

State Fair, Title to Property Of.

The state of Montana has clear title to its property and the claim of Paul Albertson as successor in interest of Samuel Wallin is without foundation.

November 10, 1911.

Hon. Edwin L. Norris,
Governor,
Helena, Montana.

Dear Sir:

Sometime ago you called attention to the fact that Paul Albertson of Butte, was asserting some right, title or claim to certain of the lands possessed and used by the state near the city of Helena, for state fair purposes, and in this connection requested this department to make full examination concerning the state's title to the lands in question. Accordingly, we obtained an abstract of title and made careful examination thereof, and now give you our opinion respecting the state's title to the said lands. In this connection, we believe that whatever rights Paul Albertson or his predecessor in interest, Samuel Wallin, ever had against the Montana State Fair, or its property, have been foreclosed by decree of the district court of Lewis and Clark County, to which attention is hereinafter particularly directed.

It appears from the abstract that the title to this property passed by mesne conveyance from the United States to the Montana State Fair, a corporation; that on February 19, 1894, the Montana State Fair, executed and delivered to Sarah A. Britton a mortgage on said property to secure the payment of eight thousand five hundred (\$8,500.00) dollars, payable February 19, 1895, with interest at eight (8%) per cent per annum, payable semi-annually. This mortgage was recorded on February 20, 1894, in Lewis and Clark County, Montana. Afterwards, on December 7, 1896, the said note not having been paid, an action was instituted by Sarah A. Britton against the Montana State Fair, a corporation, and Samuel Wallin, for the purpose of foreclosing said

mortgage. Decree of foreclosure was subsequently entered, after personal service upon defendants, an order of sale was issued, and the property described in the mortgage was sold on February 4, 1897, to plaintiff, Sarah A. Britton.

Subsequently, Sarah A. Britton assigned the certificate of sale issued to her to Charles D. Hard, and on August 5, 1897, a sheriff's deed was issued by the sheriff of Lewis and Clark County to said Charles D. Hard, conveying said property, and subsequently, on June 11, 1903, Charles D. Hard and wife, by warrant deed, conveyed said property to the State of Montana. Subsequent to the execution and recording of said mortgage to Sarah A. Britton, one Samuel Wallin instituted an action in the district court of Lewis and Clark County, Montana, and obtained a judgment against the Montana State Fair on a promissory note. Execution was thereafter issued on this judgment, and was returned and filed in said court on the 19th day of January 1897, showing that this property had been sold to Paul Albertson in satisfaction of the Wallin judgment. This is all the records disclose concerning the subject.

It appears from the abstract that the mortgage executed by the Montana State Fair to Sarah A. Britton was almost two years prior to the commencement of the action by Samuel Wallin, and it further appears from the abstract that Samuel Wallin was made a party defendant in the action to foreclose such mortgage. It further appears that the State of Montana and its predecessors in interest have been in the undisputed, peaceable, and quiet possession of said property, claiming absolute title and right of possession thereto at all times prior to and since the inception of the claim of Albertson, and it further appears that neither Albertson, nor anyone, had ever at any time redeemed or attempted to redeem said property or any part thereof, from the sale made to satisfy the mortgage executed and delivered by the Montana State Fair to Sarah A. Britton.

In conclusion, you are advised that, in our opinion the State of Montana now has clear and absolute title to this property, and that the claims of Paul Albertson thereto are without foundation.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.