

1967

Lynn S. Scott and Ann B. Scott, His Wife, and,  
Frank H. Bjorndal and Audrey K. Bjorndal, His  
Wife v. Wilford Hansen. and Viola L. Hansen, His  
Wife; Cecil Hansen and Ladonna Hansen, His  
Wife; Marjorie Baker; Darrell A. Tate; Barbara  
Buckley and Michaels S. Tate : Petition For  
Rehearing and Brief In Support Thereof

Utah Supreme Court

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Dwight L. King; Attorneys for Respondents F. Burton Howard; Attorneys for Appellants

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# IN THE SUPREME COURT OF THE STATE OF UTAH

LYNN S. SCOTT and ANN B.  
SCOTT, his wife, and  
FRANK H. BJORNDAL and  
AUDREY K. BJORNDAL,  
his wife,

*Plaintiffs and Appellants,*

— vs. —

WILFORD HANSEN and VIOLA  
L. HANSEN, his wife; CECIL  
HANSEN and LADONNA  
HANSEN, his wife; MARJORIE  
BAKER; DARRELL A. TATE;  
BARBARA BUCKLEY and  
MICHAEL S. TATE,

*Defendants and Respondents*

Case No.  
10589

## PETITION FOR REHEARING AND ERROR IN SUPPORT THEREOF

Appeal from a Judgment of the District Court  
of Salt Lake County  
Honorable Stewart M. Hanson, Judge

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FILED

JAN 17 1967

Clerk, Supreme Court

# IN THE SUPREME COURT OF THE STATE OF UTAH

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LYNN S. SCOTT and ANN B.  
SCOTT, his wife, and  
FRANK H. BJORNDAL and  
AUDREY K. BJORNDAL,  
his wife,

*Plaintiffs and Appellants,*

— vs. —

WILFORD HANSEN and VIOLA  
L. HANSEN, his wife; CECIL  
HANSEN and LADONNA  
HANSEN, his wife; MARJORIE  
BAKER; DARRELL A. TATE;  
BARBARA BUCKLEY and  
MICHAEL S. TATE,

*Defendants and Respondents*

Case No.  
10580

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## PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF

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### PETITION FOR REHEARING

The defendants petition this Honorable Court for a rehearing in the above entitled action upon the following grounds and for the following reasons:

#### I

The court has decided a question of fact i.e., the intention of Maggie Thompson in making a deed in

1907 without reference to Maggie Thompson's own abstract of title and deeds.

## II

The decision varies the terms of the written deeds without clear and convincing evidence.

## III

The recording statutes will be adversely affected and weakened by the court's decision.

Wherefore, defendants pray that the court order a rehearing so that the grounds of the court's opinion may be argued and the court consider the effect of the plaintiff's Exhibit P-2, which shows the straight line boundary, or remand the case for the Trial Court to determine the question of fact i.e., what was Maggie Thompson's intention in 1907 when she made her deed.

DATED this ..... day of January, 1967.

.....  
DWIGHT L. KING  
*Attorney for Defendants  
and Respondents*

BRIEF IN SUPPORT OF PETITION  
FOR REHEARING

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POINT I

THE COURT HAS DECIDED A QUESTION OF FACT i.e., THE INTENTION OF MAGGIE THOMPSON IN MAKING A DEED IN 1907 WITHOUT REFERENCE TO MAGGIE THOMPSON'S OWN ABSTRACT OF TITLE AND DEEDS.

The court's opinion is based on the proposition that the "parties are more apt to be familiar with such monuments (i.e. courses of roads) or markers than with precise measurements or recorder's plats." Assuming this to be true, deeds are not usually prepared on the basis of raw ground observations.

The usual place for a preparer of deeds to obtain his description is from the grantor's abstract of title. Abstracts are prepared from recorded instruments.

Plaintiff's own abstract Exhibit P-2 was a part of the record on appeal. It is not referred to in the opinion. Certainly such an important source of evidence as to title will be used if not overlooked by the court.

The abstract shows an early date of January 2, 1890 for an abstractor's certificate. Preceding this

certificate is a map showing the County road as proposed as the north line of plaintiff's property and the south line of property ultimately belonging to defendants. The only other map of the property at the end of the abstract shows again the straight line on the north boundary of plaintiff's land.

It is difficult to believe that the owner of an abstract does not know what it shows about the property lines on his acreage. With his abstract in hand it would seem likely he would know what is on the County record. Both show the same north line for plaintiff's property. (See Exhibit D-8)

Apparently the court also has overlooked the Warranty Deed of Maggie Thompson to Andrew Hansen, Jr., plaintiff's Exhibit P-5, dated October 14, 1913. The description in this deed describes exactly the area outlined in yellow and adjoining the plaintiff's land on the north as shown on the plat in the front of the plaintiff's abstract, Exhibit P-2.

The deed of defendants is of some importance since it warrants the description of land with a straight southern boundary adjoining plaintiff's straight northern boundary as shown by the abstract.

Mrs. Thompson would be less than wise to make such a warranty if the boundary was a meandering one which cut off a substantial amount of the land

described in her deed to Hansen, who is defendant's predecessor in interest.

It is respectfully submitted that these items of evidence should be considered before any final conclusion as to what Maggie Thompson's intentions were in 1907. Whether this determination of fact is to be made by the Trial Court or at the Supreme Court level.

## POINT II

### THE DECISION VARIES THE TERMS OF THE WRITTEN DEEDS WITHOUT CLEAR AND CONVINCING EVIDENCE.

All of the written deeds of Maggie Thompson, the plat in her abstract, and County Recorder's records show the line between parties' land as a straight line. To vary the effect of such a written document, this court recently held, required clear and convincing evidence. *Controlled Receivables, Inc. v. Harman*, 17 U 2d 420, 413 P 2d 807.

All of the evidence of Thompson's intentions as shown by Point I is against the court's finding.

## POINT III

### THE RECORDING STATUTES WILL BE ADVERSELY AFFECTED AND WEAK- ENED BY THE COURT'S DECISION.

Several of the statutory provisions of this state will be greatly weakened by permitting a showing

that the parties do not take with notice of what is recorded when purchasing land.

Section 75-14-16, UCA 1953. Decrees affecting real estate to be recorded by county recorder—Constructive Notice.—When a judgment or decree is made determining any matter affecting the title to real property a certified copy of the same must be recorded in the office of the recorder of the county in which the property is situated; and from the time of filing the same notice of the contents thereof is imparted to *all persons*.

The decree of distribution was recorded Book 159 of Deeds, Page 244-245, February 10, 1936.

Section 57-3-2, UCA 1953. Record imparts notice.—Every conveyance, or instrument in writing affecting real estate, executed, acknowledged or proved, and certified, in the manner prescribed by this title, and every patent to lands within this state duly executed and verified according to law, and every judgment, order or decree of any court of record in this state, or a copy thereof, required by law to be recorded in the office of the county recorder shall, from the time of filing the same with the recorder for record, impart notice to *all persons* of the contents thereof; and subsequent purchasers, mortgagees and lien holders shall be deemed to purchase and take with notice.

Section 57-4-4, UCA 1953. All instruments recorded prior to January 1, 1943.—All instruments of writing that were, previous to Janu-



ary 1, 1943, copied into the books of record in the offices of the county recorders of the several counties shall, after that date, impart to subsequent purchasers and encumbrancers, and to *all other persons whomsoever*, notice of the contents of all such instruments so far as the same may be found recorded, copied or noted in such books of record, notwithstanding any defect, omission or informality existing in their execution at the time of acknowledgment, or in the certificate of acknowledgment, the recording or certificate of recording of the same; and all such instruments, and the records or authenticated copies of the records thereof, shall be admissible in evidence, notwithstanding such defects or omissions; but nothing herein shall be construed to affect any right or title acquired prior to that date.

It is respectfully submitted that the decision of the Court, by ignoring the documents which are a public record and which have been recorded in the County Recorder's office and the County Clerk's office, destroys any possibility of reliance on the public records as showing the true state of title and the true boundary lines of property being conveyed.

## CONCLUSION

It is respectfully submitted that this Court should grant a rehearing so that the defendant may call to the court's attention the evidence, which it appears from the Court's decision has been overlooked, so

that said evidence may be properly evaluated and considered.

Respectfully submitted this.....day of.....,  
1967.

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DWIGHT L. KING  
*Attorney for Defendants  
and Respondents*