

"Big Charlie," and indicates there was a change in the arrangement in consequence of what Dal. Smith had said, and that the respondent had determined to abandon the intention which they had of letting "Big Charlie" go, and had decided to go on with the work on it. It seems to me that that is all susceptible of explanation, and is consistent with the arrangement having been that the respondent was left to determine when, if at all, the work on "Big Charlie" was to go on, and that the cheques were left with the respondent in order to provide funds for doing this work if it should be decided to go on with it.

I do not see why, if the appellants' story is true, these cheques were made payable to John A. Labine. This had not been the arrangement, and one would have to imagine, and that was a suggestion of the learned counsel for the appellants, if it were not so, that at that moment it entered into the mind of the respondent to cheat the appellants out of their interest in any Night Hawk Lake property he might acquire, and to adopt the plan of making out the cheques payable to the brother, John A., and of going on with the work on "Big Charlie," in order to give colour to the contention which the respondent makes as to the purpose for which the cheques were given.

I think that is altogether too far-fetched an assumption, and that at the most all that can be said as to the cheque transaction is that, the respondent's position in the matter is not very satisfactorily explained.

But there are circumstances on the other side, and evidence which make it impossible for the learned trial Judge to believe, and make it impossible for me to believe, the story which the appellants told.

The interest in the Night Hawk Lake claim was sold for \$300,000. Of that purchase money, the respondent was entitled to receive \$75,000, and that sum ought to have been divided between him and the appellants, if their story is true.

After a large part of the purchase money had been paid, these appellants who say that they were entitled to a third interest in this claim, borrowed from the respondent, at one time \$1,000, at another time \$100, and at another time \$100; these sums being loaned to Gilbert Labine: and Charles Labine, the other appellant, borrowed from the respondent