

pg 506
BK 251

von Munch; GIO GENTILE; F. J. SCHUMBERG; JOHN H. TROTT; DONALD H. STANBURY, as Public Trustee in and for the County of San Miguel, State of Colorado; GEORGE L. NICHOLS; LEROY THOMAS; JOHN ROBERT THOMAS, as executor; devisee and legatee of MARY NICHOLS, deceased; GEORGE W. THOMAS; MARGUERITE C. CAMPBELL; GEORGE W. JOHNSON; GEORGE W. JOHNSON, II; MICHAEL PHILLIPS JOHNSON; PAUL'S-BITTSBURG TRUST COMPANY, as executor and trustee of the will and estate of JOHN JACOB FISHER, deceased; JOHN P. H. CUMBERGAGE; KENNETH R. CUMBERGAGE; WILHELM L. MITCHELL, JR.; CHARLES H. JOHNSON, JR.; HELEN H. CUMBERGAGE; PARKET H. CUMBERGAGE; ROBERT H. CUMBERGAGE; WILFRED JOHNSON de BOGDARI; AUGUSTA P. POTTER; PHILLIPS JOHNSON; THOMAS JOHNSON; THOMAS H. HARTMAN and ROBERT K. NIKER, as executors and trustees of the will and estate of GEORGE W. JOHNSON, deceased; WILHELM L. MITCHELL; JOHN FISHER MITCHELL; MABEL FISHER; JOSEPHINE MARK FISHER; MARY LADEN FISHER; JOHN L. POTTER; JARED M. B. REIS; WILLIAM B. HOWE; ROBERT H. CUMBERGAGE; and JOHN H. LAMB as executors of the will and estate of JOHN P. H. CUMBERGAGE, deceased; and ALL UNKNOWN PERSONS WHO CLAIM ANY RIGHT, TITLE OR INTEREST IN AND TO THE SUBJECT MATTER OF THIS ACTION,

Defendants.

Now on this 24th day of October, A. D. 1955, this cause coming on for hearing by the Court, upon the motion of plaintiffs for judgment and decree, said plaintiffs appearing by TOLSON & CARROLL, their attorneys, the defendant, The Mountain States Telephone and Telegraph Company, a Colorado corporation, appearing by Akolt, Turnquist, Shepherd & Dick, its attorneys; and ~~John P. H. Cumberg~~ heretofore appointed by the Court to represent such of the defendants as are in the military service of the United States, having heretofore filed herein his statement that none of the defendants are now in such service and waiving right to file answer or other pleading on behalf of such defendants, or any of them, and all of the other defendants being now in default.

WHEREUPON, it is made to appear to the Court and the Court considers and finds that from the proof made with reference thereto that none of the defendants are now in the military service of the United States, as such term is defined by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended; except that an attorney has heretofore been appointed to represent such of the defendants in default as may be in the military service of the United States; that the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended has been complied with, and that this cause should proceed to trial and judgment at this time.

AND THE COURT FURTHER FINDS that the defendants herein named have been duly and regularly notified of the commencement and pendency of this action by personal service or by publication of summons in accordance with law; and the Court having examined the Sheriff's returns, the Motion for Publication of Summons and the Affidavits of Proof of Publication, finds that the same and each of them are in due form, regular and valid in all respects; and that the same and each of them, and the aforesaid personal service and service by publication should be, and the same are, hereby approved and confirmed by the Court; that each and all of the defendants herein have failed and neglected to appear and plead, answer or demur, except that the defendant The Mountain States Telephone and Telegraph Company, a Colorado corporation has appeared herein by stipulation; that the time within which to file pleadings has long since expired and that certificate of default has been duly issued and filed herein as to each and all of them, except as to The Mountain States Telephone and Telegraph Company, a Colorado corporation; that said cause is now at issue and that the trial thereof should be proceeded with at this time.

AND THE COURT FURTHER FINDS that a stipulation by and between the plaintiffs and the defendant, The Mountain States Telephone and Telegraph Company, a Colorado corporation, has been filed herein, and that under and by virtue of the said stipulation it was agreed, and the Court hereby finds, that the said defendant has a right-of-way over and across the lands which form the subject matter of this action for the use and purpose of constructing, re-constructing, erecting, operating and maintaining its presently existing communication lines, including the necessary conduit, poles, cables, wires, fixtures and other appurtenances, under, upon, over and across the said lands, together with the right to keep vegetation trimmed at least forty-eight (48) inches from all wires along the route of said existing communication lines, and the right of reasonable ingress and egress to said lines.

pg 50
BK 251

...and the court having found that the same were lawfully derived in the premises, finding that all of the same are, and the same are, contained in the plaintiffs' complaint and that the same, as set forth in any finding said general findings, further specifically finds that the plaintiffs are not the owners in fee simple of the real estate described in the complaint, as hereinafter set forth, and that the defendants named and captioned, respectively, however, The Mountain States Telephone and Telegraph Company, a Colorado corporation, do not have, nor do any of them have, any right, title, interest, claim or demand in and to said real estate or any part or parcel thereof; that any and all claims of said defendants, and of any and all of them, except the Mountain States Telephone and Telegraph Company, a Colorado corporation, who have found and limited, should be forever enjoined and barred; and that plaintiffs' title should be established against all claims of whatever kind or nature of said defendants, except as to the defendant, The Mountain States Telephone and Telegraph Company, and its corporation as above found and limited, and each or any of them, no matter in what manner, except the plaintiffs, claiming or to claim under said defendants, or any of them.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows, to-wit:

(A) That the plaintiff, The American National Bank of Denver, a banking association organized, existing and doing business under and by virtue of the laws of the State of Colorado and the United States of America, as Trustee, is the owner in fee simple of the legal title in and to the following described real estate, situated in the County of San Miguel, State of Colorado, to-wit:

Block 63 - Lots three (3) to Twenty (20), both inclusive in Block Thirty-five (35), and all of blocks thirty-six (36), thirty-seven (37) and thirty-eight (38), together with the streets and alleys within the extended boundaries of said blocks, in East Bellaville addition to the Town of Bellaville, and same being located in Townsite Placer, survey Lot Number 6416, in the Upper San Miguel Mining District.

Block 70 - The field and placer, survey Lot Number 554 in the Upper San Miguel Mining District, together with all water and water rights, ditches and ditch rights and upon or in connection with the said real estate, situate in the following, to-wit:

- (1) A tract of land described by notes and bounds as follows: Beginning at Corner Number One of said placer, the same being identical with Corner Number One of the St. James Placer, thence South 75° East 200 feet; thence South 15° West 75 feet; thence North 75° West 200 feet; thence North 15° East 75 feet to the place of beginning.
- (2) A tract of land described by notes and bounds as follows: Beginning at a point South 75° East 200 feet from Corner Number One of said placer, the same being identical to Corner Number One of the St. James Placer; thence South 15° West 75 feet; thence South 75° West 200 feet; thence North 75° East 167.7 feet; thence North 75° West 350 feet to the place of beginning.
- (3) A tract of land described by notes and bounds as follows: Beginning at Corner Number Four of said placer, thence South 15° West 425 feet; thence North 68° 35' East 213 feet; thence North 15° East 425 feet; thence South 68° 35' East 213 feet to the place of beginning; containing five (5) acres, more or less.
- (4) A tract of land described by notes and bounds as follows: Beginning at Corner Number One, from which, Corner Number One of the St. James Placer, survey Number 1055 bears North 15° East 75 feet; thence South 15° West 93.5 feet to Corner Number Two; thence South 75° East 133.2 feet to Corner Number Three; thence North 85° 35' East 282.67 feet to Corner Number Four; thence North 75° West 400 feet to Corner Number One, the place of beginning.
- (5) The right, title and interest of The Mountain States Telephone and Telegraph Company, a Colorado corporation of constructing, reconstructing, erecting, operating and maintaining its presently

PJ 508
BK 251

existing communication lines, including the necessary conduit, poles, cables, wires, fixtures and other appurtenances, under, upon, over and across the said lands, together with the right to keep vegetation trimmed at least forty-eight (48) inches from all wires along the route of said existing communication lines and right of reasonable ingress and egress to and along said lines.

(B) That the plaintiff, Telluride Mines, Incorporated, a Colorado corporation, organized, existing and doing business under and by virtue of the laws of the State of Colorado is the owner in fee simple in and to the legal and equitable title in and to the following described real estate, situate in the Upper San Miguel Mining District, County of San Miguel, State of Colorado, to-wit:

A tract of land lying and being in said Gold Run Placer, Survey Lot Number 554, described by metes and bounds as follows: Beginning at Corner Number Four of said placer, thence South 15° East 425 feet; thence North 68° 33' West 513 feet; thence North 15° East 425 feet; thence South 68° 33' East 513 feet to the place of beginning, containing five (5) acres, more or less, EXCEPTING, HOLDING, the right, title and interest of the defendant, The Mountain States Telephone and Telegraph Company, a Colorado corporation of constructing, re-constructing, erecting, operating and maintaining its presently existing communication lines, including the necessary conduit, poles, cables, wires, fixtures and other appurtenances, under, upon, over and across the said lands, together with the right to keep vegetation trimmed at least forty-eight (48) inches from all wires along the route of said existing communication lines and right of reasonable ingress and egress to and along said lines.

(A)

(C) That the plaintiff, Telluride Mines, Incorporated, a Colorado corporation, is the owner in fee simple of the equitable title in and to a 1250/1350 undivided interest in and to the following described real estate, situate in the County of San Miguel, State of Colorado, to-wit:

TRACT ONE - Lots Three (3) to Twenty (20), both inclusive in Block Thirty-five (35), and all of Blocks Thirty-six (36), Thirty-seven (37) and Thirty-eight (38), together with the streets and alleys within the extended boundaries of said blocks, in East Telluride addition to the Town of Telluride, the same being located in Yosemite Placer, Survey Lot Number 6416, in the Upper San Miguel Mining District.

TRACT TWO - The Gold Run Placer, Survey Lot Number 554, in the Upper San Miguel Mining District, together with all water and water rights, ditches and ditch rights, used upon or in connection with the said real estate, EXCEPTING therefrom the following, to-wit:

(105-301)

(1) A tract of land described by metes and bounds as follows: Beginning at Corner Number One of said placer, the same being identical with Corner Number One of the St. James Placer, thence South 75° East 200 feet; thence South 15° West 75 feet; thence North 75° West 200 feet; thence North 15° East 75 feet to the place of beginning.

(103-333)

(2) A tract of land described by metes and bounds as follows: Beginning at a point South 75° East 200 feet from Corner Number One of said placer, the same being identical to Corner Number One of the St. James Placer; thence South 15° West 75 feet; thence South 75° East 200 feet; thence North 78° 26' East 167.7 feet; thence North 75° West 250 feet to the place of beginning.

(A)

(3) A tract of land described by metes and bounds as follows: Beginning at Corner Number Four of said placer, thence South 15° West 425 feet; thence North 68° 33' West 513 feet; thence North 15° East 425 feet; thence South 68° 33' East 513 feet to the place of beginning, containing five (5) acres, more or less.

(4) A tract of land described by metes and bounds as follows: Beginning at Corner Number One, from which, Corner Number One of the St.

152 281
PG 509

(153.300)

James Placer, Survey Number 1035 bears North 15° East 75 feet; thence South 15° East 93.5 feet to Corner Number Two; thence South 75° East 155.2 feet to Corner Number Three; thence North 63° 35' East 222.67 feet to Corner Number Four; thence North 75° East 400 feet to Corner Number One, the place of beginning.

(2) the right, title and interest of The Mountain States Telephone and Telegraph Company, a Colorado corporation of constructing, reconstructing, erecting, operating and maintaining its presently existing communication lines, including the necessary conduits, poles, cables, wires, fixtures and other appurtenances, under, upon, over and across the said lands, together with the right to keep vegetation trimmed at least forty-eight (48) inches from all wires along the route of said existing communication lines and right of reasonable ingress and egress to said lines.

That the defendants named, (excepting, however, The Mountain States Telephone and Telegraph Company, a Colorado corporation as hereinabove limited and set forth), and defendants designated in the complaint as "all unknown persons who claim any right, title or interest in and to the subject matter of this action", and each and all of them, have no right, title, interest, claim or demand in and to said property, or any part or parcel thereof, and that the said defendants, (excepting, however, The Mountain States Telephone and Telegraph Company, a Colorado corporation), and each of them are hereby forever debarred and enjoined from claiming, asserting or enforcing any right, title, interest, claim or demand in or to the same or any part thereof, and as to them and each of them the title to the said property is hereby forever quieted and confirmed.

DONE, DATED AND SIGNED by the Court in Chambers in Montrose, Montrose County, Colorado, in the Seventh Judicial District, of which Judicial District San Miguel County, Colorado is a part, this 24th day of October, A. D. 1955.

BY THE COURT:

Walter H. Hoffman
Judge

APPROVED:

JOHN G. CARROLL

By *John G. Carroll*, Grays, Colorado.
Attorneys for Plaintiffs.

AROLA, TULQUIST, SHEPARD & DECK

By *A. M. Weale*, 1300 Telephone Building, Denver, Colorado
Attorneys for the defendant, The Mountain States Telephone and Telegraph Company

By *George W. Smith*
Attorney for Defendants in Military Service.

174 CLERK'S CERTIFICATE OF COPY - Of West Printing and Stationery Co., Colorado Springs, Colo. K3136

STATE OF COLORADO.

County of San Miguel ss.

I, Alice M. Erickson

Clerk of the District Court of San Miguel County, the same being a Court of Record, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of the original filed in Case No. 1533.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Tallahassee, Florida, this 24th day of October, A. D. 1955.

Alice M. Erickson
Clerk.

By *Han S. Lewis*
Deputy Clerk.