

Thomas Berry, et al
Complainants.

vs.

The Alexandria Mining and
Smelting Co., et al
Defendants.

No. 3457.

At a session of the Circuit Court for the County
of Wayne, In Chancery, held at the Court room thereof, in
the City of Detroit, this 26th day of January, 1910.

Present: Hon. More Richmond,
Circuit Judge.

Thomas Berry, et al,)
Complainants,)

vs.

The Alexandria Mining and)
Smelting Company, et al,)
Defendants.)

No. 34514.

This cause having come on to be heard on pleadings
and proofs taken in open Court and Bill taken as confessed
by the Defendants, The Alexandria Mining and Smelting
Company, E. Carlos Kekey, Charles E. Kekey, Anna Gray,
Fannie Jackson, Gertrude Scheuer, Carrie Scheuer, the
unknown heirs of S. A. Murphy and C. Collin Robbins, and Louis
Pimou, and after hearing the arguments of the solicitors
for the parties who have appeared therein respectively, and it

satisfactorily appearing to the Court that the material allegations of the Bill of Complaint have been substantially proven and that a Trustee should be appointed by this Court to succeed the late James L. Edson as Trustee under the Trust deed mentioned and set forth therein which this Court holds to be a Trust Deed absolutely in form and fact:— It is Therefore, Ordered, Adjudged and Decreed, that the Detroit Trust Company of Detroit, Michigan be and is hereby appointed Trustee, as Successor to said James L. Edson and in his place and stead to execute the trusts created by said Deed and conveyance, and is hereby invested absolutely with the title as Trustee in and to all the property, real, personal or mixed and all the property rights at law or in equity of the Defendants. The Alexandria Mining and Smelting Company, situate and being in the County of Esmeralda and State of Nevada, and more particularly described in said Deed and conveyance as follows:— all of the following described gold, silver and lead bearing mines, lodes, veins and mining claims situated on Prospect Mountain in the Esmeralda Mining District in the County of Esmeralda and State of Nevada, to-wit: The "Elsie" or Green Bury, the "Sterling", the "Diligent", the "Tape", the "Long Tree" and all that certain tunnel location known as and called the Sterling Tunnel Company's right or claim, being the same property conveyed to said Alexandria Mining and Smelting Company by the Sterling Mining Company a corporation of the State of California and also that certain other mine on said mountain and in said County and State, known and designated as "The Alexandria Mine", together with all and singular the dips, spurs and angles and also all metals, ores gold silver, lead and other mineral bearing rock and earth in each and all the said several mines, locations, lodes, veins, and mining claims, and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the rents, issues and profits thereof; and also all the plant, engines, boilers machines, machinery, hoisting machinery, shafting, gearing, bells, tools implements, fixtures, furniture, goods, chattels and other personal property of whatever name, nature or kind situated on or about said mines or locations or either or any of them and used and employed in or about in connection with the same and belonging to said Alexandria Mining and Smelting Company;— and said Trustee is hereby authorized and given full power to sell or otherwise dispose of the property and effects hereinbefore mentioned or any part or portion thereof, at public or private sale, at such prices and upon such terms as it shall deem for the best interests of the cestui que trusts hereinafter named

thereunder - and it is further authorized and empowered at any time if in its judgment it shall deem it for the best interests of said cestui que trusts or necessary for the proper preservation of the same - to mortgage said property or any portion thereof, and in furtherance of such objects, to execute, acknowledge and deliver such mortgage ^{or mortgages} thereon, in such forms and in such sums and payable at such time and at such rate of interest as it shall deem most advisable. And after due consideration of the premises, this Court further finds that the parties who substantially advanced all of the moneys wherewith to take up and pay the obligations secured under the Trust Mortgage described in said Bill of Complaint, and who are entitled to have contribution as against the remainder of the Defendants are the following: - Thomas Berry, Samuel Heavenrich, James L. Edson, Francis Adams, Eber L. Kelsey, and Herman C. Teckheimer, - And it further appearing that on or about October 3rd, 1887, the said Samuel Heavenrich, Thomas Berry, James L. Edson, Francis Adams, E. L. Kelsey and Herman C. Teckheimer, who were then the beneficiaries under said trust deed, by an instrument in writing duly executed by them and described in said Bill of Complaint, mutually agreed with each other as to their pro rata share of title and interest in and to said Trust Deed and the property covered thereby, and their proportionate interests thereunder at said time were as follows:-

Samuel Heavenrich	Detroit, Mich.	\$ 6500.00 or 26%
Thomas Berry	Detroit, Mich.	\$ 5500.00 or 22%
James L. Edson	Detroit, Mich.	\$ 4000.00 or 16%
Francis Adams	Detroit, Mich.	\$ 3000.00 or 12%
E. L. Kelsey	Detroit, Mich.	\$ 3000.00 or 12%
Herman C. Teckheimer	Detroit, Mich.	\$ 3000.00 or 12%.

And it further appearing to the Court that since the making of said Agreement the said Eber L. Kelsey and Francis Adams have died and that their heirs and representatives are before the Court by their solicitors, and it further appearing to the Court that said James L. Edson died since the making of said Trust Deed and the agreement aforesaid and that the title and interest of his Estate under said Trust Deed was transferred for a valuable consideration, to-wit April 16th, 1897 by Stephen Baldwin, Trustee of the heirs-at-law and persons interested in his estate, to the Complainants, Thomas Berry, Samuel Heavenrich and Eber L. Kelsey, which transfer is set forth in said Bill of Complaint, and by virtue thereof the said Thomas Berry, Samuel Heavenrich and Eber L. Kelsey, who survived said James L. Edson, became invested with the title and interest of said Edson and his estate therein, - And it further appearing to the Court that since the making

of said ^{division} agreement, the said Complainant Samuel Heavenrich has acquired, by purchase, the title and interest of said Herman C. Leckheimer in and to the Trust Deed and the property therein described, in trust for himself, said Thomas Berry and Eber L. Hekey. This court therefore finds and does hereby Adjudge and Decree that at the time of the death of said Francis Adams, the only persons who were beneficiaries under said Trust Deed and conveyance and entitled to share in the benefits and advantages accruing therefrom, were the following in the proportions set opposite their respective names:

Thomas Berry 31- $\frac{1}{3}$ %

Samuel Heavenrich 35- $\frac{1}{3}$ %

Estate of Francis Adams, Deceased 12%

Estate of Eber L. Hekey, Deceased 21- $\frac{1}{3}$ %

And this Court further finds and doth hereby Adjudge and Decree that at the time of the filing of the Bill of Complaint in this cause and at the date hereof, the only parties who are beneficiaries under said Trust Deed and entitled to share in the benefits and advantages accruing thereunder or therefrom are the Complainants Thomas Berry and Samuel Heavenrich, and the Estate of Francis Adams and Eber L. Hekey, and their pro rata share therein are as follows:-

Thomas Berry 31- $\frac{1}{3}$ %

Samuel Heavenrich 35- $\frac{1}{3}$ %

Estate of Francis Adams, Deceased 12%

Estate of Eber L. Hekey, Deceased 21- $\frac{1}{3}$ %

and that all of the other Defendants and other persons are forever barred and foreclosed from any and all rights, or interest in or claim to said Trust Deed or conveyance or any of the property therein mentioned or described:- excepting those who claim by, through or under said Thomas Berry, Samuel Heavenrich, Estate of Francis Adams and Eber L. Hekey, Deceased, respectively. It is further ordered, adjudged and decreed, that the relief asked for by the Complainants in the matter of contribution between the parties to this cause and the allowance of costs of this suit to them, is hereby denied. Provided however, should the Defendants against whom contribution is asked or any person or persons claiming by, through or under them who have been barred and foreclosed as aforesaid assert or seek to enforce any claim of title or beneficial interest in or to or under said Trust Deed or conveyance or in or to the property described therein or any portion thereof, - then in such event, the said Complainants shall be entitled to have and enforce contribution against such Defendant or persons so asserting or seeking to enforce such claim or alleged beneficial interest, and be entitled to costs, as fully as if the claim for contribution and costs had not been denied herein. And it is further Ordered, Adjudged and Decreed, that the Detroit Trust Company, Trustee herein appointed, or its successors

are hereby authorized to pay to said last mentioned parties respectively, their heirs, representatives or assigns, - from the proceeds, benefits or advantages accruing or realized from the Trust Estate, or the disposition of the whole or any part or portion thereof, after deducting the expenses incurred in and about the execution of the trusts created by said Trust Deed and this Decree, - their respective proportionate share thereof as herein determined.

Countersigned

Theodore J. Richter
Deputy Register

Morse Robinson
Circuit Judge.

No. C 73

Certified Copy - "Chancery."

State of Michigan }
County of Wayne }^{rs.} I, Thos. F. Farrell Register of the Circuit Court for the County of Wayne in Chancery, do hereby certify, that the above and foregoing is a true and correct copy of Decree and Acceptance of Trust entered in the above entitled cause by said Court, as appears of record in my office. That I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof. In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court and County, at Detroit, this 2d day of February A.D. 1910.

Court Seal

Thos. F. Farrell, Register
By John R. Fisher
Deputy Register

Fee, \$ 25¢

No 34574 Copy

Detroit Trust Company
Trust No 783

State of Michigan, Circuit Court,
for the County of Wayne, in Chancery.

Thomas Berny et al, Complainants vs. The Alexandria Mining and Smelting Co, et al Defendants. Decree - Sloman & Sloman, Solicitor for Complainants, Penobscot Building Detroit, Mich. O. K. L. D. L. B.

Recorded at the request of H. C. Mc. Terney, Feby 14th A.D. 1910
at 20 mins. past 4 P. M.

Chasman Recorder