

1958

State of Utah v. James L. Hatch and Della L. Hatch : Appellant's Reply Brief

Utah Supreme Court

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In the Supreme Court of the
State of Utah

FILED

AUG 28 1958

STATE OF UTAH,

Plaintiff,

Clerk, Supreme Court, Utah

vs.

Case No. 8937

JAMES L. HATCH and
DELLA L. HATCH,

Defendants.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	3
STATEMENT OF POINTS	6, 7
ARGUMENT	7
POINT I. SCHOOL SECTION LANDS ARE HELD BY THE STATE OF UTAH IN TRUST IN ITS GOVERNMENTAL CAPACITY	7
POINT II. THE UTAH STATUTES REQUIRE A RESERVATION OF MINERALS	10
POINT III. UTAH LAW NECESSARILY CONTROLS THE QUESTION OF WHETHER THE STATE RELINQUISHED THE MINERALS IN ITS SCHOOL LANDS	17
POINT IV. THE EXCHANGE WAS ONE OF EQUIVALENTS	21
CONCLUSION	23

CASES CITED

Alabama v. Schmidt 232 U. S. 168, 34 S. Ct. 301	18
Bridgforth v. Middleton, et al 184 Miss. 632, 186 So. 837	15
Cooper v. Roberts 18 Howard 173	18
Deseret Water, Oil & Irrigation Company 167 Cal. 147, 138 Pac. 981	19
Doolan v. Carr 125 U. S. 618, 8 S. Ct. 1228	10

TABLE OF CONTENTS—(Continued)

	<i>Page</i>
Duchesne County, et al., v. State Tax Commission et al 104 Utah 365, 372-383, 140 P. 2d 335, 338-343 _____	9
Los Angeles and Salt Lake R. Co. v. U. S. 140 Fed. 2d 436 (CCA 9th, 1944) _____	21
Newton v. State Board of Land Commissioners, et al 37 Idaho 58, 219 Pac. 1053 _____	10, 15, 19
Pioneer Investment & Trust Co. v. Board of Education 35 Utah 1, 99 Pac. 150 _____	10
Price v. Magnolia Petroleum Co. 267 U. S. 415, 45 Sup. Ct. 312 _____	10
St. Louis Smelting & Ref. Co. v. Kemp 104 U. S. 636, 26 L. Ed. 875 _____	10
State of California v. Deseret Water, Oil and Irrigation Company 243 U. S. 415, 37 S. Ct. 394 _____	18
State v. District Court of Fourth Judicial District 51 N. M. 297, 183 P. 2d 607 _____	10
State v. George C. Stafford & Sons 99 N. H. 92, 105 A. 2d 569, 573 _____	10
The Choctaw and Chickasaw Nations v. Wilmer D. Deay, et al 235 Fed. 2d, 31 (CCA 10th, 1956) _____	21
U. S. v. Champlin Refining Co., et al 156 Fed. 2d 769 affirmed 331 U. S. 788, 67 S. Ct. 1346 ____	21
United States v. Fox 94 U. S. 315, 24 L. Ed. 192 _____	18
U. S. v. Oklahoma Gas and Electric Co. 318 U. S. 206, 63 S. Ct. 534 _____	21
United States v. Sweet 245 U. S. 563, 38 S. Ct. 193 _____	22
United States v. Nebo Oil Co. 190 Fed. 2d 1003 (CCA 5th, 1951) _____	21

TABLE OF CONTENTS—(Continued)

	<i>Page</i>
Van Wagoner v. Whitmore	
58 Utah 418, 199 Pac. 670, 679	9, 10
Wyoming v. United States	
255 U. S. 489, 497, 41 S. Ct. 393	15, 22
 Constitutional Provisions:	
Utah State Constitution, Article XX, Sec. 1	8
Utah State Constitution, Article XX, Secs. 3, 5, 7	8
 Statutes:	
United States Code Annotated, Title 16, Sec. 485	6
United States Code Annotated, Title 43,	
Sections 851, 852, 853	4, 19, 22
United States Revised Statutes, Sections 2275, 2276	4
Utah Code Annotated, 1953, Section 65-1-14	14, 15, 16
Section 65-1-15	4, 5, 16, 23
Section 65-1-27	11, 12
Section 65-1-70	2, 11, 12, 13
Utah Enabling Act, Section 6, 28 Stat. 107	3, 7
Section 10, 28 Stat. 107	8
Utah Revised Statutes, 1933, Section 86-1-58	13

In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff,

vs.

JAMES L. HATCH and

DELLA L. HATCH,

Defendants.

Case No. 8937

BRIEF OF APPELLANT

STATEMENT OF THE CASE

Plaintiff, the State of Utah, commenced this suit in the District Court of Garfield County, State of Utah, to quiet title to mineral deposits in certain school lands, located within Section 2, Township 37 South, Range 7 West, Salt Lake Meridian, Garfield County, State of Utah. Plaintiff's complaint seeks to quiet title to the mineral rights in said land, and asserts no claim whatsoever to the surface rights.

Defendants filed an Answer and Counterclaim to said Complaint, which Answer denies generally the allegations of the Complaint and affirmatively alleges that the mineral deposits in the said lands are owned by the defendants. Defendants' Counterclaim seeks to quiet title to the said minerals in the defendants. Plaintiff filed a reply to defendants' Counterclaim generally denying the allegations thereof.

On June 4, 1958, the said action came on regularly for trial before the Honorable John L. Sevy, Jr., District Judge at the Courthouse in Richfield, Sevier County, Utah. It was stipulated by counsel that the matter could be tried and heard at Richfield. A written stipulation of facts, set forth at Page 11 of the transcript was entered into, executed by the counsel for the parties and filed at the commencement of the trial. Said stipulation establishes all of the factual questions relating to the said action with the exception of the question of whether the purported exchange by the State of Utah with the United States of America was made for the purpose of compacting the holdings of the State of Utah pursuant to the provisions of Section 65-1-70, Utah Code Annotated, 1953. Evidence was introduced with respect to the latter question by plaintiff through the testimony of Mr. Donald E. Prince, employee of the Utah State Land Board, which testimony is set forth commencing at page 29 of the transcript.

On July 14, 1958, the District Court rendered a memorandum decision, set forth commencing at page 14 of the transcript, holding in favor of the defendants and against the plaintiff. In said memorandum, the District Court candidly stated that, "With the limited

time and somewhat limited authorities at my command, I have tried to the best of my ability to grasp the significance and meaning of the various points raised and to arrive at the proper decision."

On July 22, 1958, Findings of Fact and Conclusions of Law and a Judgment and Decree were entered in favor of defendants and against plaintiff on the Complaint and Counterclaim. Plaintiff commenced this appeal by Notice of Appeal filed on the 8th day of July, 1958.

STATEMENT OF FACTS

There is no dispute with respect to the facts. The complaint filed by the State of Utah asks for judgment quieting its title to the mineral deposits in certain lands located within Section 2, Township 37 South, Range 7 West, Salt Lake Meridian. Title to both the surface rights and the mineral deposits of said lands is claimed by the defendants, James L. Hatch and his wife, Della L. Hatch.

The lands involved, including the mineral deposits therein, were granted to the State of Utah for the support of its common schools by Section 6 of the Utah Enabling Act. Title thereto vested in the State of Utah, upon approval of survey, which took place prior to May 24, 1897. Thereafter, on or about November 23, 1903, the United States purported to withdraw the described real property for a proposed forest reserve, which reserve is now known as the Dixie National Forest. The inclusion of the described property within the boundaries of the forest reserve had no effect, however, upon the fee title of the State of Utah.

In September and October, 1925, the State Land Board of Utah made certain indemnity school land selections using the subject lands as base for an exchange of other lands located within the State. The selected lieu lands as well as the base lands exchanged are set forth in Selection Lists Nos. 2225 and 2226 (Exhibit "A" and Exhibit "B"). Thereafter, on September 5, 1928, the selections and exchange were approved by the United States by what is known as Approved List No. 156 (Exhibit "C"). The said selection and exchange purportedly were made pursuant to the provisions of Sections 2275 and 2276, United States Revised Statutes, as amended, and made applicable to the State of Utah by the Act of Congress of May 3, 1902, which statutes are designated as Sections 851, 852, and 853, Title 43, United States Code.

At the time the purported selections and exchange were made, there was in full force and effect a State statute enacted on March 13, 1919, effective May 12, 1919, and presently known and designated as Section 65-1-15, Utah Code Annotated, 1953. The statute provides as follows:

"65-1-15. Coal and mineral deposits reserved—Exceptions—Sales on royalty basis.—All coal and other mineral deposited in lands belonging to the state of Utah are hereby reserved to the state. Such deposits are reserved from sale, except on a rental and royalty basis as herein provided, and the purchaser of any lands belonging to the state shall acquire no right, title or interest in or to such deposits, but the rights of such purchaser shall be subject to the reservation of all coal and other mineral deposits, and to the conditions and limitations prescribed by law providing for the

state and persons authorized by it to prospect or mine, and to remove such deposits, and to occupy and use so much of the surface of said lands as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom; provided that improved farm lands acquired by the state through foreclosure proceedings or improved farm lands conveyed to the state by deed in satisfaction of farm loan mortgages may be sold by the state without mineral reservations. Salts and other minerals in the waters of navigable lakes and streams are likewise reserved to the state and shall be sold by the state land board only upon royalty basis. The amount of such royalties and the terms of such contracts shall be determined by the board; provided, that all such contracts shall be subject to the use of the waters for public purposes, and provided further that before executing a contract which contemplates the recovery of salts and minerals from said waters, the state land board shall require evidence that an application for the appropriation of water for such purpose has been filed with the state engineer and is pending in his office."

The State of Utah claims that by virtue of the above quoted mineral reservation, it did not surrender the mineral deposits in the lands here involved at the time of the purported exchange with the United States.

The claim of the defendants to the mineral deposits in the land arises as follows: It is claimed that the State of Utah surrendered its title to the United States in both the surface rights and the mineral deposits at the time of the purported exchange in the year 1925. Thereafter, the United States conveyed titled to the aforesaid property to the defendants' predecessor, Ira W. Hatch, by patent

dated January 3, 1937. This latter conveyance was the result of an exchange of lands between Ira W. Hatch and the United States under the Act of March 20, 1922, 16 U.S.C. §485. Neither the patent from the United States to Ira W. Hatch nor the conveyance from Ira W. Hatch to the defendant, James L. Hatch, contained any reservation of mineral interest.

There are no written instruments relating to the purported exchange of lands between the State of Utah and the United States other than the referred to Selection Lists of 1925 and the Approved List of 1928. The Lists are silent with respect to any mineral reservation or mineral conveyance.

According to the uncontradicted testimony of Donald G. Prince, Land Examiner of the Utah State Land Board, none of the selections included in the Selection Lists of 1925 had any tendency to compact the State's land holdings. None of the selected lieu lands were located either contiguous to or in the vicinity of other State owned lands.

STATEMENT OF POINTS

POINT I.

SCHOOL SECTION LANDS ARE HELD BY THE STATE OF UTAH IN TRUST IN ITS GOVERNMENTAL CAPACITY.

POINT II.

THE UTAH STATUTES REQUIRE A RESERVATION OF MINERALS.

POINT III.

UTAH LAW NECESSARILY CONTROLS THE QUESTION OF WHETHER THE STATE RELINQUISHED THE MINERALS IN ITS SCHOOL LANDS.

POINT IV.

THE EXCHANGE WAS ONE OF EQUIVALENTS.

ARGUMENT

POINT I.

SCHOOL SECTION LANDS ARE HELD BY THE STATE OF UTAH IN TRUST, IN ITS GOVERNMENTAL CAPACITY.

It is an admitted fact that the lands here involved, including the mineral deposits therein, were granted to the State of Utah for the support of its common schools under the Utah Enabling Act, and that title thereto vested in the State of Utah, upon approval of survey, which took place prior to May 24, 1897. An examination of the Enabling Act and the State Constitution make it clear that the school section grants are held by the State in its sovereign or governmental capacity, as distinguished from a proprietary capacity.

Section 6 of the Enabling Act (28 Stat. 107) contains the following language:

“That upon the admission of said state into the Union, sections numbered two, sixteen, thirty-

two and thirty-six in every township . . . are hereby granted to said state for the support of common schools."

Section 10, of the Enabling Act, reads in part:

"That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools."

Pertinent provisions of the State Constitution include Article XX, Section 1, as follows:

"All lands of the state that have been, or may hereafter be granted to the state by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted and declared to be the public lands of the state; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired."

Article 10, Section 3, of the State Constitution, provides that the proceeds of the sale of State lands and other lands granted for the support of common schools shall be and remain a perpetual fund, the interest only to be used. Section 5 of the same Article is substantially to the same effect, while Section 7 provides that all public school funds shall be guaranteed by the state against loss or diversion.

The foregoing portions of the Enabling Act and of the State Constitution reveal an intent to impose upon the State a special trust and responsibility with respect

to school section grants. In the words of this Court, "It must be conceded that these lands are held by the state in its governmental capacity and not otherwise." *Van-Wagoner v. Whitmore*, 58 Utah 418, 442, 199 Pac. 670, 679, and see *Duchesne County, et al., v. State Tax Commission, et al.*, 104 Utah 365, 372-383, 140 P. 2d 335, 338-343.

As stated in *Van Wagoner v. Whitmore*, *supra*, upon rehearing:

"The Constitution declares that such lands 'shall be held in trust for the people to be disposed of as may be provided by law for the respective purposes for which they have been, or may be granted.' We emphasized [in the Court's initial opinion] the language just quoted, and stated that it was an 'absolute limitation upon the power of the state to dispose of such lands, or permit them to be disposed of, except for the purposes for which they were granted by Congress.' We reaffirm what was there stated, for we find no reason to change our opinion. If there ever was a solemn declaration of trust made by a grantee of lands and published as such to all the world, it seems to us that this declaration is a perfect example. In view of the pledges, guaranties, assurances, and declarations of the Constitution, it must be conceded that these lands are held by the state in its governmental capacity and not otherwise. When such is the case, ordinary statutes of limitations do not apply. To bring such lands within the operation of limitative statutes, it is extremely doubtful if anything short of an amendment to the Constitution could effect the result. . . ." 58 Utah 442, 199 Pac. 679.

Since the State of Utah hold such lands in trust in its governmental capacity, it necessarily follows that the State would not be bound by any unauthorized acts of its officers or agents in connection with the disposition of the lands. *State v. District Court of Fourth Judicial District*, 51 N.M. 297, 183 P. 2d 607; *Newton v. State Board of Land Commissioners, et al.*, 37 Idaho 58, 219 Pac. 1053. In the same connection, federal courts have held that federal land officers are without power to effect sales and conveyances not specifically authorized by federal land laws. *Price v. Magnolia Petroleum Co.*, 267 U. S. 415, 45 S. Ct. 312; *St. Louis Smelting & Ref. Co. v. Kemp*, 104 U. S. 636; *Doolan v. Carr*, 125 U. S. 618; 8 S. Ct. 1228.

Under the holding of the *Van Wagoner* case, the State would not be subject to such defenses as the statute of limitations, adverse possession, estoppel or waiver, absent specific State legislation to that effect. See also *Pioneer Investment & Trust Company v. Board of Education*, 35 Utah 1, 99 Pac. 150; and *State v. George C. Stafford & Sons*, 99 N.H. 92, 105 A. 2d 569, 573.

POINT II.

THE UTAH STATUTES REQUIRE A RESERVATION OF MINERALS.

Since the constitution of the State of Utah provides that State lands can be disposed of only "as may be provided by law" (Article XX, Section 1), it becomes appropriate to inquire what authority, if any, the State Land Board had to dispose of school section lands by an exchange arrangement with the United States. Such authority necessarily must be found in applicable State statutes.

What then is the statutory power conferred upon the State Land Board to dispose of state school sections by an exchange with the United States? The defendants have suggested that such power is conferred by what are now Sections 65-1-27 and 65-1-70 of the Utah Code Annotated, 1953. But as will be herein demonstrated, these two sections are inapplicable.

Section 65-1-27 was first enacted in 1896. In 1925, at the time of the selections and exchange here involved, the statute read as follows:

“Sec. 5580. *Selections in legal subdivisions—secure approval of U. S. Officers—cancellations, etc.* All selections of land shall be made in legal subdivisions according to the United States survey, and when the selection has been made and approved by the land board, they shall take such action as shall be necessary to secure the approval of the proper officers of the United States, and the final transfer to this State of the lands selected. The land board is hereby empowered to cancel, relinquish, or release the claims of the State to, and to re-convey to the United States, any particular tract of land erroneously listed to the State, or any tract upon which, at the time of selection, a bona fide claim has been initiated by an actual settler.” (Session Laws of Utah, 1925, Chapter 31, Section 5580).

The quoted provision has remained in substantially the same form up to the present time. The first sentence thereof appears to be merely directory. It directs the Land Board to take necessary action to secure the approval of the United States and the transfer to the State of lands to be selected. The Enabling Act, in addition to

granting the State four school sections in every township (Sec. 6), also granted the State many other lands in quantity or by way of indemnity (Sections 7, 8, 12). Many of these grants did not take effect nor did title vest until selections, according to United States surveys, were made by the State. The first sentence of Section 65-1-27 is obviously a directory provision aimed at hastening this selection process. It does not refer in any sense to school section lands, title to which already had vested in the State.

The second sentence of Section 5580 (now 65-1-27) is the empowering provision. It authorizes the Land Board to relinquish and reconvey to the United States tracts of land erroneously listed to the State or tracts upon a claim which has been initiated by a settler at the time of selection. The power of reconveyance is expressly limited to two situations, tracts erroneously listed and tracts where a settler has initiated a claim. No power to reconvey any other type of land is conferred. Certainly, no power to reconvey or exchange school sections in which title had vested in the State is conferred.

The other state statute which the defendants suggest as conferring power upon the State Land Board is Section 65-1-70, Utah Code Annotated, 1953. That statute was first enacted in 1897. In 1925, at the time of the selections and exchange here involved, it read as follows:

Sec. 5618. *To compact State land holdings — exchanges, etc.* In order to compact, as far as practicable, the land holdings of the State, the land board is hereby authorized to exchange any of the land held by the State for other land within the State held by other proprietors; and upon request of the land board the governor is hereby

authorized to execute and deliver the necessary patents to such other proprietors and receive therefrom proper deeds of the lands so exchanged; provided, that no exchange shall be made by the land board until a patent for the land so received in exchange shall have been issued by the government of the United States to such proprietors or their grantors." (Session Laws of Utah, 1925, Chap. 31, sec. 5618)

Except for minor amendments, this statute remained unchanged until the 1933 Revised Statutes. At that time, the statute was amended to read:

"86-1-58. *Exchange of lands Between Board and Proprietors.* In order to compact, as far as practicable, the land holdings of the state, the board is hereby authorized to exchange any of the land held by the state for other land of *equal value* within the state held by other proprietors; and upon request of the board the governor is hereby authorized to execute and deliver the necessary patents to such other proprietors and receive therefrom proper deeds of the lands so exchanged; provided, that no exchange shall be made by the land board until a patent for the land so received in exchange shall have been issued *to such proprietors or their grantors.*" (Revised Statutes, 1933, Section 86-1-58)

The changes made in the 1933 Revised Statutes are indicated by italicizing above. As apparent, the phrase "of equal value" was inserted in the statute, and the phrase "by the government of the United States" was deleted preceding the phrase "to such proprietors or their grantors."

Although Section 5618 (now 65-1-70) authorizes

certain exchanges of lands held by the State, it expressly limits such exchanges to situations where the United States has issued a patent on the lands to be received by the State in the exchange. The statute would seem, therefore, to refer to a private exchange between the State and a proprietor who has received a patent from the United States. In the context of the statute, the term "proprietor" obviously refers to some one other than the United States. Moreover, according to the statute itself, the purpose of the authorization to the State Land Board is "in order to compact, as far as practicable, the land holdings of the state." It will be recalled that the uncontradicted testimony of the plaintiffs' witness, Gale Prince, indicated that the exchange here involved had no tendency in any way to compact the State's holdings. Throughout, the statute speaks in terms of an exchange of deeds and patents on the part of both the State and of the proprietor with whom the exchange is to be effected. In the present case, as in all cases of selections and exchanges between the State and the United States, no deeds or patents are exchanged on either side. The entire transaction consists of the selection lists and the approved list. It is submitted, therefore, that Section 5618 (now Section 65-1-70) furnishes no authority to the State Land Board to dispose of State school section lands.

The authority of the State Land Board - if authority exists - to enter into exchanges with the United States must stem from what is now known as Section 65-1-14, Utah Code Annotated, 1953. The statute was first enacted in 1896, in substantially its present form. In 1925, its pertinent provision read as follows:

"Sec. 5575. *Control of State lands-lease-sell,*

etc.-reserve. The State Land Board shall have the direction, management and control of all lands heretofore or which may hereafter be granted to this State by the United States, or otherwise. . . for any and all purposes whatsoever, . . . and shall have the power to sell or lease the same for the best interests of the State and in accordance with the provisions of this chapter and the constitution of this State . . .” (1925 Session Laws of Utah, Chap. 31, Sec. 5575)

This provision, with additions not here material, exists today in substantially the same form. The somewhat broad powers conferred upon the State Land Board authority to direct, manage and control the lands granted to the State by the United States. As used in this statute “the power to sell” must be taken to include an exchange between the State and the federal government. Even though the decisions are not uniform, in similar situations courts frequently have held the term “sell” or “sale” to include an “exchange.” *Newton v. State Board of Land Commissioners, et al.*, 37 Idaho 58, 219 Pac. 1053; *Bridgforth v. Middleton, et al.*, 184 Miss. 632, 186 So. 837. And in *Wyoming v. United States* (1921), 255 U. S. 489, 497, 41 S. Ct. 393, the Supreme Court referred to a similar selection and exchange between a state and the United States as the equivalent of a cash transaction. The Court said:

“. . . Of course the State’s right under the selection was precisely the same as if in 1912 it had made a cash entry of the selected land under an applicable statute, for the waiver of its right to the tract in the forest reserve was the equivalent of a cash consideration. And yet it hardly would

be suggested that the Commissioner or the secretary on coming to consider the cash entry could do otherwise than approve it, if at the time it was made the land was open to such an entry and the amount paid was the lawful price."

In this connection, it must be noted that the power of the State Land Board to "sell" under the authority of Section 5575 (now 65-1-14) is expressly limited by the requirement that it must be "in accordance with the provisions of this chapter and the constitution of this state." (1925 Session Laws, Chap. 31, Sec. 5575.) The very next section of this Chapter of the 1925 Session Laws, Section 5575x, states:

"Coal and mineral lands reserved. All coal and other mineral deposits in lands belonging to the State are hereby reserved to the state. Such deposits are reserved from sale except upon a rental and royalty basis as herein provided and the purchaser of any land belonging to the state shall acquire no right, title or interest in, or to such deposits, and the right of such purchaser shall be subject to the reservation. . . ."

The foregoing provision has remained substantially the same since its first enactment on March 13, 1919. It is now known as Section 65-1-15, Utah Code Annotated, 1953. The statute constitutes an absolute and unconditional reservation in the State of all mineral deposits and an express prohibition against any attempt to alienate such mineral deposits, except upon a rental or royalty basis.

Clearly, Sections 5575 and 5575x (Sections 65-1-14 and 65-1-15 of Utah Code Annotated, 1953) are in *pari materia*. They must be read and construed together. Just

as the term "sell" in Section 5575 must necessarily include an "exchange," so also, the prohibition reserving minerals from "sale" in Section 5575x must likewise apply to an "exchange." No other construction would be reasonable or in accord with the clear intent of the two sections.

As hereinabove stated, a selection and exchange of surface lands with the United States must be effected by the State Land Board under the powers conferred by Section 5575, rather than Sections 5580 or 5618. But even if the plaintiff should be mistaken as to this, the fact still remains that any disposition of school section lands under Sections 5580 or 5618 of the same Chapter 31 would be subject to the express mineral reservation of Section 5575x, to the same extent as Section 5575 is subject to that reservation.

POINT III.

UTAH LAW NECESSARILY CONTROLS THE QUESTION OF WHETHER THE STATE RELINQUISHED THE MINERALS IN ITS SCHOOL LANDS.

Defendants concede that the fee simple title to the subject lands vested completely in the State of Utah prior to May 24, 1897. Although conceding this important fact, defendants apparently argue that the federal law controls the transaction. The question which defendants do not answer, however, is how the jurisdiction of the federal government re-attached to the subject lands when clearly such jurisdiction ceased and terminated prior to May 24, 1897. The decisions of the Supreme Court of the United States hold with clarity that when

title to school lands once vests in a state the jurisdiction of the United States ceases with respect thereto. In *Cooper v. Roberts*, 18 Howard 173, and *Alabama v. Schmidt*, 232 U.S. 168, 34 S. Ct. 301, the Supreme Court held that the state had full authority to subject vested school lands to the ordinary incidents of other titles in the state.

An excellent discussion of this question is contained in the decision in *United States vs. Fox*, 94 U. S. 315, 24 L. Ed. 192, in which the Court stated:

“The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. *McCormick v. Sullivant*, 10 Wheat. 192, 202, 6 L. Ed. 300. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government. The title and modes of disposition of real property within the State, whether into vivos or testamentary, are not matters placed under the control of Federal authority. Such control would be foreign to the purposes for which the Federal government was created, and would seriously embarrass the landed interests of the State.”

In *State of California vs. Deseret Water, Oil and*

Irrigation Company, 243 U. S. 415, the Supreme Court of the United States, although holding that a state might waive its rights in school lands in an exchange with United States, expressly stated:

“With the state questions we have no concern, their ultimate solution being a matter for that court.”

In other words the Supreme Court held that the question of whether the state had by proper authority effected a waiver of its mineral rights in school lands was a question of state, not federal law.

The identical problem was presented to the Supreme Court of Idaho in *Newton vs. State Board of Land Commissioners, et al.*, 37 Idaho 58, 219 Pac. 1053. That case involved the issue of whether the State Board of Land Commissioners had authority to exchange state owned school sections with the United States in the face of a requirement of the Idaho Admissions Bill that school section lands should be “disposed of only at public sale” and a state constitutional provision prohibiting the sale of school sections “for less than ten dollars per acre.” The contention was made that the State Board’s authority to enter into an exchange was derived from Sections 851 and 852, Title 43, United States Code. In disposing of this argument, the Idaho Supreme Court carefully reviewed and analyzed the *Deseret Water, Oil & Irrigation Co. case*, both the opinion of the United States Supreme Court and the opinion of the California State Supreme Court (167 Cal. 147, 138 Pac. 981). The Idaho Supreme Court concluded that the federal statute was no more than permissive and did not touch upon the question of state law or authority. As stated in its opinion:

"Clearly the foregoing opinion [of the United States Supreme] does not go further than to hold that sections 2275 and 2276, Rev. Stats. U. S., confer upon a state the right to receive indemnity lands for school sections 16 and 36 to which it has a complete and indefeasible title, upon its surrender of such lands to the government, and that its reinvestment of title in the government operates to waive its rights as to such land and take title to the indemnity lands. But as we understand the decision, the Federal Supreme Court expressly disavows any purpose to decide for the state when and under what circumstances it has authority under its Constitution and laws to surrender such school lands, which is the question before us for determination. . . ."

* * *

"It is clear that the federal Supreme Court in *California v. Deseret Water, Oil & Irrigation Co.*, *supra*, in construing said sections 2275 and 2276 of the United States Revised Statutes, as these sections were amended in 1891, subsequent to the passage of the Idaho Admission Bill, held that Congress has authorized the government to consent to such exchange, but it has not undertaken therein or elsewhere to say that these provisions of the statute go farther than to be permissive. As in that opinion declared, the question as to whether or not the state under its Constitution and laws has authority to make such exchange is one for the ultimate decision of the state's courts. This court is bound by the plain provisions of the Constitutional provision, which clearly and unmistakably prohibits such an exchange. We therefore hold that the state board of land commissioners is without authority to effect such proposed ex-

change with the government of the United States, and that any action that it has taken or may attempt to take to carry out this exchange is contrary to the Constitution and null and void."

Again in *United States v. Nebo Oil Co.*, 190 Fed. 2d 1003, (CCA 5th 1951) it was held that the law of the State of Louisiana controlled the question of whether a Louisiana statute of prescription applied with respect to a transaction whereby Louisiana lands were sold to the United States of America for national forest purposes. And in *Los Angeles and Salt Lake R. Co. v. U. S.*, 140 Fed. 2d 435 (CCA 9th 1944) it was held that the law of the State of California governed in determining whether a deed from the State of California to the United States conveyed the mineral rights in state land.

Other cases in which federal courts have applied state law in transactions involving the United States of America are: *U. S. v. Oklahoma Gas and Electric Co.*, 318 U. S. 206, 63 S. Ct. 534; *The Choctaw and Chickasaw Nations v. Wilmer D. Ceay, et al.*, 235 Fed. 2d 31 (CCA 10th 1956); *U. S. v. Champlin Refining Co., et al.*, 156 Fed. 2d 769, affirmed 331 U. S. 788, 67 S. Ct. 1346.

POINT IV.

THE EXCHANGE WAS ONE OF EQUIVALENTS.

The defendants argue that an exchange between the United States and the State of Utah, in which the State conveyed only surface rights to the lands it offered, would not be a valid exchange of "equivalents" as contemplated

by applicable federal laws. *Wyoming v. United States* (1920), 255 U. S. 489, 502. According to defendants, since the lieu lands selected and received by the State from the United States contained no mineral reservation and the base lands surrendered by the State were subject to a mineral reservation, there was no *quid pro quo*.

The fallacy of this argument is that the State was permitted under the federal statute to make lieu selections only of non-mineral lands. Revised Statutes, Section 2276 (now 43 U.S.C. §852) provides that the selections by the State shall be "not mineral in character." cf. *United States v. Sweet*, (1918) 245 U. S. 563. Moreover, as demonstrated by the certificate of the Commissioner of General Land Office of the Department of Interior attached to and made a part of the Approved List 156 (Exhibit "C"), a specific finding as to the "non-mineral character" of the selected land is made by the Department of Interior when the Approved List is issued and certified.

In an exchange between the United States and the State, the intention of the United States is to give the State only non-mineral lands in exchange for the school sections surrendered as base. A mineral reservation in the State, of lands to be surrendered, merely tends to make the exchange, in truth, an exchange of "equivalents." The mere fact that many years later the selected lands may prove to be valuable for minerals, and the State thereby acquires a windfall, does not change the nature of the exchange when made. At the time of the exchange, the State surrender lands, with a mineral reservation in the State. The United States grants to the State, lands non-mineral in character. In every sense of the word

there is a *quid pro quo* exchange of equivalents on both sides. The transaction must be considered as of the date of the said exchange.

CONCLUSION

It is respectfully submitted that Plaintiff was entitled to a judgment quieting its title to the mineral deposits in the lands described in the complaint.

It is an admitted fact that title to both the surface rights and the mineral deposits in the subject lands fully vested in the State of Utah prior to the time of the purported exchange of these lands with the United States in 1925. It also is an admitted fact that at that time there was in full force and effect a Utah law under which "all coal and other minerals deposited in lands belonging to the State of Utah are hereby reserved to the State." (Section 65-1-15, Utah Code Annotated, 1953) This reservation is absolute and unqualified. It constitutes a complete barrier to any attempt or purported action of any agent or official of the State to dispose of minerals in State owned lands, except on a rental and royalty basis, as specified by the State law.

Since the school section lands are held by the State in trust, in its governmental capacity, they can be disposed of only as expressly authorized by law. In its governmental capacity the State is not subject to the usual defenses of waiver, estoppel or laches. The mineral deposits in all State owned school lands are intended for the benefit of all the citizens of the State, and for the express purpose of supporting the state schools. It must

be presumed that the United States took these school lands with full knowledge of this fact.

On the basis of the foregoing, Plaintiff respectfully urges that the judgment below be reversed.

Respectfully submitted,

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