

1958

Thomas Holland v. Leroy A. Wilson, Jr. : Reply to Brief of Defendants and Respondents;

Utah Supreme Court

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JUN - 6 1958

Clerk, Supreme Court, Utah

In the Supreme Court of the State of Utah

UNIVERSITY 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.

DEC 19 1958

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No 8853

REPLY TO BRIEF OF DEFENDANTS AND
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*

ELLIS J. PICKETT,
SAM CLINE,

Attorneys for Appellant.

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REPLY TO BRIEF OF DEFENDANTS AND RESPONDENTS

We submit that the position of the defendants and respondents is untenable wherein they claim that the action as brought by the plaintiff and appellant was not a quiet title action because there was no "prayer for possession," but only a prayer for a decree entitling plaintiff and appellant to possession.

The complaint sets forth that the defendants had unlawfully interfered with plaintiff's right to possession

and development of the claims, and asks in the prayer that a decree be entered entitling them to possession. Also and incidentally, plaintiff asked that defendants be perpetually enjoined and restrained from asserting any right to the claims, which prayer for restraint is incidental to quiet title actions.

It seems a mere play upon words to try and distinguish between "being entitled to possession" and "being in possession"; and trying to maintain a position that one would make the case one of law and the other one of equity, when although the defendants did not ask for an affirmative decree in their favor quieting title, they nevertheless did have a decree entered which did quiet title in them.

The case was tried upon the theory of a quiet title action, as shown by the court's statement as set forth on page 7 of appellant's brief, " . . . and the record may show that this being a matter for quiet title, . . . "

Defendant's Point 1 states, "The case at bar is different from the cases cited by appellant," and is based merely upon their contention that any case involving a mining claim before patent is issued cannot involve the legal title but only the equitable title. This is not substantiated by *Morrison's Mining Rights*, 16 Edition, page 9, in quoting *Dalton vs. Clark*, 129 Cal., App. 136, 18 Pac. 2d 752, which holds: "In quiet title suits, while the fee is

in the United States, the interests are treated as Estates in Fee," to-wit:

"The trial court in its findings and judgment acted upon the theory that this was an action to quiet title. Assuming this is an action to quiet title, it is a well-established principle that the plaintiff must show title in himself, and cannot rely upon lack of title in his adversary. But it is also well settled that, although the title in fee to mineral lands is vested in the United States, yet as between the claimants of said lands, all rights, interests, and estates in the mines are treated as being an estate in fee, vesting in such claimants a right of property therein, founded upon their possession or appropriation of the land containing the mine, and they are treated as between themselves and all persons but the United States as the owners of the land and mines thereon," *Dalton vs. Clark*, 18 Pac 2d 752.

Morrison's Mining Rights further states on page 9:

"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."

In *Bradford vs. Morrison*, 10 Ariz. 214, 86 Pac. 6, one of the cases cited by *Morrison's Mining Rights*, the Supreme Court of Arizona announced the following rules:

"In the absence of statute, as well as under Rev. Stat. 1887, par. 2392, declaring that real property shall be coextensive with lands, tene-

ments, and hereditaments, an unpatented mining claim is real property, within Acts 1891, p. 70, No. 50, par. 4, declaring that a judgment, when properly docketed, shall be a lien on the real property of the debtor situate in the county."

The foregoing *Bradford vs. Morrison* case was appealed to the Supreme Court of the United States (212 U. S. 389, 53 L. Ed. 564) wherein the rule is announced:

"Unpatented lode mining claims are 'real property' and as such are subject to the lien of a judgment recovered against their owner when docketed pursuant to Laws Ariz. 1891, Act. No. 50, § 4 making a docketed judgment a lien upon the judgment debtor's real property, the term being defined by a territorial statute in force when the judgment in question was rendered and docketed as coextensive with lands, tenements, and hereditaments."

The *Bradford vs. Morrison* case was cited with approval by the Supreme Court of Oklahoma in *First National Bank vs. Dunlap*, 254 Pac. 729, at pages 735-6.

In support of the above rule as to the status of an estate acquired by the locator of mining claim, see *Mt. Rosa Mining, Milling and Land Co. vs. Palmer*, a Colorado case reported in 56 Pac., page 176, particularly see page 178, first paragraph on said page which holds:

"The estate acquired by the locator of a mining claim is an interest in real property, and, although the paramount title remains in the Government, the Courts have universally recognized

such interest as a free hold, and in all controversies arising between the locator and other persons, as to any right or claim thereto, he is greeted as the owner in fee.”

Lindley on Mines, Vol. 2, 3d Ed., page 1194, Sec. 535, in treating the nature of the estate in a mining claim as defined by the earlier decisions quotes a California case as follows:

“From an early period of our state jurisprudence we have regarded these claims to public mineral lands as titles. They are so practically Our courts have given them the recognition of legal estates of freehold; . . .” *Merritt vs. Judd*, 14 Cal. 60.

An early Utah case, *Lavagnino vs. Uhlig*, 26 Utah 1, reported in 71 Pac. 1046, holds:

“Mining claims are, regardless of statutory provisions, real estate.”

We submit that the case at bar contains all the elements of a quiet title action. The complaint alleges that plaintiff is the owner of and entitled to the possession of the property in question and that the defendants have unlawfully interfered with plaintiff’s right of possession, and he asks for a decree quieting title in himself and for his right of possession together with the usual prayer for restraint in the event defendants persist in interfering with plaintiff’s decreed rights. We submit that the

authorities cited above are unanimous in holding that a locator's right to a mining claim is one in fee and that his right therein is considered as real property; and we submit that there is no good reason for considering the title to mining claims upon a different legal basis than any other real property.

In view of the above authorities and those cited in appellant's original brief, it becomes apparent that the authorities cited by respondent in 117 A. L. R. 9 (respondent's brief page 3) are not in point.

Referring to "C" of respondent's arguments, it is submitted that none of the cases cited by respondents are in point. The *Wey vs. Salt Lake City* case in 101 Pac. 381, is a case primarily to set aside an illegal tax imposed upon the property and to abate the resulting lien upon said property. The California case of *Proctor vs. Ararelian* cited in 280 Pac. 368, was one based upon fraud and praying that note and deed of trust executed by plaintiff be cancelled and was held by the Court to present a case on foreclosure of vendor's lien, an equitable action precluding a jury trial as a matter of right. The California case of *City of Turlock vs. Bristow*, cited in 284 Pac. 962, was a matter for abatement of a nuisance which the court held only involved injunctive relief and was purely equitable in nature.

In Section "D" of respondents' brief, counsel has

set forth certain special considerations applying to mining claims, and we have no quarrel with such statements; but the fact that mining property may fluctuate in value from time to time certainly does not make an equitable matter out of one which the courts have held is legal. Granting for the sake of argument that a certain mining property does fluctuate in value violently as respondents indicate might happen from time to time, the action is still one to quiet title to that certain mining claim, and the plaintiff in the action would certainly be entitled to a jury inasmuch as it is for determination of legal rather than equitable rights.

Respondents refer to *Norback vs. Board of Directors of Church Ext. Society*, (84 Utah 506, 37 Pac. 2d 339) which was cited on page 10 of appellant's brief, and try to detract from the cogency of this citation by reason of its having been determined by a three to two decision, but in *Buckley vs. Cox, et al*, 122 Utah 151, 247 Pac. 2d, page 277, in an action by the plaintiff to quiet title to a drive-way over a portion of plaintiff's land, the court held as follows:

“Under the criteria set out in *Norback vs. Board of Directors*, 84 Utah 506, 37 P. 2d 339, this action is one at law . . .”

In respondents' Point E on page 5, respondents contend that “An action to determine adverse claims to a mining claim is a suit in equity,” and Montana cases are

relied upon for the support of this proposition. Appellant submits that the cases have been decided upon a special interpretation of the Montana Statute which is not similar to our Utah Statute 78-21-1, which defines wherein a jury trial may be had. The Montana Statute is cited in *Mares v. Dillon*, 30 Mont. 117, 75 Pac. 963, the first of the Montana cases cited by respondents. The Montana cases are ones in which patent has been applied for, adverse claims filed and the issues drawn under Section 1322 of the Montana Code of Civil Procedure as set forth on page 968 of 75 Pac. This is a statute specifically referring to mining claims and application for patents and determination of special rights of the applicant for the patent and one who files an adverse claim.

Our legislature in Section 78-21-1, U. C. A. 1953, has provided for the recovery of specific real or personal property by an action at law in which issues may be tried by jury unless the same is waived.

A quiet title action as shown by the cases cited in appellant's brief and in this reply brief is an action at law, and issues of fact therein are to be tried by jury unless the same is waived by the parties thereto.

We fail to see how the case of *Gerber vs. Wheeler*, 115 Pac. 2d 100 (Ida), cited on page 6 of respondent's brief, is even remotely relevant or can be of assistance to respondents. No issue concerning the right to trial by

jury was involved, nor was there any discussion as to whether a suit to quiet title was one in equity or in law.

CONCLUSION

We conclude, therefore, that the judgment of the trial court should be reversed and the case remanded to the District Court.

Respectfully submitted.

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