

trial court that under that amendment the former owner had to be offered the land before any negotiation was begun with Laredef. The court disagreed with the State that the instrument of May 22, 1962, was the grant of a mere easement and therefore was not within the purview of the constitutional amendment. The court thought that it was a "self-executing option" to purchase the land in consideration of \$1. It was an option based upon an irrevocable offer on the part of the State to sell for the self-same consideration. In other words, without further action on Laredef's part the so-called easement at the expiration of five years would become a sale and the instrument by its terms would become effective to secure the vesting of title in Laredef. The court stated that it was apparent from such provisions that the instrument was designed to circumvent the constitutional preemptive right of Alper to purchase before an offer was made to any other person.

As to Alper's contention that it should be offered the land in consideration of \$1 since that was the amount Laredef was to pay for it and since the State was unable to show that Laredef was to pay a more substantial amount without relying on the letter which was stricken from the record, the supreme court held that since Alper came into equity asking for relief it should be willing to do equity. The court pointed out that after the State had acquired the land in question it was warranted in improving it in any way which was designed to promote the purpose for which it had been taken. In the opinion of the court, any expenditure made for such purpose which enhanced the value of the land would be a proper matter for consideration if it was found later that the land was not needed for the purpose for which it was taken and was offered to the condemnee in accordance with the constitutional amendment. However, this would not be so if it appeared that the expenditure was made necessary by reason of some arrangement which was made with a third party with whom the State was mistakenly negotiating to convey the land. In the first instance it would be unjust enrichment to the former owner to force the State to reconvey without allowing for such expenditure, but in the second instance it would not. In other words, whatever the State spent solely to adapt the land to the uses of Laredef and whatever Laredef itself might have spent on the land after the conveyance of May 22, 1962, could not properly be chargeable to Alper on the ground of unjust enrichment.

Because there was some evidence in the record of State expenditure which qualified as a ground for requiring the complainant to pay more than \$1 in order to avoid unjust enrichment, the case was remanded to the trial court to determine the amount which should be paid. (M. S. Alper & Son, Inc. v Capaldi, 206 A2d 859, Feb. 1965)

177-3 SUPREME COURT OF IDAHO HOLDS STATE HAS POWER TO REQUIRE FEE OWNER OF RIGHT-OF-WAY OF FEDERAL-AID HIGHWAY TO REMOVE SIGN THEREFROM

In 1933 the State of Idaho was granted a right-of-way easement in unappropriated Federal land for use as a Federal-aid highway. The United States later granted a private person the fee interest in a tract of land which included, but was subject to, the easement. The owner erected a sign on land that was within the right-of-way but that was not used for actual highway purposes. The State, through its board of directors, asked the owner to remove the sign, asserting that it was an encroachment and a nuisance upon a State right-of-way. Following the owner's noncompliance, the State was granted injunctive relief compelling him to remove the sign.

The owner appealed to the supreme court claiming that since the State was not using all of the right-of-way for highway purposes, he was entitled, as the fee owner, to make use of the unused portion, and, therefore, was entitled to erect and maintain the sign.

The appellate court held that under a Federal regulation, (43 C.F.R. Sec. 244.9(1)), the landowner agreed to occupancy and use by the United States or its grantees of any part of the right-of-way not actually required by the project. Therefore, the State had the right to control the use of all the area within the right-of-way. This concept was consonant with the definition of the term "highway" which appears in I.C. Sec. 49-514(a):

Street or highway--the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purposes of vehicular travel.

The appellate court held that the board of highway directors had the power to keep the highway free of obstructions and that this authority carried with it the power to determine what constituted an obstruction. Such a determination made by the board was conclusive and would not be reviewed in the absence of a showing of an abuse of discretion. (State Ex. rel. Burns v. Kelly, 403 P. 2d 566, June 1965)