

1958

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

Utah Supreme Court

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Hafen and Nelson; Attorneys for Defendants and Respondents;

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DEC 13 1958

Clerk, Supreme Court, Utah

# In the Supreme Court of the State of Utah

DEC 19 1958

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THOMAS HOLLAND,  
Plaintiff and Appellant,  
vs.

LERROY A. WILSON, Jr., as Admin-  
istrator of the Estate of LeRoy A.  
Wilson; Deceased;  
W. L. RASMUSSEN; VEOLA  
HATCH RASMUSSEN;  
FIRST DOE; SECOND DOE;  
THIRD DOE; FOURTH DOE,  
and FIFTH DOE,  
Defendants and Respondents.

No. 8853

## BRIEF OF RESPONDENTS

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

HAFEN AND NELSON

St. George, Utah

Attorneys for Defendants and Respondents

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## BRIEF OF RESPONDENTS

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### INTRODUCTION

We have no quarrel with appellant's statements of fact and argument, but submit they need some further refinement before being applied to the case at bar.

## STATEMENT OF FACTS

In addition to the statement of facts set out by appellant, we wish to add that the pleadings do not show which party was actually in possession and there is no prayer for possession but only (as to possession) who is "entitled to possession."

The complaint sets out (Par. 4) that defendants have unlawfully interfered with plaintiff's right to possession and development of the claims and prays, in addition to a decree that plaintiff is **entitled** to possession, that defendants be perpetually enjoined and restrained from asserting any right in the claims and that the Court issue a temporary restraining order restraining defendants from entering upon the claims during pendency of the action and enjoining them from interfering.

## ARGUMENT

We have read the cases cited by counsel and submit at the outset that the Supreme Court of Utah has never said that every suit containing a prayer to quiet title entitles a party to a jury as a matter of right and so far as counsel can determine, it has never said that in a suit to quiet title to a mining claim a party is entitled to a jury as a matter of right.

**I—The case at bar is different from the cases cited by appellant.**

A. Whether a case is one at law or in equity is chiefly determined by the character of the pleadings. **Park v. Wilkinson**, 21 Utah, 279; 60 Pac. 945

As pointed out in our statement of facts, in the case at bar there is no allegation as to who is in possession and the prayer is for the Court to determine who is entitled to possession and for a temporary restraining order and a perpetual injunction.

B. An excellent annotation in 117 A.L.R., 9, points out a number of situations, similar to the case at bar, where there is no right to a jury trial.

1. "It is to be observed that, in general, the foregoing cases limit the right to jury trial to cases where the plaintiff claims the legal title. If the plaintiff in possession has merely the equitable title and seeks the aid of the Court to establish his interest in the land, it is clear on principle that, the remedy at law not being adequate, there is no right to a jury trial." 117 A.L.R., 9 at page 27.

It is submitted that in cases involving mining claims before patent is issued they cannot involve the legal title, but only the equitable one.

2. "There is in a suit to quiet title against a defendant in possession no right to a jury trial if possession is not prayed for in the complaint." 117 A.L.R., 9, at 44, and cases discussed 44-46.

It is submitted that in this case possession was not prayed for but only that the Court determine who was entitled to possession.

3. "There is apparent authority in support of the proposition that if possession is not determined, and there is no allegation as to who is in possession, the suit is to be treated as one in equity and the parties are not entitled to a jury trial." 117 A.L.R., 9, at 53, and cases discussed; also pages 44, 51, and 54.

It is submitted that in the case at bar there was no allegation as to who was in possession and no prayer for possession, but only an allegation that plaintiff was entitled to possession and a prayer that the Court decree that he was entitled to possession.

C. This action is brought under a statute which enlarges the common law action.

1. This proceeding is under statutory authorization, as set out in appellant's brief, which has enlarged the common law action.

See **Wey v. Salt Lake City**, 35 Utah, 504, 101, P. 381

2. It is not error to deny a jury in any case where such right was not granted at common law. **Proctor v. Arakelian**, 208 Cal. 98, 280 Pac. 368; **City of Turlock v. Bristol**, 103 Cal. A. 756, 284 Pac. 962.

D. Special considerations apply in cases involving mining claims.

1. Utah has enacted special provisions in recognition of this doctrine.

a. **Section 40-1-12, Utah Code Annotated, 1953**, provides treble damages against anyone who, knowing of adverse claimants, trespasses on such mine and removes ore therefrom.

b. **Section 78-40-11, Utah Code Annotated, 1953**, specially provides for temporary injunctions in actions involving title to mining claims.

2. The right to injunctive relief in cases involving extraction of ore in a mine is well settled. See **Lindley on Mines, Third Edition, Vol. 3, Par. 872**, page 2188.

There is no class of property more subject to sudden and violent fluctuations of value than mining lands. A



location which today may have no salable value may in a month become worth millions. **Patterson v. Hewitt** 195 U.S. 309, 321, 25 Sup Ct. Rep. 35, 49 L. ed 214.

3. The case of **Norback v. Board of Directors of Church Ext. Society**, 84 Utah 506; 37 Pac. 2nd 339, is relied on heavily by appellant. We wish to point out that this was a 3-2 decision and the dissenting opinion strongly suggests that the case should not be extended to those like the case at bar.

In view of these considerations, it is submitted that actions involving adverse claims to mining claims stamp them with an equitable character which does not exist in many suits to quiet title, and which does not exist in the cases cited by appellant.

E. An action to determine adverse claims to a mining claim is a suit in equity.

The Montana cases cited below support this proposition. In **Mares v. Dillon**, 30 Mont. 117, 75 Pac. 963, the defendant had applied for a patent to a mining claim and suit was brought to determine right to possession as authorized by the Federal statutes. The issues raised by the pleadings and the prayer of the complaint, other than the fact that defendant had applied for a patent, were very similar to the case at bar. The suit, as here, was to determine who was entitled to possession and the Court said:

“We cannot conceive how this action could be treated any other than one of equitable jurisdiction to determine an adverse claim. It has no semblance to an action at law, neither has the defense set forth in the answer any semblance to an answer setting forth a legal title to the premises. Both parties seem to desire the Court to determine



who is entitled to the possession of the premises on the adverse claim set forth. There is no allegation in the pleading upon which an action at law could be brought."

See also **Kirby v. Higgins**, 33 Mont. 518, 85 Pac. 275, **Butte Consol. Min. Co. v. Barker**, 35 Mont. 327, 89 Pac. 302, **O'Hanlon v. Ruby Gulch Mining Co.** (Mont.) 209 Pac. 1062

In each of the above cases defendant had applied for a patent and suit was brought to determine right to possession as authorized by Federal statutes. But we submit that this fact is not controlling. The same ruling would apply in a mining case where defendant had not applied for patent.

"This is not an adverse suit under the U. S. Statute for the purpose of acquiring a government patent. This is in fact only a contest between two locators as to which is entitled to possession and occupancy of the public mineral lands covered by these respective locations." **Gerber v. Wheeler** (Idaho) 115 Pac. 2d. 100.

### CONCLUSION

In view of the pleadings and prayer in the case at bar and the special considerations which apply, it is respectfully submitted that the plaintiff is not entitled to a jury and the judgment of trial court should be affirmed.

Respectfully submitted,

HAFEN AND NELSON,

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