

1960

# George O. Patterson and Edna Patterson v. Max Wilcox and Ben D. Browning : Brief of Appellants

Utah Supreme Court

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Edward M. Garrett; Attorney for Appellants;

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

GEORGE O. PATTERSON and  
EDNA PATTERSON, his wife,

*Plaintiffs and Respondents,*

vs.

MAX WILCOX and  
BEN D. BROWNING,

*Defendants and Appellants.*

FILED

AUG 15 1960

Clerk, Supreme Court, Utah

Case No. 9278

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APPELLANTS' BRIEF

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APPELLANTS' BRIEF

---

STATEMENT OF FACTS

This action involves title to the mineral rights of 400 acres of land situated in Township 31 South, Range 26 East, Salt Lake Base and Meridian, San Juan County, Utah.

Plaintiffs and Respondents, George Patterson and Edna Patterson, his wife, commenced this action against the appellants, Max Wilcox, Ben D. Browning, and others to quiet title to the lands in question.

Respondents Patterson did not introduce any evidence of their title.

The evidence of title in Wilcox and Browning, appellants, appears from defendant's exhibit 1, (reproduced herein for reference), which is a quit claim deed from respondents George Patterson and Edna Paterson, his wife, to Max Wilcox. Wilcox testified that he and his wife delivered a quit claim deed to appellant Ben D. Browning to an undivided one-half interest in the minerals conveyed to appellant Wilcox by respondents, Patterson. (TR. 36).

This case presents a single question for review by this Court; namely, the construction and effect of the quit claim deed by Patterson to Wilcox (defendant's exhibit 1).

In the lower Court the respondents directed their attack toward the circumstances surrounding the consideration for the deed rather than the intent of the parties or the provisions of the deed. They attempted to rescind the deed and an attendant agreement (defendant's exhibit 2), for alleged misrepresentations of appellants.

In this connection the evidence showed that an agreement (defendant's exhibit 2) was entered into between appellant, Max C. Wilcox and respondent, George Patterson, wherein it was provided for the conveyance of certain unpatented mining claims and "all the mineral rights" to 400 acres of land

for a consideration of \$5,000.000 cash and 5,000 shares of stock at par value of \$1.00 per share in a corporation to be formed. Ben D. Browning, one of the appellants, paid to George O. Patterson the sum of \$5,000.00 in cash on April 28, 1955. On July 17th, 1955, a certificate of stock in Plateau Mining Corporation, representing 5000 shares at the par value of \$1.00 per share, was delivered to respondents Patterson by appellant Wilcox. This corporation had been formed on February 28, 1955 pursuant to the laws of the State of Nevada. Respondents contended that the fact that the corporation had been formed prior to execution of the agreement (Defendants' Exhibit 2) amounted to misrepresentation and thus entitled them to rescind the agreement and the deed. However, the evidence showed that the date of incorporation is part of the corporate seal of Plateau Mining Corporation and this seal was clearly affixed to the stock certificate. (See Plaintiffs' Exhibit "A"). Respondents or their agent had possession of the stock certificate for approximately four years and therefore, had the means of knowing the date of incorporation for some four years before they commenced this action. (Tr. 22). Appellants moved to dismiss plaintiffs' complaint at the conclusion of their case on the following grounds: (1) That the action was barred by the three year statute of limitations (78-12-26

U.C.A. 1953), (2) that no material or other misrepresentation of fact had been made to respondents and, (3) that respondents never had offered to restore the status quo, namely to return the \$5,000.00 cash consideration which they had received. (Tr. 52). The court then stated:

“I am of the opinion and so hold that the complaint, the amended complaint of the plaintiff should be and is dismissed. Even if it be conceded that the provisions in the contract relative to the formation of the corporation is a material provision of the contract, it seems to me that if that is the only fraud that can be shown, that the statute of limitations applies and the action is barred by the provisions of the statute cited to the court which I need not mention because counsel are both familiar with them . . . I don't think there was any intent on the part of the, there isn't any intent on the part of the defendant shown by the evidence at any rate to deceive in any way the plaintiff. I don't think I need say more, gentlemen.” (Tr. 53).

This ruling of the court is reflected in the findings of the court. (R. 75). Respondents have not appealed from the order of court dismissing their amended complaint, and hence, the allegations of that complaint and issues raised thereby are not before the court on appeal. We burden this brief with a recital of the action of the lower court in regard to respondents' amended complaint merely to show the background of this action and to fur-

ther show that the entire case of respondents was devoted to attempting to focus the attention of the lower court on matters which proved to be without substance, and to thus avoid the real issue in the case, namely the effect of the quit claim deed (Defendants' Exhibit 1).

At the close of respondents case and upon the dismissal of their amended complaint, the sole issue remaining was whether as against respondents, appellants had title to "all the mineral rights" including oil and gas underlying the 400 acres of land mentioned and described in the quit claim deed. The lower court in its memorandum decision ruled that appellants did not and construed the deed as severely restricting the grant therein contained. (R. 68). This brief will show that the court erred in this regard and that its decree in this particular must be reversed.



# STATEMENT OF POINTS

## POINT I

APPELLANTS' TITLE TO ALL THE MINERALS INCLUDING OIL AND GAS UNDERLYING THE 400 ACRES DESCRIBED IN DEFENDANTS' EXHIBIT "A" (QUIT CLAIM DEED) IS GOOD AND VALID AND THE DECREE OF THE LOWER COURT HOLDING OTHERWISE IS ERROR.

# ARGUMENT

## POINT I

APPELLANTS' TITLE TO ALL THE MINERALS INCLUDING OIL AND GAS UNDERLYING THE 400 ACRES DESCRIBED IN DEFENDANTS' EXHIBIT "A" (QUIT CLAIM DEED) IS GOOD AND VALID AND THE DECREE OF THE LOWER COURT HOLDING OTHERWISE IS ERROR.

The sole question before the court is to determine what was conveyed by the quit claim deed. The answer to that question depends on the intent of the parties as shown by the deed. The terms of the deed and the words of grant are clear and unambiguous.

Briefly summarized, the deed states and conveys:

- (1) 30 mining claims.<sup>(1)</sup>
- (2) "All mineral rights" to the following named parcels of land. (The legal description follows)
- (3) An *easement* for the purpose of *mining* said properties and conducting all operations incidental thereto including, but not limited to, *exploration, development* and *surveying*.

Each of the words of grant are consistent with the removal of oil and gas, and there is no suggestion that the parties intended otherwise.

---

(1) The 30 mining claims are not an issue in this case. They were unpatented claims and by Federal law oil and gas is not subject to location under the mining laws. 30 U.S.C. §193.

The meaning attributed by law to the term “mineral rights” includes extraction of oil and gas.

NOTE: The term “mineral right” ordinarily embraces oil and gas, 58 C.J.S. Mines & Minerals §2b(4).

“Unless it appears in a particular case that it is used in a more restricted sense, the term “mineral” ordinarily embraces oil or petroleum and natural gas”.

NOTE: The term “mining” includes the extraction of oil and gas, 58 C.J.S. Mines & Minerals §3C(2).

“... In accordance with the recognition of oil and gas as minerals as discussed supra §2b (4), and by common usage, the extraction or production of oil or gas from the earth is now generally regarded as mining, ...”.

The terms *exploration, development and survey* are each terms of general meaning and are applicable to the extraction of oil and gas.

This Court has held (and settled the question in this state) that oil and gas was included in a reservation of . . . “all coal, gold, silver, lead, copper and other precious and valuable ores, minerals, mines and mining rights.” See *Western Development Company vs. Nell*, 288 Pac. 2d 488 (Utah).

Certain of the rulings in the Western Development case are particularly pertinent to the case at bar.

“While it is true that the absence of references to rights and privileges connected with oil development has been held to demonstrate a lack of intention to convey gas and oil, (citing cases) the modern trend is apparently to give greater weight to the strict definition of the term ‘minerals’ and to interpret the easements appropriate to mining as merely additional surface rights.”

“The trial court admitted the extrinsic evidence offered by appellants, but determined the issue of intent against them. The burden of persuasion remained with the parties who asserted that the grantor in both deeds here under consideration intended to convey less than the estate attributed by law to the word “minerals”, and hence, we must examine that evidence to determine whether or not it is of such substance as to compel a finding that oil and gas rights were not intended to be included in the reservation and grant.”

“All the evidence introduced was equivocal in its meaning, and thus appellants have failed to prove by extrinsic evidence that the intention of the parties was other than to grant what is generally accepted as within the term ‘minerals.’”

The burden of persuasion throughout the trial remained with respondents Patterson to show that their grant meant less than the estate attributed by law to the term ‘mineral rights’, and this they did not do; that burden was never even undertaken by respondents, let alone satisfied. The ruling of the *Western Development vs. Nell* supra, compelled

the lower court to find that the estate conveyed by respondents is all substances legally cognizable as minerals, including oil and gas. 37 ALR 2d 1440.

The lower court recognized the rule that a conveyance of “minerals” or “mineral rights” includes oil and gas. The court so stated in its memorandum decision.

“I recognize the rule that unless a contrary intention is manifested,<sup>(2)</sup> the term “mineral” or ‘mineral rights’ include gas and oil”. (R. 69).

How then did the lower court arrive at its erroneous conclusion that grantors conveyed an estate less than “all minerals”, including gas and oil? The record discloses only two possible sources for such a conclusion, neither of which support it; one item being the grazing lease entered into by respondents Patterson and appellant Wilcox more than three years after delivery of the deed, the second being the royalty reservation contained in the deed. See Paragraph 7 of the Finding of Fact (R. 75) and the court’s memorandum decision (R. 68).

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(2) “Manifest is a very strong word, a degree stronger than ‘evident’, the mind getting the truth as by an intuition. It is defined as meaning . . . obvious to the mind or to the understanding; plain; open; unmistakable; indisputable . . . ”. 55 C.J.S. p. 622.

*First, the “grazing lease”.*

It is dated October 1, 1958, more than three years subsequent to the execution of the quit claim deed and cannot be considered a contemporaneous instrument. Paragraph 4 of the lease (R. 95) contains the language relied on by respondents in regard to intent. It states:

“It is further understood and agreed that this lease does not include any mineral rights whatsoever and that the Lessors specifically reserve the right to occupy so much of the surface of the demised premises as may be necessary or convenient for any mining operations conducted by Lessors or those acting by their authority, and that no compensation will be paid to Lessee for such right.”

This lease neither referred to, nor cancelled, nor amended the quit claim deed conveying “all minerals.” Its simple effect must be to clarify the lease to the extent that no mineral rights passed by the terms of the lease. To give it effect as qualifying the deed would require a conclusion that “all minerals” conveyed by the deed were cancelled by the lease. Such construction of the lease seems wholly inconsistent with the lease provision . . . “this lease does not include any mineral rights.”

*The lease language, rather than casting doubt upon the deed, merely recognizes its existence and harmonizes the prior acts of the parties.*

Furthermore, the grazing lease covers approxi-

mately 3000 acres of land owned by respondents in the same general area as that described in the deed. The deed conveys all mineral rights to only 400 acres of land. When seen in this context, the paragraph quoted above assumes its proper proportion and shows recognition of rights not only embraced in the quit claim deed but perhaps other grants by respondents or rights not yet conveyed by respondents.

## *The Reservation of Royalty*

The lower court in Paragraph 7 of the Findings of Fact states:

“ . . . That from the face of said unrecorded quit claim deed itself, the use of the term “mineral rights” it was intended to include only minerals and ores that were to be treated by mills and against which there was haulage allowance and penalty for high lime contents, namely, uranium, thorium, vanadium and other fissionable source materials and all associated and related minerals and did not cover and include other minerals such as oil and gas with the premises.”

The deed granted “all mineral rights” to (legal description follows). The royalty reservation states:

“Grantors further reserve the right and impose an obligation upon these properties to the extent of 10% of all minerals reserved by this deed as determined by gross mill receipts, less haulage allowance and penalties for high lime content. Said ore payment to terminate when such payment shall be paid in the sum of \$5,000,000.00.”

In the absence of ambiguity the court was required to give full force and effect to the plain meaning of the deed. When the court failed to hold that gas and oil was included in this deed, such conclusion is in direct conflict with the granting clause of “all mineral rights” and had the effect of re-making the deed between the parties. The only



source in the deed from which the court could have reached such a conclusion comes from the reservation of royalty. It is obvious that the lower court concluded that the royalty reservation reflected an intention of the parties to convey those minerals and ores treated by mills and concluded that this excluded gas and oil minerals. To reach this result the court has construed this deed most favorably to the grantor and against the grantee. A reasonable construction of the deed giving full effect of the granting clause of "all mineral rights" would have been to construe the royalty reservation to impose 10% royalty on all minerals reserved by the deed after deducting all allowances and penalties for high lime content and as to the minerals not subject to milling, haulage, and high lime content there would be no royalty. To construe this granting clause as being modified by the reservation is to extend the reservation beyond its terms. The rule of construction applicable to reservations is found in 26 C.J.S. Deeds, sec. 140(1) :

"A reservation or exception will be given effect according to the plain meaning and intent of the language used. What was reserved must be determined from a construction of the reservation clause, which is to be construed more strictly than a grant. It cannot be extended beyond its terms."

The fact that it is not permissible to construe

a deed more strongly in favor of the grantor against the grantee is found in 26 C.J.S. Deeds, sec. 140 (2) :

“ . . . as a general rule, reservations and exceptions expressed in a doubtful manner are, conformable to the rule applicable to deeds generally, . . . construed most strongly against the grantor and in favor of the grantee.” 26 C.J.S. Deeds, sec. 140 (2).

Nothing in the record, nothing in the deed and no rule of construction will permit the royalty reservation to override and destroy the grant.

The reservation of royalty presents the question of what minerals are subject to royalty and not whether the reservation affects the clear and unequivocal terms of the grant.

The key words in the clause are “mill receipts” and “ore”. They are defined in law.

### *Milling*

“In mining parlance, the process of separating the materials found together, and extracting from the mass the particular natural product desired.” 58 C.J.S. §3, Page 49.

### *Ore*

“The term ore designates the compound of a metal and some other substances; a metaliferous mineral or rock. It is generally regarded as a mineral.” 58 C.J.S. §2 (5).

“Less haulage allowance and penalty for high

lime content” merely define the method of computing the net royalty.<sup>(3)</sup>

The only plausible construction of the royalty reservation is that respondents reserved ten (10%) percent of *metalliferous ores* produced from the mining claims and the 400 acres, computed on the basis of net mill returns free of development and haulage costs. The trial court evidently adopts this view as to the nature of respondent’s royalty.

We again state that the court’s finding from the royalty reservation of an intent not to convey oil and gas extended the reservation beyond its plain terms and beyond all rules of construction.

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Even if it were conceded for the purpose of argument that the reservation is ambiguous (the grant concededly is not), when the deed is viewed in the light of settled rules of construction the total effect is still a grant of “all mineral rights” including oil and gas.

The rule followed in this State is that the whole deed will be considered and effect given to all its terms. *Coltharp vs. Coltharp*, 160 Pac. 121 (Utah), *Wood vs. Ashby*, 253 Pac. 2d 351 (Utah), *Haynes vs. Hunt*, 85 Pac. 2d 861 (Utah).

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(3) The trial court in its memorandum decision states that it is a matter of common knowledge that those terms referred to processes and practices relative to the extraction of uranium and vanadium. If that be a fact, we do not learn it from the record and the court was not asked by respondents to take judicial notice of any matter. The decision of the trial court should have been based upon matters of evidence presented by the parties and made a part of the record.

With this rule in mind and giving effect to the ordinary meaning of the words used, it is still apparent that the estate conveyed includes oil and gas.

Other settled rules of construction point unerringly to the same result.

“It is generally conceded that a deed is to be construed most strongly against the grantor and most favorably to the grantee.” *Wood vs. Ashby* (supra).

“The general rule is well settled that if there is any ambiguity in a deed so that it is capable of two possible constructions, one of which will be more favorable to the grantee, the other of which will be more favorable to the grantor, that method of construction which will be more favorable to the grantee will be selected and the deed will be construed against the grantor.” 16 Am. Jur. Deeds Sec. 105.

See also 16 Am. Jur. Deeds Sections 170 and 171.

The same rule applies to the construction of the royalty reservation.

“A reservation or exception will be given effect according to the plain meaning and intent of the language used. What was reserved must be determined from a construction of the reservation clause, which is to be construed more strictly than a grant. It cannot be extended beyond its terms.” 26 C.J.S. (Deeds) Sec. 140(1).

“. . . as a general rule, reservations and exceptions expressed in a doubtful manner are, conformable to the rule applicable to

deeds generally, . . . construed most strongly against the grantor and in favor of the grantee." 26 C.J.S. (Deeds) Sec. 140(2).

"Also, in virtue of the rule that a grant is construed most strongly against the grantor when the language of an exception or reservation is ambiguous or doubtful, it will be construed in such way as to resolve doubts against the grantor in favor of the grantee, for the grant will not be cut down by the subsequent reservation to any extent beyond that indicated by the intention of the parties as gathered from the whole instrument." 16 Am. Jur. Deeds, §309.

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One further observation. The contention was made in *Western Development Company vs. Nell* (supra) that the fact that oil and gas development was of minor importance in this state in 1916 demonstrated that the parties did not have these minerals in mind when the deeds were made. The court said:

"It appears to us that the mere fact that a particular mineral had not been discovered in that vicinity would not preclude the granting of rights to such a mineral or limit a grant of 'minerals' to something less general than all the substances legally cognizable as minerals."

The quit claim deed was made in April, 1955. A major oil field was discovered at Aneth, San Juan County, Utah in 1954. This lends compelling force to the fact that the parties intended that the grant of "all mineral rights" included oil and gas.

## CONCLUSION

In this action it was incumbent upon respondents to prove that they intended to convey an estate less than that contemplated by the term "all mineral rights". This, they did not, indeed, could not do.

The plain unmistakable terms of the deed show that "all mineral rights" had been conveyed to appellants, subject only to a 10% royalty on metalliferous ore produced from the mining claims and the 400 acres of fee title land.

The findings and decree of the lower court holding that the terms of a grazing lease and the terms of the royalty reservation show an "interpretation" and intent not convey oil and gas are not founded on substantial evidence or any evidence whatsoever and must be reversed.

This court should instruct that a decree be entered quieting appellant's title to "all mineral rights" subject only to respondents 10% royalty on metalliferous ore free of development and haulage cost.

Respectfully submitted,

EDWARD M. GARRETT

*Attorney for Appellants*

1307 Walker Bank Building  
Salt Lake City, Utah



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# QUIT-CLAIM DEED

GEORGE O. PATTERSON and EDNA L. PATTERSON, his wife  
of Moab, Grand County, State of Utah, hereby  
QUIT-CLAIM to ~~MAX C. WILCOX~~ MAX C. WILCOX  
County of \_\_\_\_\_, State of Utah, hereby

of Moab, Grand County, State of Utah  
Ten and no/100-----  
the following described tract of land in San Juan County,  
State of Utah:

30 Mining claims, designated Lower Valley, Nos. 1 through 30  
all located in R 26 E, 31 S, Salt Lake Meridian, as further shown  
by the official records of the San Juan County Recorder. Re-  
serving, nevertheless, surface rights to the grantors. And,  
all mineral rights to the following named parcels of land, to  
wit: "SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Section 8, and NW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SW $\frac{1}{4}$   
Section 9 Township 31 South, Range 26 East, Salt  
Lake Base and Meridian" Commonly known as the  
W.H. Coefield property. And,  
"The East  $\frac{1}{2}$  of the Northeast Quarter of Section  
Seventeen in Township 31 South, Range 26 East,  
Salt Lake Meridian." Containing 80 acres.

Together with an easement of way to the grantee or his assigns  
to the above described parcels of property for the purpose of  
mining said properties and conducting all operations incidental  
thereto including but not limited to exploration, development  
and surveying.

Grantors further reserve the right and impose an obligation  
upon these properties to the extent of ten percent of all  
minerals reserved by this deed as determined by grossmill  
receipts less haulage allowance and penalties for high lime  
content; said ore payment to terminate when such payments  
shall be paid in the sum of \$5,000,000.00

WITNESS the hand of said grantor, this 28th day of  
April, A. D. one thousand nine hundred and fifty five.

Signed by George O. Patterson  
Signed in the presence of  
*Edna L. Patterson*  
*George O. Patterson*  
*Edna L. Patterson*

STATE OF UTAH, } ss.  
County of \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ A. D. one  
thousand nine hundred and \_\_\_\_\_ personally appeared before me

the signer of the foregoing instrument, who duly acknowledge to me that he executed the  
same.