

1958

# Thomas Holland v. Leroy A. Wilson, Jr. : Brief of Appellant

Utah Supreme Court

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Ellis J. Pickett; Sam Cline; Attorneys for Plaintiff;

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# In the Supreme Court of the State of Utah

THOMAS HOLLAND,  
*Plaintiff and Appellant,*

vs.

LERROY A. WILSON, JR., as Ad-  
ministrator of the Estate of Le-  
Roy A. Wilson, Deceased;  
W. L. RASMUSSEN; VEOLA  
HATCH RASMUSSEN;  
FIRST DOE; SECOND DOE;  
THIRD DOE; FOURTH DOE,  
and FIFTH DOE,  
*Defendants and Respondents.*

Clerk, Supreme Court, Utah

No. 8853

## BRIEF OF APPELLANT

ON APPEAL FROM THE DISTRICT COURT OF  
THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF UTAH,  
IN AND FOR GARFIELD COUNTY.

HON. A. H. ELLETT, *Judge*

ELLIS J. PICKETT,

and

SAM CLINE,

*Attorneys for Plaintiff.*

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## BRIEF OF APPELLANT

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### STATEMENT OF THE CASE

This case is before this Court on appeal from a judgment of the District Court of the Sixth Judicial District of the State of Utah, in and for Garfield County, in favor of the defendants and against the plaintiff, in an action tried before the court sitting without a jury. The judgment of the trial court was in the usual form quieting title to certain mining claims in the defendants and holding

that the locations of plaintiff to certain mining claims in conflict with the defendants' locations were void and of no effect.

The plaintiff commenced this action alleging that he was the owner and entitled to the possession, as against the whole world excepting the United States Government, of two lode mining claims. He pleaded his eligibility to locate the claims and the successive steps necessary to perfect the locations; that since his locations the defendants wrongfully and unlawfully interfered with his right to possession and occupancy of the claims; and that the defendants claim some right, title and interest in his claims which claims of the defendants are without any right or foundation.

The complaint sets forth a cause of action in the usual form to quiet title to the said lode mining claims (Tr. 1-5).

The defendants filed an amended answer admitting that they claimed some right, title and interest in mining claims which conflict with the plaintiff's claims and in substance deny that plaintiff ever made any valid locations. As affirmative defenses the defendants set up their own claimed title to certain mining claims in conflict with plaintiff's locations and which antedate the plaintiff's locations. Defendants pray that plaintiff's complaint be dismissed and that they be awarded costs (Tr. 6-10).

## STATEMENT OF FACTS

The statement of facts, pertinent to this appeal, will of necessity, be brief. A few preliminary statements will be made for the purpose of clarification, which are not shown by the record on appeal but will not be disputed.

The cause was originally filed in Kane County, the county in which the mining claims are located. After the answer was filed plaintiff moved the Court for an order changing the venue and the cause was, upon the granting of the motion, duly transferred to Garfield County for trial. After the case was transferred to Garfield County and before it was set down for trial the plaintiff filed his request for a jury trial and paid the jury fee. Judge Sevy invited Judge Ellett to preside at the trial and the case was duly tried before Judge Ellett without a jury.

Findings of Fact and Conclusions of Law were later entered in favor of the defendants and against the plaintiff. The Court found that prior to the date when the plaintiff located his claims the defendants did assessment work on one of their claims for the benefit of their entire group of claims; and that plaintiff did no assessment work on his two claims since his attempted location on February 20th, 1955 (Tr. 21-22). As Conclusions of Law the Court found that the assessment work done by the defendants was sufficient to meet the requirements of the law on their three claims which are in conflict with the

plaintiff's claims, and the court further found that the claims located by plaintiff were not open to location and therefore void. The Court further concluded that the defendants were entitled to a decree quieting their title in their three claims (Tr. 23). Accordingly a decree was entered quieting title in defendants to their three claims and holding that the plaintiff's locations were void (Tr. 24-25).

A pretrial order was made in which the issues of fact were set forth as follows:

1. Did the defendants do the assessment work for the year ending July 1, 1954, on each of the claims involved in this lawsuit?
2. Did plaintiff Holland backdate his location notice with the intent to defraud the defendants and others who might be interested in locating upon the claims involved in this lawsuit?
3. Did Oscar Lyman backdate his notice of location with the intent to defraud the plaintiff and others who might be interested in locating upon the claims involved in this lawsuit? (Tr. 13).

The pretrial order set forth the issues of law as follows:

1. Can a party who has made a valid location relocate that claim so as to avoid the necessity of doing assessment work?
2. Is the plaintiff entitled to have the title to the claims described in his complaint quieted in his favor?

3. Are the defendants entitled to have the title to the claims described in the plaintiff's complaint quieted in their favor? (Tr. 13).

## STATEMENT OF ERROR RELIED ON

For the purpose of this appeal the plaintiff relies on one error for a reversal of the judgment, to-wit: That the plaintiff was entitled to a jury trial and the trial court erred in refusing to grant the plaintiff's request for a jury trial.

## ARGUMENT

At the pre-trial the court stated plaintiff was not entitled to a jury trial and that he would not grant plaintiff's request for a jury. However, since no formal order was at that time made denying plaintiff's request for a jury, a record of such action was made before the trial commenced (Tr. 17-20). The reporter's transcript of that portion of the proceedings has been made a part of the record on appeal. The transcript shows that the first and paramount issue which the court proposed to try was whether the defendants did assessment work prior to July 1st, 1954, for the year ending then. Since the plaintiff located his claims on Feb. 20th, 1955, the court was right in saying that if the defendants could prove such fact there was no need of proving anything else. In other words, if the defendants had done a sufficient amount of assessment or representation work for the assessment



year ending July 1st, 1954, the ground would not be open for location by the plaintiff on Feb. 20th, 1955. Hence the question of fact and not a question of law was first to be determined.

The record concerning the refusal of the court to grant a jury trial and the court's reasons therefore is short and we quote (Tr. 18-19):

THE COURT: Now you gentlemen will know this and I don't. There is no need of pulling my leg. I will find out. Did these defendants do assessment work prior to July 1, 1954, for the year ending then?

MR. HAFEN: We claim they did.

THE COURT: And you will have evidence to support that?

MR. HAFEN: Yes.

THE COURT: Well, if you can prove that, there isn't need of proving anything else. Let's take the evidence on that phase first. I think you gentlemen may want to make a record about a jury.

MR. PICKETT: Yes, Your Honor.

THE COURT: In my opinion this is a non-jury case. I thought we had agreed to that, and you may make your record about that, though.

MR. PICKETT: Well, we did make a jury demand for trial, jury trial in Garfield County, Your Honor.

THE COURT: Yes, and you paid the fee.

MR. PICKETT: Yes, and we would like to have a record made of that at the present time before probably a stipulation as to trial here.

THE COURT: I have the stipulation that it be tried here in the pretrial. It was ordered that it be tried here unless counsel agreed on some other county, and the record may show that this being a matter for quiet title, an equitable matter in which a jury could be advisory only, the court did not feel that it was in the public interest to call a jury to advise him on a matter that he wouldn't be obligated to follow.

MR. PICKETT: Therefore, the jury is denied?

THE COURT: That's right.

MR. PICKETT: Very well.

It appears conclusively from the above that Judge Ellett considered a suit to quiet title as an equitable and not a law action, and that plaintiff was not entitled to a jury trial as a matter of right. If the court's position is correct, then appellant must concede that if, within the discretion of the court, a jury was called its findings and verdict would be advisory only.

The sole issue, therefore, to be determined by this Honorable Court is: Was the plaintiff entitled, as a matter of right, to have the issue as to whether assessment work was done or not, and such other issues as are raised by the pleadings, submitted to a jury for determination?

We believe this question must be resolved in favor of the plaintiff, because whether or not a suit to quiet title to realty is a law action or one in equity, is no longer debatable. This Court has decided the question in unmistakable language.

It cannot be disputed that plaintiff made a timely demand for a jury, and paid to the Clerk of the Court the required jury fee, and at no time did plaintiff waive his right to a trial by jury.

As early as 1898 Utah has had a statutory remedy for determination of adverse claims. *Section 3511, Revised Statutes of Utah, 1898*, provided as follows: "An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim." This statutory remedy has been carried forward in every revision of the Utah Statutes and in substantially the same language, until now we have the same statutory provision in *Section 78-40-1 R.S.U. 1953*. In 1900 the case of *Park vs. Wilkinson*, cited below, was determined by this Court in which it was held that under such statute an action to quiet title or to determine an adverse claim could be of a legal or equitable character, depending upon the pleadings, and that where there were both equitable issues and issues of fact the court should submit the issues of fact to a jury upon proper instructions.

Actions to quiet title or to determine adverse claims, under Section 3511, Rev. St. 1898, may be of a legal or equitable character depending upon the pleadings; but where there are both equitable issues and issues of fact in the case the court should first determine the equitable issue and then submit the issues of fact to a jury upon proper instructions, and a failure so to do constitutes reversible error.

*Park vs. Wilkinson*, 21 Utah 279, 60 Pac. 945.

*Statutory Remedies for Determination of Adverse Claims.* Under the statutes in many jurisdictions, an action may be maintained to determine adverse claims and quiet title independently of the common law right to remove a cloud on title by a bill of equity. Such statutes ordinarily are constitutional and, depending on the particular provisions, may permit the maintenance of the action either at law or in equity. \* \* \* \* In some statutes the action is an action at law, while under others it may be either an equitable action or an action at law, depending on the pleadings, issues and relief sought. If the issues tendered are equitable the proceeding is one in equity, but where no equitable rights are set up by either party or where the answer sets up an equitable defense but seeks no equitable relief, the action is one at law governed by the ordinary rules applicable to actions at law. 74 C.J.S. pages 14-15.

Rule 38(a) of the *Utah Rules of Civil Procedure*, provides "The right of trial by jury as declared by the Constitution or as given by statute shall be preserved to the parties." Then follows this note: Rule 38(a), without reference to the Seventh Amendment. This rule does not supersede our *Code 104-23-5 U.C.A. 1943*, as amended, which sets forth the grounds for a trial by jury, but must be read in connection therewith.

*Sec. 104-23-5 U.C.A. 1943* provides: In actions for the recovery of specific real or personal property, with or

without damages, or for money claimed as due upon contract or as damages for breach of contract, or for injuries, an issue of fact may be tried by a jury unless a jury trial is waived or a reference is ordered as provided in this code. Where in these cases there are issues both of law and fact, the issue of law must first be disposed of. \* \* \* \* \*

In the case of *Babcock vs. Dangerfield, et al.*, 98 Utah 10, 94 Pac. 2nd 862, it is said:

Where plaintiff alleged that he was owner and entitled to possession of property in which defendants claimed some right, title, interest or estate adverse to plaintiff and that such claims were without merit, and prayed that defendants be required to set forth nature of their claims, proceeding was 'action at law' to quiet title and, on proper application for a jury, jury trial should have been granted. Citing *Bolognese vs. Anderson*, 97 Utah 136, 90 Pac. 2nd 275; and *Norback vs. Board of Directors*, 84 Utah 506, 37 Pac. 2nd 339.

The case of *Norback vs. Board of Directors of Church Extension Society*, 84 Utah 506, 37 Pac. 2nd 339, was a suit to quiet the title to an easement, and a jury trial was denied plaintiff. This court held that the action was one in law and not equity and that it was reversible error to deny plaintiff the right to a trial by jury. The court said (page 341 of Vol. 37, Pac. 2nd):

"Upon the issues made by the pleadings, plaintiff demanded a jury trial which was refused by the

court and this is the first error relied upon by plaintiff for the reversal of the judgment of the trial court. In the view we take of the case the assignment of error based upon the refusal of the trial court to grant a jury trial after a timely demand was made and the fee paid is the only assignment of error we need to discuss.”

In the instant case the prayer for relief, besides asking for the usual relief in a quiet title action, asks for damages for wrongful and unlawful interference, and for a temporary restraining order restraining the defendants from going upon the premises during the pendency of the action. While it can be said that asking for the temporary restraining order is asking for equitable relief, yet the principal issues are issues of law.

The same problem was presented to this Court in the *Norback Case*, cited above, and it was held:

“Where principles to which appeal must be had are principles of law in the main or primary action, either party thereto upon demand is entitled to trial by jury, though application is also made to the court to exercise its equity powers in granting injunctive relief (*Comp. Laws 1917*, §§ 5838, 5839, 6781, 6782; *Const. arts. 1, 8, §§ 10, 19*).

“Where issues are legal issues, fact that equitable relief may be prayed for to carry into effect judgments based upon legal issues is insufficient to deprive either party of his rights to have legal issues submitted to a jury.

“Where primary purpose of action was to establish easement based on alleged prescriptive user of



way over another's land, action was one at law and denial of plaintiff's timely motion for jury trial was error, tho plaintiff also asked protection by way of injunction."

The question whether the work was done is for the jury and the Court cannot take it from them when there is evidence to prove it. *Knickerbocker vs. Halla*, 162 Fed. 318, 89 C.A. 298. (Cited in *Morrison's Mining Rights*, 16th Ed. at page 130.

The miner's claim or title is real estate as distinguished from chattel or personal property and is conveyed, sued for, descends, is devisable and is treated in other respects as the real property of the occupant, subject only to the paramount title of the United States. *Morrison's Mining Rights*, 16th Ed. at page 9, citing numerous cases.

The general rules as to trial, judgments and review in civil cases apply in an action to quiet title to mining property. In accordance with the usual rules of trial in civil cases, which rules apply in an action to quiet title to mining property, disputed issues of fact should be submitted to the jury or be determined by the trial court sitting without a jury and a verdict should not be directed where there are material questions of fact which have not been determined. 58 C.J.S. page 261.

## CONCLUSION

Upon the factual situation here presented and upon the settled law in Utah, plaintiff respectfully submits that the judgment of the trial court should be reversed and the case remanded to the District Court with a directive to grant plaintiff a new trial by jury.

*Respectfully submitted,*

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SAM CLINE,

*Attorneys for Plaintiff.*