

2000

# Gary J. Witherspoon v. Walter T. Stewart : Brief of Appellant

Utah Supreme Court

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Walter T. Stewart; Defendant-Appellant.

Richard Richards; Attorney for plaintiff-Respondent.

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

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GARY J. WITHERSPOON, :  
Plaintiff-Respondent, :  
vs. : Case No. 14285  
WALTER T. STEWART, et al., :  
Defendant-Appellant. :

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BRIEF OF APPELLANT

Appeal from the Judgment of the Fourth Judicial  
Court of the State of Utah, in and for Utah County

The Honorable Allen B. Sorenson, Judge

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RFD #2, Box 199  
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Defendant-Appellant

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FILED

JAN 30 1976

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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vs. :

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Defendant-Appellant. :

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE OF THE CASE

Plaintiff-Respondent, Gary J. Witherspoon, sued Defendant-Appellant, Walter T. Stewart, asking for a Writ of Replevin for the return of 35 head of cattle purchased by the Defendant-Appellant through mesne conveyances from Plaintiff claiming title had not passed from him, and to have an amount of \$1500.00 paid by one of the mesne purchasers to the Plaintiff be declared liquidated damages to the Plaintiff.

The other named Defendants were not served.

Pending trial the cattle were sold and the proceeds applied to the benefit of Plaintiff. Defendant-Appellant Stewart amended his pleadings by leave of Court at trial asking for judgment against Plaintiff-Respondent, Gary J. Witherspoon, in the amount of \$8500.00; the amount he had

paid for the cattle.

#### DISPOSITION OF CASE IN LOWER COURT

The matter was tried on the issue of whether Defendant was entitled to the \$8500.00 paid by him for the cattle. The trial court granted judgment in favor of the Plaintiff, Gary J. Witherspoon, and against Defendant Stewart -- the trial court ruling that the pertinent bills of sale did not meet the requirements of the Utah Livestock Brand and Anti-Theft Act.

#### NATURE OF RELIEF SOUGHT ON APPEAL

Defendant-Appellant, Walter T. Stewart, seeks reversal of the trial Court's ruling and prays judgment against Plaintiff-Respondent in the amount of \$8500.00.

#### STATEMENT OF FACTS

Plaintiff, a professor of Anthropology at Weber State College and part-time farmer, owned the cattle which are the subject matter of this action. The cattle bore the brand of Plaintiff which had been duly registered. The cattle were kept in two separate corrals -- one in Juab County and one in Sanpete County.

Sometime in February, 1974, Jerry Yeck gave Plaintiff, Gary Witherspoon, \$1500.00 as an earnest money deposit on the purchase of 35 head of cattle. (Plaintiff's Exhibit 1 last page)

On Monday, February 17, 1974, Jerry Yeck, for Deseret

Distributing Company, purchased from Plaintiff, Gary Witherspoon, 35 head of yearlings and calves giving two checks as payment, one for \$815.00 and another for \$11,450.00, each dated February 20, 1974. Witherspoon gave Deseret Distributing Company a bill of sale in his own handwriting granting Deseret full ownership and possession of the cattle. This transaction took place at Ogden, Utah. (Pg. 1 of Plfs. Exh. 1)

Pursuant to a bill of sale dated February 19, 1974, Yeck, for Deseret Distributing Company, sold the subject cattle to American Federal Corporation. Yeck displayed to American Federal the Witherspoon bill of sale, and took representatives of American Federal to a corral in Mills, Utah County, and another in Fayette, Utah, where the cattle were located.

On Thursday, February 21, 1974, Defendant-Appellant, Walter T. Stewart, was contacted by American Federal to sell the cattle to him. Stewart visited both sites and looked at the cattle. Mr. Seth McPherson, acting as custodian of the cattle, showed the cattle, where to load them, and how to get trucks in to the loading area. On February 21, 1974, Stewart gave American Federal a cashier's check in the amount of \$8500.00 for the 35 head of cattle (\$8500.00 being the market price of said cattle as of that date as stipulated to by counsel at trial), and received a bill of sale. (Def.'s Exh. 6)

Two days later, February, 23, Stewart rented two trucks

and hired one driver and proceeded to Mills, Utah, to pick up the 20 head of cattle in that corral. The custodian of the cattle, Seth McPherson, initially directed the loading of the cattle; helped load the first truck with seven head, but subsequently reported that "a lady over there says there is something wrong with the title to those cattle." He, thereupon, did not help further loading but let Stewart and his man load the rest.

In the meantime, the two checks given in the total amount of \$12,335.00 by Yeck to Witherspoon had been dishonored by the bank, leaving only the \$1500.00 payment to Witherspoon. Witherspoon contacted certain law agencies to report this.

Subsequently, the Highway Patrol stopped the two trucks Stewart had rented while the cattle were being transported. The cattle were impounded and later sold. The monies were credited to Plaintiff pending trial.

#### POINT I

THE TRIAL COURT ERRED IN HOLDING THAT  
THE PERTINENT BILLS OF SALE WERE VOID.

The trial court held that the pertinent bills of sale did not meet the requirements of the Utah Livestock Brank and Anti-Theft Act, Section 4-13-17, Utah Code Annotated (1953) (R. 72), and that therefore title to the 35 head of cattle never passed from Witherspoon (R. 96). In ruling the

transfers void, the Court held that:

The Anti-Theft and Branding statute is designed to protect not only the owners of livestock but those who would purchase livestock to insure that good title might be conveyed. The statute was designed for the protection of Walter Stewart and he did not comply with the statute and therefore cannot claim ownership to the cattle. The mandate of the statute is clear. A transfer of title is valid only if effected in conformity with Section 4-13-17, Utah Code Annotated, 1953, (Pugh v. Stratton, 22 Utah 2d 190, 450 P. 2d 463, (1969). (R.96)

Utah law is contrary.

The Utah Supreme Court held in Wilson v. Burrows, 27 Utah 2d 436, 497 P. 2d 240 (1972), that a bill of sale that does not meet all of the requirements of the Utah Livestock Brand and Anti-Theft Act is not necessarily void.

In Wilson v. Burrows there had been no attempt by the parties to comply with the Anti-Theft Act requirements regarding bills of sale. There was a Uniform Real Estate Contract which provided:

The Seller agrees to release all cattle to the buyer so that he may put them under loan in his name. 27 Utah 2d at 439

The trial court in Wilson v. Burrows held that this was insufficient to pass ownership to the purchaser. But the Utah Supreme Court reversed holding that:

It is Wilsons' contention here that the Utah Livestock Brand and Anti-Theft Act controlled the sale of the cattle to Burrows, and that the making of a contract in violation of its provisions was void. The purpose of the statute was aimed at the theft of livestock within the State and to impede the sale of stolen animals. It would not appear



that the Legislature intended the statute to apply to sales such as we have here between the Wilsons and Burrows. In any event, the Wilsons cannot now claim that their contracts entered into with Burrows were not made in good faith. We must conclude that the contracts were not void. 27 Utah 2d at 439-440 (emphasis added)

In the instant case, the bill of sale from Witherspoon to Deseret Distributing which the Court held to be void for failure to comply with the statute (Plaintiff's Exh. 1, pg. 1) contained the following information:

1. The date
2. The name and address (city only) of the seller
3. The telephone number of seller
4. The name and address (city only) of the buyer's agent
5. The name of the buyer
6. The number and sex of the cattle
7. The description and location of the brand
8. The number of the brand certificate registered to seller
9. That statement that seller sells the cattle giving full rights of ownership and possession
10. Signatures of buyer's agent and seller

The only requirement of Section 4-13-17 of the Utah Code Annotated (1953) not expressed in this bill of sale is the place of purchase. The statute does not specify whether this is to be where the transaction takes place or where the cattle are located.

In finding Witherspoon's bill of sale void, the trial court relied upon Pugh v. Stratton, 22 Utah 2d 190, 450 P. 2d 463 (1969). That case is not in point, however, inasmuch as the purchaser therein did not obtain a written bill of sale. In holding that transfer invalid the Supreme Court held:

The import of the entire act compels one to conclude that Woodard's possession was unlawful from the time of delivery since he did not receive a written bill of sale. 22 Utah 2d at 194

The lack of a written bill of sale in Pugh renders that case useless as precedent in the instant case, but the Witherspoon's transfer was clearly valid under the Wilson v. Burrows case. (supra page 5)

This Court should not allow a seller by technical omissions or deficiencies in the bill of sale given by him to profit as against innocent third parties. To uphold the trial court's ruling would encourage sellers to give bills of sales which would be technically deficient in some manner in order to preserve a right to revoke the transaction. This was not the purpose of the Anti-Theft Act and would render a substantial injustice in the instant case.

#### POINT II

THE TRIAL COURT'S RULING THAT THE BILL OF SALE RECEIVED BY DEFENDANT-APPELLANT STEWART WAS DEFECTIVE DOES NOT BAR DISCOVERY BY STEWART.

The bill of sale received by Stewart (Defendant's Exhibit 6) substantially complies with the requirements of the statute, and in any event it comes closer to compliance than the bill of sale held valid in Wilson v. Burrows, 27 Utah 2d 436, 497 P. 2d 240 (1972).

The conclusions of law made by the trial court with respect to this bill of sale do not justify a ruling rendering

the bill of sale received by Stewart void.

a. The actual delivery of the animals was not accompanied by a written bill of sale. (R. 96)

This requirement of the statute does not provide that a bill of sale may not be given in advance of actual delivery and, in fact, this Appellant contends that giving a bill of sale in advance of delivery actually exceeds the statutory requirement. The use of the word "delivery" implies that the livestock in question will be "delivered to" the purchaser. In such case it would be reasonable to give a bill of sale at that time. If the animals are to be picked up by the purchaser, however, it would be reasonable that he have a bill of sale in his possession at the time he arrives at the location of the cattle. This is in fact what happened.

b. The bill of sale did not indicate a place of purchase. (R. 96)

It is unclear whether this means the place where the money transfers hands or, where the cattle are located, or where they are to be delivered to. In any event, it seems that the purpose of this statutory requirement is to provide some identification as to which livestock are being sold. This issue was not raised in the instant case and has no application herein.

c. The bill of sale did not contain the signature and address of the buyer and seller. (R. 96)

Stewart's seller did in fact sign his bill of sale (Def.'s Exh. 6), although Stewart did not. This requirement is clearly for the benefit of Stewart and his seller. Neither Stewart nor his seller (who is not a party hereto) raises the issue, and therefore, Witherspoon has no standing to complain.

d. Since the brand belonged to Gary J. Witherspoon and was recorded in his name, the seller was obligated to provide proof of ownership from whom the cattle were purchased, and the length of time held in his possession. (R. 96)

This appears to be a more important requirement, but one which was met in the instant case. Stewart saw the two prior bills of sale showing a chain of title from Witherspoon. Witherspoon's deed showed that the brand belonged to him and substantiated the fact by setting forth the certificate number of the brand. Moreover, the time of possession can be also traced. Witherspoon's February 18, 1974, bill of sale (Page 1 of Plaintiff's Exh. 1) gives ownership and Deseret possession; Deseret's bill of sale to American is dated the 19th and American's to Stewart is dated the 20th. Witherspoon obtains no right arising out of any deficiency in Stewart's bill of sale and such deficiencies do not mandatorily prevent title from passing.

If Witherspoon's transfer as per page 1 of Plaintiff's Exhibit 1 (the bill of sale to him from Deseret Distributing) was sufficient to convey title, Stewart was entitled to possession of the animals as opposed to Witherspoon for the further

reason that although named in the Complaint, Witherspoon never made Deseret Distributing a party to the action.

### POINT III

THE TRIAL COURT'S FINDING THAT NO BRAND INSPECTION CERTIFICATE WAS OBTAINED DOES NOT VOID AN OTHERWISE VALID TRANSFER.

Stewart concedes that no brand inspection certificate was obtained pursuant to Section 4-13-17.5 of the Utah Code Annotated (1953). This statute is as follows:

All changes of ownership through private sale or transactions, or at public auctions or commission houses, shall be accompanied by a brand inspection certificate.

This statute does not require automatic invalidation of all transfers made without a certificate. In light of the facts of this case, no protection to either party would have been afforded by compliance with this requirement.

### CONCLUSION

Witherspoon seeks to have the transaction declared void, while retaining the \$1500.00 paid to him as earnest money (the remaining checks in the amount of \$12,265.00 did not clear the bank) on the ground that the bill of sale he drafted was insufficient. This position is taken at the expense of Stewart who had nothing to do with the preparation of Witherspoon's bill of sale, who paid the market price for said animals of \$8500.00, all of which under the trial court's ruling he loses to Witherspoon due to Witherspoon's own error.

The judgment entered below holding Witherspoon's transfer

void is based completely upon Pugh v. Stratton (R. 72).

In contrast to the instant case, however, that case did not involve a written bill of sale. Moreover, as explained in Wilson v. Burrows by the Utah Supreme Court, Utah law does not automatically void a bill of sale which does not conform to all the technical requirements of the Utah Livestock Brand and Anti-Theft Act.

The judgment below should be reversed and judgment entered for \$8500.00 in favor of Defendant-Appellant Stewart.

Respectfully submitted,

Walter T. Stewart, pro se

CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing Brief of Appellant, postage prepaid, to Richard Richards, Attorney for Plaintiff-Respondent, 670 28th Street, Ogden, Utah, 84403, this \_\_\_\_\_ day of January, 1976.

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