Claims and into said Morning Star Mining Claim; that in its course downward said vein, lode or ledge is continuous and lies between clearly defined hanging and foot walls. The defendant has mined ore containing valuable minerals, particularly tungsten, from said vein, lode or ledge in said Pure Gold Mining Claims and in the course of these mining operations has followed the said vein, lode or ledge in its course downward beyond the common side-line of said mining claims and into the said Morning Star Mining Claim; that all of the operations of defendant in extracting ore from said vein, lode or ledge within the Morning Star Mining Claims were and are confined

to such parts of said lode, vein or ledge as are embraced within its course downward lying between two vertical planes drawn parallel to the end lines of said Pure Gold Mining Claim and passing through the extremities of said apex of said vein, lode or ledge within the boundaries of said Pure Gold Mining Claim; and all ores taken and removed by defendant in said mining operations from said Morning Star Mining Claim have been so taken, extracted and removed from said vein, lode or ledge only within the above described area within said Morning Star Mining Claim, all in accordance with and as guaranteed to this defendant by the provisions of Section 2322 United States Revised Statutes, Title 30, U. S. C., Section 26, and in accordance with the rules of said mining district and other laws of the United States and of the State of Arizona.

WHEREFORE, having fully answered, defendant prays that plaintiffs' complaint be dismissed, and for his costs herein incurred.

FENNEMORE, CRAIG, ALLEN & BLEDSOE,

By H. M. FENNEMORE
202 Phoenix National Bank Bldg.,
Phoenix, Arizona.

TOM K. RICHEY
Southern Arizona Bank Bldg.
Phoenix, Arizona

Attorneys for Defendant and
Counterclaimant.

X
COUNTERCLAIM TO QUIET TITLE

Comes now defendant and counterclaimant above-named and for counterclaim alleges:

I

That counterclaimant is a resident of the State of California;

II

That counterdefendant Elizabeth L. Wood is a citizen and resident of Pinal County, Arizona; that all other counterdefendants, and each of them, are residents of the State of California;

III

That counterclaimant is the owner of the Pure Gold Lode Mining Claim, an unpatented lode mining claim, situate in the Old Hat Mining District in Pinal County, Arizona, location notice of which is of record in Book 1, page 449, of the Records of Mining Locations in the Office of the County Recorder of Pinal County, Arizona, and since about the 6th day of August, 1942, has been in possession of and has conducted mining operations on said claim; that adjoining said Pure Gold Mining Claim and lying to the south thereof is the Morning Star Mining Claim referred to in plaintiffs' complaint; that the south side-line of the Pure Gold Mining Claim is the north side-line of the Morning Star Mining Claim, said side-line being common to both claims throughout its entire length.

IV

That located within said Pure Gold Mining Claim and traversing the same easterly and westerly, and crossing the east end-line of said claim, is what is known as the Mogul Fault, containing valuable minerals, and also situated on said claim are numbers of veins, lodes or ledges containing valuable minerals traversing the same easterly and westerly and through and beyond its east end-line; that located within said Pure Gold Mining Claim and immediately south of the said Mogul Fault is the apex or top of a vein, lode or ledge containing valuable minerals, particularly scheelite or tungsten, which said apex is located within said Pure Gold Mining Claim in a northwest-southeast direction and

intersects the common side-line of the Morning Star and Pure Gold Mining Claims at a point approximately 217 feet west of the southeast corner of the Pure Gold Mining Claim; that the course downward of said vein, lode or ledge from said apex within said Pure Gold Mining Claims lies in a southwesterly direction, and said vein, lode or ledge in its course downward extends through the common side-line of said mining claims and into said Morning Star Mining Claim; that in its course downward said vein, lode or ledge is continuous and lies between clearly defined hanging and foot walls;

V

That counterclaimant is the owner of and entitled to the possession of all portions of said vein, lode or ledge and all minerals therein within the Morning Star Mining Claim embraced within the course downward thereof, lying between vertical planes drawn parallel to the end lines of said Pure Gold Mining Claim and passing through the extremities of said apex of said vein, lode or ledge within the boundaries of said Pure Gold Mining Claim; that counterdefendants claim or assert some right, title or interest in said vein, lode or ledge in its course downward within the area above described within said Morning Star Mining Claim adverse to the title of counterclaimant thereto;

WHEREFORE, counterclaimant prays that his estate in said vein, lode or ledge in its course downward within the area above described in said Morning Star Mining Claim be established and that the counterdefendants and each of them be barred and forever estopped from having or claiming any right or title thereto adverse to counterclaimant.

FENNEMORE, CRAIG, ALLEN & BLEDSOE,

By H. M. FENNEMORE
202 Phoenix National Bank Bldg.
Phoenix, Arizona

TOM K. RICHEY
Southern Ariz. Bank Bldg., Tucson

Attorneys for Defendant and
Counterclaimant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

L. M. FORCEY, WALTER S. TUBACH,)
et al.,)
)
) Plaintiffs,
) and Counterdefendants,) No. 7327
- vs -)
)
EDWARD H. MOLSON, doing business) PLAINTIFFS' AND COUNTER-
under the name and Style of) DEFENDANTS' ANSWER TO
MODINA TUNGSTEN MINE,) DEFENDANT'S COUNTERCLAIM
)
)
) Defendant
) and Counterclaimant.)

Come now the plaintiffs and counterdefendants herein and for their answer to the defendant's counterclaim on file herein, admit, allege and deny as follows:

I

Plaintiffs and counterdefendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph I of defendant's counterclaim.

II

Plaintiffs and counterdefendants admit the allegations of paragraph II of defendant's counterclaim.

III

Plaintiffs and counterdefendants admit the allegations of paragraph III of defendant's counterclaim.

IV

Plaintiffs and counterdefendants deny the allegations of paragraph IV of defendant's counterclaim.

V

Plaintiffs and counterdefendants deny the allegations of paragraph V of defendant's counterclaim, except that counterdefendants admit and allege that the plaintiff Elizabeth L.

Wood is the owner and claims title to the Morning Star Claim and all the veins, lodes, ledges, and all minerals of every kind or character within said claim or located thereon or therein, or thereunder, subject to the title and interest of co-plaintiffs in this action.

VI

Plaintiffs and counterdefendants deny each and every allegation in said counterclaim contained not hereinbefore specifically admitted.

WHEREFORE, having fully answered the defendant's counterclaim, said plaintiffs and counterdefendants pray that the defendant take nothing thereby and that the same be dismissed, and for their costs herein incurred.

ELLINWOOD & ROSS,

By JOS. S. JENCKES, JR.
Title & Trust Bldg.
Phoenix, Arizona.

Attorneys for Plaintiffs and Counterdefendants doing business under the name and style of Morning Star Mining Company.

DARNELL & ROBERTSON

By GEORGE R. DARNELL
A Member of the Firm

and

C. R. McFALL

Valley National Building,
Tucson, Arizona,

Attorneys for plaintiff and Counterdefendant, Elizabeth L. Wood, a widow.

STATE OF ARIZONA ()
County of Pima) ss.

L. M. FORCEY, being first duly sworn on his oath
deposes and says:

That he is one of the plaintiffs and counter-
defendants named in the foregoing action; that he has read the
plaintiffs' and counterdefendants' claim in this action and the
foregoing answer thereto, and is acquainted with the facts of
this case; that he makes this affidavit in his own behalf and
for and on behalf of the other plaintiffs and counterdefendants
herein named; that all and singular the allegations of said
counterclaim which are denied in the foregoing answer are un-
true, except as such as are therein denied for lack of knowledge
or information; that the allegations, matters and things set
forth in the foregoing answer are true in substance and in fact.

L. M. FORCEY

Subscribed and sworn to before me this 12th day
of September, 1944.

LILLIAN DEO
Notary Public

(NOTARIAL SEAL)

My commission expires:

June 22, 1948.

NOTES FOR MORNING STAR APEX SUIT REPORT AND TESTIMONY

GENERAL STATEMENT:-

The Morning Star Claim was located on February 26th, 1883 and patented October 12th, 1903, Mineral Survey #1836.

It is a senior location to the Pure Gold Claim which is recorded in Book 1 of Mining Locations of Pinal County at page 449, having been located on June 17th, 1908, and for which a patent has only recently been applied, the application being designated #080651 in the Federal Land Office.

Both of these claims are located in the Old Hat Mining District, Pinal County, Arizona and the north side line of the patented Morning Star Claim, running due east and west, was designated as being the south side line of the Pure Gold Claim with common corners at each end of this line.

Both of these claims were originally located because they were believed to contain veins of gold-bearing ore, and the existence of tungsten ore (scheelite) in this vicinity was apparently first noted around 1912 and during the First World War some scheelite was produced from the Morning Star and also from the Modina property lying some distance to the northeast. The recent production of scheelite appears to have started in 1940 on the Morning Star and in 1943 on the Pure Gold. No operations of this nature were noted on the Pure Gold Claim when the

Corrected
has located in 1908
of Pure Gold
amended 1912

area was examined in June of 1941 by E. D. Wilson, Geologist for the Arizona Bureau of Mines.

The trespass on and under the surface of the Morning Star Claim is said to have started in or about April, 1944 at which time the Pure Gold operators asserted their legal right to conduct work under the Morning Star Claim by virtue of extra-lateral rights derived from the apex of a vein which they alleged to have an out-crop on the Pure Gold and to dip across its south side-line and into the Morning Star property. This trespass was initiated and continued over the protest of the Morning Star operators and has resulted in the production of a substantial quantity of valuable ore mined from points lying south of the vertical projection of the common side-line.

There is no dispute as to the location of the corners of the Morning Star Claim which were clearly marked by the Deputy Mineral Surveyor, nor in respect to the course of the said common side-line which has been staked out running due west from the northeast corner of the Morning Star Claim and across the glory hole which now breaks over the said side-line for a length of 82' and to a maximum distance of 16' as shown on the accompanying map and in the photographs.

It therefore appears that the question at issue is narrowed down to the actual existence or lack of existence of a true vein, ledge or lode within the meaning of the statute and as this has subsequently been interpreted by court decisions and the existence of its apex on the Pure Gold Claim and from which the vein could be followed downward along its dip below the surface of the Morning Star.

In the event that the court should determine that no extra-lateral rights existed in favor of the Pure Gold operators it would become necessary to determine the value of the ore which has admittedly

been mined by the Pure Gold operators under the surface of this claim.

SURFACE TRESPASS:-

The trespass on the surface of the Morning Star is very definitely proved by the survey and photographs and can hardly be denied by the defendant. There is nothing in the Apex Law which gives the owner of any vein entitled to extra-lateral rights the privilege of trespassing on or disturbing the surface of a neighboring claim and in this case the caving of the said surface is entirely attributable to the inefficient and careless methods of mining employed by the Pure Gold operators who under-cut the rock without leaving proper support so that many fragments and one large boulder weighing several hundred tons have caved down from the Morning Star property and fallen into the open pit.

Subsequently,-at the direction of the State Mining Inspector, who condemned these workings as being absolutely unsafe, the Pure Gold operators have shored up the hanging wall of this glory hole with heavy timbers, but the said workings are still unsafe and further falls of rock from the Morning Star property are almost certain to occur in the near future.

While the tangible loss caused by the breaking away of the surface of the Morning Star Claim is problematical, the Morning Star people should be entitled to exemplary damages by reason of a wholly ^{un}warranted invasion of their property, and no doubt the Court will determine this matter separately from any question of extra-lateral rights and damages which are claimed by reason of the illegal ~~irregular~~ mining of ore from the alleged vein.

The surface of the Morning Star Claim is now caved from a point exactly 250 ft. west of the northeast corner to a point 82 ft. further along the common side-line, namely 332 ft. from the northeast corner of the Morning Star. The outline of the surface caving produced is irregular but its maximum extent south of the common side-line is 16 ft. at a point 67 ft. beyond the east end of the break, and thus a total of approximately 1000 sq. ft. of surface has been allowed to fall into the glory hole from the Morning Star Claim.

On the occasion of my previous visit, May 7th, 1944, it appeared that there was a small showing of ore in the nature of a pocket located at the top of the cave which had then passed only 4 ft. south of the common side-line. The conditions at this point were too dangerous to permit careful examination or sampling but apparently this pocket of ore has since fallen into the glory hole along with the surrounding rock and is either buried in the debris or has been mined by the defendant, even though as mentioned the outcrop was actually on the surface of the Morning Star Claim.

The provision of the Mining Act of 1872 which applies to the above reads as follows:--

"And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another."

THE SUB-SURFACE TRESPASS & FAILURE OF EXTRA-LATERAL RIGHTS:--

Since the defendants have admitted entering upon and removing ore from the Morning Star Claim they are prima facie trespassers, By ^g their own admission ~~the defendants were trespassers~~ and must be so.

considered unless and until they can establish their extra-lateral rights. Therefore, the burden of proof rests upon them to confirm the statements in their Answer to the Complaint by adequate and competent testimony. In this connection I suggest that reference may be made among others to the following quotations and citations:--

The presumption, where a miner is found beyond his side-lines, is against him. He is prima facie a trespasser till he has shown that he gets there by following the lode on its dip from its apex within his lines.--Cheesman v. Shreeve, 16 M.R. 79; 37 F. 36; Blue Bird Co. v. Murray, 9 Mont. 468; 23 P. 1022; Bell v. Skillicorn, 6 N.M. 399; 28 P. 768; Cons. Wyoming Co. v. Champion Co., 63 F. 540; Iron S. Co. v. Campbell, 17 Colo. 267; 29 P. 513; Duggan v. Davey, 4 Dak. 110; Leadville Co. v. Fitzgerald, 4 M.R. 380; Doe v. Waterloo Co. 54 F. 935; Maloney v. King, 25 Mont. 188; 64 P. 351; Red Wing Co. v. Clays. 30 Utah 242; 83 P. 841; Gr. Cent. Co. v. Mammoth Co., 29 Utah 490; 83 P. 648; Kelly v. Ophir Hill Co., 169 F. 601.

A bill to quiet title to extra lateral rights will not lie where there has been no development to show whether they exist or not.--Kelly v. Ophir Hill Co., 169 F. 601.

Prima facie all ore bodies lying beneath the surface of a mining claim are the property of the owner of such claim.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co. 114 Fed. 417, p. 418.

See Cheesman v. Shreeve, 37 Fed. 36

Blue Bird Mining Co. v. Murray, 9 Mont. 468.

Notwithstanding the extralateral rights given by this section the presumption is that all ore bodies found within the surface lines of an location belong to such location.

PRESUMPTION OF OWNERSHIP OVERCOME BY PROOF:

The presumption of ownership in the locator of all within his location lines throughout the entire depth prevails until it is shown that the veins or lodes within the places of his lines extended downward vertically have their tops or apices in the surface of some other valid location in such a way as to give the owner of the latter location the right to pursue them on their downward course.

St. Louis Min., etc., Co. v. Montana Min. Co., 194 U.S. 235, p. 239.

Doe v. Waterloo Min. Co., 54 Fed. 935.

Consolidated Wyoming etc., Min. Co. v. Champion Min. Co.

63 Fed. 540

Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139.

The presumption as to ownership of all beneath the surface, including minerals, may be overcome by proof showing that such mineral is a part of a vein or lode apexing in a claim belonging to another, but this is always a matter of defense.

Lawson v. U.S. Min. Co. 207, U.S. 1. P. 8.

The burden of proof is upon the party claiming ore bodies within the limits of another valid claim to overcome the presumption of ownership arising from the possession of such ore bodies, and to show by a preponderance of evidence that the apex and the strike of the vein are within the vertical planes of his own surface location and that between planes drawn vertically downward through the end lines of his location and a certain parallel line the vein from its apex on its dip is continuous, and that the continuity extended to and through the adjoining claim in controversy, and that the ore bodies, the subject of the controversy, form a part of such vein.

Grand Central Mining Co. V. Mammoth, 29 Utah 490 P. 551

See Doe v. Waterloo Mining Co., 54 Fed. 935

Consolidated Wyoming Min. Co. v. Champion Min.Co. 63 Fed.540

Pennsylvania Consol. Min.Co. v. Grass Valley Exp.Co.,117 Fed. 509.

Leadville Min. Co. v. Fitzgerald; 15 Fed. Cas. 98

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

BURDEN OF PROOF IN ASSERTING EXTRALATERAL RIGHTS:--

The burden of proof is upon the owner of a mining claim where he seeks to follow a vein or lode on its downward dip outside of the side lines of his location to show that such vein or lode has its apex within the surface lines of his location.

Doe v. Waterloo Min. Co., 54 Fed. 935. p. 937

Consolidated Wyoming Gold Min. Co. v Champion Min. Co.,63 Fed. 540 p. 550

Carson City Gold, etc.,Min.Co. v. North Star Min. Co., 83 Fed. 658 p. 663.

See Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas 98.

Duggan v. Davey, 4 Dak. 110.

The burden of proof is upon a plaintiff to show affirmatively that he is entitled to a vein or lode claimed by him and the apex of which is within his surface lines.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 672.

Waterloo Min. Co. v. Doe, 82 Fed. 45 p. 55

To justify the subversion of the territory underlying the surface location of one claim by the owner of an adjoining claim, the burden is upon the latter to prove that a vein or lode of mineral ore has its outcrop or apex inside of the surface lines of his location, and that he

reached the point of the alleged subversion by pursuing such vein from its outcrop or apex.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

A person claiming extralateral rights and seeking to take ore bodies from beneath the surface boundaries of another location must prove clearly and satisfactorily that he has the apex of the vein or lode within the surface boundaries of his location, and that he is pursuing the vein on its downward course.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 743.
See St. Louis Min. Co. v. Montana Min. Co., 194 U.S. 235.

TRESPASS--PRESUMPTION AND JUSTIFICATION:--

A person entering within the side lines of the mining claim of another to mine and take ore therefrom is prima facie a trespasser.

Cheesman v. Shreeve, 37 Fed. 36

Montana v. Clark, 42 Fed. 626, p. 630

Doe v. Waterloo Min. Co. 54 Fed. 935, 939

Blue-Bird Min. Co. v. Murray, 9 Mont. 468, p. 475.

A person entering upon a valid location of another is a trespasser, and it will not be presumed that Congress intended that any rights should be created by trespass.

Note by G.M. Colvocoresses:-

In this case it does not appear that the plaintiff had proved his rights by any development work or otherwise before he committed the trespass in the spring of 1944, and it may be that it will be only by virtue

of conditions claimed to have been developed by this trespass that he will attempt to prove his rights.

Del Monte Min., etc. Co. v. Last Chance Min., etc. Co., 171 U. S. 55, p. 74.

PROOF REQUIRED BY DEFENDANT:--

From all of the above it would appear that in order to prove that a vein exists at the point of trespass the defendant must definitely locate and describe this vein showing on a survey map the line of the outcrop or apex as it originally existed and as it may now be found and traced in their workings and the length and width of the said vein, also its exact strike and dip.

In refutation of this proof the testimony of our witnesses and the surveys and photographs may be used as indicated below, but since it is very difficult to refute such a general and indefinite claim as has been made in the Answer to the Complaint, I have suggested that the defendant should be requested to give these details and to submit a survey showing all this data just as soon as possible and well in advance of the trial.

In making my recent examination of this property particular attention was paid to the surface of the common side-line, approximately 217 ft. west of the northeast corner of the Morning Star since the defendant alleged that a vein of ore outcrops at this point. Actually, no such outcrop can be seen here or anywhere in the immediate vicinity, nor has any mining work been done closer than the east end of the open pit which is 33 ft. further to the west.

In respect to the trespass under the surface of the claim it is alleged by the plaintiff and admitted by the defendant that they have mined a considerable quantity of ore under the Morning Star to which they claim that they were legally entitled by virtue of extra-lateral rights below the outcrop or apex of the above mentioned vein.

The defendants claim that this alleged vein had a strike to the northwest and southeast and a dip to the southwest but in no case do they give the exact or even approximate course and their description is therefore very indefinite and wholly inadequate.

However, it is obvious that if any vein had actually crossed the common side-line at or near the point indicated and with such a strike and dip as they allege, the apex or outcrop of this vein should be found along the surface of the Morning Star southeast from the common side-line and, -unless it pinches out within a very short distance of the point of intersection with the side-line, -it should continue across the east end line of the Morning Star. Actually, there is absolutely no evidence of either the outcrop or underground continuation of such a vein southeast of the common side-line and again there is no evidence of the outcrop or downward extension of the alleged vein to the northwest of the present open pit. It must therefore be assumed that either no such vein ever existed or that its length was limited to the length of the present open pit which extends almost due east and west on the Morning Star and Pure Gold claims for a total length of approximately 180 ft. If any such outcrop of apex actually existed within this area the evidence of same has been destroyed by the defendant and had already been destroyed before I first visited the property on May 7th, of 1944.

As tending to prove that actually there never was any such outcrop or apex and that no true vein, ledge or lode exists or has ever existed at or near the point of trespass, I will cite among others the following facts:-

No indication of any such vein now appears along the south face of the open pit which should be the case provided the dip of this vein were less than 45° . Again, no such vein has been found in the raise which the defendants put up from their workings south of the open pit to the surface at a point almost directly on the common side-line.

It is stated that in this raise, which is no longer easily accessible a little ore was found very close to the top, but since this raise is located at a point some 350 ft. west of the northeast corner of the Morning Star and a short distance west of the caving of the surface by the open pit, it cannot logically be alleged that any showing so located forms a part of the vein on which the defendants claim extra-lateral rights as this should lie much farther to the south.

Again, no such vein was found in the two diamond drill holes which were put down by the Morning Star Company at locations shown on the map and where the cores which I examined showed no mineral or any indication of vein material.

In the crosscut which runs south from the glory hole for a distance of approximately 31 ft. (namely 47 ft. south of the common side-line) a little low grade ore mixed with lime is noted near the face, but this is very obviously a pocket and again it could not, possible be claimed that it formed any part of the trespass vein, for in that case the said vein would be clearly visible along the south face of the pit.

X
Assuming that the defendants claim that the dip of the trespass vein exceeded 45° then the continuation of said vein would lie along its dip below the bottom of the open pit and would not be visible in any of the workings above mentioned. However, the lower adit in the Pure Gold workings passes directly under the pit approximately 20 ft. below its present bottom which is partly filled with debris and the same distance below its south crosscut from the pit which in turn is about 35 ft. below the surface. The said lower crosscut reaches the common side-line and passes a few feet beyond it at one point and here there is a small pocket of ore which is now largely worked out and which in turn could not possibly be connected with the trespass vein. In the three raises which have been put up from this lower adit to be used as ore passes for the material mined in the open pit there is absolutely no indication of any vein as far as can now be ascertained, and I am informed that no showing of this nature was found when the raises were actually open. We therefore have a vertical cross-section of the entire formation from the surface down to a point approximately 70 ft. below and in which there is no trace or indication of the alleged trespass vein, although it should have been noted in this crosscut section provided it had outcropped any where between the northeast corner of the Morning Star and a point 350 ft. farther to the west with a northwest-southeast strike and any dip to the southwest less than 70 to 80° ^{a steeper dip} would have carried it directly down to the Mogul Fault before it would have entered under the Morning Star Claim.

AFFIRMATIVE PROOF THAT NO VEIN OR EXTRA-LATERAL RIGHTS EXIST AT OR NEAR THE POINT OF TRESPASS:--

In opposition to any testimony by which the defendant may support his contentions we should lay particular stress upon the true nature of this mineral deposit.

In this connection we should aim to show that neither at the location specified by the defendant nor anywhere else in its vicinity has there existed or does there now exist any vein, ledge or lode. within the legal or commonly accepted definition of those terms but that actually the deposits of scheelite ore found at and near the point of trespass and elsewhere on these two claims are merely pockets or kidneys erratically distributed thru the limestone and breccia over a wide area along the hanging wall of the Mogul Fault; and that neither the fault fissure itself nor the mineralized zone which is wholly non-commercial constitutes a vein nor acts as host to any true veins of ore.

In this connection I cite the following quotations and decisions:

in p. 174 after
Probably the most conclusive proof concerning the character of the trespass ore body and in fact all of the scheelite ore bodies developed in either of these claims is found in the location and outlines of the stopes and pits that have been worked out in the past and of the shoots of ore which are still left in place.

An examination of the surface map shows that these deposits follow no regular patterns, but occur like plums in a pudding scattered around in a most irregular manner and this holds true with depth as well as on the surface. There are only one or two of the stopes in which the length was substantially greater than the width and in each of these cases an elongated lense rather than a vein deposit was suggested.

The trespass deposit itself has now been mined out but I examined a portion of it last May and as far as can be judged from the outline of the workings it seems to have been an elongated pocket with a length of perhaps 50 ft. and a width of nearly 30 ft. partly extending

across the common side line both on and below the surface and pinching out entirely at a depth of not over 40 ft. Another similar shoot was found and mined to the north west on the Pure Gold Claim, another is found to the east at the top of a raise and close to the common side line while still another shoot of lower grade ore mixed with limestone is partially developed on the Morning Star Claim at the south end of the cross-cut driven from near the bottom of the open pit. None of these shoots are connected with each other or lie along the plane of a vein.

In checking over the reports and descriptions of this property I have so far failed to find any reference to a "vein" at or near this trespass location. Nowhere in the drawings, or text of their pamphlet do the U.S.G.S. Engineers use the term vein, ledge or lode as applied to the scheelite ore occurrences to which they always refer as "ore bodies" or "ore zones." In the text they refer to deposits "in silicified limestone breccia localized along the Mogul Fault and its related structures." They state that "the fault includes many planes of movement over a wide area"; and that the principal zone of brecciation is about 50' thick where it is exposed in the Pure Gold workings.

The term "related structures" is very vague and probably covers a large area as may be judged from the mention of several occurrences of ore in silicified zones of limestone at various points south of the fault as well as in breccia.

Elsewhere they mention the Pure Gold ore body (not vein) as being "localized in silicified breccia in the principal Mogul Fault zone" where the ore zone ranges from 5 to 40' in width at the surface where it was exposed for a length of about 200', and actually since the date of their visit last February three ore pockets have been mined out in

X this area. They mention that most of the ore produced from the Morning Star deposit at another point was taken from a "glory hole" which would be a most unusual method of mining ore from a vein and it is evident that here as well as in the other sections of the property the scheelite was erratically distributed in ~~an~~ irregular elongate bodies of silicified limestone which sometimes trend northeast, i.e., at right angles to the strike of the fault and to the strike of the alleged vein which occurs at and near the point of trespass.

On the cross section map they show a wide band of quartz and silicified limestone lying along the hanging wall of the crushed zone and indicate that this formation may contain an average of 0.1% W O₃. Since the gross value of such material was only \$2.40 per ton (even when the Government was paying \$24.00 per unit of W O₃) and working costs were at least 4 times that figure it is obvious that the filling of this mineralized zone was not commercial ore and that any mining would have to be confined to ore bodies lying within the zone. In every case these ore bodies appear to have been pockets of irregular size and shape, nearly always associated with cracks or vugs in the rock and differentiated from the surrounding rock merely by the higher percentage of scheelite which they contained and not by any well defined walls or change in the character of the rock.

My own opinion in this regard seems to be in agreement with all of the officials and employees of the Morning Star Company whom I have met and also with G. L. Derwin, a registered Mining Engineer now living in Oracle who visited the ground twice in my company and who will be glad to testify at the trial if we desire him to do so.

Among other witnesses who might be asked to testify I would especially mention a Mr. Mohney (now employed by the Eagle-Picher Co.) who once supervised the work for the Morning Star Company, and whom I know to be an experienced and competent miner. However, I have not had any opportunity to personally obtain Mohney's opinion regarding the character of these deposits and this would obviously be an essential preliminary to calling him as an expert witness.

According to Forcey and Henderson several of the engineers and foremen previously employed by the Morning Star could be called on to give testimony in general agreement with my opinion and they also say that Ward who was for some time superintendent or foreman for the Pure Gold people repeatedly stated that the trespass ore body was a pocket and not a vein and has indicated his willingness to testify to that effect.

To support the claim of the defendant, E. J. Ewing who is part owner in the Pure Gold operations will very probably testify that he found and followed down the dip of a vein as specified in the defendant's answer. Ewing is not a registered Mining Engineer in Arizona and his personal interest in the outcome of this suit will doubtless be fully considered by the Court.

Mr. T. N. Stevens, the Deputy Mineral Surveyor is also likely to be called since he has recently been surveying the Pure Gold Claim for patent and has also surveyed the underground workings of both claims in the vicinity of the trespass. As a surveyor he could hardly qualify to testify in respect to the nature of the ore deposits and so far it does not appear that there is any dispute regarding the location of the claim lines or mine workings, although this can only be determined after

we have been furnished with copies of Stevens' recent survey maps.

X E.N. Pennybaker, who has recently examined the property on behalf of the defendant is a high class geologist altho he is not registered in Arizona. I have not been able to learn the nature of his findings or testimony which may or may not prove damaging to our case. I have not been able to learn that any other Engineers or Geologists have recently examined the situation nor what other witnesses, if any, will be called by the defendant.

Citations bearing on the all important question of the nature of the deposit may be mentioned as follows:--

Ore in pockets, vugs, or other irregular and disconnected occurrences without vein matter between does not make a lode--
Cheesman v. Shreeve, 40 F. 787. Nor ore bodies formed outside the fissure.--Tombstone Co. v. Way Up Co., 1 Arizona. 426.

X Ore disseminated at intervals, or found in channels, chutes, cavities, pockets, or other irregular occurrences at intervals in quartzite⁺, without ore connections between the same, is not a vein or lode within the meaning of the statute.

Cheesman v. Shreeve, 40 Fed. 787, p. 789.

Where deposits of ore are only found in vugs in small quantities, lying in no general direction, widely separated, and found in excavations only after driving a tunnel for a considerable distance through hard quartz rock, and where such vugs of ore lay in detached/cavities, more or less like a trough, and wholly surrounded by or enveloped in such

quartzite rock, such deposits would not constitute a vein or lode within the meaning of this statute.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

The term vein or lode can not be applied to every metalliferous zone of country to which boundaries can be found, as this would reduce all mining districts to one lode.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Waterloo Min. Co. v. Doe 82 Fed. 45 p. 54.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

WHAT CONSTITUTES A VEIN OR LODE:--

The usual definition of a vein or lode is an aggregation of mineral matter containing ores in fissures of rocks.

Waterloo Min. Co. v. Doe, 82 Fed., 45 p. 54.

A vein or lode as used in this statute applies to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

Iron Silver Min. Co. v. Cheesman, 116 U.S. 529, p. 531.

Eureka Consol. Min. Co. v. Richmond, 8 Fed. Cas. 819

Stevens v. Williams, 23 Fed. Cas 40.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U.S. 72, p. 77.

An occurrence of ore, usually disseminated thru a gangue, or veinstone, and having a more or less regular development in length, width and depth. A vein and a lode are, in common usage, essentially the same thing, the former being rather the scientific, the latter the miners' name for it (Century). See Lode, Fissure; Fissure vein.

The filling of a fissure or fault in a rock, particularly if deposited by aqueous solution. When metalliferous it is called by miners a lode; when filled with eruption material a dike. A bed or shoot of ore parallel with the bedding. Called also Blanket-deposit. (Standard) A crack in rock filled by mineral matter deposited from solution by underground water. A lode (Webster).

A vein or lode as used in the law applies to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. (Iron Silver Mining Co. v Cheesman, 116 U.S., P. 531; Mammoth Mining Co. v. Grand Central Mining Co., 213 U. S. P. 77).

Vein or lode does not mean merely a typical fissure or contact vein, but any fairly well-defined zone, or belt of mineral-bearing rock in place (Cast Tintic Cons. Min. Claim, In Re 50 Land Decisions, p. 273).

A comparatively thin sheet of igneous rock injected into a crevice in rock. When this intrusion is large it is called a dike. (Webster).

MEMO RE MORNING STAR 4/28/45

Bill Evans called and told me that in conference with Fennemore he had just learned for the first time that Molson had at one time offered to make a vertical side-line agreement with the Morning Star, and on all ore mined or to be mined from under the Morning Star, to pay to Mrs. Woods her regular 10% royalty and to pay to Forcey et al (Lessees) either 10% of the net value or 5% of the gross value of ore mined from both claims, -whichever was the greater.

Evans thought that altho this offer had since been withdrawn it might again be renewed and should merit serious consideration and I was inclined to agree with him provided Molson would also agree to pay to both Mrs. Woods and the Lessees a stipulated minimum rental or royalty perhaps \$100.00 per month to each. Evans wrote Tubac to that effect. and something may be worked out, but meantime we are to go right ahead preparing for the trial and plan to leave Sunday May 6th for Tucson.

A practical advantage of the compromise would be that the Pure Gold could then use the extension of the lower adit which passes thru the Morning Star ground to get at all of their ore instead of following down along the dip of the vein which would involve very expensive development and mining.

EXTRACT FROM LETTER TO ELLINWOOD & ROSS
FROM FENNEMORE, CRAIG, ALLEN & BLEDSOE
DATED MARCH 15, 1945.

1. MRC certificates of assays and weight certificates with settlement sheets covering ore extracted from within Pure Gold vertical sidelines;

Fennemore

2. MRC assays and certificates of weight, but no settlement sheets covering 498 tons of extralateral ore delivered to MRC, but later milled by our client at the Tucson Ore Milling Company;

Fennemore

3. Jacobs Assay Office certificates of assays and public scale weights on daily samples cut on crushing platform by Jacobs, and grab samples by Mr. Ewing, or one of the foremen, cut from ore directly after mining covering 574 tons of extralateral ore delivered directly to Tucson Ore Milling Company;

Fennemore

4. Photographs showing the apex of the vein outcropping on the ground before any material work was done;

?

5. T. N. Stevens' survey plan and vertical section A-B on scale of 1" - 10';

ok. ?

6. Plan and vertical section C-D with the geology and vein structure superimposed in color on a scale of 1" - 10';

?

7. Plan of the foot wall on the adit tunnel level on the scale of 1" - 10';

? ok

8. Vertical east-west section along the plane of the common sideline showing the positions of the hanging wall, foot wall, and Mogul fault on a scale of 1" - 10';

? ok

9. U. S. Land Office Mineral Surveys for patent of both claims; and

ok

10. Report by U. S. Geological Survey with a plan map showing the strike of the vein and geology, and a vertical section showing the hanging wall limestone, the vein, the foot wall limestone, and the Mogul fault with the vein showing continually from the surface down into the Morning Star ground.

ok

498
574

1072

? interpretable

? prob by CGM

In addition we have a scale model which you may view if you wish. In addition some diamond drilling has been done within the vertical sidelines of the Pure Gold claim and records on this are available.

We will desire that your clients produce such documentary records as they have showing ores recovered from the Morning Star property and the location from which recovered, any engineering maps or reports on mineralization within the claim, their records of ore shipped and where it came from and any maps or other documents of their workings showing assays, drilling holes and the logs of their drill holes. In this connection we understand your clients have done considerable drilling on the property both vertically and horizontally and we will desire to examine the records of the results of these drill holes.

They are logs if available

They.

SUGGESTED LIST OF EXHIBITS FOR MORNING STAR TRIAL

Photos taken by G.M.C. 3/7 and 3/8/45 with captions.

Maps:-

- (1) Survey Map of Morning Star Claim (defendant)
- (2) U.S.G.S. Map and Text (")
- (3) Stevens Survey Maps (")
- (4) Survey of Morning Star on 1" = 25' scale (must be identified)
- (5) G.M.C. Map blueprint to be revised from (4).

New map of Morning Star & Pure Gold, scale 1" = 40' to be prepared by G.M.C. from U.S.G.S. Map & Stevens Maps.

Log of Morning Star drill holes,-to be prepared and identified by Forcey if data is available.

Record of Morning Star production and shipments,-to be prepared by Forcey if necessary. None of this ore was mined from vein which is alleged to have apexed on Morning Star Claim so far as I know.

Witnesses

Llennin

Henderson

Forcey

Mohney

Ward

Rumr 2

Judge ^{Paul} Hall Jones

Offn Cpn

L. H. ...

April 4th, 1945

Mr. William A. Evans
c/o Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Morning Star (Forcey vs. Molson).

Dear Mr. Evans:

I have carefully studied your letter of March 27th, addressed to Judge Darnell. I have also reconsidered all technical phases of this case in the light of information obtained at our March 23rd conference in Tucson on which occasion the defendants explained their theory and permitted us to examine their exhibits, including certain survey maps of which I obtained prints on March 31st.

The defendants will aim to convince the Court that:--

- (1) They had the apex of a vein of scheelite ore with quartz which outcropped in part on the Pure Gold Claim as shown by photo, survey maps and model.
- (2) That this proved to be a well defined vein (hereinafter referred to as the "trespass vein") whose outcrop crossed the common side line about 280' from its east corner with a strike of about north 30° west and a dip of some 45° to the southwest. This vein was followed down along its dip at the point of trespass for a distance of 93' from the surface and developed for a total length of 420' along the outcrop which was traced for 270' on the Pure Gold and 150' on the Morning Star.

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

(3) That this vein with a width varying from 5 to 40' had a well defined hanging wall of "dark lime-stone" as shown on their maps and photos and this hanging wall near the point of trespass was for a short distance close to and parallel with but did not cross the common side line. This hanging wall was barren of values as proved by their assays while all of the alleged vein carried a substantial percentage of scheelite, even though the commercial ore was limited to shoots and pockets.

(4) That this vein had a well defined foot wall of gray limestone, also barren of values, below which lay the breccia and crushed material constituting the gouge of the Mogul fault that can be traced for several miles. In the gouge of this fault zone was found the crushed granite and breccia with solid granite on the foot wall.

Proof of all of these contentions has been carefully prepared and should be very convincing especially when illustrated by the model, which will be explained and verified by Pennybaker, Molson and Ewing. As matters now stand and regardless of whether or not their claims conform to the facts, I fear that the defendants would simply overwhelm us by the preponderance of their testimony and exhibits.

It is not clear to me why the defendants in their Answer to the Complaint state that there are located on the Pure Gold Claim "numbers of veins, lodes or ledges containing valuable minerals traversing the

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

same easterly and westerly and thru and beyond its east end line." They have apparently prepared no data or maps pertaining to any other than the above described trespass vein and if any other parallel or nearly parallel veins actually exist it is hardly possible that they could be so located (in view of the location of the Mogul Fault) as to cross the east end line of the Pure Gold claim.

However, this quoted statement would seem to be of little importance if they can substantiate their claims regarding the trespass vein and show that, where outcropping on the Pure Gold claim it was entitled to extra-lateral rights by virtue of which they have legally mined what they term the "extra-lateral ore" amounting altogether as per their figures to 1072 tons with an average grade of 0.927% W.O₃.

In reference to your #1 (pages 1 thru 6 of your letter) it is evident that the fact that the alleged vein does not cross either end line of the Pure Gold Claims has no bearing on its extra-lateral rights and in this respect my own study of the law had led me to reach a similar conclusion, mainly based on the decision of the U. S. Circuit Court of Appeals in the case of Work Mining & Milling Co., vs. Doctor Jack Pot, 194 Federal 620-629.

Commenting on your opinion regarding the possibility that we might show that the alleged trespass vein crossed both the north and south side lines of the Pure Gold Claim, I might say that after carefully reviewing my notes I do not believe that we could possibly

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

make such proof, except at prohibitive expense. The strike of the Mogul fault and of the alleged vein swings sharply toward the north near the west end of the outcrop and if the vein extended far enough in that direction it should cross the north side line rather than the west end line of the Pure Gold claim. However, a deep gulch runs north thru this claim about 600' from its west end and the sides of this gulch are covered with loose overburden and talus which completely masks the outcrops of rock. While I never carefully examined the surface on the west of this gulch it did not appear that any vein outcropped in this area and even if such a vein were found it probably could not be identified as a continuation of the trespass vein unless the entire length should be trenched and the outcrop more or less continuously exposed.

I have obtained a copy of the patent survey of the Pure Gold claim and note that the original discovery pit was located along the center line of the claim at a point 350' west of the east end line. The vein (if any) on which this discovery was made has obviously no connection with the alleged trespass vein and therefore from your study of the law, the legal effect of proving that the trespass vein crossed both side lines of the claim would appear to be nil.

Complainant's Argument and Proof:--

Now it has been and still is my opinion that the scheelite in all of this area occurs as replacement deposits in the wide band of crushed and shattered limestone that is found along the hanging wall

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

of the Mogul fault and that nearly all of this limestone which I shall term the mineralized zone is more or less homogeneous in character and carries a small percentage of scheelite, but that within this area there are certain sections which have been highly silicified so that quartz and quartzite are more predominant and here the scheelite has been concentrated to a point where in some places it constitutes commercial ore, which ore was actually found and mined in pockets or kidneys associated with vugs and fissures in the rock. These areas may be termed the ore zones and several of them will be shown on the map of the surface of the two claims which I am now preparing.

Actually, I believe that we can show that the trespass vein differs from its foot and hanging wall only to the extent that in that particular area the rock is more highly silicified and dotted with vugs and fissures, one of which last was particularly featured in defendant's maps and model. The trespass shoot of pay ore was much shorter than mapped by defendants and the ore pinched out about 35 to 40' below the surface. If any pay ore was found in the lower drifts and crosscut, it seems to have been only in small, detached pockets which were not connected with the main ore-shoot.

It is significant to note that all of the defendant's exhibits represented only the conditions in the immediate vicinity of the trespass, for if they had mapped a larger area they would have been obliged to show other deposits of ore which occur under similar geological and physical conditions, notably at the Rivera

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

workings and inclined shaft in the Morning Star claim.

I believe that we can show that nothing gives the trespass vein "an individuality which, apart from other differences, clearly distinguishes it from the neighboring rock." This quotation from the case of U. S. Mining Co. vs. Lawson 134 Federal 769, and the balance of the decision quoted on page 10 of your letter may be made, along with other similar citations, the basis for a claim that the entire area of silicified limestone on the hanging wall of the Mogul fault has been so shattered and mineralized "as to convert it into a single broad vein or lode", in which case it obviously extends over a large portion of the surface of the Morning Star.

However, in the particular case of the trespass ore body we shall have to admit that the ore zone in which the shoots or pockets of pay ore occur does take the form of an elongated lense which, while it is not nearly so well defined as claimed by the defendants, may be held by the Court to constitute a vein, ledge or lode within the legal meaning of the term.

To meet that situation, it seems most important to produce conclusive evidence that the outcrop or apex of that particular ore body itself extended for a considerable distance across the common side line where its higher portion was found on the Morning Star, which is the senior location.

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

X It is very significant and I consider very suspicious that the defendant has shown in maps and model that ^{on the surface} the hanging wall of the alleged vein almost exactly coincides^d for a considerable distance with the common side line of the claims although strange to say it never actually crossed that line by even so much as an inch.

Now, it is my distinct recollection that in May, 1944,--when the rim of the trespass pit was only 3 or 4' over the line--material which was to all appearances pay ore, and was so designated by the operators was plainly visible on the south rim and wall of this pit in the Morning Star ground and even today, when the trespass pit has invaded the Morning Star to the extent of 10' on the surface and 16' somewhat lower down, there are patches of what appear to be similar pay ore showings at points along the wall of the pit and along the surface farther up the hill to the south, all of which the defendants designate as the barren hanging wall of the vein.

Unfortunately I never had the opportunity to test by lamp or sample any of these showings, and their importance was not apparent until the theory of the defendant was explained to us in Tucson, but it would now appear that a thorough examination of this hanging wall would be our best procedure, and that the testimony of witnesses who were on the ground before the defendant broke across the line and destroyed the original outcrop may have even greater importance. No doubt the defendants failed to find ore at one or more particular points along the side line but they did not pretend to have sampled this continuously along the area where it is now caved and where the

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

X ~~the~~ outcrop was directly above the stopes from which the extra-lateral ore was mined, and their photographs in contrast with mine show the hanging wall of one pocket of ore and not along the length of the alleged vein.

This situation is discussed under (4) on page 17 of your letter of March 27th and it is my understanding that the Pure Gold operators would not be entitled to any extra-lateral rights along the downward extension or dip of the vein throughout the entire length where its original apex or outcrop was split by the common side line. Actually this would mean that Molson had no legal right to most of the extra-lateral ore which he has mined to date and that he could only continue mining at the west end of his present workings where I understand that very little pay ore was left aside from what may have recently been developed by the drill holes.

If you and Judge Darnell should agree with the legal effectiveness of the proof which is outlined in this letter I strongly recommend that our case should be much more thoroughly prepared before we go to trial, mainly thru a careful and complete testing of the hanging wall area of the trespass ore shoot conducted by lamp and, in the more important places, by cutting and assaying samples.

The maps which I am now preparing would be a great deal more convincing if they could show the actual records of tests or assays of

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

X
of samples and the verbal testimony of our witnesses should also be supported by such returns if we expect to defeat the contention of our opponents. I regret that substantially more expense will have to be incurred than I had assumed before our conference in Tucson, particularly since I ^{feel} ~~fell~~ that it will now be essential to engage at least one other engineer as an expert witness who should take part in the lamping and sampling of the surface and underground workings.

Finally, I wish to refer to the damage done to the surface of the Morning Star claim for which there was absolutely no wrrrant in law. This was not mentioned in our complaint which was drawn up at a time when the south rim of the trespass pit extended to a maximum of 4' over the line and only for a length of some 30', involving perhaps 100 sq. ft. of surface.

Since that date, the defendants, thru failure to support their workings, have caused the surface of the Morning Star to cave for a length of 82' and to a maximum distance of over 10' beyond the side line so that some 700 sq. ft. of surface rock has now fallen into the pit and it is practically certain that there will be more caving in the future. This can properly be stated to detract from the value of the Morning Star as it will make further mining in that area more difficult and expensive.