

1954

William B. Mason v. Wayne N. Mason : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: 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.

Young, Thatcher & Glasmann; Attorneys for Appellant;

Recommended Citation

Brief of Appellant, *Mason v. Mason*, No. 8198 (Utah Supreme Court, 1954).
https://digitalcommons.law.byu.edu/uofu_sc1/2220

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.

8198

**IN THE SUPREME COURT
OF THE STATE OF UTAH**

WILLIAM B. MASON,
Plaintiff and Respondent,

vs.

WAYNE N. MASON,
Defendant and Appellant.

FILED

NOV 26 1954

APPELLANT'S BRIEF

Clerk, Supreme Court, Utah

**Appeal from the District Court of
Box Elder County, Utah
HONORABLE JOHN A. HENDRICKS, *District Judge***

YOUNG, THATCHER & GLASMANN,
Attorneys for Appellant

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	4
Point 1. Did the District Court have jurisdiction in this case?.....	4
Point 2. If a District Court does have jurisdiction, what is the scope of the review?.....	5
Point 3. In any event, a court should not set aside a decision of the Department of Interior, unless it appears from the record made on appeal to the Department of the Interior that said department either:	
A. Committed an abuse of discretion; or	
B. Misinterpreted and misconstrued the law	5
Point 4. That the evidence presented in this case does not support the Findings, Conclusion of Law and Decree that the defendant holds title in trust to the three isolated tracts of land.....	5
ARGUMENT	5
Point 1.	5
Point 2.	7
Point 3.	9
Point 4.	14
CONCLUSION	16

AUTHORITIES CITED

Court Decisions

Page

Amirikon vs. United States U. S. District Court of Maryland 100 F. Supp. 263	10 and 14
Davis vs. Fell 211 Pac. 30	6
DeMille vs. Los Angeles County 77 P. 2nd, 905	13
Friedman vs. Schwellenback U. S. Court of Appeals, District of Columbia.....	10
Jamieson vs. James 100 Pac. 700	10
Johnson vs. Riddle 240 U. S. 467	10
Los Angeles County vs. Ransohoff 74 P. 2nd, 828	13
Maddox vs. Burnham 156 U. S. 544	6 and 13
Martin vs. Bartmus Cal. 207 Pac. 550.....	6
Peck vs. Greyhound Corporation 93 F. Supp. 679	14
Ruberoid Company vs. Federal Trade Commission 96 Law Edition, 732	10
Sanders vs. Dutcher Cal. 187 Pac. 51 - 187 Pac. 51.....	6

	Page
Script Howard Radio, Inc. vs. Federal Communications Comm. 316 U. S. 4	10
United States vs. Church of Jesus Christ of Latter Day Saints 101 F. 2nd, 156	10
United States vs. Federal Maritime Board 96 Law Ed. 390	10
United States vs. McIntosh Utah, 85 Fed. 333	6
Wells Fargo and Company vs. State Board 56 Cal. 194	13

TEXTS

Words & Phrases, Vol, 15.....	13
Words & Phrases, Vol. 14A	13

RULES AND STATUTES CITED

43 CFR 250. 11 (b) (3).....	8, 11 & 12
Revised Statutes, as amended Sec. 2455 - 42 U. S. C. 1946 Ed. Suppl. 4 Sec. 1171	1 and 3
Revised Statutes 43 U. S. C. 1201.....	3 and 4
245 Revised Statutes, as amended.....	11

IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM B. MASON,
Plaintiff and Respondent,

vs.

WAYNE N. MASON,
Defendant and Appellant.

APPELLANT'S BRIEF

STATEMENT OF FACTS

The following facts are admitted by both parties: The government of the United States was the owner of a single unit of land located near the foothills of the Wasatch Range near Plymouth, Box Elder County, Utah which was composed of thirteen subdivisions aggregating 540.16 acres. Under the authority of Section 2455 of the Revised Statutes, as amended (43 USC, 1946 Ed. Supp. 4, Section 1171) the government offered this land for public sale. The sale was held on September 28, 1949 and defendant purchased the entire tract. Within the time allowed by law, plaintiff who claimed to be the owner of contiguous lands, and defendant, who also claimed to be the owner of contiguous lands, both assert-

ed preferential right to purchase this isolated tract. As the preference right claimants, plaintiff and defendant failing to agree respecting the division of the isolated tract between them, the matter was referred to the regional administrator of the Colorado-Utah region, Bureau of Land Management. On April 10, 1950 he determined that defendant should be permitted to purchase the one subdivision (the Southeast Quarter, Northwest Quarter of Section 35, Township 14 North, Range 3 West, Salt Lake Meridian) of the isolated tract to which his privately owned land is contiguous and that plaintiff should be permitted to purchase the twelve other subdivisions of the isolated tract. Upon the basis of the region administrator's determination, the manager of the land and survey office at Salt Lake City, on April 13, 1950, issued a formal decision apportioning the isolated tract between the preference rights claimants in the twelve and one manner indicated by the regional administrator. Both of the preference rights claimants thereupon took appeals to the director of the Bureau of Land Management. Plaintiff contended that the entire isolated tract should have been apportioned to him. Defendant contended that at least one half of the isolated tract should have been apportioned to him. On September 12, 1950 the assistant director of the Bureau of Land Management affirmed the apportionment of the tract previously made by the manager pursuant to the regional administrator's determination. Defendant then appealed to the Secretary of the Interior. Plaintiff did not take a further appeal, although he was served with a copy of defendant's appeal, and he filed no response thereto.

On April 2, 1952, the Secretary of the Interior, by Masten G. White, Solicitor, handed down a decision reversing the two previous decisions and holding that under Section 2455 of the revised statutes as amended, the isolated tract should be divided between the respective parties on the following basis: Six of said subdivisions to defendant and seven to plaintiff and pursuant thereto, the United States, on the 5th day of December, 1952, issued its patent to the defendant to the six subdivisions described as Lots 1, 2, 3, 4, 5 and the Southeast Quarter of the Northwest Quarter of Section 35, all in Township 14 North, Range 3 West, Salt Lake Meridian, and likewise, issued a patent to the plaintiff to the remaining seven subdivisions of the isolated tract. No appeal or writ of review of any kind was taken by plaintiff to review the decision of the Secretary of the Interior. In support of the foregoing facts, see Plaintiff's Exhibit No. 10; Defendant's Exhibit No. 8 and Findings numbered 1, 2, 3, 4 and 5. The court by its Conclusion of Law No. 1, found that both plaintiff and defendant held preferential rights to purchase the isolated tracts offered by the government under the provisions of Section 2455, Revised Statutes, as amended, (43 USCA, 1171).

Notwithstanding the decision entered by the Department of the Interior, the court proceeded to take evidence for the purpose apparently of determining whether or not the decision of the Secretary of the Interior should be affirmed and after the hearing, upon the evidence submitted by both sides, the trial court, in its Finding No. 8, found from the evidence presented in court that it was not equitable within the meaning of the statute, (43

USC, 1201), to apportion, under the facts of this case, the lands to be sold on an equal basis and the trial court determined that an equitable division would require the awarding to plaintiff all of the entire tract, except only Lots 4 and 5, and the Southeast Quarter of the Northwest Quarter of Section 35. See Finding No. 8. And as a conclusion of law, the court found that the Department of Interior erroneously interpreted the statute and the court thereupon found as a Conclusion of Law that the defendant holds in trust for the plaintiff three of the Forty-acre tracts which should have been equitably allocated and awarded to plaintiff. See Conclusions of Law No. 2 and No. 4. The court thereupon entered its decree in equity ordering the defendant, upon being reimbursed for the costs of the lands in question, to convey to the plaintiff the additional tracts of land.

The result arrived at then is as follows: Out of the thirteen original isolated tracts, the Secretary of the Interior awarded plaintiff seven. Of the six remaining, the court awarded plaintiff three more, which in effect gave plaintiff ten of the isolated forty-acre tracts and the defendant three. The defendant appeals from this decision, contending that this decision, under the facts and the law, is erroneous and that the defendant should be entitled to be decreed the six isolated tracts which were awarded to him by the Secretary of the Interior.

STATEMENT OF POINTS

Point 1. Did the District Court have jurisdiction in this case?

Point 2. If a District Court does have jurisdiction, what is the scope of the review?

Point 3. In any event, a court should not set aside a decision of the Department of Interior, unless it appears from the record made on appeal to the Department of the Interior that said department either:

A. Committed an abuse of discretion; or

B. Misinterpreted and misconstrued the law.

Point 4. That the evidence presented in this case does not support the Findings, Conclusion of Law and Decree that the defendant holds title in trust to the three isolated tracts of land.

We shall discuss these questions in the order suggested in the foregoing statement of points:

ARGUMENT

Point 1. DID THE DISTRICT COURT HAVE JURISDICTION IN THIS CASE? As heretofore noted, the plaintiff did not appeal from the decision of the Department of the Interior. On the contrary, he stood idly by until after the patent to the tracts in question had been issued by the government and then he commenced this suit in the District Court seeking to impress a trust upon this property. It makes little difference what you call this proceeding. After all, it is in the nature of an appeal from the decision of the Secretary of the Interior on matters relating to public lands; or, if it is not an appeal, it is an attempted collateral attack on the final decision of the land department. I know of no federal statute

which vests in state courts jurisdiction to hear or determine appeals from the decision of the Department of the Interior. I recognize that there are cases which hold that where a citizen goes upon the public domain, takes possession of the property, puts improvements thereupon and thereby obtains an equitable interest in the property that an action may lie in the state court to impress the property with a trust. In this case, however, plaintiff was never in possession of the property. He placed no improvements thereon and the question presented to the Department of the Interior was how to divide the isolated tract equitably between two contiguous land owners. The Secretary of the Interior made that division as he was required to do under the law and we contend that having made such a decision in the absence of fraud, and in the absence of an appeal through the proper channels to the proper court, that the decision of the Secretary of the Interior is final and binding upon the court.

We think the following cases support our position:

Maddox vs. Burnham, 156 U.S. 544;

Sanders vs. Dutcher, Cal. 187 Pac. 51 - 187 Pac. 51
Davis vs. Fell, 211 Pac. 30;

U. S. vs. McIntosh, Utah, 85 Fed. 333;

Martin vs. Bartmus, Cal. 207 Pac. 550.

Appellant filed a motion to dismiss the complaint. All of the matters are sufficiently covered by the allegations of the complaint, to which are attached the various exhibits including the decision of the Department of Interior, so that the matter was squarely presented to the

court. Objections were also raised to the introduction of evidence so that the issue is squarely presented to this court as to whether or not, under the facts alleged, this complaint stated a cause of action or whether or not the District Court had jurisdiction to review the decision as rendered, which in effect is what the plaintiff was asking the court to do.

Point 2. IF THE DISTRICT COURT DOES HAVE JURISDICTION, WHAT IS THE SCOPE OF THE REVIEW? If the court did have jurisdiction to hear this matter, and if the complaint does state a cause of action, then the next question to be determined is this: What was the scope of the inquiry which could be made by the District Court? We contend that the only question which the District Court could determine *was whether or not on the record which was filed with the Department of the Interior, the ruling of the Department of the Interior was erroneous*. We quote from the decision:

“The record in this case does not reveal any persuasive reason for departing from the ordinary rule of apportioning subdivisions among preference right claimants on the basis of equality as far as possible.”

Further on we again quote from the decision wherein it discusses the evidence which was presented at the various hearings:

“There was no indication in the determination, however, regarding the relationship between the apportionment provided for in it and the nature of the isolated tract or the use each applicant makes of his own lands together with the land

in the isolated tract; and the record does not contain any supplementary reports or other written data tending to explain why these particular factors were regarded as sufficient to warrant a departure in the present case from the ordinary rule prescribed in 43 CFR 250.11 (b) (3)."

The decision then proceeds to analyze the other factor as revealed by the record with regard to the difference in the amount of land owned by plaintiff and defendant and the decision then says:

"However, the fact that William B. Mason owns a substantially greater acreage of contiguous land than Wayne N. Mason does not, ipso facto, take this case outside the ordinary rule of equal apportionment as far as possible * * * *In this connection, it is to be noted that neither section 2455 of the Revised Statutes nor the pertinent departmental regulation mentions the degree of contiguity as a factor affecting the apportionment of an isolated tract among competing preference right claimants.*"

In the trial of this case before the District Court, the plaintiff, over the objection of the defendant, was permitted to testify at some length as to matters which were clearly outside the record as presented to the Department of Interior and he attempted to supply evidence which was clearly absent from the record presented to the Department of Interior. As we understand it, the scope of the inquiry contended for by plaintiff is a judicial determination of whether or not the Secretary of the Interior misconstrued the facts and made an erroneous division of the tract. It is difficult for us to understand how the court could receive and consider

evidence which was never presented to the Department of the Interior in an attempt to prove that the Department of the Interior erroneously construed facts which were never presented to him. We contend, therefore, that if the court did have jurisdiction and if the complaint does state a cause of action, yet the court in examining the matter should be limited to considering the record as actually presented to the Department of the Interior and not be permitted to offer evidence beyond the record when the scope of the inquiry is limited to the question of whether or not the Department of Interior misconceived the facts as presented to him.

Point 3. IN ANY EVENT, A COURT SHOULD NOT SET ASIDE A DECISION OF THE DEPARTMENT OF INTERIOR, UNLESS IT APPEARS FROM THE RECORD MADE ON APPEAL TO THE DEPARTMENT OF THE INTERIOR THAT SAID DEPARTMENT EITHER:

A. COMMITTED AN ABUSE OF DISCRETION;
OR

B. MISINTERPRETED AND MISCONSTRUED
THE LAW.

It is universally held that,

“In case of contest the finding of fact by the Commission of Inspector examined on final appeal by the Secretary of the Interior are binding upon the courts in the absence of gross mistake or fraud and the judicial inquiry is limited to determining whether it is clear error of law that resulted in awarding the right of purchase and ultimately issuing the patent to the wrong party.”

Johnson vs. Riddle, 240 U.S. 467 ;

United States vs. Church of Jesus Christ of
Latter Day Saints, 101 F. 2nd, 156 ;

Ruberoid Company vs. Federal Trade Com-
mission, 96 Law Edition, 732 ;

Script Howard Radio, Inc., vs. Federal Com-
munications Comm., 316 U.S. 4 ;

Jamieson vs. James, 100 Pac. 700 ;

Friedman vs. Schwellenback, U.S. Court of
Appeals, District of Columbia ;

United States vs. Federal Maritime Board
96 Law Ed., 390.

It is also established that,

“long continued administrative interpretations of
law is entitled to great weight.”

Amirikon vs. United States, U.S. District Ct.
of Maryland, 100 F. Suppl. 263.

In the opinion and order of the Secretary of the
Interior, we find the following :

“The basic departmental policy expressed in the
second sentence of this portion of the regulation
is that the subdivisions included in an isolated
tract are ordinarily to be divided equally among
competing preference right claimants, if this is
possible in view of the number of subdivisions
and the number of such claimants ; and that where
an equal apportionment cannot be accomplished
because of an odd number of subdivisions in rela-
tion to the number of preference right claimants,
the apportionment shall be as close as possible to
the standard of equality.”

In other words, at the time that this decision was rendered on April 2, 1952, the policy of the Department of Interior for a long time previous thereto had been to apportion the isolated tracts equally if possible between abutting owners. That policy was followed in this case and the odd tract was given to the plaintiff because he initiated the claim to a preferential right at the time this decision was made. See,

245 Revised Statutes, as amended.

“It shall be lawful for the Secretary of the Interior to order into market and to sell at public auction any isolated or disconnected tract or parcel of the public domain, not exceeding 1520 acres, which in his judgment it would be proper to expose for sale, provided that for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price and where two or more persons apply to exercise such preference right, the Secretary of the Interior is authorized *to make an equitable division of the land among such applicants.*”

It is to be noted that a fair degree of discretion is vested in the Secretary of the Interior in first ordering the land to be sold and secondly in making a division of the land among owners of contiguous land. At the time of this decision, the foregoing statutory provision was implemented by the following relevant portion of 43 CFR 250.11 (b) (3) :

“Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed thirty days from receipt of

notice within which to agree among themselves upon a division of the tracts in conflict by subdivisions. In the absence of an agreement the regional administrator will make a determination equitably apportioning the various subdivisions among the claimants, *ordinarily so as to equalize as nearly as possible the tracts they should be permitted to purchase.* * * *

It seems to us that the foregoing language can mean nothing else except that in case of two or more claimants desiring to purchase it was the declared policy of the department to divide equally as nearly as possible the tracts of land each should be permitted to purchase, *irrespective of the amount of land each contiguous owner might own in his own right.*

Counsel relies upon Title 43, Chapter 1, Sec. 250.11 (b) (3) as now amended. This was amended on June 4, 1953, more than a year after the decision in question was rendered. As now amended, the foregoing statute adds the following pertinent provisions:

“In the absence of an agreement, an equitable division of the land will be made, taking into consideration such factors as:

- “1. The equalizing of the number of acres which each claimant will be permitted to purchase,
- “2. Desirable land use based on topography land pattern location of water and similar factors; and
- “3. Legitimate historical use including construction and maintenance of authorized improvements,

if considerations dictate all of the subdivisions may be awarded to one of the claimants.”

It is well established that a subsequent law passed after the rights had accrued and the legal title had passed is not operative to divest such legal or enlarge as against such title any equitable rights which the defendant thereafter had.

Maddox vs. Burnham, 156 U.S. 544.

This question must be decided on the law as it existed at the time of the decision supplemented by rules of interpretation adopted by the department and in long use. The key words governing the duty of the department as defined in the act itself are:

“equitably apportioning and to equalize as nearly as possible the tracts.”

The word “equitably” has been defined to mean fairly, justly and impartially. See,

Words and Phrases, Vol. 15, Pages 3, 4, and 5,
and cases cited.

The key word in the statute “equalize” as defined in,

Words and Phrases, Vol. 14A, Page 439.
is as follows:

“To make equal. To cause to correspond or be like in amount or degree as compared with something.”

See the following cases:

Los Angeles County vs. Ransohoff, 74 P. 2nd, 828
DeMille vs. Los Angeles County, 77 P. 2nd, 905;
Wells Fargo and Company vs. State Board, 56
Cal. 194.

It would seem, therefore, that the duty imposed upon

the department was to divide these tracts equally among the preference claimants in a manner that was fair, just and impartial but leaving the procedure in affecting this equitable settlement to the discretion of the department. It is further noted that in the opinion of the department it is stated that it is the basic policy of the department which is being carried out. From this it would seem to be an interpretation of the statute of long standing. If such is true, if the courts have any right at all, they should be very careful in substituting their own interpretation of the statute for that of the administrative agency. See,

Amirikon vs. United States, U.S. District Court of Maryland, 100 F. Suppl. 263;

Peck vs. Greyhound Corporation, 93 F. Suppl. 679. We say, therefore, that the apportionment as made by the department was both fair and equitable in light of the interpretation and policy adopted by the department under the statute.

Point 4. THAT THE EVIDENCE PRESENTED IN THIS CASE DOES NOT SUPPORT THE FINDINGS, CONCLUSION OF LAW AND DECREE THAT THE DEFENDANT HOLDS TITLE IN TRUST TO THE THREE ISOLATED TRACTS OF LAND. Finally, we contend that even though the court was right in permitting the plaintiff to introduce evidence concerning the matters covered by the testimony, yet under this evidence the decision of the lower court is manifestly erroneous. We contend first that the number of acres owned by each contiguous owner is of no importance whatsoever. The whole policy of the homestead law from

its inception was to provide a method whereby citizens could acquire land on the public domain. It was never the policy to prefer or even encourage the acquisition of large tracts of land by one person. If the number of acres owned by each is controlling, then the bigger the company's or individual holdings would determine his or its rights to gobble up the public domain and squeeze the little fellow out completely. The evidence in this case shows that some years ago the defendant filed a homestead on this land and it was his bona fide intention to homestead the same. He erected fences within the area. In addition to this the defendant has the right to graze twenty seven head of cattle on the national forest. These isolated tracts adjoin this national forest and the isolated tracts are valuable for early Spring and late Fall grazing before cattle can be turned on the national forest. The plaintiff owns no rights whatsoever in the national forest. The defendant has for many years leased Section 36 from the State of Utah and the State of Utah has now announced that it intended to offer this section of land for sale. Defendant will thereby be given an option equal to that of plaintiff to purchase this section which adjoins the national forest on the south and the isolated tracts on the east. See Plaintiff's Exhibit 6. It is difficult for us to see how it can be contended that the awarding to plaintiff of ten of said tracts and the awarding to defendant of only three tracts can be said to be an equitable apportionment of the lands or to equalize as nearly as possible the tracts.

CONCLUSION

In conclusion, it is appellant's contention that the decision of the Secretary of the Interior apportioning the land between plaintiff and defendant was strictly in accordance with the law, the rules which had been established by the department and the procedure which it had followed over many years; that the court cannot consider the provisions of the amended act passed in 1953; that the ruling of the department was fair and just; that the department equitably apportioned the land equalizing it as nearly as possible but gave to the plaintiff the one extra subdivision; that in doing so the department acted in good faith; that his decision is supported by the law as it existed at that time; that the trial court was powerless to reverse, modify or change this decision; that this decree should be reversed and judgment should be entered dismissing plaintiff's complaint.

Respectfully submitted,

YOUNG, THATCHER & GLASMANN,
Attorneys for Appellant