

1939

E. S. Wilson v. Weber County : Brief of Appellant

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

E. S. WILSON,

*Plaintiff, Respondent
and Cross-Appellant.*

vs.

WEBER COUNTY, a public corpor-
ation of the State of Utah,

*Defendant, Appellant and
Cross-Respondent.*

No. 6195

APPELLANT'S, WEBER COUNTY, BRIEF

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Received.....copies of the above brief this.....
day of December, 1939.

.....
Attorneys for Plaintiff and Respondent

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STATEMENT OF THE CASE

On April 4, 1938, plaintiff in the above entitled action filed his complaint in which it was alleged that William W. Maule was the duly appointed, qualified and

acting Executor of the Estate of David Maule, deceased, and as such Executor on July 1, 1935, he paid to the Weber County Clerk the sum of \$335.00 for the purpose of filing the inventory and appraisement in probate proceedings of the David Maule Estate in accordance with the provisions of Section 28-2-2, R. S. U., 1933.

That this Court in the case of *Smith v. Carbon County*, 90 U 560 and its companion case 95 U 360 held that that portion the statute requiring all sums over \$10.00 for filing inventories in Estate matters was unconstitutional. That demand was made upon Weber County Commissioners for the refund of \$325.00 of the \$335.00, paid to the County Clerk by the said Executor, on September 1, 1938. That the Board of County Commissioners had refused to refund said sum, and that prior to bringing the action the claim had been assigned to the plaintiff, E. S. Wilson.

To this cause of action Weber County demurred:

- (a) Generally
- (b) Bar of Statute of Limitations

The Courts overruled both demurrers and the defendant chose to stand upon its demurrer and refused to answer and judgment was entered by the Court in favor of the plaintiff and against the defendant for the sum of \$325.00 and costs from this judgment defendant, Weber County, appeals.

ARGUMENT

The defendant-appellant made two assignments of error (1) overruling its demurrers and (2) the entering of a judgment in favor of the plaintiff.

The contention of appellant, Weber County, is that the plaintiff's complaint failed to state a cause of action as to this cause of action for the reason that it failed to plead that the Executor did not pay that portion of the filing fee, to-wit: \$325.00, which he deemed illegal, to the County Clerk under protest pursuant to 80-11-11, R. S. U., 1933, C. L. U. 1917, Sec. 2684, 1907 Laws, Sec. 533, which reads as follows:

“In all cases of levy of taxes, licenses, or other demands for public revenue which is deemed unlawful by the party whose property is thus taxed or from whom such tax or license is demanded or enforced, such party may pay under protest such tax or license, or any part thereof deemed unlawful, to the officers designated and authorized by law to collect the same; and thereupon the party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit on whose behalf the same was collected, to recover said tax or license or any portion thereof paid under protest.”

Appellant's contention is that this case is distinguishable from the case of Neilson v. Sanpete County

40 U 560, 123 P 334, in this: that in the Sanpete County case the Court held that law was totally void and therefore the taxes need not be paid under protest in order to maintain an action for the recovery thereof, while in the instant case it is conceded only a portion was illegal. But the Court in discussing 2684 (1917) now 80-11-11, says: (40 P 568)

“ * * * It is clear that the purpose of section 2684 is to give the taxpayer an opportunity to contest the right of the county to collect certain taxes, licenses, or demands for revenue, or any portion thereof, by paying the whole under protest, and then sue to recover all or any portion that he may be entitled to. It is also clear that the taxes, licenses, or demands referred to in that section are such as are “deemed unlawful” by the taxpayer before payment is made. Such taxes, licenses, or demands may, however, not be deemed unlawful by the officers who are required to collect them, and hence the taxpayer is required to indicate to the officers what portion he deems unlawful, and thus pay such part under protest for the purpose of laying a foundation for an action to test their legality. Under such circumstances, it is but fair and just that the taxpayer be required to indicate what portion of the tax he will contest on the ground of illegality, so that the officers can govern themselves accordingly in making the proper apportionment of the taxes.”

Section 2684, C. L. U. 1917, 80-11-11, R. S. U. 1933, has been on the books almost as long as Utah has been a state and until the Smith v. Carbon County case, the fees collected under its provisions had not only been

deemed lawful by the officers but by the legal fraternity as well. We feel certain that when the Executor paid the \$335.00 he did so with no qualms whatsoever as to the legality of the payment and with no thought of compulsion whatsoever.

We contend the instant case is further distinguishable from the Neilson v. Sanpete County, supra, in this: that it was not levied nor paid as a tax. The Court having held in the Smith v. Carbon County case, supra, that it was in the nature of a tax, and, therefore, unconstitutional. Therefore, we contend a claim should have been filed with the County Auditor within a year after its payment in compliance with 19-11-10, R. S. U. 1933, which says in part:

“Every claim against the County must be presented to the County Auditor within a year after the last item of the account or claim accrued.”

Wherefore, this appellant prays: that the judgment of the Court in overruling its demurrers and entering a judgment in favor of the plaintiff be reversed for the reasons heretofore set out.

Respectfully submitted,

JOHN A. HENDRICKS,
GLENN W. ADAMS,

*Attorneys for Defendant and
Appellant, Weber County.*