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How The Statute of Uses Became Operative in Colorado With a "Telling" Effect

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Henry Moore Teller, a young member of the Illinois Bar arrived in Colorado Territory in April of 1861, settling at Central City in Gilpin county which was then affectionately referred to as the "Little Kingdom of Gilpin." Mining was the leading industry and a gold-mine stock boom in the winter of 1863 and spring of 1864 made Central City a center of commerce.

Willard Teller soon joined his older brother and the two erected the Teller House at Central City, where the celebrated "Face on the Barroom Floor" may still be seen. Henry Teller was elected to the Senate of the United States in 1876 and was later Secretary of the Interior under President Arthur, while Willard Teller developed the extensive practice of the Teller law firm.

In 1897, Willard Teller was retained by Samuel B. Morgan to prosecute and argue an appeal from an action of ejectment brought in the Federal circuit court for the district of Colorado by the City of Denver and Platt Rogers, as mayor. The defendant, Morgan, traced his title to, and relied upon, a patent from the United States granting to Joseph E. Bates, former mayor of the City of Denver, and to his successors and assigns forever, lands described, including the land in controversy, in trust for the City of Denver. The circuit court had sustained a demurrer to the defendant Morgan's answer setting up such chain of title.

Morgan v. Rogers et al.,[1] came on before the Circuit Court of Appeals of the Eighth Circuit. Willard Teller, appearing for the plaintiff in error, argued that the Statute of Uses (27 Hen. VIII, c. 10) was part of the common law of Colorado, that the use was executed on the delivery of the patent, and that thus both the legal and equitable title to the property passed at once to, and vested in, the City of Denver, as the *cestui que use*. Teller's argument was successful and the judgment was reversed. This was the first case on appeal to invoke the Statute of Uses in Colorado. If *any* lawyer in Colorado should have good reason to remember the Statute of Uses, Willard Teller was that lawyer, and thereby hangs a tale.

Somewhat earlier, in 1887, Ellen R. Seymour and W. G. Pell, owners of certain mining property conveyed the same to the Slide and Spur Gold Mines Company (Limited). In 1889, the company having defaulted in the payment of the purchase price of the property, the vendors, Seymour and Pell, sued in the United States circuit court for the district of Colorado to have decreed a vendor's lien upon the property sold, and in July, 1890, obtained a decree establishing their lien. In September, 1894, the master in chancery sold the property under the decree. On May 11, 1895 he gave a deed which

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[1] *Morgan v. Rogers et al.*, 79 Fed. 577, Circuit Court of Appeals, Eighth Circuit, (1897); error dismissed, 173 U. S. 702, 19 S. Ct. 879, 43 L. Ed. 1185, (1899).

recited that the complainants were allowed in and by the terms of the decree to bid for the property at the sale up to the amount of the decree without paying cash except sufficient to pay costs, and that thereupon Willard Teller bid for the said complainants, *in his name for the use of* the complainants,, and that being the highest bidder, the property was sold to him. The deed then recited:

> "Now therefore I, Adolphus Capron, master in chancery aforesaid, do by these presents grant, bargain, sell and convey unto said Willard Teller, trustee, and to his heirs and assigns forever the said real estate * * * to have and to hold to the said Willard Teller, trustee, for his heirs and assigns forever."

Why title was taken by Willard Teller as trustee for Seymour and Pell was soon apparent when three days after the deed was recorded, May 13, 1895, David Hill recovered a judgment against Seymour and Pell *et al.*, and a transcript thereof was filed in the office of the clerk of the county of Boulder wherein the property was situate. In April, 1895, Hill sued to subject the mining property held by Teller, trustee, to the judgment of Hill and to have his judgment declared a prior lien to any claim of Teller. Hill received a judgment awarding the relief prayed for and Teller appealed. Willard Teller was represented in his appeal by his elder brother, Senator Henry M. Teller (who had also been his partner when *Morgan v. Rogers, supra,* was decided) and by the youngest brother, James H. Teller.

Hill's position was that the Statute of Uses executed the legal estate conveyed to Teller and united both the legal and equitable estate in Seymour and Pell. The estate thus created, Hill contended, was subject by operation of law to a lien in Hill and such lien was superior to any secret lien between Teller and the benficiaries under the master's deed.

Teller *denied* that the Statute of Uses was in force in Colorado! He also contended that if it was, the statute did not operate, as the trust was an active one, and further that the firm of Teller & Orahood had an attorney's lien upon the estate created by the master, superior to the lien created by Hill's transcript of judgment.

The Colorado Supreme Court held, *Teller v. Hill*,[2] that the trust was a passive one, upon which the Statute of Uses would operate and that a judgment lien was superior to an attorney's lien in favor of the trustee of which the judgment creditor had no notice. As to the crucial issue of whether the Statute of Uses was in force in Colorado, the court simply said:

> "That the Statute of Uses was one of the statutes so adopted by this commonwealth, was ruled in *Morgan v. Rogers* (Cir. Ct. App., 8 Cir.), 79 Fed. 577. No authority is cited to the contrary."

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[2] *Teller v. Hill*, 18 Colo. App. 509, 72 Pac. 811 (1903). The rule of law laid down in this case is now subject to the qualification imposed by statute (C.S.A., 1935, c. 40, sec. 9) requiring (1) a designation of the beneficiary and (2) that the trust either be defined or that there be a reference to some instrument of record which recites the terms of the trust.