

1962

## San Juan County v. Grand County : Brief of Respondent and Cross Appellant

Utah Supreme Court

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APR 9 1962

## IN THE SUPREME COURT

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of the

STATE OF UTAH

FILED

SAN JUAN COUNTY, a Body Corporate  
and Politic of the State of Utah,

*Plaintiff, Respondent, and  
Cross-Appellant,*

vs.

GRAND COUNTY, a Body Corporate  
and Politic of the State of Utah,

*Defendant, Appellant and  
Cross-Respondent*

APR 9 - 1962

Supreme Court, Utah

No.  
9563

## Brief of Respondent and Cross Appellant

Appeal by Grand County and Cross-Appeal by San Juan County  
from the Judgment of the District Court of Utah County,  
State of Utah. Hon. R. L. Tucket, District Judge.

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# IN THE SUPREME COURT of the STATE OF UTAH

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SAN JUAN COUNTY, a Body Corporate  
and Politic of the State of Utah,

*Plaintiff, Respondent, and  
Cross-Appellant,*

vs.

GRAND COUNTY, a Body Corporate  
and Politic of the State of Utah,

*Defendant, Appellant and  
Cross-Respondent*

No.  
9563

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## Brief of Respondent and Cross Appellant

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### NATURE OF THE CASE

Grand and San Juan Counties each petitioned the Utah State Engineer to survey and monument Parallel 38° 30' North Latitude as the common county boundary to said counties, and the Utah State Engineer having had the said boundary located on the ground by enlarged Reconnaissance Survey, Grand County refused to accept the statutory boundary, refused to participate in the final marking of the boundary, announced Grand County would continue to exercise jurisdiction to a



township line 3500 feet south of the statutory boundary line until a court otherwise decreed. This action was brought by San Juan County to have the court determine the lawful boundary line between San Juan County and Grand County and direct Grand County to abide by that line as and when surveyed and monumented by the State Engineer.

### DISPOSITION IN LOWER COURT

Though the District Court by Findings of Fact determined the boundary to be Parallel 38° 30' North Latitude, as defined by statute, it refused to grant judgment to either plaintiff San Juan County on its complaint, or to defendant Grand County on its counterclaim, asserting the District Court had no jurisdiction in the matter.

### RELIEF SOUGHT ON CROSS APPEAL

San Juan County seeks to have this Court affirm the judgment of dismissal of the counterclaim of Grand County. On its cross-appeal, San Juan County asks for reversal of the judgment dismissing the complaint and the assessment of costs against San Juan County for the reason that the trial court erred in deciding it had no jurisdiction. In addition San Juan County asks this Honorable Court to enter judgment in accordance with Findings of Fact 1, 2 and 3 that the common boundary line between the two counties, and the line to be surveyed and monumented by the State Engineer of Utah, was and is Parallel 38° 30' North Latitude, and that such boundary line has never been changed.

## STATEMENT OF FACTS

San Juan County is unable to agree with the Statement of Facts contained in appellant's brief for the reason that Grand County omits a number of decisive facts and states as facts contentions of Grand County for which there is no proof.

Defendant Grand County inaccurately infers that it has exclusively levied and collected taxes and exercised exclusive jurisdiction over all property and governmental services in what it refers to as the "disputed area."

The "disputed area" varies in width but is approximately 3500 feet in width and extends from the Green River on the west to the Colorado line on the east, a distance of approximately 54 miles, and includes an area of 22,909.1 acres, or 34 square miles. Properties to be taxed in the "disputed area" consist of fee lands and properties and easements of utilities such as Mountain States Telephone Company, Utah Power & Light Company, El Paso Natural Gas Company, Midland Telephone Company, motor carriers, such as Ashworth Transfer, W. S. Hatch, bus companies and others (Tr. 98).

There are also public roads through the "disputed area" which have been and continue to be maintained at the expense of San Juan County.

Facts omitted from the Brief of Appellant Grand County, and facts which should be more accurately stated, are as follows:

## TAXATION IN DISPUTED AREA

The only lands taxed by Grand County in the disputed area are in two narrow strips of arable lands extending south from Moab. The acreage taxed varied from 160 acres in 1900 to approximately 600 acres in 1960, which was owned by never more than seven different people (Ex. 163). The greatest acreage taxed was 1010 acres in 1941, which produced \$179.18 in taxes. Most of the lands in the disputed area are public domain.

All utilities were assessed on their properties in the disputed area and paid such tax to San Juan County. Significant amounts are represented in the taxes on these utilities. Though the figures are for the county as a whole, Utah Power & Light Company paid San Juan County in taxes for 1956, \$5,666.03, including the pro rata for property in the disputed area. In 1959 this figure was \$9,301.25. Likewise Pacific Northwest Pipeline in 1956, for all its property in San Juan County, including that in the disputed area, paid taxes to San Juan County of \$38,201.92, and in 1959, \$41,177.54 (Tr. 300).

The personal property of the Geyser Sawmill Lumber Company located in the disputed area had been taxed and taxes collected by San Juan County (Tr. 301).

All personal properties of common carriers which traverse San Juan and Grand Counties are taxed and the taxes divided between the two counties on the basis of mileage traveled in each, with the computation made on the basis of the common boundary being at a point 3500 feet north of the south line of Township 26 South, Range 23 East (Tr. 97-100; Ex. 83). San Juan County received all these taxes for the disputed area.

## JURISDICTION OVER ROADS IN DISPUTED AREA

The State of Utah by statute has created for the benefits of counties what is designated as the Class "B" road funds, which are allocated among the counties on the basis of the mileage of qualifying roads within the boundaries of the counties concerned. Exhibit 103 and the testimony of Dale Burningham of the State Road Commission (Tr. 238) establishes that the State of Utah, in allocating and paying the Class "B" road fund for San Juan County, included as mileage for computing San Juan County "B road funds" all qualifying roads within the disputed area.

Exhibit 104 is one of several resolutions which periodically have been adopted by the defendant Grand County Board of County Commissioners, approving the allocation of Class "B" road funds on the basis of the county boundary line being at a point 3500 feet north of the south line of Township 26 South, Range 22 East.

As several of the roads in the disputed area dead-end at various view points and are reached from points in Grand County, Exhibits 114 and 115 represent the written agreement entered into between plaintiff and defendant counties, pursuant to which Grand County maintained the portion of the road in the disputed area for San Juan County and charged San Juan County for the cost of maintaining San Juan County roads in the disputed area. Exhibits 20, 112 and 116 show the payment of funds by San Juan County to Grand County in accordance with this agreement.

## RECOGNITION BY PROPERTY OWNERS

Exhibits 167 and 168 were received in evidence (Tr. 492) and represent 716 pages of documents affecting property in the disputed area that have been filed of record in San Juan County. The dates of these documents are generally from 1952 to 1960, conforming with the uranium activity and more recently the potash leases and discoveries. These instruments are mining locations, states leases and federal leases, and are not assessed by the county but are to be assessed for taxes by the Utah State Tax Commission. A consideration of the hundreds of pages making up these two exhibits discloses the public recognition that lands in the disputed area are located in San Juan County, and those concerned with the protection of the title to their properties located in the disputed area place them of record in San Juan County.

## 1912 SURVEY

Defendant Grand County inaccurately and without any foundation whatsoever, contends that in 1912 the county boundary had been surveyed by mutual agreement and joint effort, placing the line coincident with the south line of Township 26 South. Defendant Grand County took the deposition of an 86-year-old former resident of San Juan County, who states that he was with a surveyor and line-man who were surveying the county line in 1912 (Tr. 459). The line surveyed did not follow the township line (Tr. 479).

The witness stated that he had observed section corners from a 1906 survey and that the line being surveyed as the boundary line was north of the section corners (Tr. 480).

The witness stated that there were people from both Grand County and San Juan County who helped on the survey, but described those people at Page 482 of the transcript as people who volunteered to help "who were running cattle or sheep in that particular area. And as you would come near their location they would help."

Though the defendant in its Statement of Facts asserts that the two counties by mutual agreement conducted a survey in 1912, there is no evidence whatsoever that Grand County ever participated in the survey; never paid anything; no minutes of Grand County were introduced showing that it was aware of the survey; no evidence was introduced that the county surveyors or either county participated, or that the counties had county surveyors. The only evidence introduced by Grand County was that there was unilateral action by San Juan County in surveying the line.

Defendant's Exhibit 132 is an excerpt from the minutes of San Juan of March 7, 1910, showing that the San Juan County Commission directed its surveyor to survey several roads "and to survey lines between Grand and San Juan Counties." No such direction was ever shown by Grand County Commissioners, no agreement is shown by any evidence, nor is there shown any expenditure authorized by Grand County in connection with this survey.

Defendant claims that all of the "old maps" show Parallel 38° 30' North Latitude as coincident with the south line of Township 26 South. Exhibit 96-P of greater antiquity shows the parallel *north* of the township line.

## SURVEY AND MONUMENTING BY STATE ENGINEER

Neither the Utah State Engineer nor San Juan County has abandoned the proceeding to survey and monument the county boundary between San Juan and Grand Counties. Grand County, in writing and publicly, announced it would no longer participate in the monumenting and surveying of the boundary line. This, of course, interrupted the completion of the survey.

The action before the Court was necessitated because the announced refusal of Grand County to honor the line so monumented required that Grand County's assertion of jurisdiction beyond the statutory boundary line be quieted and determined.

The line will be monumented as soon as the contentions of Grand County are determined.

## ARGUMENT

### POINT NO. I

THE TRIAL COURT PROPERLY DISMISSED DEFENDANT GRAND COUNTY'S COUNTERCLAIM WHICH SOUGHT TO HAVE THE COURT FIX THE BOUNDARY AT A POINT DIFFERENT FROM THE STATUTORY DESCRIPTION.

(A) GRAND COUNTY, BY ENGAGING THE STATE ENGINEER OF UTAH, PURSUANT TO TITLE 17-1-33 UTAH CODE ANNOTATED, 1953, TO SURVEY AND MONUMENT PARALLEL 38° 30' NORTH LATITUDE AS A COMMON BOUNDARY LINE BETWEEN GRAND AND SAN JUAN COUNTIES, WAIVED

ANY RIGHT OR CLAIM TO A BOUNDARY LINE AT ANY OTHER LOCATION. BY ITS PETITION AND RELATED ACTS GRAND COUNTY IS ESTOPPED FROM ASSERTING, AND/OR WAIVED ANY RIGHT, TO CLAIM A DIFFERENT BOUNDARY.

The District Court properly determined that Title 17-1-33 Utah Code Annotated, 1953, is the statutory and exclusive procedure for surveying and monumenting county boundaries where there is uncertainty or dispute as to their location. Grand County initiated and joined in engaging the State Engineer to take jurisdiction in surveying and monumenting the boundary, as the following facts conclusively establish:

Exhibit 49-P is a letter from Grand County to the State Engineer dated March 12, 1958, a copy of which was mailed to the county attorney of San Juan County:

"A dispute has arisen as to the location of the boundary line between Grand County and San Juan County.

"The statute which defines the boundary line of the Counties described the line as being Parallel 38° 30' North Latitude. Some of the older maps show the boundary line to coincide with the south line of Township 26 South; however, later maps indicate that the boundary should be approximately one-half mile north of the township line afore described.

"Under the provisions of Section 17-1-33, Utah Code Annotated 1953, the Grand County Commissioners request the services of the State Engineer to determine such boundary line."

Exhibit 48 is a letter to the State Engineer by which San Juan County has submitted a similar request, and which was forwarded to the State Engineer March 10, 1958.



Exhibit 50 is a letter of Wayne P. Criddle, State Engineer, dated March 19, 1958, directed to the County Attorneys of both counties, acknowledging receipt of the request for the establishment of the boundary line, and suggesting a meeting at Moab.

At Pages 310-311 of the record, Mr. William C. Walton, County Commissioner of San Juan County, states the meeting was then held at Moab with the State Engineer and representatives of the respective counties, all of whom are named, and that the following occurred (Tr. 313):

“Yes, I suggested that it (the common county boundary) be referred to the State Engineer and we would accept whatever designation the State Engineer put on it and asked Mr. Bolden of Grand County if he would do the same, and he said yes.”

At Page 314 of the record Mr. Walton stated:

“Q. Now, can you tell us whether the statement you have given us, leaving it to the State Engineer, was made before or after the reconnaissance?

A. It was made before the reconnaissance.”

Then followed correspondence hereinafter set forth:

Exhibit 53 is a letter of April 11, 1958, to the County Attorneys of each county from the State Engineer, advising that pursuant to his best information the boundary line is “3500 feet north of the south line of Township 26 South.”

Exhibit 54 is a letter from the State Engineer to the County Attorneys, dated April 15, 1958, indicating that the boundary line could be best established by simply “measuring the hori-

zontal distance from the section corners north to where the parallel should be . . . Incidentally, if we had to call up the Coast and Geodetic Survey on this problem, it is possible that the cost might exceed \$50,000."

Exhibit 55 is a letter from the San Juan County Attorney to the State Engineer, expressing that his county would be willing to have the point fixed at 3500 feet north of the south line of Township 26 South, and requesting one of the State Engineers to monument such a boundary.

Exhibit 56 is a letter from the County Attorney of Grand County to the State Engineer to the effect that his county was not in a position at that time to accept as a fact the assumption that Parallel 38° 30' is on a line 3500 feet north of the south line of Township 26 South.

Exhibit 57 is a letter dated April 23, 1958, from San Juan County to the State Engineer, requesting that the State Engineer proceed to employ the U. S. Coast and Geodetic Survey to survey the line.

Exhibit 58 is a letter of Wayne D. Criddle, State Engineer of Utah, dated April 25, 1958, to the Director of the U. S. Coast and Geodetic Survey, requesting their assistance in running the boundary line, copies of which were sent to each county.

Exhibit 59 is a letter from the U. S. Coast and Geodetic Survey to the State Engineer, indicating that a reconnaissance survey could be provided for an estimated cost of \$1200.00.

Exhibit 60 is a letter dated May 2, 1958, from the State Engineer to the County Attorney of Grand County, enclosing

copies of Exhibit 59 and requesting that funds of \$600.00 be forwarded for the survey.

Exhibit 61 is a letter dated May 2, 1958, with copies to both County Attorneys from the State Engineer of Utah, which reads as follows:

"Gentlemen:

Enclosed is a copy of a letter just received from the Coast and Geodetic Survey which I believe is self-explanatory.

"Because of the economic importance to your counties of the positioning of latitude 38° 30' with respect to the township line, we feel that only the most authentic survey possible should be considered. This assumes that both counties will not agree to the positioning as shown on the new quadrangle sheets of the U. S. Geological Survey.

"We recognize that, at this time, you may not wish to bear the cost of marking the entire boundary with monuments two miles apart, however, such complete marking might be done at one time most economically while the surveyors are on the ground. Perhaps monuments established at the Colorado line and at the west end of the joint county line, plus several monuments in Ranges 20 and 21 East, may serve your immediate purposes. However, to fix the costs will apparently require a visit of U. S. Coast and Geodetic Survey personnel to the area.

"We are sure that you desire this problem cleaned up as soon as possible. Do you wish us to officially request the Coast and Geodetic Survey to make the reconnaissance and will each county agree to underwrite the \$600 cost of this preliminary investigation?

Sincerely yours,

Wayne D. Criddle"

Exhibit 62 is a letter dated May 5, 1958, to the State Engineer of Utah from San Juan County, agreeing that it will "underwrite one-half of the cost of such investigation, or any other expenses involved in having this matter settled." Exhibit 63 is a letter of May 6, 1958, from Grand County to the State Engineer of Utah, which reads as follows:

"Dear Mr. Criddle:

Re: Boundary dispute between Grand  
and San Juan Counties.

"Reference is made to your letter dated May 2, 1958, regarding the above entitled matter.

"Grand County agrees to and will underwrite the approximate cost of \$600.00 for its share of the preliminary investigation to establish the boundary line.

"The County is not in any position to create any extensive obligation regarding the matter and it is hoped that the line can be established somewhere in relation to the South boundary line of Township 26S as there appears to be no question as to where the South line of Township 26S is located.

"It is our thinking that once the actual location of latitude 38° 30' is established on the earth's surface at some point in the Colorado River area there will be no need to set markers along the boundary line, except in three or four predetermined places."

Exhibit 69 is a letter dated June 4, 1958, to the State Engineer of Utah from Grand County, enclosing \$600.00 "as Grand County's share of the estimated cost of a reconnaissance of the boundaries between Grand and San Juan Counties."

Exhibit 72 is a check of Grand County showing the payment of an additional \$741.86 on March 2, 1959, for "recon-

naissance (only) for survey to locate the boundary between Grand and San Juan Counties.”

At Pages 200 and 201 of the record the Deputy State Engineer testified “that the purpose of this survey, as far as we were concerned, was to determine engineering-wise the position of  $38^{\circ} 30'$  as close as he could determine within the funds available and within time limitations. And we further indicated that in order that his survey—there should be something that would be something we could tie to later on—that he should mark  $38^{\circ} 30'$  as near as he could determine it from his survey positions along the  $38^{\circ} 30'$  parallel on the ground.”

Stations were then set up at intervals along  $38^{\circ} 30'$  by the survey crew, which Mr. Lambert, the Deputy State Engineer, identified (Tr. 201) as “a stake supported by guy wire and in some instances it was still flagged and in some instances the flag blown off and this stake was anchored into the surface of the ground at a semi-permanent position.”

Exhibits 76 and 77 are plats prepared by the U. S. Coast and Geodetic Survey, indicating the work they have done, and illustrating thereon by a designated line on the plats the position  $38^{\circ} 30'$  North Latitude, with the various stations marking on the ground the position of that latitude from Green River to the Colorado boundary, and indicating the relation of such boundary line to established monuments, such as the South Quarter Corner of Sec. 32, T. 26 S., R. 20 East (Exhibit 79), and designated “Coast and Geodetic Survey Stations.”

The foregoing facts conclusively establish that Grand County engaged the State Engineer of Utah to “permanently

determine such boundary line." Such facts conclusively establish that in connection with such proceeding Grand County agreed to accept the determination made by the State Engineer and that it was not until the "reconnaissance survey" revealed that the boundary was approximately two-thirds of a mile north of the South boundary of most of the Townships 26 South that Grand County refused to accept the determination made by the State Engineer. The claim that there had been a "survey in 1912" was made for the first time near the conclusion of the trial.

As a matter of law, Grand County is bound by the State Engineer's determination of the boundary, and has waived its rights, if any, and is estopped to claim otherwise for two reasons:

*FIRST: Estoppel from taking an inconsistent position.*

Section 17-1-33 Utah Code Annotated, 1953, is the exclusive method provided by the Legislature for surveying and monumenting an uncertain or disputed boundary on the ground. A county requesting the State Engineer to act under this statute admits:

- (1) That there is a dispute or uncertainty as to a boundary.
- (2) That the county surveyors have failed to agree or have failed to establish a boundary.
- (3) That the State Engineer can survey and monument only the boundary established by law. The law which establishes county boundaries for these two counties is the Utah Statute 17-1-22 U.C.A. 1953, for

San Juan County, and 17-1-13 U.C.A. 1953 for Grand County.

(4) That the line so monumented shall be the line until modified by the Legislature.

Courts will not permit the initiating of statutory remedies and permit the initiating party to take a contrary position.

Having admitted the lawful statutory boundary by the petition to the State Engineer, Grand County is estopped from asserting a boundary at another location.

Having admitted that the county surveyors had failed to agree or otherwise failed to establish the boundary, in order to get the State Engineer to act, Grand County will not be permitted to assert that the county surveyors had fixed the boundary or that the counties had agreed on the boundary.

In *Hinsdale County vs. Mineral County*, 48 Pac. 675, the issued involved was the location of a common boundary line between two counties. The Colorado statute provided in a manner quite similar to Utah's that when a dispute arose, and upon application of the counties involved, "it shall be the duty of such State Engineer . . . to run out and establish such line . . . and to fix and define such boundary line by plain and substantial mounds and markers." The determination of the Colorado State Engineer is made final unless an appeal is taken to the District Court.

The parent counties concerned had petitioned the State Engineer to survey an uncertain and indefinite boundary line, and, pursuant to notice, the State Engineer had made the survey and made a report to each of the counties of his work, accom-

panied by plats on which the boundaries were shown. One of the counties contended that it was not bound by the determination of the County State Engineer because for sometime before the attempted boundary adjustment its parent county had exercised dominion over the territory in dispute and had claimed and successfully asserted the right to collect taxes in that territory. The Court then states at Page 680:

“When it (Saguache County) petitioned the State Engineer for the adjustment of its disputed boundary, it confessed that it was uncertain where the boundary was, and whether the territory in dispute belonged to it or not. It placed itself on an exact level with the opposing claimant of the territory; that its claim of boundary was not acquiesced in by Hinsdale County is evidenced by the fact that the latter county also petitioned for an adjustment of the same boundary. There were opposing claims to the territory, and if it could possibly be said that the acts of dominion exercised by Saguache County over this territory invested that county with any right, legal or equitable, it waived those rights by invoking the action of which counsel complain.”

The Supreme Court of the United States has announced a similar doctrine of law that a party will not be permitted to occupy inconsistent positions or to take a position with regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him.

In *Casey v. Galli*, 94 U. S. 673, 24 L. Ed. 168, an action was brought against the stockholders of a bank to pay the liabilities of the bank as provided by statute. The stockholders raised as one of the defenses that the corporation of which



they were shareholders had no legal existence. The court rejected this defense by saying:

"Parties must take the consequences of the position they assume. They are estopped to deny the reality of the state of things which they have made appear to exist, and upon which others have been led to rely. Sound ethics require that the apparent, in its effects and consequences, should be as if it were real, and the law properly so regards it." (Citing authorities).

The same doctrine of law has been applied by state courts. In *State ex rel Fitch vs. State Board of School Commissioners of Wyoming*, 27 Wyo. 54, 191 Pac. 1073, it was contended that the bid was not proper at the public sale and therefore the alleged sale was not valid. The court, in holding that the sale was valid, stated:

"It further appears by the respondent's own evidence that not only in this instance, but also in such sales throughout the state generally, the state officers have regarded and acted upon the guaranty of the applicant as a bid. Having placed that construction upon the language contained in the guaranty, they should not be heard to here insist upon a different construction of it."

SECOND: *Grand County having represented to the State Engineer and San Juan County that the boundary to be surveyed is Parallel 38° 30' North Latitude, and in reliance thereon the State Engineer and San Juan County having entered into an agreement pursuant to which that line was surveyed and marked and moneys expended in reliance thereon, Grand County is estopped to assert that the line to be surveyed is other than 38° 30' North Latitude.*

Grand County induced San Juan County to enter into an agreement and expend \$1341.66 on surveying Parallel 38° 30' North Latitude as the boundary. Grand County will not now be allowed to contend the line to be surveyed or the boundary to be located is a point other than 38° 30' North Latitude.

Grand County petitioned the State Engineer of Utah to survey and monument Parallel 38° 30' North Latitude as the boundary pursuant to Section 17-1-33 U.C.A., 1953 (Ex. 49). Grand County duly notified San Juan County of submission of the matter to the State Engineer.

A meeting was held at Moab, with Commissioners of both counties attending with the Utah State Engineer, and both counties agreed to abide by Parallel 38° 30' North Latitude as established by the State Engineer (Tr. 313).

Proposals of the State Engineer to accept the boundary as 3500 feet north of south section corners of Township 26 South (Ex. 53), or by measuring 3500 feet north of such section corners (Ex. 53), were rejected by Grand County, as a result of which was the agreement (Ex. 63) by which each county agreed to have the State Engineer secure the services of the United States Coast and Geodetic Survey to survey and stake Parallel 38° 30' North Latitude as the boundary.

Each county was sent a copy of the plat evidencing the enlarged reconnaissance survey, and showing the locations of the boundary markers, and the position of 38° 30' North Latitude in relation to the various U. S. Coast and Geodetic triangulation stations, and also in relation to the location of several section corners of the south line of Townships 26 South.

Such plat confirmed what the State Engineer had previously told the two counties that the county boundary is approximately 3500 feet north of the south lines of Townships 26 South.

The two counties agreed on the fact that the boundary to be surveyed and marked was 38° 30' North Latitude. This fact having been established by the agreement, neither party may thereafter repudiate that fact and contend for a different boundary from the true line after San Juan County proceeded in good faith in reliance on the submission by Grand County to the State Engineer and expended moneys toward the ascertainment of the true boundary line.

At 31 C.J.S., Par. 55, at Page 232, the rule is announced:

“In the absence of fraud, accident or mistake, parties to a contract and their privies are estopped to deny facts agreed on or assumed in the making of the contract.”

This Court in *Migliaccio vs. Davis*, 120 Utah 1, 232 Pac. (2) 195, was considering a case in which the appellant having an interest in a mining property stood silent while representations derogatory to his interests were made, and in reliance on which moneys and effort were expended by respondent, all of which were known to appellant. In applying an equitable estoppel against the appellant asserting his full interest in the property against respondent, the Court states at Page 199:

“Equitable estoppel or estoppel in pais is the principle by which a party knows or should know the truth is absolutely precluded, both at law and in equity, from denying or asserting the contrary of any material fact which by his words or conduct, affirmative or negative,

intentionally or through culpable negligence, he has induced another, who was excusably ignorant of the facts and who had a right to rely upon such words and conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion were allowed."

The position of Grand County in initiating and agreeing to this survey and securing the agreement of San Juan County was that the boundary to be surveyed was Parallel 38° 30' North Latitude. Certainly Grand County will not now be permitted to claim the boundary is at a different parallel.

Grand County, having petitioned the State Engineer concerning an uncertain boundary, will not be allowed to assert that the boundary line was previously fixed and established in a location different from the line defined by the statute.

Other agreements and practices which estop Grand County from asserting a contrary position to Parallel 38° 30' North Latitude as the boundary, are the following:

For twenty years Grand County had approved the distribution of "B" and "C" road funds on the basis of the boundary with San Juan County being at Parallel 38° 30' North Latitude. Maps of Grand County showing roads qualifying, mileage computation and county boundaries were prepared by the State Road Commission annually and formally approved by Grand County Commissioners. Such maps showed the boundary with San Juan at Parallel 38° 30' North Latitude and as a point two-thirds of a mile north of the south township line of Township 26 South. (See Ex. 46-47 and 104). This has been true

since 1940 (Tr. 281-296), with such maps the basis for the distribution of the funds.

From 1952 through 1960, Grand County by written agreements has charged San Juan County for maintaining all roads in the disputed area on the basis of the county boundary being two-thirds of a mile north of the township line. These charges have exceeded \$2500.00 a year for the years since 1956. (Ex. 112-116-117).

(B) THE PURPORTED SURVEY OF 1912 DID NOT MEET THE REQUIREMENTS OF SECTION 17-1-33 U.C.A. 1953, TO ESTABLISH A DISPUTED COUNTY BOUNDARY.

Under its Point No. 1 Grand County claims it is entitled to a judgment establishing the line "surveyed, marked and monumented by the mutual consent and agreement of the two parties to be the true common boundary line between the two counties." The burden of defendant's argument under this point is that the 1912 survey testified to by C. R. Christensen constitutes a survey meeting the requirements of Section 17-1-33 U.C.A., 1953.

This statute does provide the exclusive method by which uncertain and disputed boundaries are to be established on the ground. Its requirements are:

- (a) The line "may be determined by the county surveyors of the counties interested, or if they fail to agree";
- (b) By the State Engineer on application of either or both county commissions "by making the necessary survey

and erecting suitable monuments to designate the boundary."

- (c) Neither the State Engineer nor County Surveyor shall have any authority other than "to erect suitable monuments to designate boundaries as they are now established by law."

Defendant Grand County, at Page 10 of its brief, states that its evidence on this point rests entirely on the description of a survey in 1912 observed by C. R. Christensen, plus San Juan County minutes (Exhibits 129-139). Its case fails for the following reasons:

1. *There is no evidence that either San Juan County or Grand County had a surveyor in 1912.*

A review of Exhibits 129 to 139 indicates that in 1910 San Juan County had employed a surveyor Woodman to do work on roads and boundary lines in 1910. None of Exhibits 129 to 139 concern the purported work done in 1912, and do not identify any person as a County Surveyor.

None of the testimony admitted in evidence identifies any person as a County Surveyor of either San Juan County or Grand County.

2. *If there was a County Surveyor, there is no evidence that the San Juan County Surveyor or Grand County Surveyor participated.*

Neither the Exhibits 129 to 139, nor the testimony of Christensen admitted in evidence, identify any person as the County Surveyor of either Grand County or San Juan County.

Mr. Christiansen was not the county surveyor nor even a surveyor. He might have been county assessor or sheriff. The statute, however, never did authorize any county officers other than the county surveyors of the two counties to determine the county boundary. Consequently, there was an utter lack of compliance with the statute.

*3. There is no showing that Grand County authorized or participated in the 1912 survey in any manner whatsoever.*

No minutes or testimony were introduced to show that Grand County or San Juan County, or any officials of either San Juan County or Grand County, were authorized to act or were acting for their counties. Neither is there any evidence of any agreement or that either County authorized anyone to participate in the 1912 survey.

*4. The line surveyed was testified by Christensen to have been run on a course north of any section line.*

At Tr. 480 Christensen is asked:

"Q. But this particular line that you were attempting to survey, was it north of the section corner?

A. Well, that is what the boys said. As I said, there was different survey marks there and the marks on them indicated that they had been done in 1906. I remember that quite well, but I don't know who did it.

Q. And the line you were running was north of that line?

A. Yes, sir."

5. *The Finding of the District Court that the 1912 Line was not established and cannot be found is supported by the evidence.*

Christensen (Tr. 479) stated, "the line did not follow the township line."

Richard O. Cozzens, a surveyor employed by defendant, testified that either during or immediately prior to the trial he had followed a mound of stones which indicated a boundary line. Each and every monument Cozzens testified to was identified with a United States Land Survey. Each mound of stone Cozzens identified was a section corner or a quarter corner of a United States Land Survey on the south line of two townships (Tr. 430, 433-434). The mounds of stone he found are described in the field notes of an official Land Office survey in 1902, being a survey of portions of Township 26 South, Range 23 East (Ex. 125). The other mounds are described in the field notes of a partial survey of 1894 of the south line of Township 26 South, Range 23 East (Ex. 120). There is no testimony that any of these monuments were those erected in 1912.

Defendant called an old-time resident Holyoak as a witness to certain monuments, and he identified the monuments as those he had seen in 1907. Exhibits 120-D and 125-D are field notes of Land Office surveys which show that rock monuments were erected on the south line of the two townships in question in 1894 and 1902. As Mr. Holyoak saw the monuments five years before 1912, they could only be monuments established by government surveyors some ten to eighteen years prior to the 1912 monuments.



Neither testimony nor minutes indicated that a plat or field notes were prepared in connection with any survey in 1912. There is, therefore, no evidence in this record, nor any evidence indicated, which could possibly identify any point established or monumented in 1912. It would be futile to attempt to locate any course run in 1912.

The finding of the District Court with reference to the 1912 survey that 't'he extact location thereof cannot be determined" is certainly true, and no contrary determination could be made on any evidence introduced in this case.

(C) THE DOCTRINE OF ACQUIESCENCE IS NOT APPLICABLE TO ESTABLISH A COUNTY BOUNDARY IN UTAH AT OTHER THAN THE LOCATION PROVIDED BY STATUTE.

1. PARALLEL 38° 30' NORTH LATITUDE IS A DEFINITE AND ASCERTAINABLE STATUTORY COUNTY BOUNDARY LINE AND CAN NOT BE LEGALLY CHANGED BY ACQUIESCENCE.

20 C.J.S., Sec. 22, Pages 773-774 states:

"Acquiescence can be considered only when there is uncertainty because of a conflict in the calls, monuments or descriptions employed in the statute fixing the line; . . . A county's boundary line, however, as fixed by statute, if determinable, cannot be changed by laches or acquiescence, and acquiescence in another line is immaterial where the true boundary line can be determined as a question of law."

El *Elmore County vs. Tallaloosa County*, 131 So. 552, the Court states:

"If a boundary line of a county can be ascertained as a question of law, acquiescence in another line by contiguous counties is immaterial."

In view of the provisions of Article XI, Section 1, Constitution of Utah, this Court in *Summit County vs. Rich County*, 57 Utah 553, 195 Pac. 639, held that not even the state legislature can alter a county boundary line which is definite, stating:

"The fact that other parts of the boundary line between the two counties may be ambiguous or unascertainable by engineering skill, did not justify the legislature in ignoring altogether that which was clear and unmistakable."

In a subsequent determination between Summit and Rich Counties (63 Utah, 193, 224 Pac. 653) this Court again states that the legislature cannot create a new line "unless the description of the boundary line is so indefinite, uncertain or ambiguous that the line cannot be definitely determined from the description of it."

Parallel 38° 30' North Latitude is, and at all times since it was first created as a county boundary line by the territorial legislature, has been a definite and ascertainable line.

The Arizona Supreme Court in *Yuma County vs. Maricopa County*, 19 Ariz. 475, 172 Pac. 276, states:

"The boundary line being the meridian line its description was not indefinite . . . The fact that a certain meridian of longitude was designated as the boundary did not render the descriptive line uncertain

or make the statute ambiguous so as to require construction through the aid of extrinsic circumstances. Although a line so described may be difficult of practical location, nevertheless when employed to define a boundary line it constitutes the true line to be followed in making a practical location."

2. GRAND COUNTY OFFICERS BY THEIR ACTIONS COULD NOT EXTEND THE TERRITORY OF THAT COUNTY; NEITHER COULD SAN JUAN COUNTY OFFICERS BY INACTION CONTRACT THE TERRITORY OF SAN JUAN COUNTY.

As expressed by the Colorado Court in *Board of Commissioners of Ouray County vs. Board of Commissioners of San Juan County*, 143 Pac. 841, at Page 842:

"A county line is not determined by the actions of omission or commission of public officers."

In *Hinsdale County vs. Mineral County*, 48 Pac. 675, the Court states:

"Saguache County is not a county by prescription. It was created by statute. Outside of statute it has no existence and all of its territorial rights are derived from statute. It has and can have no territory except what the statute gives it."

3. ASSUMING ONLY FOR PURPOSES OF ARGUMENT THAT THE DOCTRINE OF ACQUIESCENCE MAY APPLY AS TO A COUNTY BOUNDARY, NEVERTHELESS GRAND COUNTY FAILED IN ITS PROOF TO ESTABLISH A BOUNDARY BY ACQUIESCENCE.

In *Nelson v. DeRouch*, 87 Utah 457, 50 P. (2d) 273, at Page 277, this Honorable Court not only held that a party who asserts acquiescence in a line differing from the true line has the burden of proof, but that the proof must show that the line varying from the true line,

- (1) Has been open to observation and marked by monuments, fences, or buildings;
- (2) Knowingly acquiesced in as the recognized true line for a long period of time; and
- (3) The parties must have occupied up to that line.

The counties, of course, do not "occupy" the lands within their boundaries. In the *Nelson* case the court refused to apply the doctrine of acquiescence for there was no proof that the fences were located by agreement of the parties, and the only time the boundary location was discussed "it was agreed to have a survey made and abide by the true boundary so established."

The line contended for by Grand County as having been established by "acquiescence" as the county boundary consists of the south lines of "Township 26 South . . . as said township line is now marked and as it extends between the eastern boundary of the State of Utah and the middle of the main channel of the Green River . . . " Neither county had anything to do with the surveys of the south lines of said townships, 10 in number. There is an offset of 623 feet to the north from the southeast corner of Township 26 South, Range 24 East, to the southwest corner of Township 26 South, Range 25 East. The south lines of those townships were all surveyed by the

United States as part of the public lands. The south lines of Townships 26 South, Ranges 17½, 18 and 19 East were not surveyed until 1954. Those township lines did not exist until 1954 and "acquiescence" could not apply to a non-existent line. The line at Range 24 East was not surveyed until 1946.

The only evidence of monuments on the south lines of those townships consists of (a) United States survey monuments erected as section corners, quarter corners and witness corners; (b) three segments of fence on or near the township line in the area of the airport, Section 36, T. 26 S., R. 22 E.; and (c) two highway signs to the south of the township lines.

Each of the section corners, quarter corners and witness corners was erected by the United States, the first ones in October, 1880, and the last monuments in 1954. Not one of those monuments was ever erected to mark any county boundary. There is no evidence that either county erected the road signs, nor that either county constructed any one of the three sections of fence. Consequently, neither county had anything to do with establishment or maintenance of any of those "monuments." Not a single one of those "monuments" was located in its position to establish a county line nor to settle a boundary dispute. At Ranges 17½, 18 and 19 East, the monuments did not exist prior to 1954, and therefore existed only for a very short period of time prior to suit.

In the *Nelson* case this Court said that "the fact of locating a building or a fence or other structure that may later take on the nature of a monument, in the absence of, or without the knowledge of, the adjoining owners, or upon a supposition that said location is the true boundary line when in fact it is

not, and when no agreement or long acquiescence is shown, does not establish a boundary line different from the true one." Furthermore, in *Oklahoma v. Texas*, 272 U.S. 21, 71 L. E. 145, .... S. Ct. ...., it was declared that in order for a line to be acquiesced in and adopted as the boundary it would have to be established on the ground and marked. The Court further remarked that the conduct of both states in requiring settlement of the boundary negated acquiescence.

The following matters of record conclusively show that there was no acquiescence in the south lines of Township 26 South by either Grand County or San Juan County:

By letter dated September 5, 1925, Exhibit 78, the State Engineer recommended that the Legislature change the boundary line to the south lines of Township 26 South as far as then surveyed and platted. However, by resolution dated October 5, 1925, Exhibit 164, Grand County Commissioners declared that "Grand County does not feel that it should agree on the township line as representing the county boundary if, in fact, it does not do so"; and that the portion of the line in the vicinity of the Colorado River should "be accurately established." Said resolution negatives "acquiescence".

For the past twenty years Grand County and San Juan County have affirmatively recognized and approved county maps prepared by the State Road Commission for purposes of allocation of Class "B" and "C" road funds, which maps clearly show the position of Parallel 38° 30' North Latitude is about two-thirds of a mile north of all of the south lines of Township 26 South except at Ranges 25 and 26 East, where the lines are offset to the north. See Exhibits 45, 46 and 47.

These maps showing the position of the parallel were made from surveys, and from the known latitude and longitude of various Coast and Geodetic triangulation stations in Grand and San Juan Counties (Tr. 281-296). These triangulation stations were established between 1893 and 1938. See Exhibit 78. One second of latitude is 101.167 feet (Tr. 506). It is a matter of computation from the known latitude of the various Coast and Geodetic stations to determine the position of 38° 30'. Exhibit 104 is a resolution of Grand County Commissioners dated May 4, 1959, approving the road map prepared by the State Road Commission for allocation of Class "B" and "C" road funds. See also resolution dated September 12, 1960, Exhibit 115. Exhibit 110 shows the allocations of said Class "B" and "C" road funds since 1940, based upon the mileage established by said maps. These maps clearly show that the entire "disputed area" between 38° 30' North Latitude on the north and the south lines of Township 26 South on the south to be entirely in San Juan County.

From 1952 to 1960 Grand County maintained certain portions of the roads in San Juan County and charged San Juan County for those maintenance costs. The county maps used for allocating the Class "B" and "C" road funds were used to compute the mileage of roads maintained by Grand County for San Juan County. The roads in the "disputed area" were included in the road mileage maintained by Grand County which were charged to San Juan County. Exhibit 114 is a copy of the agreement between the two counties dated 1955 for maintenance of certain San Juan County roads by Grand County. Exhibit 20 consists of photo copies of statements submitted by Grand County to San Juan County for such road maintenance

and warrants issued by San Juan County in payment of those charges, from 1952 to 1959 amounting to thousands of dollars. See also Exhibits 112, 116 and 117. After having charged San Juan County for many years for maintaining the roads in the "disputed area", the claim of "acquiescence" in the south line of Township 26 South as the "boundary" not only fails, but Grand County is estopped to deny that 38° 30' North Latitude is the actual boundary line.

On March 12, 1958, Grand County requested the State Engineer to establish the boundary line and unequivocally declared that the boundary line is 38° 30' North Latitude. (Exhibit 49.) Grand County was well aware of the maps showing the position of the county boundary to the north of the south lines of the townships, for Grand County mentioned those maps in its letter to the State Engineer. Furthermore, for twenty years Grand County had transacted business on the basis of those maps showing Parallel 38° 30' North Latitude to be approximately two-thirds of a mile north of all except two of the south lines of Township 26 South. Grand County made no pretense of "acquiescence" in the south lines of the townships in March, 1958. When the County Commissioners met with the State Engineer, Grand County made no contention that the south lines of Township 26 South had been established as the boundary, but agreed to accept the determination by the State Engineer. In the letter dated April, 1958, Exhibit 56, no claim of acquiescence was even hinted. The question was, Where is 38° 30' North Latitude located?

On May 6, 1958, Grand County stated by letter to the State Engineer that "it hoped that the line can be established



somewhere in relation to the south boundary line of Township 26 South," and "once the actual location of latitude 38° 30' is established on the earth's surface . . . there will be no need to set markers along the boundary line, except in three or four predetermined places." Grand County made no claim then that there was any variance from true 38° 30', nor that the boundary had been established on the south lines of the township by "acquiescence."

This action was filed December 28, 1958. The original answer and counterclaim of Grand County was filed February 5, 1959, setting up the claim of acquiescence in the south lines of the townships as the boundary line. San Juan County submitted interrogatories. On September 18, 1959, Grand County, by H. B. Evans, County Commissioner, signing under oath, and Harry E. Snow, Esq., County Attorney, signing as counsel, answered *inter alia*:

"Q. State in detail all of the facts which defendant will offer in evidence at the trial and all facts upon which defendant bases its allegation 'that the plaintiff and defendant mutually agreed as to its (boundary) location and for 68 years last past both the plaintiff and defendant have agreed and recognized that the true boundary between said counties coincides with the south boundary of Township 26 South . . . ' "

Answer by Grand County: "As of this date, it is impossible for the defendant to state and set forth in detail all of the facts the defendant will offer in evidence at the trial, *if any*." (Italics added).

In Paragraph 9 of its counterclaim, defendant Grand County stated that for 68 years the boundary had been con-

sidered by plaintiff and defendant counties as coincident with the south boundary line of Township 26 South, and in its interrogatories plaintiff asked the defendant to state in detail what evidence and facts it would produce at the trial to support such allegation. Grand County answered:

"It is impossible for the defendant to state and set forth in detail what evidence and facts defendant will produce at the trial of this case in support of the allegation of said Paragraph 9."

By Interrogatory 8 plaintiff asked: "Specifically, what facts defendant will rely on at the trial, if any, to show how and when said disputed area became a part of Grand County?" Grand County answered:

"As of this date it is impossible for the defendant to state and set forth upon what facts defendant will rely at the trial, *if any*, to show how and when the said disputed area became a part of Grand County." (Italics added).

Interrogatories 9 and 10 requested Grand County to state what facts it would introduce to show that the statute defining the San Juan County boundary never became operative and by what statutes the territory was placed in Grand County. Both questions were answered by Grand County that "it is impossible for defendant to set forth such statutes" (R. 27-31).

It is inconceivable that a party claiming long acquiescence could not name any facts or evidence to support that claim. The foregoing certainly discloses a hidden mental theory on the part of an undisclosed person and not the open, public recognition required to establish acquiescence.

Most of the argument in the Brief of Appellant is devoted to the contention that by agreement of the two counties the line was surveyed and monumented, and that such line was coincident with the south lines of Township 26 South. The only witness presented was C. R. Christensen, who testified to a 1912 survey. At the opening of trial it was admitted by Grand County that it had no plat of any survey (Tr. 16). No mention of any 1912 survey was made until February 8, 1961 (Tr. 445). There are no field notes and no plat of such "survey" to show where the line was supposedly run with respect to any objects or monuments, and it would be utterly impossible to retrace the line. Counsel for Grand County admitted defendant had no evidence to tie with the 1912 line to any parallel of latitude (Tr. 447). Mr. Christensen's testimony states that the line run in 1912 did not follow any township line, and that the line was to the north of the section corners. His testimony also refuted the argument that the south lines of township were established as the boundary line.

Grand County tried to overcome the evidence which clearly showed that for over twenty years it had recognized Parallel 38° 30' North Latitude as the boundary line, by a number of incompetent or irrelevant documents. It showed that a few people who received patents to land in the "disputed area" recorded the patents in Grand County instead of San Juan County, and that by reason of such errors Grand County assessed those few tracts for taxes and collected taxes. The tax collections constituted only a small fraction of the total taxes collected on properties in the disputed area, the great bulk of which were collected by San Juan County because they were

levied on public utilities and the State Tax Commission used 38° 30' North Latitude as the county line as required by statute.

Counsel for Grand County argued that the State Land Board "recognized" the south line of Township 26 South as the boundary by issuing patents to lands in the disputed area, stating that the lands were in Grand County. Exhibits 167 and 168 consist of over 700 pages of documents recorded in San Juan County covering lands in the "disputed area", including mining locations, oil and gas leases, and other instruments. Included in Exhibit 168 is a State potash lease dated December 21, 1956, ML-15092, which states that the lands are in San Juan County. There are oil and gas leases covering lands in Grand County which are recorded in San Juan County. The State Land Board and others made a number of mistakes in stating the county in which certain lands were located. Those errors could not change the boundary line. If they could, then it could be argued that the county boundary line is over a mile north of 38° 30' North Latitude by reason of such errors in recordation.

Grand County contends that a township plat from the United States public land surveys, showing the southeast corner is 38° 30' North Latitude, establishes the location of the parallel. If that be so, then Exhibit 4 shows that the southeast corner of Township <sup>26</sup>~~25~~ South, Range 24 East is 38° 29' North Latitude (or 1.15 miles farther south, one minute of latitude being 6105.6 feet. R. 506). Legally, defendant's contention is not valid, but further, it is in error factually.

Exhibits 9 and 10, excerpts from the Manual of Survey Instructions, Bureau of Land Management, show that to and

including the year 1930 the land surveyors were not required to compute latitude closer than one minute (which amounts to 6105.6 feet or 1.15 miles). Later, the surveyors were required to tie their land surveys to the Coast and Geodetic triangulation stations and to use latitude and longitude as computed by the Coast and Geodetic Survey. Grand County did not show that any one in either county prior to 1958 ever looked at any of the old Land Office plats.

Grand County introduced several "old maps" of Utah on which the county line was shown to be in the area of the south lines of Township 26 South, Ranges 25 and 26 East. Exhibits 24, 25, 26, 27 and 28. Those maps were clearly erroneous. Exhibit 96, dated 1881, clearly shows the parallel to be about two-thirds of a mile north of the south lines of those two townships. There is no evidence that anyone ever saw or heard of those maps in either county prior to 1958.

Grand County makes the novel argument that five "old maps" of Utah constitute proof that when the Legislature created Grand County in 1890 and used Parallel 38° 30' North Latitude as the county boundary it "intended" the south lines of Township 26 South. Two of the maps are dated 1884 and 1889. By 1890 only the townships in Ranges 25 and 26 had been surveyed, or a total of 8½ miles east and west. Over 45 miles of township lines were unsurveyed, some of which were not surveyed until 1954. It is admitted that all maps and plats since 1925 prepared by the Bureau of Land Management and the State Road Commission show 38° 30' North Latitude to be about two-thirds of a mile north of the south lines of the townships except at Ranges 25 and 26 East.

Defendant attempts to change the plain wording of the statute by some extrinsic evidence to show that the Legislature in 1890 meant something other than what it plainly stated. Grand County ignored the fact that by revisions of the statutes in 1898 and 1933 the Legislature readopted 38° 30' North Latitude as the boundary line, not some township line or lines. This Court has announced the rule that legislative intent must be taken from the words of the statute itself.

In *Parkinson v. State Bank of Millard County*, 84 Utah 278, 35 P. (2d) 814, at Page 821, this Court says:

“ \* \* \* Ordinarily the Legislature speaks only in general terms. Its intention and meaning primarily must be determined from language of the statute which should be given a liberal interpretation. Words and phrases are presumed to have been used according to their plain, natural, and common import and usage of the language, unless obviously used in a technical sense. Such is the effect of our statute, Rev. St. 1933, Sec. 88-2-11.”

In *Canada Dry Bottling Co. v. Board of Review*, 118 Utah 619, 223 P. (2d) 586, at Page 590, the Court states:

“The primary purpose in construing statutes is to arrive at the legislative intent within the framework of the language used. \* \* \* there is nothing indefinite or uncertain about the words, ‘*If an employer has acquired all or substantially all the assets of another employer and such employer had discontinued operations upon such acquisition, the period of liability of both employers during such period shall be jointly considered for all purposes of this section.*’ We need not restrict the meaning of this phrase by assuming a narrow and rigid construction of the words. We accept them in their every day usage . . . ”

The statute which created San Juan County in 1880 used Parallel 38° 30' North Latitude four years before any of the "old maps" referred to by Grand County ever came into existence. In 1890 the Legislature again used that same parallel. That parallel is a definite ascertainable boundary line. There can be no resort to extrinsic evidence to speculate that the Legislature might have meant something it did not say. In the revisions of the statutes in 1898 and 1933 the original boundary line was reenacted.

Grand County has maintained an airport which is admittedly located in both Grand and San Juan Counties. It is in both Grand and San Juan Counties, for it is in Townships 26 and 27 South. Because San Juan County quitclaimed to Grand County the lands in Township 27 South, it is argued in Appellant's Brief that San Juan County impliedly recognized the south line of Township 26 South as the county boundary. There can be no such implication. The deed clearly states that the land is in San Juan County, and no county boundary is mentioned. Exhibit 158 is a patent from the State of Utah covering lands in the disputed area and to the north thereof, in Section 36, which patent states that the lands are in San Juan and Grand Counties.

Grand County cites *Virginia v. Tennessee*, 148 U. S. 503, 37 L. Ed. 537, 13 S. Ct. 728. That case is not in point for the boundary line actually had been marked and established in 1803 and there was a compact between the two states approving that line.

*Indiana v. Kentucky*, 136 U. S. 479, 34 L. Ed. 329, 10 S. Ct. 1051, involved an uncertain boundary. The statute admitting

Kentucky into the Union made the north side of the Ohio River the state boundary. The river meanders and the courses had changed. There was some uncertainty as to whether an island in the river was actually within the river when Kentucky became a state.

*New Mexico v. Colorado*, 267 U. S. 30, 69 L. Ed. 499, 45 S. Ct. 202, cited on Page 24 of Appellant's Brief by the wrong citation, does not support the contentions of Grand County. The dispute arose over a U. S. Land Office survey in conflict with a prior boundary survey. The Supreme Court held that U. S. Land Office surveys cannot alter boundary lines established by law.

(D) IT IS A CARDINAL RULE OF APPELLATE PROCEDURE THAT A JUDGMENT RIGHT IN RESULT WILL NOT BE REVERSED MERELY BECAUSE THE WRONG REASONS WERE STATED FOR ENTRY OF SUCH A JUDGMENT.

Regardless of the erroneous reason stated for dismissal of the counterclaim, that the trial court was "without jurisdiction," the result was right and Grand County is not entitled to a reversal of the judgment of dismissal of such counterclaim.

In *Dayton Power & Light Co. v. Public Utilities Com.*, 292 U. S. 290, 78 L. Ed. 1267, 54 S. Ct. 647, the United States Supreme Court said, "The appellant may not prevail unless there has been error in the result as well as error in the reasoning." See also *Rose Hill Cemetery Co. v. Chicago*, 352 Ill. 11, 185 N. E. 170, 87 A.L.R. 742, and 3 Am. Jur., P. 37, Sec.



825. "A decision right in result will not be reversed even though the reason stated for it is wrong." 3 Am. Jur., P. 563.

The judgment dismissing the counterclaim was right because of a clear lack of any competent evidence, and for the further reason that the counterclaim was contrary to law, since the county boundary line was fixed by statute and said line is a definite ascertainable boundary line, and could not be shifted by "acquiescence" to some jagged line never authorized nor described by statute.

## POINT 2.

THE DISTRICT COURT ERRED IN ADJUDGING THAT IT WAS WITHOUT JURISDICTION TO DETERMINE THE ISSUES PRESENTED IN THE CASE, AND IN DISMISSING THE COMPLAINT OF PLAINTIFF.

San Juan County concurs with the contention of Grand County that the District Court had jurisdiction to adjudicate the controversy between the two counties. San Juan County takes the position that the counterclaim of Grand County was properly dismissed, although for the wrong reason. San Juan County takes the position that it was error to dismiss the complaint in its entirety, and that the District Court should have granted judgment in favor of plaintiff in accordance with Finding of Fact No. 3.

By Finding of Fact No. 3 the Court found that the common boundary line between Grand and San Juan Counties has been established by the Territorial and State Legislatures and has "*never varied and has always been described as Parallel 38° 30' North Latitude.*"

The jurisdiction of the District Court was invoked by the complaint of San Juan County to determine what is the common boundary between the two counties "that is now established by law." The complaint does not seek to have the court determine *where* the boundary is precisely located on the ground, but what is the lawfully established boundary. The issue as to what is the boundary established by law arises from the recent contention made by Grand County to the effect that the boundary is not Parallel 38° 30' North Latitude as defined in the statutes, but the south lines of Townships 26 South. It was alleged that Grand County sought to exercise jurisdiction over a strip of land between Parallel 38° 30' North Latitude on the north and the south lines of Townships 26 South on the south, called "the disputed area."

By answer Grand County admitted that it was claiming jurisdiction over the strip of land called "the disputed area," and that it asserted a right to collect taxes on property lying in the disputed area. Grand County alleged by its answer and counterclaim that the boundary is not Parallel 38° 30' North Latitude, but a line coincident with the south lines of Townships 26 South. Thus even the answer and counterclaim show there is a controversy as to what is the lawfully existing boundary line.

Article VIII, Section 7, Constitution of Utah, provides that the District Courts shall have original jurisdiction in all matters civil and criminal not excepted by the Constitution and not prohibited by law. Article I, Section 11, provides that "all courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy

by due course of law, which shall be administered without denial or unnecessary delay.”

Our code specifically authorizes action by one county against another county, Section 78-13-3, U.C.A. 1953:

“An action against a county may be commenced and tried in such county, unless such action is brought by a county, in which case it may be commenced and tried in any county not a party thereto.”

Whether or not the State Engineer finished the job of surveying and monumenting the boundary line was not a fact which could divest the trial court of jurisdiction, when Grand County expressly admitted it was trying to exercise county jurisdiction south of Parallel 38° 30' North Latitude, and that Grand County would continue to do so until otherwise ordered by the court. It was error for the trial court to dismiss the complaint and refuse to give plaintiff judgment defining the boundary as Parallel 38° 30' North Latitude.

### POINT 3.

THE DISTRICT COURT ERRED IN FAILING TO ENTER JUDGMENT THAT THE BOUNDARY LINE BETWEEN SAN JUAN AND GRAND COUNTIES WAS AND IS 38° 30' NORTH LATITUDE AND THAT SUCH BOUNDARY LINE NEVER HAS BEEN LAWFULLY CHANGED.

The District Court appropriately made Findings of Fact 1, 2, 3 and 4 from the statutes and the admissions of Grand County and the competent evidence. Having correctly found that the common boundary “has never varried and has always

been described as Parallel 38° 30' North Latitude," San Juan County was and is entitled to have judgment rendered in accordance with those findings, inasmuch as Grand County attempted to move the line from a half mile to two-thirds of a mile southward to the south lines of Townships 26 South.

On page 42 of its brief, Grand County states under its Point III:

"The Court should have determined as a matter of law that 38° 30' North Latitude, *as historically marked and monumented*, is the common boundary line between the two counties and was what the Legislature creating the counties intended as the true common boundary between the counties."

San Juan County agrees with all of the quoted statement *except* "as historically marked and monumented," for prior to 1958 the parallel was not marked and monumented. On page 31 Grand County states that "The exact position of 38° 30' North Latitude is still unmarked on the earth's surface," which indicates that the parallel has never been marked and monumented. Judgment should be entered adjudging that the common boundary was and is 38° 30' North Latitude and that said boundary line has never been changed to the south lines of Townships 26 South nor to some other line.

Even if San Juan County were properly found not to be entitled to all of the judicial relief it sought in bringing the action, that would not warrant denial of all judicial relief. The trial court should have entered judgment establishing the statutory line of 38° 30' North Latitude and judgment that such boundary line never has been legally changed, in order "to determine the ultimate rights of the parties" as provided

in Rule 54 (c). Our Rules of Civil Procedure contemplate that a party to an action shall be granted the relief to which he is entitled.

#### POINT 4.

#### THE DISTRICT COURT ERRED IN AWARDING COSTS TO DEFENDANT.

Inasmuch as the District Court properly dismissed the counterclaim of Grand County, and inasmuch as San Juan County was entitled to at least some judicial relief, it was error to assess costs against San Juan County.

#### CONCLUSION

The judgment of dismissal of the counterclaim of Grand County should be affirmed, inasmuch as Grand County attempted to annex about 35 square milse of San Juan County without compliance with the constitutional requirements. The judgment dismissing the complaint should be reversed and judgment should be entered that 38° 30' North Latitude was and is the county boundary line and that said boundary line has never been lawfully changed to the south lines of Townships 26 South, nor to any other position at variance with the true statutory line. San Juan County should recover its costs.

Respectfully submitted,

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