

1975

William J. Colman v. A. J. Butkovick and Geneva A. Butkovich, G. W. Anderson and Jeanne D. Banks : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH
J. Reuben Clark Law School

WILLIAM J. COLMAN,
Plaintiff-Respondent,

vs.

A. J. BUTKOVICH and GENEVA
A. BUTKOVICH, Husband and wife;
G. W. ANDERSON, and JEANNE
D. BANKS, and all unknown persons
who claim any interest in the subject
matter of this action,

Defendants-Appellants

Case No.
13868

RESPONDENT'S BRIEF

Appeal from the Fourth Judicial District Court Of Summit
County, Honorable Allen B. Sorensen Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM J. COLMAN,

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A. J. BUTKOVICH and GENEVA
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RESPONDENT'S BRIEF

NATURE OF THE CASE

Plaintiff sued to quiet title to a parcel of property located in Park City, Utah, claiming ownership and that the tax title of Defendants was a nullity. The defendants Butkovich answered claiming title superior to plaintiff's to all but a small part of the property claimed by plaintiff.

DISPOSITION IN THE LOWER COURT

After trial, the lower court entered a decree quieting title to the property in plaintiff based on findings

that plaintiff had color of title and that the tax deeds from Summit County were void because the descriptions of the land were fatally defective. The lower court denied a motion to amend the findings of fact and conclusions of law and to alter the judgment filed by defendants.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks to have the decree quieting title in him sustained by this Court.

STATEMENT OF FACTS

The defendants Butkovich obtained their title to the property by two quit-claim deeds from Summit County on July 9, 1964, and April 15, 1965. Summit County had previously, in 1915 and 1940, obtained title by Auditor's Tax Deeds resulting from tax sales in 1910 and 1935. The deeds from the County were in customary form, except that the legal descriptions were *void* for uncertainty.

The description in the first Summit County Deed to the Butkovichs. dated July 6, 1974, read,

"All unplatted land in Block 29, and also land West of Block 29 and lots 1 and A. PC 364".

Thereafter correctory deed was given by Summit County to the Butkovichs, dated April 15, 1965 which read,

"All unplatted land in this Block (29 PC)

and all land West of this Blk. and Pt. lot 1: Pt. lot A."

These are the sole conveyances out of Summit County upon which the Butkovich tax title is predicated.

On February 15, 1966, Mr. and Mrs. Butkovich executed and delivered to Security Title Company a Warranty Deed for lands in Block 29, Park City Survey somewhat similar to the description in the April, 1965 correctory deed and followed it by a metes and bounds description supplied by Mr. Butkovich. The same day, Security Title Company executed and delivered back to Mr. and Mrs. Butkovich "as joint tenants", the identical property. The metes and bounds description is that shown on page 7 of appellants' brief. That brief erroneously implies that such is a part of the correction deed from Summit County (Entry 58 of abstract, Exh. 11A). That description did not appear until Mr. Butkovich delivered it in 1966 to Security Title Company for preparation of the two deeds. He said that such (Exh. 5) was prepared by Mr. Raymond L. Griffith, (Tr. 68) a surveyor for Mountain Fuel Supply Company. However, Mr. Griffith denied that he had prepared it or given it to Mr. Butkovich. (Tr. 109)

Both Plaintiff and the Defendants Butkovich had paid taxes on the property. On the issue of possession, neither had fenced, cultivated or occupied the land (a hillside in the Park City area) and the trial Judge found, No. 4 (R. 155) that "There is no evidence that

either of the parties has had exclusive possession of the property or has actively occupied, cultivated, fenced or otherwise used the property, except in a very casual manner."

Plaintiff's title to the involved land came by a Warranty Deed dated November 12, 1968 from Robert T. Banks, as Trustee and individually, describing:

"All that part of the NW 1/4 of the SE 1/4 of Section 16, Twp 2 South, Range 4 East, Salt Lake Base and Meridian, that lies Westerly of Norfolk Avenue."

As reflected by the abstract of title, Exh. 11A, that property had been vested in 1916 in The Assets Corporation and in Park City Townsite. Neither had conveyed out after that date and no other title claimant appears of record from 1916 until the 1968 Warranty Deed to Plaintiff. Along with that deed was recorded the Affidavit of Robert T. Banks explaining the expiration of the two title holding corporations and his authorization to sell. He conveyed as Trustee and individually.

Mr. Robert B. Jones, is a Utah licensed land surveyor employed by Bush and Gudgell (Tr. 16). He has made 400 to 500 surveys in the Park City area and did one on this property (Exh. 8). He was later asked about the possibility of platting, locating or surveying the descriptions contained in the two deeds from Summit

County to the Butkovichs, which read, 1964, "All unplatted land in Block 29 and also land west of Block 29:" and in 1965, "also land west of Block 29". To both of these enquiries he answered in the negative (Tr. 28). However, as to the Plaintiff's description, such was locatable as it is encompassed within the legal quarter section description. Defendants presented no evidence to disprove such testimony.

Judge Sorensen, after hearing the evidence, seeing the demeanor of the witnesses and considering the memoranda submitted by the parties, issued his Memorandum Decision (R. 152) as follows:

"The court concludes that, as between the parties, plaintiff holds color of title. The court further concludes that the tax title held by defendants is void from its inception. See *Edwards v. City of Santa Paula*, 292 P.2d 31, *Meyercort v. Warrington*, 19 So.2d 433, and *Burton v. Hoover*, 93 Utah 498.

The statute of limitations is therefore not applicable, and title is ordered quieted in plaintiff."

ARGUMENT

I.

THE 1964 AND 1965 DEEDS FROM SUMMIT COUNTY WERE A NULLITY AS TO THIS PROPERTY — VOID BECAUSE OF TOTALLY DEFECTIVE DESCRIPTION AND

PLAINTIFF IS NOT BARRED BY STATUTE OF LIMITATIONS.

The law in Utah and generally is that a legal description must be adequate to identify the property if a conveyance is to be effective. This applies to tax deeds as well as to ordinary conveyances. Let us cite the three cases identified in Judge Sorensen's Memorandum Decision. The critical issue is the sufficiency of the portions of the two tax deeds from Summit County:

1964 "also land West of Block 29".
1965 "all land West of this Block." (29PC)

In *Edwards v. City of Santa Paula*, Calif. 1956, 292 P.2d 31, the issues in the quiet title suit revolved around a tax sale and deed referring to certain lots in "Block 68 Subdivision". There was no Block 68 Subdivision of record in the Recorder's Office. In the decision holding that the fee title owner would have been barred by the statute of limitations, except for the fact that the description in the deed was fatally defective, the Court said in part:

"To be sufficient the description must be such that the land can be identified or located on the ground by use of the same. *Best. v. Wohlford*, 144 Cal. 733, 736, 78 P. 293. Parol evidence is always admissible in aid of application of the description to its subject matter, but not for the purpose of completing a description which is inherently not susceptible of application to the ground."

"There are no presumptions or intendments in favor of the description of a tax deed. *Sinai v. Mul*, 80 Cal. App.2d 277, 280, 181 P.2d; *Harvey v. Meyer*, 117 Cal. 60, 64, 48, P. 1014. The intention of the assessor or grantor (state) is not a proper subject of inquiry for the proceeding is *in invitum*, the property owner has no intention which enters into the deed, he may stand upon its insufficiency, and the taxing agency or the state must adhere to settled basic rules in describing the property or the deed will be void."

Meyerkort v. Warrington (Mississippi), 1944, 19 So. 2d. 433. A tax sale was conducted in which the lands were described as part of certain sections:

"This alleged tax sale, as well as the assessments upon which it was based, was utterly void for want of description. The pretended descriptions were as follows:

'Pt. Sec. 28 Tp. 12 R. 3 E, 5 acres,' and 'Pt. Sec. 29 Tp. 12 R 12 E, 100 acres,' and 'Pt. Sec. 30 Tp. 12 R 12 E, 29 acres,' and the other four descriptions were in like terms. That such an attempted description is no description whatever and that a tax deed containing the nullity is no deed at all has been settled in several of our cases, among which are *Cogburn v. Hunt*, 54 Miss. 676, and *Tierney v. Brown*, 65 Miss. 563, 5 So. 104, 7 Am. St. Rep. 679."

"Appellees' third contention is that appellants, the Meyerkorts, are barred by Chapter 196, Laws 1934, Sec. 717, Code 1942, because suit was not brought within two years after April 4, 1934, the

effective date of that Act. The sale to the State being utterly void for want of description, there was no tax deed to the land here in question, wherefore the cited statute does not apply, nor does any other such statute, save the ten-year statute of adverse possession, and this only to the lands actually occupied, and not to the calls of the deed; for in a tax paper such as in this case there are no calls. We pursue this issue no further than to cite *Pearce v. Perkins*, 70 Miss. 276, 12 So. 205, and *Patterson v. Morgan*, 161 Miss. 807, 138 So. 362—statutes of limitation do not run in favor of the holder of a tax deed void on its face. 61 C.J. p. 1427.”

Thus, in this case, it was held that the descriptions in the tax deed were void, hence the statute of limitations would not be initiated nor run against the owner.

The Utah case cited is *Burton v. Hoover*, 1937, 93 Utah 498, 74 Pac. 2d 652. This involved a quiet title procedure on lands in Wasatch County. The tax title was based upon a purported description of lands, “Sec. 7-5-4” and “Sec. 18-5-4”. The Court held that notwithstanding the legislative authorization for abbreviations (Sect. 80-1-6 R.S. Utah 1933, now Sec. 59-1-6 U.C.A. 1953) the tax deed was void as no realty was described as the township and range were not indicated. Citations were given of like matters and that such are “confusing in the extreme, and intolerable when employed as a means by which to divest title to real estate without the consent of the owner”.

“And the omission to designate whether the

range is east or west, and the township north or south, is likewise held fatal. *Wilson v. Jarron*, 23 Idaho 563, 131 P.12; *Sears v. Murdock*, 59 Or. 211, 117 P. 305; *Noble v. Watrous*, *supra*. The first requisite in a description of real property is a definite basic starting point, which is entirely lacking when, as here, the description fails to indicate any township or range, or, if that were indicated, whether north or south, or east or west, or even from which of two meridians the land is to be located.'

In Utah we have another decision that touches upon this issue, namely *Ferguson v. Mathis*, 96 Utah 442, 85 P.2d 827. There the court construed the validity of a tax deed identifying Lot 15 of Highland Park "Subdivision", and held that the use of the word "addition" in place of "subdivision" was not a fatal defect. A general statement of the law in Utah is found at page 828 as follows:

"Was then the description of the property in the tax sale proceedings so indefinite or erroneous as to invalidate such proceedings? The Courts have consistently held that if a description in tax proceedings is too vague, too indefinite, to notify the owner that it is his property that is being taxed, and insufficient to inform prospective purchasers as to what property is to be sold, the resulting tax title after sale is void" (underling ours)

Olsen v. Bagley, 10 Utah 492, 37 P. 739; *Tintic Undine Mining Company v. Ercanbrack, et al.*, 93 Utah 561, 74 P.2d 1184."

A very extensive annotation of the law relating to ambiguities in descriptions of lands in deeds and whether parol evidence may be submitted to explain such ambiguities, is found in 68 A.L.R. 4-105. At page 65 is a discussion of ambiguous descriptions in deeds executed at judicial sales. It is stated there that the courts have usually applied a stricter rule of construction in case of a deed executed at a judicial sale, such as tax deeds, than in the case of a deed between individuals.

An extensive annotation is in 133 A.L.R. 570 which deals with the applicability of specific statutes of limitations relating to tax titles. The summary of the holdings as made by the editor of the annotation is as follows:

“Where the description in a tax assessment or tax deed does not describe the property purported to have been sold for taxes, or the description thereof is so vague, uncertain or erroneous that the property in question cannot be identified, it has been held or stated that limitation periods provided for the purpose of barring attacks on tax sales are not applicable to protect tax titles based thereon.”

A reading of the cases cited in the annotation reveals that descriptions far more comprehensive than the one involved here have been held to be patently insufficient, and as a result the tax deed void and the statute of limitations inapplicable.

The fatal defect in the two deeds from Summit

County to the Butkovich is that the conflict with Plaintiff's property would be based upon, if at all, the descriptions, "also land West of Block", No perimeter of the parcel is given. Does it run westerly to the Pacific Ocean, to the West line of Utah, Summit County or to the summit of the next mountain? The fatal uncertainty of this was testified to by the licensed surveyor, Mr. Jones (*supra*) when he said that he could not survey or locate such a tract.

In consequence, the Butkovichs acquired no right, title or interest in property adverse to Plaintiff. There is no basis for attempting by speculation to clarify this void description by use of parol evidence. In any event, no official of Summit County was called to explain that verbiage. In *Davidson v. Robbins*, 30 Utah 2d 338, 517 P.2d 1026, your Court held that parol evidence is admissible *to apply*, but not to supply, a description of lands in a contract. That decision can give no comfort to appellants in this case.

We are not unmindful that the Utah Legislature strove mightily to cloak tax titles with a mantle of strength. The enactment of the sections relating to the statutes of limitations were for that very purpose. Appellants point to Section 78-12-5.1 and 78-12-5.2, U.C.A. 1953, as amended, to claim that Plaintiff's cause of action is barred. They say that more than four years had passed from the date of the first tax deed on July 6, 1964, until filing of this action on June 24, 1971. Sec-

tion 78-12-5.1 is the seven year statute and 78-12-5.2 is the four year statute. The thrust of the Appellant's position is that Plaintiff was not in possession as required by said two sections.

Had the Butkovichs acquired *prima facie* valid title to the involved property by the deeds from Summit County, some merit would be conceded for the assertion of that position. However, where the tax title as to these lands is *fatally* defective because the same does not describe the realty, then the tax title statute of limitations cannot be asserted.

II.

DEFENDANTS, BUTKOVICH, CREATED NOTHING BY THE 1966 DEED EXCHANGE WITH METES AND BOUNDS DESCRIPTIONS.

The complete inadequacy of the Butkovichs' tax deed must have been realized by him shortly after the 1964 deed as he applied to Summit County for a correctory deed in 1965. This was basically a change of the word "also" to "all" and in no way placed any dimensions or perimeter to the land "west of said Block". Mr. Butkovich testified that later he went to Security Title Company and was told he must get a "proper description on it" and could not even then insure it until five years had passed. (Tr. 68). Then he brought to Security Title Company a legal description from which was prepared a

Warranty Deed from the Butkovichs to Security Title and a Quit-Claim Deed to the Butkovichs as joint tenants from Security Title (Exhs. P-3 and P-4 respectively) both dated February 15, 1966. These were recorded February 23, 1966.

No one has advised the Court of the origin of the metes and bounds description supplied by Mr. Butkovich for the deeds. The surveyor denied creating such. He had good reason for doing so, as it not only encompasses land owned by Mr. Colman (plaintiff herein) but several residences which are not owned or claimed by any of the parties hereto. It appears to be an irresponsible and reckless attempt by a wild description to initiate a title where none previously existed.

This is the first time that the Butkovichs appear of record to have any asserted interest in the involved lands. However, this was sort of a "bootstrap operation" whereby the Butkovichs tried to assert an interest by creating it through their own deed to Security Title. Prior to that time, they had no interest as the two Summi County deeds did not have a valid legal description which could be platted, surveyed or possessed. This fact was known to the Butkovichs as evidenced by the refusal of Security Title to insure and requiring that Mr. Butkovich get a legal description, exchange deeds and then wait for five years.

We observe that the Appellants cite the case of

Peterson v. Callister, 6 Utah 2d 359, 313 P.2d 814. Here a tax title was being litigated and the four year statute (Sect. 78-12-5.1, U.C.A. 1953) was asserted. The Court's decision *affirmed* the purpose of that statute as one of repose "after another has received a tax title *valid on its face*". (emphasis ours). That is the problem which Mr. Butkovich was trying to overcome. His tax deed was *not* valid on its face. He recognized it. Security Title recognized it. In an apparent effort to be helpful, he was told to bring in a valid legal description, exchange deeds, record them and then wait for five years. No greater confirmation of the invalidity of the two deeds from Summit County could be asked.

III.

PLAINTIFF HAS COLOR OF TITLE TO THE PROPERTY

IV.

DECREE QUIETING TITLE IN PLAINTIFF IS PROPER AND SHOULD BE AFFIRMED.

The evidence of Plaintiff's title is direct and is shown by Exh. 1-A which reflects that title was in Park City Townsite (a corporation) by a Sheriff's deed November 21, 1916, and in The Assets Corporation by a deed from Michigan Trust Company dated December

28, 1916. No recorded conveyances appear from either corporation since 1916. In 1968 we find the recorded Affidavit of Robert T. Banks which fully explains how he became the Trustee and owner of such assets in these two inactive corporations. The final step is the November 12, 1968, warranty deed from Robert T. Banks "as Trustee and individually" to William J. Colman, Plaintiff and Respondent herein.

This established in the record of this case prima facie evidence of title in plaintiff, William J. Colman. Judge Sorensen enquired as to the "quality of title" essential to enable judgment to be rendered in favor of the plaintiff in this proceeding. With over 52 years of continuous uninterrupted title in the corporations, 1916 to 1968, a clear "root of title" was proven within the intent and purpose of Chapter 9, Title 57, Utah Code Annotated 1953, relating to Marketable Record Title. That is the "unbroken chain of title of record to any interest in land for forty years", as defined by Section 57-9-1.

The adoption of this Chapter by the Legislature of Utah was an effort to wipe out old concepts of absolute marketability and to relate the issue to a more recent period of time (40 years). This pattern has now been adopted by many states as a necessity, as chains of title grow longer and longer (this one started in 1877 by U.S. Patent). In recognition of the newness of the approach, our Legislature gave a guide to the Courts

of Utah for interpretation. Section 57-9-9, U.C.A. 1953, as amended, reads,

“This act shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions. . .”

The Utah State Bar Association likewise took steps in aid of such interpretation and the fundamental purpose of placing at rest old land title defects and facilitating current land transactions. Having in mind the 52 years, 1916 to 1968, let us consider the impact and guidance in the Title Standards of the Utah State Bar. Standards 46 through 56 deal with various phrases of the Marketable Title Act. Standard 47 refers to “a connected series of conveyances *or other title transactions* of public record in which the *root of title* has been a matter of public record for at least forty years.” (underlining is ours).

Mr. Colman's title has such a root, going back to 1916. It seems significant that the Standard uses the phrase “or other title transactions” (taken from Section 57-9-1 of the statute) in addition to the reference to “conveyance”. This is a clear recognition that the curative purposes of this wise legislative step might involve the application of liberal interpretation to other documents. The combination of the Affidavit and the Warranty Deed in 1968 by Robert T. Banks is such “other title transaction” of significant import to transfer title to Mr. Colman. We note that he warranty deed to Mr.

Colman is by Mr. Banks "as Trustee" as well as in an individual capacity. The concurrent Affidavit, read along with the warranty deed, show that he was endeavoring to pass the complete title of The Assets Corporation and Park City Townsite Company to Mr. Colman. Had we the task of drafting the deeds now, perhaps more exact words of art might have been employed. Mr. Banks is deceased now, so we cannot go back to a correctory deed.

Title Standard 48 refers to the language of "purporting to divest", as found in Section 57-9-1(2) of the statute. The two deeds in 1916, one from the Sheriff to Park City Townsite Company and one from The Michigan Trust Company to The Assets Corporation, certainly purported to divest title. The Sheriff's Deed described the Northwest Quarter of the Southeast Quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Meridian, which is the property at issue. The other deed was more general. Now the next conveyance in 1968 to Mr. Colman is a *Warranty Deed* by Mr. Banks "as Trustee and individually", and such certainly divests all title which grantor had, both as Trustee for the record title owners and individually. Section 57-1-12 relating to Warranty Deeds says:

"Such deed when executed as required by law shall have the effect of a conveyance in fee simple to the grantee, his heirs and assigns, of the premises therein named, together with all the appurtenances, rights and privileges thereunto be-

longing, with covenants from the grantor, his heirs and personal representatives, that he is lawfully seized of the premises; that he has good right to convey the same; that he guarantees the grantee, his heirs and assigns in the quiet possession thereof; that the premises are free from all encumbrances; and that the grantor, his heirs and personal representatives will forever warrant and defend the title thereof in the grantee, his heirs and assigns against all lawful claims whatsoever."

In Title Standard No. 48 we find the following language: "A recorded instrument may also purport to divest even though there is not a complete chain or record title connecting the grantee in the divesting instrument with the forty year chain." At the trial some reference was tossed out that the Banks to Colman was a "wild deed". Such is not a fact, as Mr. Banks warranted the property as "Trustee" as well as individually. This makes the conveyance a valid and enforceable transfer and not merely an act of a interloper in the title. The Affidavit under oath is a recorded document under the Marketable Title Act and must be considered, particularly as the concurrent act of the grantor in making the Warranty Deed as Trustee. Such is an explanation of the status of the title. With two inactive corporations the difficulties were obvious and this does constitute evidence of "other title transactions" as contemplated by the Statute and by the Standards.

Appellants contend that the plaintiff must rely on

the strength of his own title and not the weakness of the tax title of the defendants. The decision of *Olsen v. Park Daughters* is cited to fortify this legal proposition, 29 Utah 2d 421, 511 P.2d, 145. This legalism was stated in that case but was merely as an aside, as the case was decided on the issue of Marketable Record Title Act vs. boundary by acquiescence. Mr. Olsen had an unbroken chain of title running back to a root of title more than 40 years old (1886). However, the channel of the Provo River and a fence along the west bank had apparently been the boundary line acquiesced in for over 50 years. The boundary by acquiescence theory won.

This *Olsen v. Park* case stands for the legal principle that the Marketable Record Title Act did not apply "to defeat the more fundamental boundary by acquiescence as established in defendants." If we consider the "quality of title" required to prevail in a case, we should remember that in boundary by acquiescence cases such as Olsen and others, the prevailing party *has no fee title and no root or chain of title*. Thus, in order for your Court to find the issues in favor of Mr. Colman in the present case as against the defendants, no actual established chain of title is required.

Has Utah always required a plaintiff to have a marketable title to be a successful plaintiff? The answer must be in the negative. Boundaries by acquiescence are one example. In an Occupying Claimant proceeding,

one merely needs "color of title" (see Section 57-6-4 U.C.A. 1953).

The *Olsen* case cited (*supra*) is the most recent Utah decision known to us on the Marketable Record Title Act. Part of the decision reads:

"The Marketable Record Title Act has for its purpose encouraging repose and discouraging a controversy by providing for elimination of ancient defects in title."

This is consistent with plaintiff's purpose in this proceeding. The fee title is in plaintiff and such can be adjudicated by this Court. The transition from the companies who took title in 1916 to Mr. Colman, through Mr. Banks, Trustee, may not be in ideal documentation, but as against the defendant and the world, none can assert a better, prior or superior title. Appellants are critical of Mr. Banks and challenge his position as a Trustee. This is immaterial to them. They are not stockholders in either corporation and have absolutely no privity with them or Mr. Banks. Prima facie evidence of title has been adduced before the court sufficient to sustain the affirmative Decree quieting title in plaintiff.

In turn, we challenge the position of Appellants in attempting to attack plaintiff's title in this proceeding. We have discussed above in detail the *void* nature of the defendants' tax deed from Summit County because of the fatal inadequacy of the description. A recent word

from your Court on tax titles, *Huntington City v. C. W. Peterson*, 30 Utah 2d. 407, 518 P.2d 1246 said in part:

“Before the holder of a tax deed can deprive the record owner of land, the burden is upon him to establish his title by showing that the tax and all proceedings in connection therewith were strictly according to the statute.” (p. 1249)

Thus, we reaffirm that the burden is on Butkovich in this case. The title to this property came out of the United States by patent during the 19th Century and is now vested in someone. We believe it is in the plaintiff - obviously, not in the defendants. Sections 78-12-1 and 78-12-7.1 U.C.A. as amended, say that in a quiet title proceeding, “the person establishing legal title to such property shall be presumed to have been possessed thereof within the time required by law; . . .”

CONCLUSION

The stability of titles to real property is a desirable end to be achieved. It is abundantly clear that the appellants cannot sustain and have not proven any title to the realty here involved. The purported tax deeds from Summit Couty were fatally defective as to this property. No portion of this property was conveyed thereby to the Butkovichs.

The trial Court has found that Plaintiff had “color of title” within the requirements of the law. Both the

Marketable Record Act and the Utah Bar Title Standards sustain such a finding and the Decree quieting title in the Plaintiff. We respectfully urge that this decision be affirmed by your Court. The great care exercised by the trial court is deserving of affirmation and application of the presumptions of propriety customarily followed by your Court.

Respectfully submitted,

HARRY D. PUGSLEY

NED WARNOCK

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