

1960

## State of Utah v. J. Howard Valentine et al : Respondent's Petition for Rehearing

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](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.

Cotro-Manes & Cotro-Manes; Attorneys for Intervening Defendant and Respondent;

---

### Recommended Citation

Brief of Respondent, *State v. Valentine*, No. 9100 (Utah Supreme Court, 1960).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/3425](https://digitalcommons.law.byu.edu/uofu_sc1/3425)

This Brief of Respondent 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](mailto:hunterlawlibrary@byu.edu).

---

---

# In the Supreme Court of the State of Utah

STATE OF UTAH by and through its  
ROAD COMMISSION,

*Plaintiff and Appellant,*

vs.

J. HOWARD VALENTINE and  
FLORENCE S. VALENTINE,

*Defendants,*

WESTERN STATES REFINING  
COMPANY, a corporation,

*Intervening Defendant and Respondent.*

FILED

MAR 8 - 1960

Clerk, Supreme Court, Utah

Case No.

9100

---

RESPONDENT'S PETITION FOR REHEARING  
and  
RESPONDENT'S BRIEF ON PETITION FOR REHEARING

---

COTRO-MANES & COTRO-MANES

*Attorneys for Intervening Defendant  
and Respondent*

---

---

# In the Supreme Court of the State of Utah

---

STATE OF UTAH by and through its  
ROAD COMMISSION,  
*Plaintiff and Appellant,*

vs.

J. HOWARD VALENTINE and  
FLORENCE S. VALENTINE,  
*Defendants,*

WESTERN STATES REFINING  
COMPANY, a corporation,  
*Intervening Defendant and Respondent.*

Case No.  
9100

---

## RESPONDENT'S PETITION FOR REHEARING

---

Comes now the above named Intervening Defendant and Respondent and respectfully petitions the Honorable Supreme Court of the State of Utah for a rehearing in the above entitled matter.

This petition is based upon the Records and Files in the above entitled matter which show that on February 18, 1960,

the Honorable Court rendered its opinion in the above cause, which opinion reversed the decision of the trial court.

The petitioner respectfully submits that the court's opinion is in error in the following points:

1. The appellate Court erred in ruling that the intervening defendant, Western States Refining Company, had notice or knowledge of the pendency of the action to condemn the land upon which it had a leasehold interest.

2. A taking of the leasehold interest of the intervening defendant, Western States Refining Company, under the appellate Court's theory of Estoppel violates the intervening defendant's constitutional rights by taking property without due process of law.

3. The appellate Court's ruling that the intervening defendant, Western States Refining Company, was estopped, notwithstanding the fact that it was not a party to the action, is contrary to constitutional guarantees and the general law of the land.

4. The appellate Court erred in not ordering a new trial to determine the value of the leasehold interest based upon the court's opinion.

This petition is based upon all the records, files, transcripts, exhibits and papers on file in the above entitled matter and upon the brief of authorities filed herewith.

Respectfully submitted,

COTRO-MANES & COTRO-MANES  
*Attorneys for Intervening Defendant,  
Respondent and Petitioner for Rêhearing*

## TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE .....	5
STATEMENT OF POINTS .....	6
ARGUMENT	
POINT ONE .....	7
<p>THE APPELLATE COURT ERRED IN RULING THAT THE INTERVENING DEFENDANT, WESTERN STATES REFINING COMPANY, HAD NOTICE OR KNOWLEDGE OF THE PENDANCY OF THE ACTION TO CONDEMN THE LAND UPON WHICH IT HAD A LEASEHOLD INTEREST.</p>	
POINT TWO .....	9
<p>A TAKING OF THE LEASEHOLD INTEREST OF THE INTERVENING DEFENDANT, WESTERN STATES REFINING COMPANY, UNDER THE APPELLATE COURT'S THEORY OF ESTOPPEL, VIOLATES THE INTERVENING DEFENDANT'S CONSTITUTIONAL RIGHTS BY TAKING PROPERTY WITHOUT DUE PROCESS OF LAW.</p>	
POINT THREE .....	12
<p>THE APPELLATE COURT'S RULING THAT THE INTERVENING DEFENDANT, WESTERN STATES REFINING COMPANY, WAS ESTOPPED, NOTWITHSTANDING THE FACT THAT IT WAS NOT A PARTY TO THE ACTION, IS CONTRARY TO CONSTITUTIONAL GUARANTEES AND THE GENERAL LAW OF THE LAND.</p>	

## POINT FOUR

Page

THE APPELLATE COURT ERRED IN NOT ORDERING A NEW TRIAL TO DETERMINE THE VALUE OF THE LEASHOLD INTEREST BASED UPON THE COURT'S OPINION.

CONCLUSION ..... 14

## CASES

Baldwin v. Starks, 107 U. S. 463, 27 L. Ed. 526, 2 S. Ct. 473	14
Brigham City v. Chase, 30 U. 410, 85 P. 436	9
Keeland v. Luch, 141 U.S. 437, 35 L. Ed. 808, 12 S. Ct. 39..	14
North Laramie Land Co. v. Hoffman, 268 U.S. 276, 45 S. Ct. 491, 69 L. Ed. 593	11
Ogden L. & I. Ry Co. v. Jones, 51 U. 62, 168 P. 548.....	9
Oregon S. L. & U. N. Ry. Co. v. Mirchell, 7 U.510, 27 P. 693	9
Silberman v. United States, CCA 1st (1942) 131 F.2d 715..	12
State v. Danielson, 122 U. 20, 247 P.2d 900	9
Utah Copper Co. v. Montana Bingham Consol. Min. Co., 69 U. 423, 255 P. 672	9
Victor Gold & Silver Mining Co. v. National Bank of the Republic, 15 U. 391, 49 P. 826	8
Wiser v. Lawler, 189 U.S. 260, 47 L.Ed. 802, 23 S. Ct. 624..	13

## AUTHORITY

Annotation, 1 L.Ed. 2d 1643	11
19 American Jurisprudence 747, Sec. 91	13
19 American Jurisprudence 758, Sec. 107	13
Fletcher, Cyclopedia Corporations, Vol. 3, p. 28, Sec. 793..	8
Jahr, "Eminent Domain, Valuation & Procedure,"	
p. 338, Sec. 217	10
p. 330, Sec. 208	10
50 American Jurisprudence 611, Stipulations, Sec. 10	14

## STATUTES

Rule 3(c) Utah Rules of Civil Procedure	10
Rule 8(c) Utah Rules of Civil Procedure	11
78-34-10, Utah Code Annotated, 1953	12

# In the Supreme Court of the State of Utah

---

STATE OF UTAH, by and through its  
ROAD COMMISSION,  
*Plaintiff and Appellant,*

vs.

J. HOWARD VALENTINE and  
FLORENCE S. VALENTINE,  
*Defendants,*

Case No.  
9100

WESTERN STATES REFINING  
COMPANY, a corporation,  
*Intervening Defendant and Respondent.*

---

## BRIEF OF RESPONDENT AND PETITIONER FOR REHEARING

---

### STATEMENT OF THE CASE

The Supreme Court of the State of Utah rendered its opinion in the above entitled matter on February 18, 1960, reversing the trial court's judgment of \$17,500.00 and holding that the intervening defendant, Western States Refining Company, the leaseholder, was not entitled to any compensation for

the taking of its leasehold interest on certain land condemned by the State of Utah in 1952. From this opinion the intervening defendant has filed its petition for rehearing.

## STATEMENT OF POINTS

### POINT ONE

The appellate Court erred in ruling that the intervening defendant, Western States Refining Company, had notice or knowledge of the pendency of the action to condemn the land upon which it had a leasehold interest.

### POINT TWO

A taking of the leasehold interest of the intervening defendant, Western States Refining Company, under the appellate court's theory of Estoppel, violates the intervening defendant's constitutional rights by taking property without due process of law.

### POINT THREE

The appellate Court's ruling that the intervening defendant, Western States Refining Company, was estopped, notwithstanding the fact that it was not a party to the stipulation, is contrary to constitutional guarantees and the general law of the land.

### POINT FOUR

The appellate Court erred in not ordering a new trial to determine the value of the leasehold interest based upon the court's opinion.



## ARGUMENT

### POINT ONE

THE APPELLATE COURT ERRED IN RULING THAT THE INTERVENING DEFENDANT, WESTERN STATES REFINING COMPANY, HAD NOTICE OR KNOWLEDGE OF THE PENDANCY OF THE ACTION TO CONDEMN THE LAND UPON WHICH IT HAD A LEASEHOLD INTEREST.

The Supreme Court contends in its opinion that the Western States Refining Company is barred by estoppel for non-disclosure of its lease interest, because the president and vice president of the corporation were in the courtroom at the time of the hearing on the State's motion for Immediate Occupancy.

There is nothing in the record to establish, or show, or upon which this court can draw an inference that the corporation had either notice or knowledge of the hearing.

It is undisputed that the corporation was not a party to the action. Where then, could have the corporation gained the needed knowledge or notice whereby it would have been bound by the proceedings in the trial court or whereby the president or the vice president were authorized to make representations on behalf of the corporation?

The fact that the vice president was a party defendant to the action does not impart notice to the corporation, nor the fact that the president of the corporation, acting as an attorney for the vice president, places him in a position whereby any knowledge he may have had would be chargeable to the corporation.

Fletcher, Cyclopedia Corporations, Vol. 3, page 28, Section 793, states:

"The general rule is that knowledge acquired or possessed by an officer or agent of a corporation otherwise than in the course of his employment or in relation to a matter which is not within the scope of his authority, is not notice to the corporation."

In the Utah case of Victor Gold & Silver Mining Co. v. National Bank of the Republic, 15 U. 391, 49 P. 826, the court said:

"But it should be borne constantly in mind that the cases where a notice to the president or any officer of a corporation will affect the corporation are cases where such president or officer is acting exclusively for the corporation. In cases where they are acting partly for the corporation and partly for themselves, a notice to them does not affect the corporation, because the fact that their personal interest is opposed to that of the corporation may influence them to withhold the information thus communicated from the directors or from the appropriate corporate officer. In receiving a communication under such circumstances the president or other officer *is held not to represent the corporation, but to represent himself only.*" (Emphasis ours.).

There is no doubt who the president was representing in the hearing on the immediate occupancy. As a practicing attorney, and one of the counsel for the defendants, he was bound by ethics and morals to serve only one master, that of the defendants, the Valentines. Mr. Valentine, one of the defendants, was out for the best deal that he could get for himself as the landowner. His primary interest was his own affairs. This is borne out by the very nature of the stipulation in light of the attending facts which clearly indicated that

the court could not have granted the State of Utah an order of immediate occupancy. As he was carrying out his own interests the ruling of the Victor Gold & Silver case (*supra*) is controlling. There was no notice or knowledge to the corporation, Western States Refining Company. As there was no knowledge or notice then there could be no non-disclosure on the part of the corporation or no acquiescence by the corporation to any stipulation made by the parties to the action. It would not be estopped by any theory to assert its rights to contest the taking or the order of immediate occupancy. *State v. Danielson*, 122 U. 220, 247 P.2d 900; *Utah Copper Company v. Montana Bingham Consol. Mining Co.*, 69 U. 423, 255 P. 672. It had a right to base its claim of damages from the time of the intervention in 1955. *Oregon S. L. & U. N. Ry Co. v. Mitchell*, 7 U. 510, 27 P. 693; *Ogden L. & I. Ry. Co. v. Jones*, 51 U. 62, 168 P. 548; *Brigham City v. Chase*, 30 U. 410, 85 P. 436.

## POINT TWO

A TAKING OF THE LEASEHOLD INTEREST OF THE INTERVENING DEFENDANT, WESTERN STATES REFINING COMPANY, UNDER THE APPELLATE COURT'S THEORY OF ESTOPPEL, VIOLATES THE INTERVENING DEFENDANT'S CONSTITUTIONAL RIGHTS BY TAKING PROPERTY WITHOUT DUE PROCESS OF LAW.

The Supreme Court in its decision ruled that by Estoppel the Western States Refining Company is in effect bound by the stipulation between Valentine and the State of Utah. To so hold, either directly or indirectly, is to violate the consti-

tutional guarantees of the 14th Amendment as the corporation was not a party to the action.

"No person may be deprived of his property without due process of law. Due process has been frequently discussed and variously circumscribed by court decisions, but all courts agree that due process requires two major ingredients, namely, that somewhere along the line there must be notice and an opportunity to be heard. When an owner's property is taken from him for public use, without his consent and against his will, he is entitled, under the constitution, to notice and an opportunity to be heard on the question of determining his just compensation."

Jahr, "Eminent Domain, Valuation & Procedure," p. 338, Sec. 217

It is fundamental law that a party cannot be bound by court orders without being made a party to the action.

"The condemnation court must have jurisdiction not only of the subject matter, but jurisdiction of the parties as well. The jurisdiction of the parties is obtained by the service of process upon each party entitled to notice under the condemnation statute. Without the service of process the court is without jurisdiction."

Jahr, "Eminent Domain, Valuation & Procedure," p. 330, Sec. 208.

The Utah Rules of Civil Procedure set forth when the court acquires jurisdiction. Rule 3(c), URCP.

The United States Supreme Court has ruled:

"Under the requirements of that amendment (14th) property may not be taken for public use without reasonable notice of the proceedings authorized for its

taking, and without reasonable opportunity to be heard as to substantial matters of right affected by the taking."

North Laramie Land Co. v. Hoffman,  
268 U.S. 276, 45 S. Ct. 491, 69 L. Ed.  
593

The question of the right of immediate occupancy was certainly a fundamental and substantial matter in this condemnation action. The fact that the State of Utah, after it had actual and constructive notice of the existence of the leasehold interest of the Western States Refining Company, (see Point 5, respondent's original brief) still chose not to bring in the company as a party defendant and now attempts to bind the company by stipulations and orders made while it had no knowledge of the action or was not a party thereto is violative of due process. It is also submitted that the question of "Estoppel" is an affirmative defense, Rule 8(c), Utah Rules of Civil Procedure, which if not plead is waived. The State of Utah did not raise the issue of Estoppel by any pleading as required by the Rules of Procedure and therefore the appellate court cannot base its opinion on a defense which has been waived.

In the annotation appearing in 1 L.Ed. 2d 1643, it is said:

"As a matter of general constitutional law, to meet the requirements of due process, notice must afford a reasonable time for those interested to make their appearance."

It is uncontroverted that the Western States Refining Company had a lease and by virtue of having that lease, it was entitled to show the value of that leasehold interest. This is

supported by decisions based on United States Supreme Court rulings:

"Nor is it doubted that a lessee for a term of years has an interest which must be recognized upon the taking of the property covered by his lease (citing cases). The right to compensation carries with it the right to be heard upon the important question of the value of the property taken and the damages caused." (Citing cases).

Silberman v. United States,  
CCA 1st (1942) 131 F.2d 715

The appellate court's ruling that as this is an executory lease there is no damage accruing to the Western States Refining Company is contrary to the law that allows juries and trial courts to arrive at the amount of damages arising from condemnation. 78-34-10, Utah Code Annotated, 1953. All things have value and that value must be determined. The case must be referred back to the trial court for a new trial based upon the court's ruling for the assessment of damages. Whether the lease, executory or not, is worth the \$17,500.00 as awarded by the trial court or \$1.00 is a matter which must be settled. Anything less is violative of the United States and Utah Constitutions which hold that private property will not be taken without just compensation. The Supreme Court in its opinion has set itself up as a jury and has usurped the jury's prerogatives. This is contrary to the constitutional guarantees and the general law of the land.

### POINT THREE

THE APPELLATE COURT'S RULING THAT THE  
INTERVENING DEFENDANT, WESTERN STATES RE-

FINING COMPANY, WAS ESTOPPED, NOTWITHSTANDING THE FACT THAT IT WAS NOT A PARTY TO THE ACTION, IS CONTRARY TO CONSTITUTIONAL GUARANTEES AND THE GENERAL LAW OF THE LAND.

The Supreme Court in its opinion in this case holds that the Western States Refining Company is estopped to assert damages from the time of the taking because of non-disclosure. The court then cites as authority 19 Am. Jur. 747, Sec. 91, et seq. It is interesting to note that none of the material in the comprehensive article holds that the doctrine of estoppel by non-disclosure of an interest in real property is applicable to a condemnation suit or a judicial taking of land. Section 107, page 758 of the same work, however, states the prerequisites which must exist before the doctrine is applicable. Notice of the sale, encumbering or other dealing is essential. The United States Supreme Court has ruled that there must be an obligation to set forth the interest. *Wiser v. Lawler*, 189 U.S. 260, 47 L.Ed. 802, 23 S. Ct. 624. There is no obligation created by Utah Law to intervene into a condemnation suit and the Utah Supreme Court has held that where one is not a party to a condemnation suit, any judgment rendered therein is a nullity as to those not parties to the action.

It is submitted that the authority cited by the appellate court is not applicable to those instances involving the determination of interests in land by judicial process. To hold otherwise is to do away with the guarantee of due process of law.

It is fundamental law of the United States that "a stipulation is not regarded as binding on those who are not parties

either to the stipulation or to the action or proceeding in which it is entered into." 50 Am. Jur. 611, Stipulations, Sec. 10, citing the United States Supreme Court case of Keeland v. Luce, 141 U.S. 437, 35 L. Ed. 808, 12 S. Ct. 39.

The United States Supreme Court has ruled that one who becomes a party to a suit long after the making of a stipulation between counsel of the parties is not bound by that stipulation. Baldwin v. Starks, 107 U.S. 463, 27 L. Ed. 526, 2 S. Ct. 473.

As the Western States Refining Company was not a party to the action it could not be bound by any stipulation made in that case, and as it was not a party to the action it was not under any legal obligation to assert at that time its claim, and it was not subject to the orders of the court for whatever purpose made.

## CONCLUSION

The respondent respectfully submits that in view of the overwhelming authority of law in favor of the respondent on the subject matter before this court, that this Honorable Court should grant the petition for rehearing and reconsider the matter in light of the governing law applicable to the case; or, in the alternative, remand the case back to the trial court for re-trial to determine the value of the leasehold interest as of the date of the service of summons.

Respectfully submitted,

COTRO-MANES & COTRO-MANES  
*Attorneys for Intervening Defendant,  
Respondent and Petitioner for Rehearing*