

MINERAL LAND IS SUBJECT TO TAX

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mineral; that coal or other mineral in place may be granted and conveyed as land separate and apart from that which underlies and overlies it; that for the purpose of separate ownership lands may be divided horizontally as well as vertically.

"That the method of its creation of these separate estates, whether by deed direct granting the mineral estate or by an exception in a deed granting a surface, is immaterial, and that by either of these methods such a separate estate is created.

"That such separate estates in land, however created, whether by deed or reservation, or whether they consist of interests formed by dividing the land horizontally or vertically, each constitute real estate.

"From the foregoing we arrive at the conclusion that, as to the tracts of land mentioned in the plaintiff's complaint, there are two separate and distinct estates in real property under separate ownership (a) the estate conveyed to the purchasers by the plaintiff, which we may designate as the surface rights in the land, which are owned by the grantee of the plaintiff, and (b) the minerals and mineral rights therein, which were reserved by the plaintiff in making the conveyance and which are still owned by the plaintiff.

"Section 1 of article XII of the constitution of this state provides that the necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation in the condition in which they now stand upon the records, unless they come within and are controlled by section 3 of article XII of the state constitution, which provides that 'all mines and mining claims, both placer and rock in place, containing and bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the rate paid the United States therefor, etc.' and which constitutional provision is incorporated in the statutory law in section 2,569 of the Revised Codes with only two or three verbal changes.

"In reference to the history of this constitutional and statutory provision, counsel for the defendant, in their argument on the demurrer, pointed out that in substance both of these provisions were in existence as law of the territory of Montana long prior to the adoption of the state constitution. Section 1,791 to 1,795 of the fifth division of the Compiled statutes of 1887, being the act of February 21, 1879, contains substantially the same provisions as the constitution and the sections of the Revised codes above referred to, and these provisions of the territorial legislature of 1879 were not original with that body, but were simply the adoption as a part of the statutory law of the state of the principles announced by Chief Justice Wade in Hope Mining company versus Kenyon, 3 Mont. 35, which opinion was rendered in the year of 1877. In considering this question the court, in that decision, only had in mind mining property under the mining laws of the United States; that the legislature followed the decision, undoubtedly having in mind only that class of property, and the constitution, following the territorial legislative provisions, sharply carried forward and continued in existence as fundamental law of the state of Montana the principles announced in the decision above referred to.

"In interpreting the intent of the framers of the constitution the court is at liberty to apply the same rule as applied in statutory construction, that is, to look at the provisions in question themselves, their history, or both for the key to the intent of the makers.

"Now let us look at the wording of the constitutional provisions and of the statutory enactment. It is like: 'All mines and mining claims, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, etc.' What is the meaning of the expression, 'after the purchase thereof from the United States?' The word 'purchase,' in its most enlarged and technical sense, signifies the lawful acquisition of real estate by any means whatever except descent. In a more limited sense, and according to common usage, it is applied to only such acquisitions of real estate as are obtained by bargain and sale for money or some other valuable consideration. In common parlance, the word signifies nothing more or less than buying for a price. The code provides that words and phrases are to be construed according to the context and the approved usage of the language.

"The provisions of the constitution and code under consideration provide that 'after purchase from the United States, mines and mining claims are to be taxed at the price paid the United States therefor.' The word 'price' generally, and in common acceptance, means the sum of money which an article is sold for.

"Taking into consideration the history of these provisions together with the language used, construing the

words according to the context, giving them their commonly accepted meaning in order to arrive at the real intent of the persons using them, and I am led to the conclusion that that intent was, and is, that these provisions of the constitution and code apply only to mines and mining claims which are purchased from the United States for a price, and as the only method by which the mines or mining claims can be purchased from the United States is under the provisions of the mineral or coal land laws, that it was only intended to include therein mines and mining claims, title to which had been acquired from the United States by purchase under such mineral land laws.

"Adopting this construction of these provisions, we are led to the conclusion that they are not applicable to the estate in these lands reserved by the plaintiff when it conveyed the balance of the estate, and that this reserved estate is, therefore, taxable as other real estate, or interests therein.

"Counsel for plaintiff argued with much force that if this construction were to be placed upon these constitutional and statutory provisions, such construction would render them both void as being violative of the fourteenth amendment to the constitution of the United States. If that be true, I think it should be left to a higher tribunal than this to so declare, but in consideration of the further grounds of my decision I do not deem it necessary to express any opinion upon that point.

"Up to this point we have assumed, as counsel for both parties did in the argument of the demurrer, that the plaintiff's reserved estate in the lands conveyed constituted either a mine or a mining claim.

"Is this the correct assumption? We think not.

"Bouvier defines a mine as an excavation made for obtaining minerals from the bowels of the earth. There are numerous definitions of the word given in the decided cases which differ in their wordings, but the sum of them all is in consonance with Bouvier, that a mine is a pit or excavation in the earth from which metallic ores or other similar substances are taken by digging.

"The plaintiff's reservation is 'all mineral of any nature whatsoever upon or in said land, including coal and iron, together with the right to the use of surface ground for exploration, etc.' According to the allegations of the complaint, there has never been any exploration for coal or other mineral upon this land, and there is no allegation that there has ever been any pit, shaft, tunnel or other excavation made thereon. Suppose it had been absolutely demonstrated that a deposit of coal underlies these lands, but that there had never been any excavation by pit, tunnel, shaft or otherwise looking to the removal of the coal deposit therefrom, would we say of this deposit that it is a coal mine?

"I quote the following from the case of Springdale Coal Min. Co. vs. Grogan, 52 Ill. App. 60:

"In appeal of Westmoreland Coal Co., 85 Pa. 344, it was ruled that the term 'mine' when applied to coal is equivalent to a worked vein, for it is then said that by working a vein it becomes a mine. In *Astry vs. Ballard*, 2 Min. Rep. 251, it was held that a seam of coal unmined was not a coal mine in the obvious or popular meaning of those words.

"The term 'mining claim' is the name given to that portion of the public mineral lands which the minor for mining purposes takes up and holds in accordance with the mining laws, and it includes the soil, rock and precious metals contained therein. This is the meaning of the term as I gather it from an examination of the definitions given in a great number of decided cases, both federal and state, and we read the reservation contained in the deed of conveyance made by the plaintiff company and say that that comes within the definition of the term 'mining claim.' It does not appear to me that by any fair construction of the words 'mine' or 'mining claim' it can be reasonably contended that this reservation is either a mine or mining claim.

"But, as pointed out in the beginning, this reservation is an estate in real property and one which is capable of private ownership and is, in fact, owned by the plaintiff company, and under the provisions of the constitution and statute is taxable for the purpose of raising revenue.

"The further point is made that the great difficulty of ascertaining the value of the interest reserved by plaintiff renders it impossible to assess and tax the same under the laws of this state.

"This contention appears to be settled by the case of *State vs. Downman*, 134 S. W. 737, cited by counsel for defendant. In which the court says:

"We further believe and therefore hold that it was necessary on the part of the state as claimed by appellee, to show that the lands described in the deeds of conveyance to Downman contained any mineral ores or other valuable substances, because we think the burden was on the appellee to show that they did not contain such mineral."

"For the reasons above set forth the demurrer to the plaintiff's complaint is sustained."

BIG CONTRACT GOES TO MISSOULA FIRM

Allen J. Olson of the firm of Olson & Johnson, received yesterday a telegram from Frank L. Magee, who represents the firm at Edmonton, Canada. Mr. Magee announced that the contract for erecting a seven-story office and store building had just been awarded the Missoula firm through his agency. The new building is to be 39 feet by 150 feet, and to accommodate 90 offices. It will cost \$185,000, and it is to be completed next fall. So sure were the Edmonton capitalists of the efficiency of the Missoula builders, that they did not advertise for bids on the contract, and there was no competition. Mr. Magee has many friends in Missoula who are pleased to learn of his continued success in his line of work.



Most Sensational Clothing Values Ever Offered at a Season's Height

Beginning this morning, men of Missoula will be presented with the most extraordinary clothing values ever offered either here or elsewhere. If you need a winter suit, overcoat or raincoat, and intended paying \$15, \$18 or even \$20 for it, see the remarkable special bargains you'll find here. Come early, because, like time and tide, such bargains wait for no man! Doors open at 8 o'clock. Open until 9 tonight.

Hundreds of Brand New All-Wool Suits and Overcoats, Regularly \$15 and \$18, at

\$10⁷⁵



A clothing "scoop" that will set the whole town talking and quickly bring every man who appreciates a saving of from \$4.25 to \$9.25 in real money to this store to share in the extraordinary offerings.

Over Two Hundred Men's \$15 and \$18 Suits \$10.75

Suits, many of them, that cannot be duplicated in quality, style or fit outside of this store for less than \$20. These are all brand new suits in up-to-date styles, made from fine strictly all-wool chevots and cassimeres and pure worsteds in fancy patterns in grays, browns, blues and in plain blues and blacks. No suits ever sold inside the \$20 mark are as fully hand-tailored—the collars and lapels are hand-felled, the edges hand-bluffed, even the buttonholes have been worked by hand. They are suits you can depend upon to wear and hold their shape. Sizes to fit all comers.

\$15 and \$18 Overcoats, Raincoats and Gaberdines at \$10.75

In all our years in the clothing business we have never seen or heard of values like these. To comprehend them, one must understand that while our regular prices for these garments are \$15 and \$18, they are in reality worth \$3.00 to \$5.00 more and could not readily be duplicated at that. Four lots to pick from:

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Young men's winter weight Cravenette coats, made with convertible collar and silk sleeve lining; splendidly tailored coats that will give you a world of service; \$15 coats. **\$10.75**

Men's raincoats, made of genuine black Thibets, and black and gray worsteds; 52 inches long, with convertible collars; regularly \$15 and \$18, on sale at **\$10.75**

Men's genuine English gaberdines and cravenettes—made from Priestley's imported cloths, the best for rainproof garments; well made, stylish, practical coats; reg. \$15, at **\$10.75**

A Great Underwear Offering

In conjunction with our great \$10.75 Sale, we offer one hundred dozen men's "Lambsdown" undershirts and drawers at a saving on every suit of 75c. "Lambsdown" underwear is a high grade, heavy fleeced goods, warm, comfortable, sanitary and hygienic, with satin facings and trimmings; all sizes; regularly \$1.00 a garment; during this sale only, **65c**



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