

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF THE  
STATE OF SOUTH DAKOTA, IN AND FOR LAWRENCE COUNTY.

THOMAS BOULETTE,

Plaintiff,

-vs-

ANCHOR MOUNTAIN MINING COMPANY,  
a corporation,

Defendant.)

C O M P L A I N T.

The plaintiff complains and for cause of action against the defendant herein, alleges:

First:

That the Anchor Mountain Mining Company is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of South Dakota, with its principal place of business located at Deadwood, South Dakota.

Second.

That at the times hereinafter mentioned and now, the above named defendant was and is the owner and in possession of the following described real estate, mining claims and mining properties and premises, situated in the Bear Butte Mining District in Lawrence County, South Dakota, and which were held, used and operated as a single property by said defendant, to-wit:

Anchor Mt. No. 1, Location Certificate thereof recorded in Book 220 at Page 180 in the Register of Deeds office of said county and state;  
Anchor Mt. No. 2 and 3, Location Certificate thereof recorded in Book 220 at Page 180 in the Register of Deeds office in said county and state;  
Anchor Mt. No. 4, Location Certificate thereof recorded in Book 220 at Page 180 in the Register of Deeds office of said county and state;  
Anchor Mt. No. 5, Location Certificate thereof recorded in Book 220 at Page 189 in the Register of Deeds office of said county and state;  
Anchor Mt. No. 6, Location Certificate thereof recorded in Book 220 at Page 189 in the Register of Deeds office of said county and state;  
Anchor Mt. No. 7, Location Certificate thereof recorded in Book 220 at Page 189 in the Register of Deeds office of said county and state.

All of the aforesaid reference to the record description as contained in the books and pages of the records of the Register of Deeds office within and for Lawrence County, South Dakota, are incorporated herein by reference thereto and made a part of this complaint by such reference, together with all buildings, machinery, equipment and supplies situated thereon, including all water rights, rights-of-way and easements, owned or controlled by lease or agreement, and all office furniture and equipment, books, maps, plans, records and supplies now located in the office of said Anchor Mountain Mining Company, in said county and state, and used in connection therewith in the operation of said properties and premises; that the said work, labor and services, hereinafter specified, were performed for the benefit of said properties as a whole, the same being owned, held and operated as a single property.

Third.

That the plaintiff, between May 20, 1927 and June 22, 1938, at the special instance and request of said defendant, performed work, labor and services for the defendant in and about and upon and for the benefit of the properties of the defendant described in Paragraph Second of this complaint, and there is now due and owing from said defendant to this plaintiff on account of said work, labor and services so performed, after allowing all credits, the sum of Thirty-nine Thousand Nine Hundred (\$39,900.00) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from June 22, 1938.

Fourth.

That on the 15th day of July, 1938, and within sixty days after the performance of said last item of labor and services set forth in Paragraph Third of this complaint, this plaintiff filed with the Clerk of the Circuit Court of Lawrence County, South Dakota, and being the county in which said property is situated, a Miner's Lien, against the property described in Paragraph Second hereof, which said lien contained the name of claimant, his post office address, the name of the owner of the property against which said lien is asserted, an itemized statement of the work, labor and services so performed, and the amount due said plaintiff, after allowing all credits, said lien being duly verified in the manner provided by law so as to entitle the same to be recorded, and the same was duly docketed by the Clerk of the Circuit Court of said Lawrence County, in the Miner's Lien Record kept in said office by said clerk, and said lien is still a valid subsisting lien against the property hereinbefore described, under and by virtue of the Miners lien law of the State of South Dakota.

Fifth.

That there is now due and owing to this plaintiff from the defendant on account of said work, labor and services so performed, after allowing all credits, the sum of Thirty-nine Thousand Nine Hundred (\$39,900.00) Dollars, with interest from June 22, 1938, at six per cent (6%) per annum, and the further sum of Two (\$2.00) Dollars paid for filing lien and the sum of Five (\$5.00) Dollars expense allowed by law for the preparation of said lien, together with the statutory costs and disbursements of this action, for all of which a miner's lien is hereby claimed against the property described in Paragraph Second of this complaint.

Sixth.

That no proceeding at law or otherwise has been had to recover the sum or any part thereof claimed in and by this cause of action or secured by the property against which said miner's lien is claimed.

WHEREFORE, plaintiff prays judgment against the above named defendant, Anchor Mountain Mining Company, a corporation, for the sum of \$39,900.00, together with interest thereon at the rate of 6% per annum from June 22, 1938, and that the miner's lien filed by the plaintiff and set forth and described in the complaint herein, be adjudged and decreed by this Court to be a valid prior lien against the properties of the defendant described in this complaint, and that said lien be foreclosed and that said properties of defendant, and which have been owned, used and operated as a single property be sold in entirety as a single property, according to law, to satisfy the amount found to be due the plaintiff herein, and that out of the proceeds of said sale be paid the costs and expenses of such sale and costs and expenses of this action and the costs of the preparation and filing of said lien, and that the defendant may be adjudged to pay any deficiency.

And for the costs and disbursements of this action, and such other and further relief in the premises as shall be meet and just and according to equity.

Francis J. Parker.  
Attorney for Plaintiff.

STATE OF SOUTH DAKOTA,  
( SS.  
COUNTY OF LAWRENCE.)

THOMAS BOULETTE, being duly sworn on his oath, deposes and says:  
That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the statements and allegations therein contained are true of his own knowledge, except as to matters therein stated upon information and belief, and as to such matters he believes it to be true.

Thomas Houlette.  
Affiant.

Subscribed and sworn to before me this 15th day of August, 1888.

Francis J. Parker.  
Notary Public.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF THE  
STATE OF SOUTH DAKOTA, IN AND FOR LAWRENCE COUNTY.

THOMAS BOULETTE,

Plaintiff,

VERIFIED COPY OF ACCOUNT.

ANCHOR MOUNTAIN MINING COMPANY,  
a corporation,

Defendant.

STATE OF SOUTH DAKOTA,  
COUNTY OF LAWRENCE.

THOMAS BOULETTE, being first duly sworn under oath, says: That the following is a true bill of particulars of the Plaintiff's demand in this action, as demanded by you:

"For services, in the capacity of Manager of all of the corporate affairs of said corporation, in connection with its mining operations and its mining properties described in the attached Lien.

For One Hundred and thirty-three (133) months at a stated salary of Three Hundred and no/100 (\$300.00) Dollars per month from May 21, 1927 to June 21, 1938."

Totaling - - - - - \$39,900.00.

Thomas Boulette  
Affiant.

Subscribed and sworn to before me this 19th day of September, 1939.

Thomas D. Barber  
Notary Public.



IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF THE  
STATE OF SOUTH DAKOTA, IN AND FOR LAWRENCE  
COUNTY.

THOMAS HOULETTE, )  
Plaintiff, ( )  
-vs- ( )  
ANCHOR MOUNTAIN MINING COMPANY, )  
a corporation, ( )  
Defendant, ( )

ANSWER AND COUNTER-CLAIM

Comes now the defendant and for its answer to the plaintiffs complaint denies each and every allegation set forth therein except those which are herein after admitted or explained.

I

Defendant admits the allegations set forth in the first paragraph of plaintiffs complaint.

II

Defendant admits the allegations set forth in the second paragraph of plaintiffs complaint.

III

Defendant denies the allegations set for in the third paragraph of plaintiffs complaint and allege the facts to be as follows, that the plaintiff owned and controlled the majority of the stock in said defendant corporation, and was elected president of said corporation and held that office from May 27, 1927 until June 22, 1938.

IV

Defendant denies allegations set for in the sixth paragraph of plaintiffs complaint:

AND BY WAY OF AFFIRMATIVE DEFENSE AND COUNTER-CLAIM DEFENDANT ALLEGES:

I

That the Anchor Mountain Mining Company is a corporation duly existing and doing business under and by statutes of the laws of South Dakota, with its principal place of business located at Deadwood, South Dakota,

## II

That plaintiff has allowed a part of his purported claim against said defendant, to become outlawed, to-wit:

"The purported salary for the years of 1927, 1928, 1929, 1930, 1931, and 1932;"

By reason of the six year Statute of Limitations under the statutes of South Dakota.

## III

That on or about the 30th day of March 1934 said plaintiff signed an agreement whereby he canceled all claims against said company for salary and cancelled all notes held by him for money loaned to the company, and canceled all claims for equipment, supplies, purchased for said company in the amount of fourteen thousand four hundred (\$14,400.00) dollars; said plaintiff further agreed to offer his services for the benefit of the Defendant company without salary until such time ~~that~~ as said defendant corporation was in a position to pay the same.

## IV

That on many occasions said plaintiff, while acting as president of said company, did convert to his own use, and without the consent of the Board of Directors, personal property of said defendant Company, and of which no accounting has been made.

## V

That during the time when said plaintiff was acting as President and manager of said company to-wit: From May 27, 1927 until June 22, 1938; said plaintiff had exclusive control of said defendant company's business and management; that during this time and while under said plaintiff's control and management, the property of said defendant company was allowed to become depleted, lost and stolen; that because of plaintiff's neglect and mismanagement this defendant company has been damaged in the amount of twenty-five thousand (\$25,000.00) dollars.

## VI

That at no time was there ever any salary voted to said

plaintiff except that on February 18, 1933, the Board of Directors including said plaintiff agreed that said plaintiff should receive the sum of three hundred (\$300.00) dollars monthly for past services; which resolution was absolutely void and against public policy.

WHEREFORE defendant prays that plaintiff gain nothing under the complaint filed herein and that the defendant recover from the plaintiff as damages the amount of twenty-five thousand (\$25,000.00) dollars, and for its costs and disbursements in this action.

*Th. H. Ward*  
Attorney for Defendant  
*Th. H. Ward*

State of South Dakota)  
County of Lawrence ) ss.

D. C. Ward, being duly sworn on behalf of the plaintiff corporation in the above-entitled action, says: That he is the president of said corporation; that he has read the foregoing complaint, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

*D. C. Ward*  
President of Plaintiff

Subscribed and sworn to before me this 26 day of Feb.

1938.

*Earl B. Hyman*  
Notary Public in and for the county of Lawrence, State of South Dakota.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF THE  
STATE OF SOUTH DAKOTA, IN AND FOR LAWRENCE COUNTY.

THOMAS BOULETTE,

Plaintiff,

-VS-

ANCHOR MOUNTAIN MINING COMPANY,  
a corporation,

Defendant.

REPLY.

The Plaintiff in reply to the defendant's counter-claim alleges:

First.

Denies all allegations of defendant's counter-claim therein contained except as hereinafter admitted and qualified.

Second.

Admits the allegations of paragraph I. of said counter-claim.

Third.

Further answering paragraph III. of defendant's counter-claim, plaintiff admits that on March 30th, 1934 he signed an agreement whereby he was to cancel all claims for salary to that date and surrender certain notes to the defendant corporation held by him for monies advanced to said company and also to cancel all claims for equipment and supplies purchased for the defendant, aggregating approximately \$14,400, but that the cancellation and surrender of the aforesaid obligations to said defendant corporation and its committee therein named depended entirely and solely upon the fulfillment of subsequent terms and conditions by said defendant corporation and its committee expressed and set forth in said contract, but that the said defendant corporation and its committee wholly and entirely failed to keep and perform any of the covenants imposed upon it and them by the terms of said agreement.

Fourth.

Further answering paragraph V. of defendant's counter-claim, plaintiff admits that he was president and manager of said corporation defendant from May 27, 1927 until June 22, 1929 and that he had control of defendant's corporation's business and management during that period of time, but denies all other allegations therein contained.



WHEREFORE, the plaintiff prays that he be granted the relief asked for in his complaint herein and that the defendant be denied all relief prayed for in its Answer and Counter-Claim, and for such other and further relief as might seem just in the premises.

Francis J. Parker  
Attorney for Plaintiff.

STATE OF SOUTH DAKOTA, )  
COUNTY OF LAWRENCE. ) ss

THOMAS HENLETT, being first duly sworn, says: That he is the above named plaintiff; that he has read the foregoing Reply and knows its contents; that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to such matters he believes it to be true.

Thomas Henlette  
Plaintiff.

Subscribed and sworn to before me this 23rd day of November, 1938.

Francis J. Parker  
Notary Public.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH  
DAKOTA, WITHIN AND FOR THE COUNTY OF LAWRENCE

oooooooooooooooo

THOMAS HOULETTE,

Plaintiff,

- vs -

ANCHOR MOUNTAIN MINING COMPANY,  
a corporation,

Defendant.

FINAL JUDGMENT ON EQUITABLE  
ISSUES AND ORDER TRANSFERRING  
CASE TO LAW CALENDAR.

The above entitled action having been regularly brought on for trial on the 9th day of August, 1939, plaintiff, Thomas Houlette, appearing in person and by his attorney, Francis J. Parker, and the defendant, Anchor Mountain Mining Company, appearing by its president, D. C. Ward, and its attorney, Gale B. Wyman, and it satisfactorily appearing to the Court that the summons and complaint in said action were duly and personally served upon the defendants and filed in the office of the clerk of this court.

And the Court having proceeded to trial of said case and having heard and considered all the evidence adduced by and on behalf of the plaintiff and defendant and having heretofore made and filed its Findings of Fact and Conclusions of Law,

NOW, THEREFORE, on motion of Gale B. Wyman, attorney for defendant, it is, by the Court,

ORDERED, ADJUDGED AND DECREED that the plaintiff in this action is not entitled to equitable relief as prayed in his complaint; that the lien asserted by plaintiff in this action against the property of the defendant is invalid and unenforceable, and that the statement of such lien filed with the clerk of this court on the 27<sup>th</sup> day of July, 1939, is of no legal effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action be, and the same is hereby transferred to the law calendar of this court for trial of the issues at law.

Done and Ordered at Deadwood, Lawrence county, South Dakota, this  
3<sup>rd</sup> day of October, A. D., 1939.

BY THE COURT:

Chas. Hays  
Judge.

ATTEST:

A. M. Lamb  
Clark.  
By Ethel M Phil. deputy

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH  
DAKOTA, WITHIN AND FOR THE COUNTY OF LAWRENCE

\*\*\*\*\*

THOMAS BOULETTE,

Plaintiff,

- vs -

ANCHOR MOUNTAIN MINING COMPANY,  
a corporation,

Defendant.

VERDICT

Ye, the jury, find for the defendant upon all of the issues.

Dated at the city of Deadwood, Lawrence county, South Dakota, this

31 day of January, 1940.

R. W. Knox  
Foreman.

RECEIVED  
JAN 31 1940  
COURT CLERK  
LAWRENCE COUNTY, S. D.