DECISION IN THE FAMOUS GRAND CENTRAL-MAMMOTH CASE

The full text of the decision of Judge Marioneaux, in the celebrated Grand Central-Mammoth case, the result of which was given in a Nephi special to the "News" last night, is as follows:

In the district court of the Fifth Judicial district, county of Juab, State of Utah.—Grand Central Mining company, a corporation, plaintiff, vs Mammoth Mining company, a corporation, defendant.

In September, 1899, the plaintiff commenced an action of trespass against the defendant for the recovery of the values of certain ores which it charged had been extracted from the southern end line of the Silveropolis mining claim by said defendant.

The defendant filed a denial to the complaint, and also a counter claim in which it alleged title to the vein from which the ores in question were taken. In its third amended counter claim filed on Nov. 20, 1901, it claims to be the owner of the first northern extension of the Mammoth lode mining claim, lot 38, the Bradley lode mining claim, the Young Mammoth lode mining claim, the Schey lode mining claim, the Welding lode mining claim, the Bess lode mining claim, the Jenkins lode mining claim, and the Golden King lode mining claim; and it says that "within the surface lines of said first northern extension of the Mammoth lode mining claim there was and is a vein lode and ledge of rock in place of bearing gold, silver, copper and other precious metals, having its apex within the surface limits of the said first northern extension of the Mammoth, and extending upon its strike from the point where the said lode at its apex crosses the southerly end line of lot 38 to a point 1,100 feet north of said southerly end line and within the limits of said claim; but the said apex and outcrop of said lode is very wide, and in consequence of said great width of said lode the same overlies the east side line of lot 38 and a portion of said apex is found within the limits of the said Young Mammoth mining claim and the Schey, Welding and Bess mining claims, and upon the west side of said lot, the said lot extends over the westerly side lines of lot 38, and a portion of said apex is found upon the said Jenkins and the said Golden King and the said Bradley mining claims belonging to said defendant, but during the whole distance of 1,100 feet from the southerly end line of said lot 38 the said apex of the said Mammoth lode as aforesaid in lot 38 does not at any point wholly depart from said lot 38.

THE TRIAL.

Upon the trial of this cause, a jury was called as advisory to the court upon certain issues which were submitted to them in advance of the taking of testimony. Upon the preparation of these issues, counsel for the defendant requested the court to submit to the jury an inquiry as to where the strike of the vein was to be found, if they should be of the opinion that it did not continue in lot 38 as far north as the southerly end line of the Silveropolis south end line prolonged across lot 38.

The counsel for the plaintiff objected to the submission of such a question upon the ground that finding upon it would not be material to the issues framed by the pleadings; and counsel for the defendant company thereupon replied that if such a question should be submitted and the jury should find in responding to it that the vein does not continue in lot 38 up to the southerly end line of the Silveropolis claim prolonged eastward across lot 39, but, departing before it reached that point, it still continues on its strike north and parallel to the side lines of lot 38, and in the Golden King and the Bradley claims, he would then ask to amend the counter claim to conform to such findings. The court, however, did not sumbit such a question to the jury.

REGARDING THE APEX.

At this point, it may be as well to mention that upon the coming in of the jury with their findings, the court estimated and expressed its opinion that the apex was between the south end line of the Silveropolis prolonged eastward across lot 38 and the 1,100-foot line, in the Golden King and the Bradley claims; and that thereupon Mr. John M. Zane of the counsel for the defendant, stated, that if after a consideration of the case, the court should announce that conclusion in its opinion, the defendant would desire to make an application to amend the counter claim to conform to that finding. These circumstances are mentioned to show the interpretation put upon the counter claim by defendant's counsel, and to make it plain that it is conceded by them that an amendment would be necessary to entitle them to a decree if the vein is found to have its apex entirely in the Bradley and Golden King mining claims.

At the outset let it be understood that no attempt will be made to exhaustively review the mass of testimony given upon the trial of this cause. The hearing of the case occupied more than two months of the court's time, and the pressure of other business makes it impracticable for me to state the evidence in detail.

Neither shall I make an effort to explain the case so elaborately as that the whole controversy may be comprehended by persons unfamiliar with the mines in question, or with the testimony taken and the maps exhibited at the trial. I think I shall have met the just expectations of the parties in interest if I shall briefly state the conclusions of the reasons upon which I have based them.

The parties do not differ materially in their views of the facts in this cause, and it is regarding the conclusions properly to be deduced from the facts practically agreed upon, that this arises.

THE JURY CONCURRED WITH.

I have already said that I concur in the finding of the jury that the vein on its strike passes out of lot 38 at the Cunningham stope. The back fissure certainly does leave lot 38 at that point; and that fact alone would seem to dispose of the issue in favor of the plaintiff company, the defendant in the counter-claim. But the merits of the controversy cannot be narrowed, as it seems to me, to the mere question of the location of the apex in lot 38.

This is the form the issue has taken, it is true, but the substance of the controversy between the parties, wholly aside from the manner of pleading, is the question, "Does the Mammoth Mining company, or the Grand Central Mining company, own the ore bodies underneath the Silveropolis and the Consort claims between the planes drawn downward through the south end line of the Silveropolis prolonged and the 1,100-foot line? In the last analysis, that is the real controversy.

As the ore bodies lie underneath the Silveropolis and Consort mining claims, presumptively they are the property of the Grand Central Mining company, and they cannot be entered upon by the Mammoth Mining company, unless the latter can show they are in a vein or lode which has its top or apex within the boundaries of some claims of which it is the owner. In the present action, the defendant company has sought to show that such apex exists in lot 38, between the planes heretofore mentioned.

FINDINGS.

The jury has found (with the concurrence of the court) that the apex does not exist there; but the facts do not necessarily establish that the ore bodies in question are not in any vein or lode of which the defendant company has the apex. Upon that point as to whether the apex of the lode is in any claim or claims owned by the defendant company, I think it proper to express my views, because it should always appear from a decision in chancery upon what grounds the judgment has been given against the party, whether because it appears he has no rights in the matter in controversy, or whether he has failed to establish the rights specifically claimed in his pleadings.

The vein the apex of which is in controversy in this action is one founded by replacement. The "country" is limestone, and the mineralizing solutions, by which all parties agree the ores were deposited, have followed up such fissures in the limestone as extended to the deep, eating out the limestone on each side of the fissure and depositing ore in its place, much in the same manner as in petrified wood the vegetable matter has been replaced atom for atom with silica. This replacement of the limestone with ore has been in places in the limestone that the mineralized solutions found favorable for the deposition of their riches. What conditions rendered particular portions favorable, geology does not teach us, although the fact that the fissures have been the channels through which the mineralizing solutions or vapors made their way is quite manifest. We do not always find ore in the fissures, or even in sparse mineralization, because many of the fissures in the line do extend to the source of mineralization; but when we do find ore or mineralization, we very uniformly find accompanying it the fissure through which the solutions passed upwards.

COURT'S INSTRUCTIONS.

In view of the nature of the country and the manner in which the ore has been apparently deposited, I instructed the jury that the limits of mineralization must be regarded as marking the limits of the vein or lode. I concurred with the jury in their findings that the apex is not found in lot 38 within the planes in controversy for the reason that the mineralization does not reach upward so as to fall within vertical planes drawn downward through the side lines of lot 38.

I shall now explain why I stated to the jury at the time of the rendition of their findings, and why I believe that the apex of the vein in which the ore bodies in dispute are found is in the Golden King and the Bradley, and likewise my reason for believing that the strike is not as claimed by the plaintiff company; and then it will be perceived that the conclusions which I have deduced from the testimony differ widely from the views of both parties to the cause. I therefore submit them with some reluctance and take pleasure in assuring the able and experienced counsel for the parties, that I do so with the utmost deference to them.

IN THE VEIN.

Starting at the surface of lot 38, at the Cunningham stope, we are in the vein, and it is the point that the plaintiff company contends the vein turns and proceeds in a direction approximately 51 degrees and 30 minutes west true. The proof of the correctness of this contention is very essential to the ultimate success of the plaintiff company, for it is conceded that from the Cunningham stope down to the ore bodies in dispute you go into the earth at an angle of 70 degrees from the horizontal every foot of the way in ore; and if you be not then going along the strike of the vein, you are going upon the dip from an apex in the defendant ground. I take it from reading the act of Congress that the strike of the vein is its course through the country as contradistinguished from its inclination downward. Now, it is conceded that there is a vein coursing through the country substantially parallel to and within the side lines of lot 38, as far north as the Cunningham stope, but while it is insisted that at this stope the vein turns to the west at the angle above stated, the evidence establishes as clearly as if it were admitted of record that you may pass through the Cunningham stope, continuing north 18 degrees, 55 minutes east along the Finn tunnel level clear beyond the foot of the Condon winze, in ore substantially every foot of the way a distance of 370 feet. Going along the Finn tunnel in the direction stated, you encounter the "95," the "Butler" and the Trelear raises, and the foot of the Trelear raise is about sixty feet long by about twenty feet high. Returning to the north end of the Cunningham stope where it is found reaching the Plummer level, ore runs north of the stope upon a course last given for a distance of 240 feet, and at that point a stope goes down from the Plummer to the 300-foot level a distance of 90 feet. From the stope last spoken of on the Plummer, there is ore still to the north, namely as far as the O'Brien winze, a distance of 165 feet north of the stope between the Plummer and the 300-foot level, and from the O'Brien on the Plummer in ore, that connects with the ore of the Cunningham stope for 20 feet further, at which point may be found another stope going up for a distance of 30 feet toward the Plummer and then you may go still further north till you are 70 feet beyond the 1,100-foot line, and you are still in ore, so that it seems clear to me that while the vein left lot 38 at the Cunningham stope as found by the jury, it did not turn off at the angle claimed by the plaintiff. It is certainly too plain to dispute that in going down in the Cunningham stope as far as the Plummer level at least, you are following the vein in its downward course into the earth as contradistinguished from its length, and indeed Prof. Jenny, one of the plaintiff's witnesses, expressly admitted, as I shall point out later, that not only the Plummer level, but to the 300-foot level in descending from the Cunningham stope, we go down upon the dip of the vein.

CUNNINGTON RAISE.

Returning to the Cunnington stope at the Plummer level we go down the Cunningham raise, "practically a part of the stope," and descending sixty feet in ore we reach the Betsy drift; turning north in the drift we go along in solid ore for 120 feet, until we encounter the southern end of the Betsy stope, in the richest body of ore ever found in the Mammoth mine. Returning along the Betsy drift until we reach the Cunningham raise we go down in ore until we reach the 300-foot level and along north on the 300 until we reach the Betsy stope again. This much observed, it seems plain to me that the ore taken from the Cunningham stope to the end of the Betsy stope was extracted from one great body of ore. The Cunningham and the Betsy are manifestly one stope. You may go from the Betsy stope north along the 300-foot level to station 28 all the way in ore, a distance of 5,105 feet, passing on the way the raise from the 300 to the Plummer and the O'Brien winze from the Plummer to the 300, both of which workings were made through solid ore. Starting a trifle south of the Cunningham raise you may descend the Tranter winze to the Carbos drift, and then starting at the south end of that drift you may go clear north to the Bush winze in ore, a distance of 350 feet in a direction north 18 degrees and 55 minutes east, and yet it is said that the strike of the vein from the Cunningham stope is north 51 degrees 30 minutes west, true. Descending from the 300-foot level you may go through the Crib winze to the 400-foot level, and starting in that winze after having reached it through the workings that were driven in the solid ore from the Cunningham stope, the winze went through solid ore to the 400-foot level. Stopping en route at the eighty-foot level you find yourself in the midst of a great body of ore which upon that level alone is shown to be 210 feet long and extending along a line running north 18 degrees east. Going down from the eighty-foot level to the 400-foot level through the Bucket raise there is ore all the way, and arriving at the last named level you find yourself in the midst of a channel of ore running north about 18 degrees and 55 minutes east, and this channel of ore is upon the 400-foot level 480 feet long, extending at least from the Rope raise to the Bush winze. There is clearly disclosed on the 300-foot level, north of the Cunningham stope a solid body of ore at least 540 feet long, running north about 18 degrees east from the Cunningham stope, and actually connected with it.

Returning to the eighty-foot level, a short drift between the 300 and 400-foot levels of the Mammoth mine, a fact may be observed which rightly interpreted and investigated will prove, in my judgment,

WHERE CONTROVERSY TURNS.

The pivot upon which this whole controversy will turn. Upon that little level Mr. Jennings says he found the vein branching in its course downward, one part going to the east and the other to the west, with a wedge of limestone between them. What I think Mr. Jennings saw was the point of junction of two lodes in their course towards the north. Descending to the 400-foot level only 60 feet below, we find unmistakably two veins, the western one going almost downward and the eastern one dipping to the west. This fact is indisputable, and it is a circumstance of the first importance. For the western lode is along the vertical fissure found in the south end of lot 38, and from the verticality of that fissure no inference against the western dip of the front vein or lode can with any show of reason be deduced.

From the 80-foot level we may go down to the 400-foot level either upon the front or back vein. There are four connections through the Bush winze, Crib winze, Copper raise and Bucket raise. The bottom of the Crib winze is about 30 feet east on the 400-foot level from the bottom of the Bucket raise. The back vein is shown by the ore in the bottom of the Crib winze, and in the bottom of the Bush winze, and the Bucket and Copper raises on the 400 show the front vein. Mr. Tranter testifies as bearing on this point: "I sank down 40 feet in ore and then drifted westerly 35 feet." "I sank at station 102 then drifted west 35 feet in crushed lime and was then in ore again." This is undisputed testimony, and makes it plain to me that we are dealing with two separate and distinct veins. Mr. Tranter upon the 400-foot level found the ore going downward vertically when he went down at station 102, but drifting west 35 feet through lime encountered ore again. (See his testimony at page 378 of the record.) My judgment is that the 400-foot level of the Mammoth mine, when considered in connection with what is disclosed and what I have described on the 80-foot level, shows that from about the Hatten raise as you go southerly you find two diverging veins. At that raise the fissure from the Mammoth shaft, which is almost a vertical fissure, is met by another fissure coming from the south and which you may see as far south as station 401, and this last mentioned fissure dips westerly. The great ore bodies near the extended south line of the Silveropolis extend from one fissure to the other. The front vein or lode, so far as the evidence discloses, completely fades out at about station 427 (G. C. map). Examine the map of the 400-foot level. It seems that nothing could be plainer than that you may go south upon either one of two distinct veins, each having a different dip and a different strike. Coming along from the Mammoth shaft in the back vein and from station 401 1, you find these two veins converging, and at 427 they touch and mingle their ores. North of station 427, the front fissure still continues, but it is no longer mineralized, and is, therefore, from my point of view, of no further importance. The back fissure, on the contrary, goes on still north bearing mineral, although in constantly diminishing quantity.

BELOW 400-FOOT LEVEL.

Between the 400-foot level and the 500-foot level there is a solid body of ore extending north and south for a distance of 360 feet, all in the front vein, and you can descend upon it to the 500-foot level. Reaching that level the ore extends from the Rope raise north to the top of the Earl raise, a distance of 510 feet—course about north 18 degrees east. Continuing in the front vein as it is found on the 500-foot level, you may go through the Earl raise or the Bench stope to the 600-foot level in ore. Reaching the 600, we find the front vein disclosed from stations 39 to 49. The width of the ore on this level is accounted for by the extremely shattered condition of the limestone as you approach the point of union of the so-called Finn and Coates dykes, it being plain that the mineralizing solutions found easy passage and spread enormously through this finely brecciated material; for if there is any condition of the limestone which is indicated by the workings in these mines to be favorable to the deposition of ore, it is the finely brecciated matter. At the Earl raise on the 400, we find again the evidence of the fading out of the mineralization of the front fissure, for while the drift from 49 to 51 and on west is the line, from 45 to 47 is in ore. My judgment is that the northern limit of the front vein on this level is found at station 49, about 10 feet north of the Earl raise. On the 700-foot level, without pausing to point out all the evidences of it, I think that the testimony clearly leads to the conclusion that the front vein is found as far south as the long crosscut running west from station 708.

It is manifest to the court that down to the 600 level you follow a sheet of ore which is many hundreds of feet long, running north and south and substantially parallel to the side lines of lot 38; and you follow it on its "course downward" into the earth. You go down in other words from the 80-foot level to the 600 on the "dip" of the front vein; and since in going down from the 600 to the 700 through the stopes, the developments require that you shall start on the 600 south of the extended south end line of the Silveropolis claim, it only remains to consider whether in going from the 600 to the 700 south of that line, you are going downward upon the strike or upon the dip.

VALIDITY OF TRACING.

The principal, and indeed the only ground upon which the validity of the "tracing" of the ore bodies in dispute is resisted by the plaintiff company is that from U. to T. is upon the strike of the vein. I will examine this contention briefly and bring my opinion to a close.

In the first place, Prof. Jenney, one of the chief experts of the plaintiff company, testified that going down from the Cunningham stope in the 300-foot level, you are upon the dip of the vein. The professor is learned and intelligent, and as honorable and credible a witness as was heard upon this trial. He informed the court also that at the 300-foot level the vein goes through the dyke, and he presented a sketch which was admitted in evidence and marked "Jenney's sketch No. 1," and that sketch is absolutely conclusive proof that what is claimed by the plaintiff company to be the strike is really the dip. It confirms the views that I entertain that the Cunningham stope down to the 600-foot level is upon the dip of the vein. There is in fact no disagreement whatever between the court and Prof. Jenney upon this point, except as to the meaning of the words strike and dip. In order to reject the conclusion that from the 300 to the 600 level of the Mammoth mine you go down on the dip of the vein, the testimony of Prof. Jenney regarding the "real evidence" furnished by conditions in the earth between those points must be totally ignored, and this in the face of the fact that not a single witness contradicts him or disagrees with him regarding the facts which he has presented in regard to the conditions between the 300 and the 600 levels. It is easy to understand why despite the facts he has testified to the professor insists upon the conclusion that from the 300 to the 600 is upon the strike of the vein. That gentleman repeatedly informed the court that he regards the course of the mineralizing solutions ascending from the deep as indisputably marking the "strike" or "course" of the vein. But there is a vast difference, as a moment's reflection will show, between the "course" or "strike" of a river or stream of mineralized water and the "course" or "strike" of a vein. To save tedious explanation, I give upon the next page a substantial copy of Jenney's Exhibit No. 1, made to illustrate the strike of the vein from the 300 to the 600 of the Mammoth mine.

As you behold this illustration, you are looking to the north; although it has been called otherwise, it is indisputably a cross-section. The line extending through the shattered line and called "the vein" marks the direction downward into the earth of a body of ore only a few feet in vertical thickness, measured at a line drawn through at right angles to its inclination downward, which body of ore extends north and south with substantially the same thickness for hundreds of feet. We are here given a view of a sheet of ore by a section taken through it at right angles to its course; and it is insisted that the strike of it is from east to west, simply because the mineralizing waters came up from the west or down from the east.

MOST PERFECT FISSURE.

The most perfect fissure vein ever found in the mountains running true north and south, descending westerly into the north at an angle of 45 to 70 degrees must, if the theory of the palintiff here is accepted, be considered a vein whose course is east and west, and the dip of which is vertical because the mineralizing solutions, the "river of mineral water," must have come from the west, and the course of the "river" must be taken to be the course of the vein. It is not easy to take Prof. Jenney and the other experts of the plaintiff seriously upon this point, but, while I feel compelled to take them seriously, I find it impossible to agree with them.

Prof. Raymond, in defining for the United States government the dip of the vein, said that if you take a section through the vein at right angles to its length the line of section will mark the line of dip. Prof. Jenney has given the court as perfect a cross-section through the lode between the 300 and 600 as can be drawn, and it is unquestionably upon a plane at right angles to the length of the vein; and yet he will not have it that the line of section shows the line of dip. The act of Congress forbids us to take the course of the mineralizing solutions to determine the strike of a vein, for the act plainly refers to the course downward into the earth as the direction in which you may follow the vein out of vertical plains drawn downward parallel to its course or length. It is admitted that you have ore far to the north and far to the south of the line U. T. It is undeniable that there is ore far enough to the north and far enough to the south to make a chain of ore which has a length through the country, the top of it is neither square nor a point, if you measure through it on a line at right angles to its inclination; it is but a few feet, but the plaintiff seeks to meet the force of this fact by the suggestion that the ore to the north and south is where the solutions have fed out into the limestone. But admit it, what then? That this circumstance is of no significance is apparent from very simple illustration. Suppose we have a fissure in limestone of but the thickness of a knife-blade running through the country north and south for 300 feet and going down into the earth toward the west at an angle of 70 degrees. Now suppose a stream of mineralizing solution, or hot water, if you will, begins to rise in this fissure at great depth and at a point just 150 feet from its south end (in the middle of the fissure measuring along its length) and as the water comes upwards the heavy deposition of minerals of but 4 or 5 feet in width and makes the south as it goes up the fissure, but the water (in small quantities) feed out east and west until the top mineral extends the whole length of the fissure. Going down upon such a fissure, assume that at 100 feet in depth the mineralization extends north and south 250 feet; that when you get down 200 feet in the fissure you find mineral extending a distance north and south of only 200 feet, at 300 feet deep the mineral extends north and south only 150 feet, at 400 feet in depth only 100 feet north and south, at 500 feet in depth, only 75 feet north and south, at 600 feet in depth only 50 feet north and south, and so on downward to an indefinite depth assume the mineralization to narrow continually; could it be said that the strike of the vein was along the heavy deposition of mineral from the depth upward because the mineral extending to the north and south of the line of heavy material deposition had fed out into the country? Would not the direction north and south of such a sheet of ore be the "strike" and the "direction downwards" be the "dip?" With all deference to those who would contend that this inquiry should be answered in the negative, I submit that no decision will ever be found so answering it. But it may be asked, suppose there is no fissure? Well, assuming there is no fissure at all, yet if the ore takes the form supposed, fissure or no fissure, the result must be the same because it is still a lode or vein. If one would understand the controversy here he must be careful not to be misled by the appearance of the exhibit known as the "clothes horse" section. It is a cross section through just such a lode as I have assumed in the preceding paragraph, taken upon a plane drawn through the line of the heaviest deposition of mineral. An examination of it in connection with all the other maps shown at the trial will prove this to be the case. Since Prof. Jenney admits that from the Cunningham stope down to the 300-foot level is upon the dip of the lode, it will suffice to examine the

"CLOTHESHORSE" SECTION

from the 300-foot level to the 600. Take the body of ore shown on the exhibit and called the "Klonkide stope;" that body of ore is shown to be dipping into the earth at an angle of about 70 degrees. And if you were standing in that body of or in the mine, and in the portion of it shown in this exhibit, you could walk along it to the north on the 300-foot level for a distance of 500 feet, and upon the 400-foot level for a distance of 400 feet, and measured upon a line drawn through it at right angles to its inclination downwards, it is approximately five feet thick. It is impossible for me to believe that going down upon such a vein is going upon its strike. So the ore shown on this exhibit between the 400 and the 500-foot levels is but a continuation of the great northerly and southerly ore body above, having the same general form, course and inclination downwards. From the 500 to the 600 and down to the 700 the ore shown on this exhibit is ore in the front vein which we go down on from the 80-foot level, having less extent north and south so far as the developments prove, but still having very little extent measured at right angles to its inclination downward, and changing the angle of its inclination until it grows quite flat. The time at my disposal does not allow me to proceed much further with explanations of this controversy.

CONCLUSION.

My conclusion is that there are two veins in the Mammoth ground, one running from the shaft out north and extending as far as the 1,700-foot line at least, and the other lines to the east. North of the extended south end line of the Silveropolis these two lodes come so close together that the ores from one have mingled with the other and destroyed the line of demarkation between them above the 80-foot level, so that in the top of the back vein, apexing in the Bradley and Golden King as is practically conceded, is the top of the front vein. But the front vein, as I have already stated, extends no further north than the station marked 427 on the map of the 400-foot level (G. C. map).

It follows, therefore, that in a proper proceeding the defendant should be decreed to be the owner of the ore bodies in dispute under the Silveropolis and Concert mining claims, between planes drawn downward through the south end line extended of the Silveropolis and a line running parallel thereto through station 427.

From the foregoing it is evident that the allegations of the counter-claim have not been sustained by the evidence, and for the fatal variance between it and the facts established, it should, in the judgment of the court, be dismissed and the plaintiff herein should have its costs in this behalf incurred. Counsel for the plaintiff are directed to prepare and submit to the court findings of fact and conclusions of law accordingly. By the court, T. Marioneaux, judge.

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