

1953

# State of Utah et al v. Cooperative Security Corporation of Church of Jesus Christ of Latter Day Saints et al : Brief of Appellants

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Arthur Woolley; Attorney for Defendants and Appellants;

---

## Recommended Citation

Brief of Appellant, *State v. Cooperative Security Corporation of Church of Jesus Christ of Latter Day Saints*, No. 8016 (Utah Supreme Court, 1953).

[https://digitalcommons.law.byu.edu/uofu\\_sc1/2005](https://digitalcommons.law.byu.edu/uofu_sc1/2005)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

IN THE  
**SUPREME COURT**  
OF THE  
**State of Utah**

**FILED**  
JUL 21 1953  
Clerk, Supreme Court, Utah

STATE OF UTAH, by and through  
its ROAD COMMISSION, D. H.  
WHITTENBURG, Chairman, H. J.  
CORLEISSEN and LAYTON MAX-  
FIELD, Members of the State Road  
Commission,

Plaintiff and Respondent,

vs.

COOPERATIVE SECURITY COR-  
PORATION OF CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS, a non-profit corporation of  
the State of Utah, and WASATCH  
STAKE OF CHURCH OF JESUS  
CHRIST OF LATTER-DAY  
SAINTS, H. CLAY CUMMINGS,  
Trustee, and President of Wasatch  
Stake, a corporation sole of the State  
of Utah,

No. 8016 Civil

Defendants and Appellants.

---

**BRIEF OF APPELLANTS**

---

ARTHUR WOOLLEY,  
*Attorney for*  
*Defendants and Appellants.*

# TABLE OF CONTENTS

	Page
STATEMENT OF FACTS .....	1
STATEMENT OF POINTS .....	4
POINT I. The judgment does not substantially comply with the mandate and decision of the Supreme Court .....	4
POINT II. The award was not arrived at in accordance with the ruling of the Supreme Court in the case .....	4
POINT III. The award does not conform to the proof in the case .....	4
POINT IV. The judgment does not award just compensation to defendants .....	4
POINT V. The judgment is against law .....	4
ARGUMENT .....	5
POINT I .....	5
POINT II .....	7
POINT III .....	8
POINT IV .....	11
POINT V .....	12
CASE .....	1
State, by and through Road Commission, et al, v. Cooperative Securities Corporation, etc. — U — 247 P (2d) 209 .....	1

IN THE  
**SUPREME COURT**  
OF THE  
**State of Utah**

STATE OF UTAH, by and through  
its ROAD COMMISSION, D. H.  
WHITTENBURG, Chairman, H. J.  
CORLEISSEN and LAYTON MAX-  
FIELD, Members of the State Road  
Commission,

Plaintiff and Respondent,

vs.

COOPERATIVE SECURITY COR-  
PORATION OF CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS, a non-profit corporation of  
the State of Utah, and WASATCH  
STAKE OF CHURCH OF JESUS  
CHRIST OF LATTER-DAY  
SAINTS, H. CLAY CUMMINGS,  
Trustee, and President of Wasatch  
Stake, a corporation sole of the State  
of Utah,

No. 8016 Civil

---

**BRIEF OF APPELLANTS**

---

**STATEMENT OF FACTS**

This appeal is taken from the Judgment fixing the compensation to the owner upon condemnation, made and entered April 10, 1953, in the District Court of Wasatch

County, State of Utah, by the Honorable Joseph E. Nelson, one of the Judges of said Court, sitting without a jury, after and in purported pursuance of the reversal by this Honorable Supreme Court of the judgment, made and entered after trial before the same Judge in the cause, without a jury, and appealed to this Supreme Court by the plaintiff, State Road Commission. A motion for a re-hearing of the decision in this court was made and denied.

State, by and through Road Commission, et al,

vs.

Cooperative Securities Corporation, etc.

— U —

247 P (2d) 209

After the remittiture had come down, Judge Nelson notified counsel for the parties to appear before him in the District Court of Wasatch County on March 13, 1953, and the Court calendar for that date noticed the said cause, "To be set for trial."

Mr. Budge, Deputy Attorney General for the Road Commission, and Arthur Woolley, for the defendants (Mr. L. C. Montgomery of Heber City having recently died), appeared before the Court at the time fixed.

The reporter did not report the proceedings before the Court at that time. The Attorney General had prepared a proposed Order and Judgment which he handed up to the Court, and which is the same Order and Judgment now appealed from.

Counsel for the defendants contended that pursuant to the mandate of the Supreme Court stated in the decision on appeal, it was "necessary for the Court to re-

assess the damage for the taking on a basis of the replacement cost, as well as to assess damages, if any, to the two small tracts which were severed."

The amounts stated in the form of judgment handed up by the Attorney General and adopted by the Court were calculated as follows: The area of the two small tracts was multiplied by \$400.00, and the sum divided by two, that is to say that these tracts were worth \$400.00 per acre and damaged 50% by the severance. The area taken, viz: 7.89 acres was multiplied by \$400.00, and this amount in dollars was added to the damage to the small tracts, and this is the sum and amount carried forward into the judgment.

Defendants' counsel contended that pursuant to the mandate of the Supreme Court, it was the duty of the Judge to determine the number of acres of land remaining to Berg, and adjacent to the land of the Church, which, according to and by comparison with the land of the Church taken in the condemnation, would be necessary to replace the 7.89 acres of land of the Church condemned, and that this number of Berg acres should be multiplied by \$400.00, the price fixed by Berg for his acres, and that this figure would be the replacement cost.

The Court thereupon set the matter down for March 27, 1953, at Heber City, when, his Honor stated, he would either sign the form of judgment presented by the Attorney General, or enter an order that a hearing be had, and further stated that if he should decide to have a hearing to assess the damages, the matter would be heard on May 4, 1953, at Heber City.

The Deputy Attorney General and counsel for the defendants appeared to attend the Court at Heber City

on March 27th. We were informed that Judge Nelson was ill, and was not able to appear. The matter did not come on.

Thereafter, and without further notice to counsel, and under date of April 10, 1953, in open Court at Heber City, according to the record, Judge Nelson signed the form of Order and Judgment as presented to him by the Attorney General on March 13, as aforesaid, and the judgment was entered by the clerk. Neither party was represented at that session, and the defendants, at least, were not notified.

This appeal is taken from this judgment so made and entered.

## STATEMENT OF POINTS

### POINT I

THE JUDGMENT DOES NOT SUBSTANTIALLY COMPLY WITH THE DECISION AND MANDATE OF THE SUPREME COURT.

### POINT II

THE AWARD WAS NOT ARRIVED AT IN ACCORDANCE WITH THE RULING OF THE SUPREME COURT IN THE CASE.

### POINT III

THE AWARD DOES NOT CONFORM TO THE PROOF IN THE CASE.

### POINT IV

THE JUDGMENT DOES NOT AWARD JUST COMPENSATION TO DEFENDANTS.

### POINT V

THE JUDGMENT IS AGAINST LAW.

## ARGUMENT

### POINT I

#### THE JUDGMENT DOES NOT SUBSTANTIALLY COMPLY WITH THE DECISION AND MANDATE OF THE SUPREME COURT.

The judgment now appealed from finds:

“That the replacement value of the seven and eighty-nine hundredth acres (7.89) of the land of defendants taken by plaintiff for the purpose of right-of-way, was, on February 16, 1950, four hundred dollars per acre — that, therefore, defendants are entitled to judgment against plaintiff in the following amounts:

Value of land taken	\$3,156.00
(7.89 acres at \$400.00 per acre)	
Damage to land not taken by reason of severance	734.63
(4.49 acres at 50% of \$400.00 per acre)	_____
TOTAL	\$3,890.63”

Thus, it is manifest that the Court did not consider, or pass upon, or determine the comparative value of the land taken from the Church farm with the adjacent land of Berg, which would remain to him after part of his land was taken by the same highway improvement.

Mr. Justice Wade, in the opinion of the Court on the appeal, pointed out that whereas the land to the east of the Church property had been valued by Berg at \$400.00 an acre, it might be determined that it would take more than 7.89 acres of Berg's land to equal, in value, the 7.89 acres of land taken from the Church, and Justice Wade



further commented that even though under the application of this formula it would have taken the entire 15.3 acres (the total of Berg's land) to replace the 7.89 acres condemned, the amount would be much less than that granted by the Court, and therefore, the Supreme Court could not assume that the trial Court based its severance damages on the amount it would have cost respondents to replace the condemned land, which was a proper element in determining the value of the condemned land.

It is accepted as the rule of this case that there was no basis for severance damages as such, but that the replacement cost should be the measure of damages.

And it was and is the ruling of this Honorable Court in this case, and the mandate handed down to the trial Court, that,

“It becomes necessary for the court to reassess the damage for the taking, on a basis of the replacement cost \* \* \* .”

The formula for computation of the amount of the award under this ruling, we submit, was not followed by Judge Nelson in the judgment here now appealed from.

We submit that it is the rule and law of this case that, as to the land taken, it was, and is the duty of the trial Judge to first factually determine that there existed, at the time of the commencement of the action, comparable land available, and how many acres of that land it would require considering its quality and location in comparison with the land of the Church being condemned. This requires an appraisalment of the land remaining to Berg, and what its relative productive value was compared to the Church land taken.

The price of \$400.00 per acre was fixed by Berg upon all of his 15 plus acres. What the Attorney General has done, and what the trial Court has seemingly assumed, is that, acre for acre, the Berg land, which he offered, was of equal value in all respects for dairy purposes as that taken from the Church farm. The evidence in the case did not support this conclusion, and it was definitely not the holding of this Honorable Supreme Court that such was the case. The quoted portion of the opinion clearly indicates, we submit, that this Honorable Court had in mind the disparity between the worth of the Berg land, and the worth of the Church land.

The formula adopted by Judge Nelson simply totally ignores the matter of replacement and restoration of economic balance of the farm, but adopts the single element: namely, the acre value in place of the land taken.

## POINT II

### THE AWARD WAS NOT ARRIVED AT IN ACCORDANCE WITH THE RULING OF THE SUPREME COURT IN THE CASE.

The law of this case is that it is "necessary for the Court to reassess the damage for the taking, on the basis of the replacement cost." In order to arrive at the amount of damage, it is necessary for the Court to first determine the quality of the available land offered for replacement, acre for acre. This fact has not been found, either at the trial of the case, nor by this Honorable Supreme Court, nor by Judge Nelson since. It is true that Judge Nelson, in his original decision, gave the in place value of \$325.00 per acre to the 7.89 acres taken, whereas in the judgment tendered him by the Attorney General, \$400.00 is assigned as the per acre value of this

same 7.89 acres of land taken. The adoption of the Attorney General's figure did not change the "arbitrariness."

If, as suggested by Mr. Justice Wade, it might require the entire 15.3 acres of Berg's land to replace the 7.89 acres of the Church land taken, we would be entitled to a judgment for \$6,120.00 for the land taken, because \$400.00 per acre was the price Berg fixed for all of his land that he offered. There is, accordingly, still at least \$2,964.00 of margin over and above the decision from which this appeal is taken, and still within the formula of the Supreme Court in the case, as to which defendants are entitled to a "judicial" determination.

### POINT III

#### THE AWARD DOES NOT CONFORM TO THE PROOF IN THE CASE.

The situation affecting the Berg property was not fully explored at the former trial. Some testimony was given concerning the nature of the Berg land and its value in comparison with the Church land taken. Some objections were sustained to evidence to its use and value, that is to say, its comparative value as against the Church land.

In our Brief on the Motion for Re-hearing, we attempted to secure from this Honorable Supreme Court, a clarification of the opinion as handed down by the main opinion written by Mr. Justice Wade, and the brief concurring opinion by Mr. Justice Wolfe. We suggested that the imprecisions in the opinion might cause difficulty. We asked these questions:

"Does it require or permit a new trial?"

“May either party, if so minded, produce additional evidence upon the question of comparability?”

“Or new or additional evidence upon the question of the in place value of the land taken?”

“And generally, just how is the trial Court to proceed to reassess the damages for the property on a basis of the replacement cost as well as to assess damages, if any, to the two small tracts which are severed?”

“And, does the court mean to hold that there is not a severance damage to the meadow south of the new highway? If not, upon what theory, pray?”

Each of these questions is now here again.

First, was a new trial, or re-hearing, or the taking of additional evidence necessary or permissible?

And, what was the formula that this Honorable Supreme Court would have the trial Judge apply in farm land cases for assessing damages?

Surely, the law is not that the Attorney General may write a judgment and have it adopted *laissez faire*.

The law does not justify arbitrary judgment, even though it may favor one side or the other. Judgment, to be lawful, must be based upon full knowledge and impartial weighing of all pertinent facts.

Having several times driven the highway involved in this case and seen the land in place which is involved in this appeal, and having heard the evidence taken at the trial, we adopt the suggestion made by Mr. Justice Wade that it might take all of the 15 and a fraction Berg

It is at least the hope of the subject that, upon the facts to be found under the new formula, a larger measure will be required to hold the just compensation in this cause than the one carried to Court by the state's Attorney General.

## POINT V

### THE JUDGMENT IS AGAINST LAW.

The cornerstone of American Justice is the right to an open trial and judgment rendered by the trier of the facts, freely and fairly presented to the judge or jury.

Such a trial has not been had in this case under the rule of the case prescribed by the Supreme Court.

A "reassessment" without hearing "facts" which were not offered or which were excluded at the former trial because not pertinent, as the Judge then considered, is not a fair trial, and a judgment so rendered is not a lawful judgment.

Respectfully submitted,

ARTHUR WOOLLEY,  
*Attorney for*  
*Defendants and Respondents*  
617 Eccles Bldg., Ogden, Utah