

ARIZONA CITIZEN.

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THE ARIZONA CITIZEN

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WORK IN THE BEST STYLES AT
reasonable rates, such as
SHAVING, SHAMPONING, and
HAIR CUTTING.
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Cigars! Cigars!

NOTICE TO THE PUBLIC.
FROM THIS DATE WE ARE AUTHORIZED to reduce the price of the CLARK & FOWLER CIGAR, (London Finos) from \$30 to \$25 per thousand. These Cigars are manufactured from the choicest Tropic Tobacco and warranted unequalled by any imported to the Pacific Coast.
ROUNTEEE & LEBBERT, Agents,
Guaymas, Oct. 1, 1873. 2-4m

DRUG STORE.
HAVING ENLARGED AND REFITTED my saleroom, and increased my stock of
DRUGS AND MEDICINES,
I would respectfully invite the public to call and examine my goods and prices, at
THE SIGN OF THE MORTAR,
On Congress street, at my old stand.

Will give prompt attention to compounding physicians prescriptions, and all orders from the town and surrounding country.
CHARLES H. MEYERS.

FLOUR! FLOUR!!
HAVING PUT IN FINE RUNNING order the
EAGLE STEAM FLOURING MILL,
in Tucson, I am prepared to fill orders for
CHOICE FLOUR

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Patronage Solicited. Please call at the Mill and Examine my make of Flour and Prices.
JAMES LEE.

WHOLESALE AND RETAIL.

Patronage Solicited. Please call at the Mill and Examine my make of Flour and Prices.
JAMES LEE.

SUPREME COURT OPINIONS.

Following are two short but complete opinions delivered at the recent session of the supreme court of Arizona, and a carefully prepared abstract of another. Next week a succinct abstract of the opinion in the case of Campbell et al against Shivers, will appear, in which some powers of the supreme court and rights to water are passed upon:

In the case of the Territory of Arizona, ex rel C. W. C. Howell, district attorney of Yuma county, respondents, against J. B. Tuttle and Joseph Goldwater, appellants, the opinion was written by Tweed and concurred in by Titus and reads:

The appeal is from judgment in favor of plaintiff and respondent, purporting to have been rendered at the November term of the district court, second judicial district, for the year 1873, sitting at Yuma.

The same question arises in this case as to the authority of the supreme court judges to fix the time for holding the district courts in the three districts of the Territory, that we have passed upon in the case of John G. Campbell et al against Shivers. The order of the judges made at the seat of government on the 11th day of February, 1873, to fix the time for holding the district court in the second district, designated the first Monday in April and the first Monday in December as the times for the commencement of these terms until further order should be made. It appears from the record that the judge of the district being absent, the court was opened by the sheriff on the first Monday in November and adjourned from day to day until the second Monday in November, on which last mentioned day an order was received from the judge commanding the sheriff to adjourn the court over until the third Monday in November, which was accordingly done. On the said third Monday in November, the judge being present, the court proceeded with the transaction of business until November 22, at which time the court was adjourned until the second Monday in December. It appearing, therefore, that no court was opened or in session on the day fixed by the order of the judges aforesaid, under our ruling in the case of Campbell et al vs. Shivers, heretofore referred to, the December term of said court must be deemed to have lapsed; and it appearing by the record that the order of court overruling the demurrer herein, was made on the 9th day of December and the order for the judgment herein on the 11th day of December, the same must be deemed as having no validity. The cause must be remanded with directions that said judgment and orders be annulled and set aside, and it is so ordered.

In the case of the Territory of Arizona, respondent against Patrick T. Leary, appellant, the opinion was written by Tweed and concurred in by Titus and Porter, and reads as follows:

The defendant was indicted and tried for the crime of murder at the May term of the district court, second judicial district, in and for the county of Mohave.

Upon the trial, the defendant was convicted of the crime of murder in the first degree, and judgment rendered and pronounced against him. The appeal is from the judgment.

We have examined the transcript which seems to us exceptionally full and accurate, showing that the requirements of the law in all the proceedings from the organization of the grand jury to the rendition of the verdict by the jury which tried the case, were strictly complied with. Some exceptions seem to have been taken in the progress of the proceedings to some portions of the testimony, and a sweeping exception made to the charge of the court to the jury. But the testimony objected to or offered and refused is not brought before us, nor is the charge of the court contained in the transcript. To have a verdict made, a motion for a new trial should have been made, and the testimony objected to and the charge of the court made a part of the statement upon such motion. As before stated we see no error in the proceedings and judgment must be affirmed, and it is so ordered.

Following is an abstract of the supreme court's opinion in the case wherein Alonzo E. Davis and John A. Rush are plaintiffs and William A. Linn and Washington French are defendants. The suit was appealed from the third judicial district court. James E. McCaffry and John A. Rush were attorneys for Davis and Rush and Coles Bashford for Linn and French. The entire opinion would fill eight columns of this type, hence an abstract alone can be given, but all that is directly pertinent to the issues involved are here presented. The opinion is by Titus, Tweed concurred in the judgment and Porter's name is not attached to it:

This is an action in the nature of ejectment brought in the third district by Davis and Rush against Linn and French for the possession of a mining claim. The verdict which was in favor of the plaintiffs, was set aside by order of the court as against the evidence, and the appeal is to disaffirm that order. The statement included in the transcript of the record, discloses the following conclusions of fact: In the Fall of 1870 and in 1871, the Tiger Mining Company, consisting of E. J. Cook, Washington French, A. B. Smith, H. C. Curry and D. C. Moreland, was formed for the purpose of prospecting and locating mining claims in the Bradshaw mountains, in the county of Yavapai. On the 10th of January, 1871, D. C. Moreland located the claim known as the Tiger Mine, 230 feet including the discovery location on the Tiger Mine, and on behalf of this company, at the same time, Moreland located the instance of French, located 200 feet north of and adjoining the location of the company for Wm. A. Linn, one of the defendants, and this is the claim contested in the present case. At the time of location, the boundaries were measured by stepping and a monument was erected on the north end and the claim was called the Tiger Mine. At the same time, a notice was placed on said monument, claiming the same and signed Wm. A. Linn. On the 27th of January, 1871, French caused a description of this

claim to be recorded in the office of the county recorder of Yavapai county; and on the 2d of February, 1871, next following this record, a description with the certificate of record upon it, was placed on the monument with the original notice.

The transcript of the record of this case shows that at the time of the location, it was not included within any organized mining district, and that the location and record of it were made in accordance with the custom and practice prevailing in that vicinity, among miners at the time; it also shows that afterwards, on the 4th of February, 1871, a mining district was organized there, a system of rules adopted, and a recorder elected or appointed; it shows that it was not any time the custom of that district to record with the district mining recorder locations made and recorded with the county recorder previous to the election or appointment of the mining recorder. The transcript also shows that work was done on the claim on behalf of Linn from about the 15th of February, 1871, till the plaintiffs' entry and entry, which was on the 20th of June, 1871, and that as early as February 3, of that year, Thomas Maxwell was at work there for Linn. The transcript further shows that on the 11th of February, 1871, Mary E. Sawyer entered upon the claim in contest, saw where some work had been done, removed from the monument Linn's notices and substituted one of her own; that she worked on the claim one or two days, doing as much work as a woman could do, which one of plaintiffs' witnesses thought was a joke; and on the 11th of June, the same year, conveyed all her interest to the plaintiffs in this case; also that before the plaintiffs purchased the claim of Mary E. Sawyer, they had examined Linn's description of it among the records of the county, and had visited and examined the claim itself, where they saw that considerable work had been done upon it, which they understood had been done by those representing the Linn claim; that afterwards, about the 20th of June, 1871, the plaintiffs put two men to work on the claim; that the day after, Stewart and Maxwell came upon the claim, and Stewart, claiming to be agent or partner of Linn, forbade the plaintiffs' men from working any longer on this claim; and that on June 23, 1871, Linn came upon the ground, evicted the plaintiffs and has retained possession ever since; also that in January and February, 1871, W. A. Linn, the defendant, resided in Nevada and that he did not return to Arizona till the month of June of the same year, just previously to his alleged eviction of the plaintiffs; also that at the organization of the Tiger Mining District, the rules and regulations required that all claims located therein should be recorded with the district recorder within thirty days after the location, and five days' work be done on the same within six months, commencing within thirty days after the location.

No regular assignment of errors appears in the case, and the points of law presented for the disaffirmance of the order appealed from, appear only on the brief of appellants' counsel, as follows:

1. The verdict of the jury was in accordance with the law and the evidence, and the court erred in setting aside the verdict and granting a new trial. It is the province of the jury to weigh the evidence and the court will not disturb the verdict when the evidence is conflicting.
2. The court erred in allowing Linn to give evidence to contradict his deed to French.
3. A mining claim is an interest in land within the meaning of the statutes of frauds.
4. One person cannot locate a mining claim for another except in connection with himself, without authority in writing from the person for whom he locates.
5. The location of a mining claim is not valid unless made in accordance with the laws of the United States, the laws of this Territory, and the rules and customs of the mining district where the same is situated.
6. One having already located under the laws of the United States, approved July, 1869, the amount of mining ground allowed to be located by such law, another person with the intent to locate the after location inure to his benefit, is void as made in fraud and evasion of said law of the United States.
7. The court erred in charging the jury that the law constitutes the discoverer of a mine the agent for whom he chooses to act, and makes his act their act regardless of the fact whether they have any knowledge of it or not. Such further reference will be made to the facts in this case as may be found necessary to illustrate the foregoing points, in the progress of the discussion.

The first point taken, viz: The verdict of the jury was in accordance with the law and the evidence and the court erred in setting aside the verdict and granting a new trial. It is the province of the jury to weigh the evidence and the court will not disturb their verdict, when the testimony is conflicting. The first of the legal propositions presented is a statement of the affirmative branch of the issue and can only be answered by an examination of the whole case; the second of these propositions is perhaps more frequently repeated than almost any other, and when taken in all its generality, is fraught with error. It is true, only of that portion of every case which intervenes between the submission by the court of all the evidence to the jury, and the completion of its verdict. The evidence is subjected to the cognition of parties, witnesses, counsel and court before it goes to the jury at all. Some power, beside the jury, must decide the competency, relevancy and unexceptionableness of every portion of the evidence before it can enter the jury box. And on the rendition of the verdict, the party litigant to whom it is adverse, has the indefeasible right to have it compared with the evidence by the court, as the final test of its validity. The statement of the transcript of the present case shows an obvious preponderance of the testimony against the verdict, and this point must therefore be and is overruled.

The second point is: That the court erred in allowing Linn to contradict his deed. And this would certainly be a grave error of law, had it any foundation in the facts of the present case. The evidence however which Linn was allowed to give, and which was excepted to, at the time, appears to be no contradiction of his deed. The specific portion of the testimony which is alleged to contradict the deed, was not pointed out. Indeed it was discussed rather as an abstract proposition of law, as which it is certainly undeniable, not however without its well established limitations. It does appear that Linn, in the course of his examination, was asked "for what purpose did you execute the deed in question?" and the answer was

objected to by the plaintiffs on the ground that Linn being one of the defendants could not give evidence to contradict his own deed. Linn answered said question under objection as follows: "I expected to receive from French all the money he 'prevailed' knowledge of him that he 'would not fairly with me. If he did not 'I was the loser.' French too on his examination as a witness says: 'I expected to pay Linn all I should get for the 'claim.' Linn on his examination also said 'I now owe French about \$1000. Most 'of this indebtedness has been made since 'my return from Nevada.' This seems to be all the evidence of Linn's purpose in making the deed. Of the relations of the defendants, Linn says: 'French and I 'came to Arizona in 1869. There had 'been a partnership between us in Mohave county, and I have always continued 'in the Spring of 1869, I went to 'White Pine, French furnishing me 'means to go with. I told him on leaving that if I found anything at White 'Pine, I would locate for him, and if he 'found anything here, he should give me 'a show. On or about June 21, 1871, I returned to Prescott. I staid four days and then went to Bradshaw. On the morning of June 28, 1871, I arrived at Bradshaw.' On cross examination Linn says: 'I have never been engaged in any 'business in partnership with French. I 'never owned a mining claim in company with him. What I mean by a mining partnership is that when one is 'broke and the other is not, the one who 'has money shares with the other, French 'does not now own any portion of the 'property in question. He holds one-half 'of the ground as security for what I owe 'him.' French on this subject says: 'In 'the Spring of 1869, Linn went from Prescott to White Pine. It was understood 'between us that I was to be interested in 'anything he found, and if I found any- 'thing here, I would give him a show; or 'if I could get him a situation here I 'would do it.' The statement of the transcript also contains copies of two letters, also a copy of deed and power of attorney from Linn to French. The first of these letters is dated Prescott, A. T., January 12, 1871, and is addressed by French to Linn at Gold Hill, Nevada, and states that French had located a claim for Linn and promised to send him some ore. Plaintiffs objected to this letter and the objection was overruled. The second of these letters is between the same parties and from and to the same place, dated January 27, 1871. The letter seemed to have contained a blank deed and it also appears that Linn executed and returned the deed and a power of attorney with little if any delay. On the 27th of June, French executed his deed to Linn for one undivided half of the property. The consideration of the whole of said property from French to Linn being \$1000, and the consideration of one-half divided back by French to Linn being \$500. A witness named Thorne was called by the plaintiffs and offered to prove that at the time Moreland located the ground for Linn, he located two claims for witness and Cassidy, with the understanding that said Thorne and Cassidy were to deed one-half of said location to the Tiger Company of which Moreland was a member without further consideration; and agreeable to said understanding, did deed one-half of said ground to the Tiger Company. This belief was offered to show that a similar understanding existed at the time with Linn. Objected to and the objection was sustained and the plaintiffs excepted.

From the evidence of Thorne thus stated, the court is asked to find fraud in the location of the claim of Linn by Moreland and French. The credibility of this statement is seriously impaired by the fact that the man Thorne who makes it was himself parties frauds by his own confession; but even if true, it does not tend to show fraud in Linn, and it is rightly rejected. Linn seems to have done all in his power diligently to assert his own right and protect his claim. True, he seems to have been chiefly employed in defending himself since the installation of this suit. On July 18, 1872, Linn however appears to have done it like a man who believes himself right and laboring to defend his own property. After the most careful consideration, neither contradiction of the deed from Linn to French nor fraudulent intent in the defendants, is discovered in this testimony. It is true in law that a deed cannot be directly contradicted by parol testimony. It is always susceptible of the fullest oral explanation for the prevention of fraud and the consummation of justice. It frequently happens that the real or whole intention is not mentioned or described in a deed and it must be shown by other testimony if ever called in question. What possible contradiction of evidence appeared in Linn's deed, which mentions the consideration of \$1000, is there in the fact that Linn owed French money at the time; desired and thus enabled French to sell the property, expected French to pay him the purchase money or credit him with it; or in the fact that French expected to do all this as he says he did in good faith? These facts and intentions may all stand on a solid foundation of truth together. The power of attorney is no contradiction of the deed or anything else. It was another familiar way of enabling French to sell the property for Linn's benefit. It proves the real intention of the deed and not in contradiction of it. So too the deed from French to Linn for only an undivided half of the property, is evidence of the defensible character of Linn's deed to French and may be remote evidence of Linn's indebtedness to French for which the other half remaining in him is alleged to be a collateral security. If French shall deny that Linn's deed was but a defensible deed or Linn deny that he owes the debt for which French retained the undivided interest of half the claim as a security, then the fraud will perhaps begin to have existence. At present, none is apparent. With these conclusions the highest judicial authorities fully accord. A careful examination of the case discloses no evasion, duplicity, concealment, falsehood or false pretense on their part, which constitute the unfailing index of fraud. No one claims to have been injured by them or either of them; not M. E. Sawyer who, entered on Linn's claim February 11, 1871, removed his notices and attempted to usurp his claim; not the plaintiffs who have knowingly taken her place and commenced this suit. The second point of appellants must therefore be overruled.

The third point is that "a mining claim is an interest in land, within the meaning of the statutes of fraud." This point is certainly true as an abstract legal proposi-

tion. There is no element of the present case which brings it within the statute of frauds. It is not shown nor does it appear how the statute of frauds can apply to any person or thing in the present case. The third point is overruled as inapplicable to the case.

The fourth point is "one person cannot locate a mining claim for another except in connection with himself, without authority in writing from the person for whom he locates." Since the United States first permanently occupied California in July, 1846, there has arisen a system of mining law on our Pacific Slope whose peculiar principles, obligations, and relations, courts of justice cannot disregard without the most flagrant injustice. In all other codes which have attempted permanent existence, this code has been the offspring of stern necessity. This system, too, has revealed a class of men peculiar in their characters and relations. One of these is the prospector who with a remarkable daring and sagacity alone, with small attendance, penetrates everywhere in search of the precious metals. Great as are his natural resources, he would be powerless but for the necessary aid furnished him by others, more or less remote, who are to share with him in the results of his explorations. The compacts by which these things are done in many, perhaps in most instances, are found without any written assurance by men who know and trust each other's unwritten faith. But for these simple, harmless methods, our mineral wealth would have been far less developed than it is. Destroy these methods and our mineral system must lose much of its progressive power. The present case belongs to this system and it cannot be determined without more or less reference to its rules and obligations. At the time of the location of the claim in controversy, it was not included in any mining district of its own, nor was it subject to the law of any other. The common law of miners above referred to, was recognized by those concerned in the claim; but beyond that, they were bound by no law except the act of Congress of July 20, 1866. All these laws appear to have been complied with by defendants. This suit however stopped them before their patent could be secured. The testimony shows that French had Linn's authority to locate this claim for him and that Linn afterwards ratified his acts by taking and holding the property. It enabled Linn to hold the property against every claimant but the United States. Even if Linn had no right, Mary E. Sawyer could not by any legal right enter on his property and carry off his notices. This point is therefore overruled.

The sixth point is: "That the location of a mining claim is not valid unless made in accordance with the laws of the United States, the laws of the Territory, and the rules and customs of the mining district where the claim is situated." This mine was not in an organized mining district. In the location as far as it progressed before this suit suspended it, all was done, from what appears, in accordance with the laws of the United States, the laws of this Territory and the local customs so far as they were known. The notices put on the property on behalf of Linn were sufficient to inform the whole community who claimed the location in controversy. Both Mary E. Sawyer and the plaintiffs, as the testimony shows, were fully informed of Linn's claim. During the brief period of the plaintiffs' occupancy, it appears they adopted Linn's monuments, and Linn's marks and measurements, thereby acknowledging their sufficiency. The occupancy on behalf of Linn and by Linn himself appears to have been all that the law required in an unsettled and troubled Indian country. This point is therefore overruled.

The seventh and last of the appellants' points is: "One having already located under the laws of the United States, approved July 23, 1869, the amount of mining ground allowed to be located by such laws, another location made by him in the name of another person with the intent to have the said claim after location inure to his benefit, is void as made in fraud and evasion of the said law of the United States." There is no evidence that the claim in contest in this case was intended to inure to the benefit of anyone but Linn in whose favor it was located by French. This point has been disposed of as far as the court has power to do so, under a former one.

The following is the judgment in the case: "The judge of the district court of the third judicial district was right in setting aside the verdict in this case, and ordering a new trial and his order must therefore be affirmed."

According to dispatches received from San Diego last night, Congress is working away on railroad legislation. So far nothing final has been effected. The country has about gone daft on the subject. A few years ago railroads were promoted and the country was never more prosperous than then; now the unstable public mind is changed by the demagogic press and congressmen have not the moral courage to do what they believe ought to be on behalf of this class of public improvements. There even seems to be a demand that vested rights shall be impaired by Congress.

In a devout Thanksgiving editorial, the editor of the Topock Commercial remarks that: "It is difficult to believe that God ever interferes with Kansas politics," and concludes that "Thanksgiving Day is chiefly serviceable in bringing to our remembrance the fact that there is a God."

MINING LIFE of Silver City, New Mexico, says that Henry Lesinsky arrived there on the 13th and left next day to look after the copper mines in which he is largely interested at Clifton, Arizona.

Last night's mail came in early. It was very large. Some of the papers were in a pulpy condition. From all accounts, Tucson has fared comparatively well during the late storm.

On January 29, Governor Safford appointed James E. McCaffry a notary public for Pima county.

SAN FRANCISCO, January 30.—Gold 111 1/2 Greenbacks 90 3/4