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Mines and Minerals - Grants by Government of Mineral and Mining Rights - Reservation by State Land Department

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a court of equity has power not only to decree, but to enforce its decrees in its own way *in the absence of a definite procedure*.⁸ Is not a contempt proceeding a definite procedure and the one usually invoked upon the violation of an injunction?⁹

There is a line of cases in which courts of equity do require a bond of the defendant.¹⁰ However, these cases are readily distinguished from the principal case in that the bond is a substitute for a temporary injunction. These cases offer nothing in the way of analogous support for the principal case.

Among the questions the decision raises are: How long will the defendant have to maintain the bond? What if the defendant is unable to post the bond?¹¹ It is submitted that the requirement of a bond conditioned on conformance with an injunction is an anomaly for which there is no necessity. As was cogently observed by the dissenting justice, "The arm of a court of equity is not, and there should be no intimation that it is, so short that it cannot protect its orders without bringing in additional aid and assistance by way of a bond."

JOHN C. STEWART.

MINES AND MINERALS — GRANTS BY GOVERNMENT OF MINERAL AND MINING RIGHTS — RESERVATION BY STATE LAND DEPARTMENT. — In an action to quiet title to certain realty against the state of Arizona, judgment was entered adverse to the state. On appeal, one justice dissenting, the Supreme Court of Arizona affirmed the Superior Court and *held*, that notwithstanding the fact that notice of sale of certain state lands stated that the patent was to contain a reservation of all gas, oil, minerals, and mineral rights, such reservation was void, because the statute¹ giving the State Land Department power to sell did not authorize such reservation and no other statutes authorized such reservation. *State v. Drew*, 316 P.2d 1108 (Ariz. 1957).

The federal or state government may reserve title to minerals in public land granted or sold by such government.² Though the actual sale is committed to the executive department, the authority to make such reservation rests entirely with the legislature.³ Where the legislative act authorizing sale makes no reference to reservation of mineral rights, the question arises, as in the instant case, as to whether or not the executive department has power to reserve such rights when making the sale. The jurisdictions which have passed on this question are divided, some holding that reservation of minerals may not be made in the sale of state lands in the absence of constitutional or

8. 101 Wash. 81, 172 Pac. 257, 261 (1918) [Emphasis added].

9. See 1 Story, Equity Jurisprudence 15 (13th ed. 1886) "Mr. Justice Blackstone . . . has truly said: 'The system of our Courts of Equity is a labored connected system, governed by established rules, and bound down by precedents from which they do not depart. . . .'; de Funiak, Equity, 20 21 (1950) "If the defendant fails or refuses to obey the injunctive order or process of the court, he is in contempt of court." "The punishment imposed for contempt may be either by fine or imprisonment or both."

10. See, e.g., *New Jersey and North Carolina Land and Lumber Co. v. Gardner-Lacy Lumber Co.*, 113 Fed. 395 (E.D.N.C. 1902).

11. As was queried by the dissenting Justice, ". . . why should a bond be required? I know nothing of the financial standing of the defendant but wonder just what is intended should result if she is unable to make a \$5,000 bond." "If the defendant cannot deposit the bond is she not then in contempt? Having no money, must she go to jail? Are we about to return to the maintenance of cells for poor debtors?"

1. *Ariz. Ann. Rev. Code* § 11-401 (1939).

2. See 1A *Summers, Oil and Gas* § 137 (1954).

3. See *Messenger v. Kingsbury*, 148 Colo. 611, 112 Pac. 65 (1910).

statutory provisions for such reservation,⁴ and others holding that it is not essential that the body in control of sales should be given express authorization for the inclusion of the reservation.⁵ Determination as to the existence of this power necessarily involves the construction of the authorizing statute to determine the legislative intent.

The final construction of a statute rests with the courts,⁶ but the construction by the executive charged with the duty of execution is to be considered and given weight,⁷ especially when such construction is in accord with previous decisions.⁸ In the instant case an interpretation of the statute by the State Land Department that such reservation was permissible was apparently not in harmony with previous judicial decisions.⁹

It is desirable that the legislature in passing acts of this nature indicate their intent with clarity for the intent of the legislature is to be ascertained primarily from the language used in the statute.¹⁰ It is illustrative that in a recent Wyoming case, a statute reading, "the state shall convey title in fee simple", was held not to establish that title to such land when sold must include all minerals;¹¹ in a Colorado case the statute read approximately the same, but it was held that the State Board of Land Commissioners had no power to reserve the mineral rights in such conveyance and such reservation was void.¹²

Since the instant case was decided, the Arizona legislature has attempted to make their law more definite by the adoption of a statute providing for proportionate reservation of mineral rights in all sales of state owned land.¹³ The newly adopted statute is similar to that of North Dakota.¹⁴

TED CAMRUD.

MONOPOLIES — SUPPRESSION OF COMPETITION — USE OF THIRD PARTY TECHNIQUE. — Defendants, a group of eastern railroads, engaged a public relations firm for the purpose of creating public resentment against the long-

4. See *Walpole v. State Land Com'rs.*, 62 Colo. 554, 163 Pac. 848 (1917); *Hugh v. Thornton*, 155 Minn. 432, 193 N.W. 723 (1923); *State v. McKelvie*, 111 Neb. 224, 196 N.W. 110 (1923).

5. See *Terry v. Midwest Refining Co.*, 64 F.2d 428 (10th Cir. 1933); *State ex rel. Otto v. Field*, 31 N.M. 130, 241 Pac. 1027 (1925); *State ex rel. Cross v. Board of Land Com'rs*, 50 Wyo. 184, 58 P.2d 423 (1946).

6. *E. g.*, *Twaits v. State Board of Equalization*, 93 Cal. App. 2d 796, 210 P.2d 40, 42 (1949) (dictum).

7. See, *e. g.*, *State v. Davenport*, 61 Ariz. 355, 149 P.2d 360 (1944).

8. See *Prichard v. Southern Pac. Co.*, 9 Cal. App. 2d 704, 51 P.2d 428 (1935).

9. See *Campbell v. Flying V. Cattle Co.*, 25 Ariz. 557, 220 Pac. 417 (1923). The state suggested that the instant case is not controlled by the earlier case, for the reason that in the prior case the notice of sale did not recite that such reservation would be made, but the *Campbell* case held it is immaterial that purchaser knew the patent contained reservations, since the law did not authorize the state to impose such a condition in making the sale.

10. See, *e. g.*, *Garrison v. Luke*, 52 Ariz. 50, 78 P.2d 1120, 1122 (1938) (dictum). See also *State v. California Co.* 56 N.W.2d 762 (N.D. 1953); *Kopplin v. Burleigh County*, 77 N.D. 942, 47 N.W.2d 137 (1951) (holding reservation of minerals by the county in a deed after tax sale was invalid because of conflicting statutes).

11. *State ex rel. Cross v. Board of Land Comm'rs.*, 50 Wyo. 181, 58 P.2d 423 (1953).

12. *Walpole v. State Land Comm'rs.*, 62 Colo. 554, 163 Pac. 848 (1917).

13. Ariz. Rev. Stat. § 37-231 (1957) "All sales, grants, deeds or patents to any state lands shall be subject to and shall contain a reservation to the state of an undivided one-sixteenth of all oil, gases, and other hydrocarbon substances, coal or stone, metals, minerals, . . .".

14. N. D. Rev. Code § 38-0901 (1943) "In every transfer of land . . . by the state of North Dakota . . . fifty per cent of all oil, natural gas, or minerals which may be found on or underlying such land shall be reserved to the state of North Dakota . . .".