

January 1930

A Tale of a Title

Charles S. Thomas

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Charles S. Thomas, A Tale of a Title, 7 Dicta 25 (1930).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

A TALE OF A TITLE

By Senator Charles S. Thomas of the Denver Bar

IN the winter of 1877-8 two men, Fryer and Borden by name, discovered a deposit of Carbonate of Lead ore rich in silver on a modest hillock just northeast of the little town of Leadville. They named the hill for Fryer, and their mining claim the New Discovery. The location of the Little Pittsburg, Winnemucca and Little Chief claims to the Eastward swiftly followed. All of them proved to be great properties, laid over the same deposit. The first two covered practically the same ground, and a battle was summarily staged in the courts by the rival owners for the disputed area. The Winnemucca was owned by Bissell and associates, the Little Pittsburg by Tabor and Rische. The latter sold his interest to Senator Chaffee during the ensuing summer.

The Fryer Hill Deposit, which proved to be one of the largest and richest bodies of Lead-Silver ores ever discovered, was, until developments proved otherwise, assumed to be a vein or lode, and since the New Discovery occupied the crest of the hill, it was supposed to cover the apex of the vein. If so, it would belong to Fryer and Borden throughout its depth. Hence, the Pittsburg owners and the Winnemucca owners were equally anxious to secure control of the New Discovery and to conceal the fact from the others. Each, therefore, began an active but stealthy campaign for the purchase of the New Discovery.

Neither Fryer nor Borden regarded their claim as of unusual value. Both were willing to sell for fifty thousand dollars each, but as there were few buyers at the time, the fact was not generally known. Fryer had no occupation, but called Denver his home. Borden was in the employ of Berdell and Witherell, who owned and operated a small smelting plant.

Soon after this situation developed, Senator Chaffee, meeting Fryer in Denver, purchased his half interest in the mine for \$50,000, but gave the incident no publicity. Meanwhile, the Bissell interests sought to secure Borden's title by requesting Nelson Hallock, one of his intimate friends, to conduct the negotiation. Hallock promptly visited the smelter

for this purpose. But Borden happened at the time to be in Denver. Berdell, guessing Hallock's purpose, which the latter admitted, informed Hallock that he was Borden's closest friend, hence he could make a better bargain with him than any one, and would be delighted to do so; that the only compensation he wanted or expected would be the privilege of purchasing the ore mined from the claim at current market rates for treatment. Hallock reported this suggestion to his principals, who authorized him to accept it, which he did.

At this point in the narrative of events, some reference to the character of Leadville's communications with the outside world is desirable. All freight was hauled in and out by wagon from the terminus of the South Park railway then at Baileys, about 40 miles from Denver. The nearest telegraph office was at Fairplay, 20 miles away via Mosquito Trail and sixty miles by road. A stage line for passengers and mail operated from the rail head stopping over night at Fairplay. The schedule time to and from Denver was, therefore, 36 hours. Granite, then the County Seat of Lake County, was 18 miles distant from Leadville.

When Borden returned, Berdell negotiated a purchase of his half of the New Discovery on his own account. A deed was duly executed to him for fifty thousand dollars, for which Berdell executed five notes for ten thousand dollars each payable every thirty days thereafter. These, with the deed, were mailed to the First National Bank of Denver, to be held in escrow under the terms of the agreement.

This done, Berdell, who knew of Chaffee's purchase of the Fryer interest, reported the transaction to Bissell, and demanded one-eighth of the Borden half as a commission for his services. Bissell hotly rejected the proposal and denounced Berdell in genuine western fashion. Berdell rejoined by notifying Bissell that unless his terms were accepted within thirty days he would offer the interest to Chaffee who would, of course, take it over.

The Berdell Smelter was located just out of town and directly upon the stage route. Two mornings afterwards Berdell thought he saw George W. Trimble, one of Bissell's associates, in the outgoing stage as it passed his office. He instantly concluded that Trimble was en route to Denver to take up the

escrow, or otherwise to forestall the Berdell ultimatum. Berdell therefore, saddled his horse and took the Mosquito Trail to Fairplay. He arrived hours ahead of the stage. When it drove up to the hotel Berdell, from the side of an adjoining structure, saw Trimble leave the coach and enter the hotel. Next morning he saw Trimble take the coach for Denver. During the day he sent a confidential wire to the Cashier of the Denver Bank, saying that he had concluded to pay the Borden notes and obtain the deed attached to them at once; that his agent had left on the morning stage and would attend to the matter on arrival. As soon as the transaction was closed, would the Cashier please notify him by wire with particulars?

During the course of the next day Berdell received the requested telegram informing him that Mr. Trimble had lifted the notes and received the deed just as Berdell had advised. Thereupon Berdell returned to Leadville. On the same evening after reaching home he showed Borden the telegram, giving him some explanation for the turn which affairs had taken. He added that it was very important to him that the conveyance should be on record the next day, and would Mr. Borden kindly execute to him a duplicate conveyance that he might send it right away to Granite. The unsuspecting Mr. Borden would and did, whereupon Mr. Berdell dispatched a "pony expressman" forthwith to the County Seat with the deed and with instructions to have it recorded and return with it the next morning. His orders were obeyed, and with the deed in his possession, Mr. Berdell awaited an early call from Dr. Bissell. He did not wait until his patience was exhausted; for Mr. Trimble lost no time in returning from Denver. Thereupon, Bissell, armed with the escrow deed and the Berdell notes, invaded the Berdell office, informed that gentleman of the Denver transaction, and demanded an immediate conveyance of the Borden interest in the New Discovery mine. Should Berdell refuse, suit in attachment would be instituted upon his notes, which had been indorsed by the Bank to Mr. Trimble.

Berdell then disclosed his hand. He showed Bissell his recorded deed, told Bissell how and why he had secured it and countered by demanding a sixteenth interest in the mine and a surrender of the notes or he would sell and convey the half

interest to the Chaffee people. This was a knockout for Bissell. He retired for consultation and reinforcements. He finally surrendered after several parleys. Berdell insisted that compliance with his demand should be a final settlement of all differences, to which Bissell yielded under protest.

The value of Berdells sixteenth was prodigious. Should he sell to Chaffee, the latter would have control. Should Bissell obtain it he would be on a par with Chaffee. So Berdell played the contending parties against each other until they compromised their differences before concluding which, Chaffee, with Bissell's approval, made a final offer to Berdell, with the warning that he could take it or leave it. He took it. What the amount was I never knew. For Berdell, still with an eye to the windward, insisted that the ostensible sum to be paid for the sixteenth interest should be \$4000 and no more. To effectuate this he dumped a lot of chips and whetstones on Chaffee to represent the ostensible consideration for the principal part of the moneys paid him.

Shortly afterwards, the Bissell people brought suit against Berdell to recover the value of the sixteenth interest, which, as I recall, was fixed at fifty thousand dollars. Berdell countered with a denial of the alleged facts, and pleaded his \$4000 sale as the actual value of the interest. At the trial all the facts above detailed were proven, while defendant stressed the finality of the settlement as a complete bar to the suit. The jury returned a verdict for \$4000 from which both sides appealed. The Supreme Court affirmed the judgment, but reversed the law of final settlement, by accepting the negative testimony of the plaintiffs upon the subject. This was just, whatever the rule of the law. Those who care to read the case will find it reported as Bissell vs. Berdell 6 Colo. 160. The final result was followed by a passage at arms in Leadville between Berdell and a man named Foss; but that is another story. The reader will draw his own conclusion as to the moral involved in the transaction, if any there be.