

1967

# William Parley Spratling And Daisy Spratling v. State Of Utah, By And Through Its Land Board : Brief of Respondents

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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WILLIAM PARLEY SPRATLING  
and DAISY SPRATLING,

*Plaintiffs, Respondents,*

— vs. —

STATE OF UTAH, by and through  
its LAND BOARD,

*Defendant, Appellant.*

Case  
No. 10947

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## BRIEF OF RESPONDENTS

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Appeal From the Judgment of the Third District Court,  
Salt Lake County, State of Utah

HONORABLE MARCELLUS K. SNOW, *Judge*

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Clerk, Supreme Court, Utah

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## BRIEF OF RESPONDENTS

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### NATURE OF THE CASE

This is an action by which plaintiffs-respondents seek to establish their fee simple title to a tract of land (herein called the "Tract") acquired by their predecessors in interest from the State of Utah under the terms of a 1907 Agreement to Purchase Selected Lands. The defendant-appellant claims to have reserved mineral interests by virtue of 1919 legislation which is now Section 65-1-15, UCA 1953.

## STATEMENT OF FACTS

For many years after statehood was attained, it was the practice of the State's Land Commissioners to permit the public, in effect, to decide what tracts of the federal public domain should be acquired for the state's lieu selection rights. Any eligible person who wanted to acquire federal public domain without the effort of homestead entry would simply petition the state to select it. To assure that the selection would produce immediate revenue, the State required that the person requesting the selection firmly bind himself to purchase the selected land if the selection were in fact approved by the Department of the Interior. In general, purchasers acted with confidence because the Department could deny selection applications only if the land was known to be mineral in character or had been subjected to some prior appropriation under the federal land laws, and the status and character of public lands were determinable, in the main, from public records.

In 1907, plaintiff-respondents' predecessors in interest undertook to acquire the Tract, requested its selection, and signed the agreement to purchase of which a copy is found at pages 13 and 14 of the record herein. Selection application was made by the State that year, the selection was eventually consummated, and defendant-appellant issued its patent on July 26, 1920, reserving no interest or estate of any kind.

After the execution of the agreement to purchase and before the issuance of patent, the 1919 Utah Legis-

lature enacted statutes which reserved "coal and other mineral deposited in lands belonging to the state." It further required such reservation as to selection applications *thereafter* approved.

## ARGUMENT

### POINT I.

THE TRIAL COURT DID NOT ERR IN FINDING THE MINERAL ESTATE NOT TO HAVE BEEN RESERVED BY DEFENDANT-RESPONDENT.

A. NEITHER THE CONDUCT OF THE PARTIES NOR THE LANGUAGE OF THEIR AGREEMENT SHOWED ANY INTENT THAT THE MINERAL ESTATE BE RESERVED.

The intent of the parties to any agreement must be determined by the language they employed when they reduced that agreement to writing and, when there is ambiguity in that language, by appropriate parol evidence. In this connection, no evidence is more appropriate than the subsequent conduct of the parties in performing and implementing their agreement where that conduct shows that each party places the same interpretation on the ambiguous words.

Defendant-appellant lays great stress on language of the 1907 Agreement, quoted in its brief, to the effect that, after the selected lands are patented to the State by the United States, the "affiant will purchase the land" . . . "in accordance with the provisions of the law gov-

erning land sales.” Defendant-respondent construes that language to mean that the laws in accordance with which the sale is agreed to be made are whatever laws are in effect at the time of patent to the State. The quoted language is, of course, even more susceptible to the interpretation that the “laws” in contemplation were the laws in effect at the time of the agreement. (i.e. affiant *will* buy in accordance with the *present* laws). In general, as the editors of Corpus Juris Secundum state at 17A CJS 295, “the law applicable” to a contract “at the time and place of its *making*” (our emphasis) is a part of the contract. There is some authority for the proposition that parties cannot be *implied* to have contracted with reference to future statutes (*Loeb v. Christie Hotel Corp.*, 60 P2d 529, 16 C.A. 299) and that subsequently enacted statutes may not be deemed to have been in contemplation in the absence of a clear statement of such intent (*Drane v. Lawton Co.*, 141 NE 2d 253). A clear statement of such intent would employ some such verbiage as “. . . the laws governing land sales in effect on the date of conveyance to the State.”

Even if defendant-appellant’s construction of the language of the contract is reasonable (which we do not concede), there is at least some ambiguity in it. If we resort to the subsequent conduct of the parties for enlightenment as to their intent, we discover that the State proceeded immediately after receipt of the U. S. patent with the preparation of two documents, first a certificate of sale and later a patent, neither of which reserves minerals or mentions the possibility of reservation. The administrators at the time knew what the contract meant;

it is a half-century later that successor administrators attempt to read some different meaning into a contract which the negotiators and signers have fully performed in accordance with their intent.

**B. THE STATUTE ON WHICH DEFENDANT-APPELLANT RELIES IS NOT EVEN APPLICABLE TO THE TRANSACTION UNDER SCRUTINY.**

Defendant-Appellant relies on Section 65-1-15 U.C.A. 1953, as the basis for the reservation it asserts. That section does not even purport to relate to lands to be acquired by the State, it applies only to lands "belonging to the State" at the time of the enactment. It should be remembered that the enabling act grant of school sections was, in terms, in fee and in *praesenti*. There was every reason for concern that valuable mineral interests might be alienated in state lands to which title had vested. There was much less reason for concern about loss of valuable minerals in lands which might later be acquired by selection *because application for selection would not even be considered by the United States without proof the land was not mineral in character*. (See affidavit incorporated in Agreement to Purchase Selected Lands, Record 14).

Nevertheless, having first, by Section 65-1-15, solved the State's problem with reference to "lands belonging to the State of Utah," the 1919 Legislature proceeded to deal with the issue of mineral reservation *vel non* in respect to federal public domain the State might later acquire. Defendant-appellant argues that the Legisla-



ture may, in the exercise of the police power, simply confiscate the property of its citizens and void the State's contractual obligations. If so, it is abundantly clear that the 1919 Legislature did not have any such totalitarian project in mind. By Section 65-1-16, UCA 1953, the Legislature provided that "all applications to purchase, *approved subsequent to May 12, 1919*, shall be subject to a reservation" (our emphasis) of minerals. Defendant-appellant can hardly contend that the emphasized language was frivolous and that the real intent was to make applications approved *before* May 12, 1919, subject to the reservation as well.

The Agreement To Purchase Selected Lands (Record 13) is the application to which the statute refers. The document's first paragraph recites that the affiant "makes application . . . for selection." The application in this case was "filed" (as appears at page 14 of the Record) on August 8, 1907, and "approved" on the same date. It is simply not in the category of applications to which the Legislature made the mineral reservation applicable.

**C. THE TRIAL COURT DID NOT HOLD THAT THE STATE COULD NOT, IN PROPER EXERCISE OF THE POLICE POWER, ABROGATE THE STATE'S CONTRACTS — EVEN IF SUCH HOLDING WOULD HAVE BEEN ERROR.**

In arguing that the State can abrogate its contracts, Defendant-Appellant makes some assertions about the instant agreement which will not stand scrutiny. First, says defendant, the Agreement To Purchase Selected

Lands is not a contract, it is merely an offer to purchase. Examination of the instrument, however, compels the conclusion that it is more than offer which the state can accept or reject after U. S. Patent issues. It firmly binds the State to sell and the applicant to buy if the selection is consummated. Paragraph 3 states conditions under which the State "shall be released from all obligations under this agreement." It seems peculiar indeed for the State to specify the conditions under which it will be released from obligations if it has none.

*Miles v. Wells*, 22 Utah 55, 61 Pac. 534, is cited by defendant as authority for its assertion that the contract initiated no rights. The most cursory reading of the case reveals that the applicant there had entered into such contract as the one before the Court now. In that case, the applicant "demanded" that the State select and sell him land, contending a statute conferred upon him the right to make such demand. It was later that the State adopted the procedure for realizing revenue from its selection rights which involved the form of agreement before us.

There have been volumes written about the nature of the police power and the circumstances under which it can be properly exercised. No case cited by defendant-appellant, however, supports the contention that a statute should be *contorted* to effect the abrogation of the State's contracts. In the instant case, the statutes carefully differentiate between applications filed and approved *before* May 12, 1919, and applications filed thereafter. As to the latter category, the Legislature decreed that lands involved should be conveyed only sub-

ject to mineral reservation. Where the agreement predated the legislation, it is evident there was no legislative intent to abrogate or interfere with the obligations of the contract.

The trial court had no reason to hold the State *could not interfere* with contracts, the trial court merely held that, in this case, the Legislature did not intend to do so.

### CONCLUSION

Plaintiff-Respondents' predecessors entered into an agreement in 1907 which, by its terms, bound the parties to a sale on fully specified terms. There is nothing about the language of the agreement which suggests they contracted with reference to statutes yet to be enacted. Even if that interpretation is possible within reason, the parties later fully executed their agreement in a manner which demonstrates their mutual conviction that the 1919 statutes did not affect their contract.

Whether or not the 1919 Legislature could have abrogated this contract, the words of the statutes confirm that there was no legislative intent to do so. The Legislature took pains to protect the rights of applicants who had entered into agreements before May 12, 1919.

The ruling of the trial court should be upheld.

Respectfully submitted,

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