

In the Superior Court of the City and County of San Francisco, State of California.

Juan M. Luco, Plaintiff,

vs.

Robert S. Baker, Arcadia Baker
and California Star Oil Works

Company, Defendants.

No. 19,531.

Department No. 3.

Affidavit of D. G. Scofield, on Motion of Defendant, California Star Oil Works Company, for change of place of trial.

State of California,

City and County of San Francisco.

ss.

D. G. Scofield being first duly sworn, deposes and says that he now is and continuously, ever since the 12th day of March, A. D. 1881, has been the president of the California Star Oil Works Company, a corporation and one of the defendants herein, and that continuously, ever since the latter part of the year 1876, up to and until the present time, affiant has been and still is a director of said corporation defendant.

II

That the summons and complaint in this action were served on said defendant the California Star Oil Works Company on the second day of February, 1887.

III

That this affiant, president of said California Star Oil

Works Company, the above named defendant, has fully and fairly stated the case in this action to Gordon Blanding, Esq., one of the attorneys and counsel for this defendant corporation, and a member of the firm of Pillsbury & Blanding, the attorneys and counsel for said defendant corporation in this action, and who resides at No. 1900 Franklin Street, in the said City and County of San Francisco, and has his office at No. 324 Pine Street, in said City and County; and, after such statement, this affiant is and always has been advised by said attorney and counsel, and verily believes that the said defendant corporation has a good and substantial defense on the merits in this action.

IV

That the defendants Robert S. Baker and Arcadia Baker, and each of them, now are and for more than fifteen (15) years continuously last past have been residents of the City and of the County of Los Angeles, State of California, and affiant alleges that plaintiff well knew at the commencement of this action, and long prior thereto, that the said Robert S. Baker and Arcadia Baker, and each of them, were and had been continuously residents of said City and County of Los Angeles, during all of said last mentioned times, and that the fact that said defendants Robert S. Baker and Arcadia Baker, and each of them, have, during all and singular the times in this affidavit mentioned, resided in and been residents of said City and County of Los Angeles, has been open and notorious and well known throughout all of said last mentioned county.

V

That said defendant corporation, California Star Oil

Works Company, consents and has consented that the trial of this action be had in, and that the place of trial of this action be changed to the said County of Los Angeles, State of California, and that this action be transferred from the Superior Court of the said City and County of San Francisco, to the Superior Court of said County of Los Angeles, and that said defendant corporation expressly waives and has expressly waived any and all right which it might have to require this action to be tried in the City and County of San Francisco, State of California, upon the ground of its residence in said City and County.

VI

That this is an action for the determination of a right or interest in real property, and that said real property is and always has been wholly situated in the County of Los Angeles, State of California.

VII

Affiant further deposes and says that he has fully and fairly stated to the said Gordon Blanding, Esq., one of the attorneys for the defendant corporation, the facts which said corporation expects to prove by each and every one of the following witnesses, to wit: Christopher Leaming, C. A. Mentry M. R. Craig, A.G. Ruxton, John Goldsworthy, H.C. Austin, George Campton, Joel C. Leighton, Lewis C. Hanscom, John Powell, I.W. Hellman, Anson Brunson, E.M. Ross, C. Cabot, James, J.W. Havers tick, J.B. Morrison, A.B. Gates, Frank A. Gibson, William Reynolds, M. W. Childs, Romulo Pico, Robert S. Baker and Arcadia Baker, and that each and every one of said witnesses is a material and necessary witness for the defense of the

defendant corporation, on the trial of said action, as affiant is advised by said counsel and verily believes, and that without the testimony of each and every one of said witnesses said corporation defendant cannot safely proceed to the trial of this action, as affiant is also advised by the said counsel of said defendant corporation and as he verily believes.

VIII

That each and every one of said witnesses now resides and for a number of years continuously last past has resided in the county of Los Angeles, State of California.

IX

That the facts which said corporation defendant expects to prove by said witnesses are as follows:

First. That the said Pio Pico mentioned in the complaint as the assignor of plaintiff, neither by himself, nor with the defendant, Robert S. Baker, nor with Edward F. Beale, Sanford Lyon, Juan Foster, or Francisco P. Foster, or with any of them, or otherwise or at all, ever at any time discovered, located, claimed, worked or held, for mining purposes or for any purpose or at all, the tract of land described in the complaint, or any portion thereof, and that said Pio Pico has not now, and never has had any right, title or interest whatsoever in, or to the said tract of land, or any portion thereof, either as a discoverer, locator, claimant or holder, or otherwise or at all;

Secondly. That no notice of the alleged and pretended location in the complaint was ever recorded in the Recorder's office of the San Fernando Petroleum Mining District or any where or at all;

Thirdly. That the pretended locators of said lands

in the complaint mentioned never did, and that none of them ever did take possession of the mining claim in the complaint described, or any portion thereof, under said alleged and pretended location, and that none of said alleged and pretended locators ever worked the said pretended claim, or any portion thereof, in accordance with the local mining laws of said District, or of the mining laws of the United States, or otherwise or at all, or that said pretended locators, or their successors, or their grantees, or their assigns, or any of them, ever has or have, since said pretended location or ~~an~~ at any time or at all, owned or possessed said pretended mining claim, or any portion thereof.

Fourthly:- That no United States patent for the premises described in the complaint, or any portion thereof, ever was issued under or by virtue of, or ~~through~~ through any right acquired by the location alleged and pretended in the complaint.

Fifthly:- That defendants Robert S. Baker and Arcadia Baker never have, and that neither of them ever has held, or now holds the real property described in the complaint, or any portion thereof, in trust, or otherwise, or at all for the said Pio Pico, in the complaint mentioned, or for the plaintiff, or otherwise, or at all in trust.

Sixthly:- That the defendant corporation never, at any time prior to the filing of the complaint brought by this plaintiff, on the same cause of action, in the Circuit Court of the United States for the Northern District of California, Ninth Circuit, on the 19th day of July, 1886, ever knew, or ever was advised, or ever had any reason to know, or to suspect the alleged and pretended trust set up in the com-

plaint, or the execution of the alleged and pretended declaration of trust therein mentioned, or any fact or circumstance concerning , or in relation to the same.

Seventhly:- That prior to said 19th day of July, 1886, the defendant corporation never knew, and never had any reason to know or suspect that it was even claimed by Pio Pico, assignor of plaintiff, or by plaintiff, or by any one whatsoever, that the defendant, Baker, then, or ever held any interest in the said premises, or any portion thereof, in trust for said Pio Pico, or for any one, or at all in trust.

Eighthly:- That the defendant corporation never conspired or confederated with its other codefendants, or either of them, or with any person or persons whatsoever, to cheat or defraud said Pico, or any one out of his, or any interest in the Pico Oil Springs Mining Claim, mentioned in the complaint, or any portion thereof, or in any property, real or personal, whatsoever, or otherwise or at all.

Ninthly:- That the defendants, Robert S. Baker, and Arcadia Baker, never conveyed, nor did either of them ever convey, for the purpose of carrying out any fraudulent or secret purpose whatsoever, any of the property mentioned in the complaint, to the defendant corporation.

Tenthly:- That neither plaintiff, nor his assignor Pio Pico, is or ever has been entitled to any accounting whatsoever of or from the defendant corporation.

X

That a large amount of documentary evidence relating to various mineral locations made upon the premises described in the complaint , will be necessary in this action; that said premises are situated in the San Fernando Petroleum Mining District; that said Mining District has been duly

7

organized ever since the 24th day of June, 1865; that ever since said last mentioned day, one Christopher Leaming, herein-
witness
above mentioned as a material and necessary for the defendant corporation, has been and still is the duly elected, qualified and acting mining recorder of said District; that all the records of said Mining District have been continuously, during all of said last mentioned times and still are, kept and written up by and in the personal custody of the said Leaming; that said mining district embraces hundreds of various mining locations, in which are interested a great number of persons, as locators, or their successors in interest; that a large amount of business is done in said District, and that, by a mining law and rule of said District, duly adopted, reduced to writing, promulgated and in force, the said recorder of said Mining District is required to reside therein, and to have his books and papers open, at all reasonable times, during business hours, to such persons as may need to consult the said records, or any portion thereof, or as may need to transact business with said Mining Recorder; that under the laws of said Mining District, no location within said District can be made without the personal presence of said Mining Recorder, upon the ground, to superintend said location, and to take care that the persons desiring to locate any property, in said District, do not, intentionally or by mistake, trespass upon ~~the~~ ground already located or occupied, under the mining laws and customs thereof; that said Mining District is wholly situate in the county of Los Angeles, State of California; that said Mining Recorder resides and ~~xxx~~ is required by the Mining Laws of said District to reside in said District and at a distance of only

about thirty (30) miles from the City of Los Angeles, County of Los Angeles, wherein the Superior Court for Los Angeles County, to which this action is sought to be removed, is continuously in session; that it is always possible, at any time, for said mining recorder to go to said City of Los Angeles, from his place of residence in said Los Angeles County, and to attend upon the Superior Court therein, with his books, papers and official records of said Mining District, and to return, in the course of a few hours, again, to the said Mining District, with the said books, papers and official records thereof; that the records of said mining district embrace a great number of transactions, both in the way of locations, conveyances etc., etc., and are very voluminous, and that it would be difficult and expensive to bring them to the City and County of San Francisco, as will be necessary for the defendant corporation to do, in case this action is retained in this City and County for trial; that, owing to the number of locations in said Mining District, and the consequent necessity for the execution and acknowledgement of conveyances and other legal documents and papers therein, it is absolutely necessary for the transaction of business in said District, or in regard to the locations contained therein, to have constantly present within its limits some officer duly authorized and empowered to take acknowledgements of real property, and before whom oaths or affirmations may be made; and that the said Christopher Leaming is, and for some time has been, the only Notary Public, or other officer, authorized or empowered by law to take acknowledgements, or oaths, or affirmations, in said Mining

District, or within a distance of many miles thereof; that the said Christopher Leaming is one of the most material, the most necessary and the most important witnesses of this defendant, and that it will be absolutely necessary for said Leaming to be brought to the City and County of San Francisco and kept there during the whole of the trial of this action, should it take place in said City and County, and with all his records, books and papers of said District, and that, in such event, the entire business of said Mining District would come to a standstill, and no locations could be made therein, nor any use whatsoever had of the official books, papers or records thereof.

XI

That, in addition to the official books, papers and records of said Mining District, it will be essential to the defense of this corporation, in this action, to introduce in evidence herein copious and various extracts from and portions of the official records of the United States Land Office, at Los Angeles, California; that testimony given in contests in said Land Office will be required to be introduced, on the part of the defendant corporation, in this action, and that said Land Office, with its official books, papers and records, are situated in the City of Los Angeles, County of Los Angeles aforesaid, and at a distance of only a few steps from the court house, in which the sessions of the Superior Court of said County of Los Angeles are constantly held, and that plaintiff will require testimony from the United States Register and Receiver, in charge of said Land Office, and that said Register and Receiver reside in said City of Los Angeles, and are constantly in attendance and to be found at said

10

United States Land Office, and that their testimony could, at any moment, be easily obtained, without inconvenience to them, in said Superior Court of Los Angeles County, but that it would be impossible to procure either of said officers to attend in the City and County of San Francisco.

XII

That it will be necessary for defendant to offer and introduce in evidence various portions of the records of the said County of Los Angeles, kept by and in the custody of the Recorder of said county, and that said records are kept in the Recorder's office of said county, which is situated in the same building in which the Superior Court of said County of Los Angeles is constantly in session, and that it is always practicable and easy, at any moment, to procure said records to be offered in evidence in said Superior Court.

XIII

That the above mentioned M. R. Craig is a witness material and necessary for the defendant corporation, as above set forth, and that said Craig is and has been for many years continuously last past, the general manager and superintendent of the Pacific Coast Oil Company and the San Francisco Petroleum Company, corporations organized and existing under the laws of the State of California, for the purpose of mining for manufacturing and dealing in petroleum oil and its products, and, also, of the Sierra Nevada Asphalt Company, the Occidental Asphalt Company and the Eureka Asphalt Company, corporations organized and existing under and by virtue of the laws of the State of Nevada, for the purpose of mining for, manufacturing and dealing in petroleum oil and its products, all of which corporations are owners of extensive mining interests in said District, the said Pacific Coast Oil Company controlling

nearly the entire oil production of the Pacific Coast; that the presence of said Craig in Los Angeles County is constantly required in said business, of which he is general manager and superintendent, and that he could not leave said county without serious loss and detriment to said business.

XIV

That E. M. Ross above mentioned, is a witness material and necessary to the defendant corporation, and that said Ross is the Judge of the District Court of the United States for the Southern District of California, which court has its court room in and holds its sessions at said City of Los Angeles.

XV

That I.W.Hellman above mentioned is a witness material and necessary for the defendant corporation and that said Hellman is and has been for many years continuously last past the president of the Farmers' and Merchants' Bank of Los Angeles, and the person in actual daily control of said bank, as the manager thereof, and that it would be impossible, as affiant avers on his information and belief, to procure the attendance of said Hellman, in this City and County, during the trial of this action.

XVI

That Anson Brunson above mentioned is a witness material and necessary for this defendant corporation, and that said Brunson is an attorney at law, in large and extensive practice in said City of Los Angeles and residing therein, and that said Brunson could not leave said City of Los Angeles to come to the City and County of San Francisco and attend upon the trial of this action without serious detriment to his business and clients, and plaintiff avers, on information and belief, that he could not be so personally procured to attend in this City and

County.

XVII

That C. Cabot, above mentioned, is a witness material and necessary for the defendant corporation, on the trial of this action, and that said Cabot now is and for many years continuously last past has been an attorney at law engaged in a very large and extensive legal practice, in the United States Land Office and elsewhere, in said City and County of Los Angeles; that said Cabot is now and for many years last past has been the regular attorney of the Southern Pacific R.R.Co., in said County of Los Angeles, and that said Cabot could not leave said City of Los Angeles and come to the City and County of San Francisco, in attendance upon the trial of this action, without serious detriment to his own business and to that of his clients, and, as affiant avers on information and belief, said Cabot could not be procured to so attend, in this City and County.

XVIII

That H. C. Austin above mentioned is a witness material and necessary for the defendant corporation, and that said Austin now is and for several years continuously last past has been the duly elected, qualified and acting City Justice of the City of Los Angeles, and having his court in said City of Los Angeles, and constantly engaged, during each and every day, in attendance upon and holding sessions of his said court; that it would be impossible for said Austin to leave said City of Los Angeles and abandon his judicial duties therein, which are extensive and of daily occurrence, and come to the City and County of San Francisco, in attendance upon the trial of this action, and affiant avers, upon information and belief that it would be impossible to procure his attendance in this City and County.

XIX.

~~Twentiethly~~:- That all of the other witnesses above mentioned, as material and necessary for defendant corporation upon the trial of this action, ⁱⁿ reside, and are actively engaged in some branch of commercial, or mining, or official business in said County of Los Angeles; and affiant avers, upon information and belief, that it would be impossible to procure the attendance of any of said witnesses, in this City and County, upon the trial of said action; but that the personal attendance of each and all of the witnesses mentioned in this affidavit could easily be had in the Superior Court of the County of Los Angeles, if the place of trial of this action be changed to said last mentioned county.

Wherefore affiant avers that this action is one for the determination of a right or interest in real property, and that the convenience of witnesses and the ends of justice will be promoted by a change of the place of trial of this action from the said City and County of San Francisco to the said County of Los Angeles, and prays that said change be ordered accordingly .

Subscribed and sworn to before me
 this 7th day of March, A.D. 1887.
 Holland Smith
 Notary Public

D. G. Scofield