

1960

# In the Matter of the Disconnection of Part of the Territory of West Jordan, Inc. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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62-100

Clk's Supreme Court, Utah

IN THE MATTER OF THE DIS-  
CONNECTION OF PART OF THE  
TERRITORY OF WEST JORDAN,  
INC.

} No. 9254

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BRIEF OF APPELLANT

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## TABLE OF CONTENTS

STATEMENT OF POINT .....	3
--------------------------	---

### ARGUMENT

THE AREA SEEKING DISCONNECTION DOES COME WITHIN THE PROVISIONS OF SEC. 10-4-1, UCA 1953, AS BEING LAND "WITHIN AND LYING UPON THE BORDERS" OF THE INCORPORATED CITY OR TOWN AND IT WAS THEREFORE ERROR TO DISMISS APPELLANTS' PETITION FOR LACK OF JURISDICTION .....	3
---	---

### AUTHORITIES CITED

#### STATUTES

10-4-1, U.C.A. 1953 .....	1, 2, 9
---------------------------	---------

#### CASES

<i>Anaconda Mining Company v. Town of Anaconda</i> , 33 Colo. 70, 80 P 144 .....	4, 5
<i>Carson v. Hickman</i> , Del. 4 Houst 328, 335 .....	8
<i>Egan v. Village of Meadow Grove</i> , 66 NW <sup>2</sup> 427 .....	8
<i>Gypsum v. Lundgren</i> , 61 Colo. 332 (1916), 157 P. 195 .....	4
<i>In Re Chief Consolidated Mining Company</i> , 71 U. 430, 266 P. 1044 .....	7
<i>Jones v. City of Chadron</i> , 55 NW <sup>2</sup> 427 .....	8

#### TEXTS

Second Edition of Webster's 20th Century Dictionary ("lie")..	7, 8
25 Words and Phrases 740 .....	8

# IN THE SUPREME COURT of the STATE OF UTAH

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IN THE MATTER OF THE DIS-  
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TERRITORY OF WEST JORDAN, } Case No. 9254  
INC. }

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## BRIEF OF APPELLANT

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### STATEMENT OF FACTS

The appellants in this cause were the petitioners who sought a decree of disconnection from the Town of West Jordan, Inc. in the District Court of Salt Lake County, State of Utah (R. 1-4), pursuant to Sec. 10-4-1, UCA 1953, which permits the District Court to enter a decree of severance whenever the majority of real property owners within territory upon the borders of any incorporated city or town petition for such relief and the court finds that justice and equity require such severance. This case was tried before the Honorable

Aldon J. Anderson without a jury on November 19, 1959, and successive days thereafter, and the case was finally argued and submitted on November 24, 1959. Judge Anderson found in favor of appellants and on January 5, 1960, Judge Anderson signed Findings and Conclusions of Law accordingly (R 9-11). No decree of severance was entered then because the statute requires that commissioners be appointed to adjust the property rights and liabilities between the area granted disconnection and the remaining portion of the town and that this be entered as part of the decree. On January 12, 1960, the respondent moved to vacate the Findings and Conclusions or grant a new trial (R 12). In support of this motion counsel for the Town of West Jordan argued orally and in their brief that the Court was in error in that the area in question was not "within and lying upon the borders" of the Town of West Jordan within the meaning of Sec. 10-4-1, U.C.A. 1953. On March 17, 1960, the Honorable Aldon J. Anderson signed amended Findings and Conclusions and a Judgment (R 14-16) dismissing the petition on the grounds that the Court did not have jurisdiction to enter a decree of severance because the petitioners' land did not come within the provisions of the statute referred to above. On March 21, 1960, Judge Anderson signed an order to include the files of two prior cases as part

of the record and to set forth more fully the basis of his findings on the merits which were not included in the amended Findings because of his decision on the jurisdictional question involved. Petitioners appeal from the judgment dismissing their petition on the ground that the trial court did have jurisdiction to grant them the relief to which they were found entitled.

### STATEMENT OF POINT

THE AREA SEEKING DISCONNECTION COMES WITHIN THE PROVISIONS OF SEC. 10-4-1, UCA 1953, AS BEING LAND "WITHIN AND LYING UPON THE BORDERS" OF THE INCORPORATED CITY OR TOWN AND IT WAS THEREFORE ERROR TO DISMISS APPELLANTS' PETITION FOR LACK OF JURISDICTION.

### ARGUMENT

THE AREA SEEKING DISCONNECTION DOES COME WITHIN THE PROVISIONS OF SEC. 10-4-1, UCA 1953, AS BEING LAND "WITHIN AND LYING UPON THE BORDERS" OF THE INCORPORATED CITY OR TOWN AND IT WAS THEREFOR ERROR TO DISMISS APPELLANTS' PETITION FOR LACK OF JURISDICTION.

The first question that arises is whether some portion of the property of each petitioner must be contiguous with the border of the town in order for the court to grant relief to such a party. It seems apparent from the provisions of our statute and particularly that part which requires the majority of the owners within the area to join in the petition that each parcel separately does not have to be contiguous with the borders of the town. The few cases deciding this point so hold. In *Gypsum v Lundgren*, 61 Colo. 332 (1916), 157 P. 195, the town contended that tracts sought to be disconnected from the town must not only be contiguous to each other but that each tract must be contiguous to the borders of the town. There two of the three tracts involved, although contiguous to each other, were not contiguous to the border of the town. The court held that the requirement of the statute was that 20 or more acres as a unit must be contiguous to the borders of the city and that the decree of disconnection granted in that case was valid.

The next question is whether or not an area may be disconnected when the boundary of the area seeking disconnection is shorter in distance than a border which is not contiguous. The main authority heretofore relied upon by respondent in favor of such a proposition is the 1904 case from Colorado of *Anaconda Mining Company*

*v. Town of Anaconda*, 33 Colo. 70 80 P 144. In that case the Colorado Court held that the petitioner's property which was contiguous with the border only along a narrow 150-foot strip could not be disconnected. Although the language there appears to make the problem a jurisdictional one, the Colorado Supreme Court stated that the effect there would be to divide the town in two. The accompanying map in that case indicates that this is not geographically true, but the Court stated that the evidence showed that would be the practical effect of it. The other cases relied upon by respondent as authority for this proposition deal with the question of symmetry and not with contiguity or jurisdiction.

It is important to distinguish statutes where, as in Colorado, the trial court has no discretion to grant or deny the petition if certain facts exist and a statute such as ours where the court is given discretion to grant or deny the petition or to grant it in part and to deny it in part in accordance with justice and equity. Courts dealing with the former type statute are naturally more strict in their interpretation of it since the court's decision can not be predicated upon the effect which the granting of the petition will have, whereas in the latter jurisdictions the court may consider all relevant factors, including the effect of the shape of the town.

The question in this case is whether the area seeking disconnection is located in such a situation that the court did not have jurisdiction to entertain the case. This must be distinguished from the problem of symmetry which concerns the effect of the shape and location of the area seeking disconnection upon the remaining portion of the town. This distinction is very important because practically all of the cases which deny disconnection do so on the latter basis, whereas the ruling of the Court in this case was not based on the merits but on the jurisdictional question just stated.

Other than the distinctions already noted in the applicable statute and the language of the *Anaconda* case, where the petition was denied by the trial court, the following factual differences exist between the two cases:

1. The contiguous area in this case was 16 times greater.
2. The ratio of length to border is approximately one to three in this case as contrasted with one to ten in the *Anaconda* case.
3. The granting of the petition in the *Anaconda* case would have left a broad segment of the residential area

on the border of town, whereas no such result would follow the granting of this petition.

It is not unlikely that the Colorado Court was influenced in preventing Anaconda Mining Company from disconnecting from the Town of Anaconda by the same factors which caused the petition of the Chief Consolidated Mining Company for disconnection from the Town of Mammoth City to be denied by our court in the case of *In Re Chief Consolidated Mining Company*, 71 U. 430, 266 P. 1044.

Certainly the area seeking disconnection is "within" the borders of the town in question. Is it also "lying" upon the borders? If that word must be construed as to mean that the object is reclining thereon in such a position as a person does upon a couch so that the larger dimension is upon the border, then this area *as a unit* does not meet the test. However, it is to be noted that the word "lie", which is the verb from which the word in question is a participle, has nine different connotations according to the *Second Edition of Webster's 20th Century Dictionary*, and the sense of reclining there indicates a horizontal position which of course has no meaning with respect to the position of land. Two other meanings there appear to be closer to the legislative intent. They

are: "3. To be situated; as Ireland lies west of England" and "6. To extend; stretch; as the road lies straight across the prairie."

*Words and Phrases* has this annotation under "Lying On" (Page 740 of Volume 25): "'Lying on' as used in a will giving to testator's daughter that part of his land lying on the northeast side of a certain road, imports in law, as well as in fact, that the land extends to and borders upon the boundaries designated in the description. *Carson v. Hickman*, Del. 4 Houst 328, 335."

If our statute is to be given a literal interpretation, then only a frame shaped area could be disconnected since the area to be severed must not only lie upon a border but all borders since the plural of the town's extremities is used in that statute. A much more logical purpose for the wording of the statute is to prevent doughnut-shaped towns if islands could be disconnected, such as was attempted in the Nebraska cases of *Jones v. City of Chadron*, 55 NW<sup>2</sup> 499 and *Egan v. Village of Meadow Grove*, 66 NW<sup>2</sup> 4-27 where the area seeking disconnection was *entirely* surrounded by municipal area.

It is inconsistent for the legislature to grant the court broad discretion as to granting of severance and

then to make an arbitrary limitation on that remedy with respect to the shapes of the area on which that discretion could be exercised.

If the lower court's construction of our statute is correct, it is legally impossible to have a rectangular shaped area disconnected in one action when the shorter side is contiguous with the border, but this result could be accomplished in a series of actions by using the shorter side of such area as the longer side of smaller rectangles built one on top of the other toward the center of town if the merits of the case out-weighed any detrimental effect caused by the location of such a rectangle. This seems arbitrary and unnecessary in view of the discretionary latitude extended to the court by the applicable statute to grant the petition only in part if the location of some of the area seeking disconnection is so situated that its justification for withdrawal is outweighed because of the effect that such would have upon the remaining area of the town.

## CONCLUSION

We respectfully submit that the lower court was in error in finding that the petitioners' property did not come within the provisions of Sec. 10-4-1, UCA 1953 and the judgment of the lower court dismissing appellants'

position should be vacated and the lower court directed to enter a decree of severance after proper appointment of commissioners to adjust the equities between the parties and making proper provisions in the decree with respect to such equities as is provided by law.

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