

1977

# Stanley K. Florence et al v. Hiline Equipment Company et al : Brief of Defendant and Appellants

Utah Supreme Court

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Brian R. Florence; Attorney for Plaintiffs-Respondents;

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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STANLEY K. FLORENCE and  
BARBARA J. FLORENCE

*Plaintiffs and Respondents,*

vs.

HILINE EQUIPMENT COMPANY,  
JAMES SARACINO, CAROL  
SARACINO, CLINTON C. GROLL,  
BONNIE C. GROLL, PAUL L.  
WESTBROEK, and BECKY L.  
WESTBROEK,

*Defendants and Appellants.*

Case No.

15166

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## BRIEF OF DEFENDANT AND APPELLANTS

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Appeal is taken from the Judgment of the  
Second Judicial District Court of the County of Weber,  
State of Utah, The Honorable Calvin Gould presiding.

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**FILED**

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#### DISPOSITION IN LOWER COURT

The Court of the Second Judicial District, County of Weber, State of Utah, ruled in favor of the Plaintiffs, finding that a boundary by acquiescence had not been proved and that the Plaintiffs were entitled to have the property up to the new survey line. Findings of Fact and Conclusions of Law, and a Decree thereon, were entered by the Court on about the 4th day of April, 1977, and the Defendants here appeal from the same.

#### RELIEF REQUESTED ON APPEAL

The Defendants request that the Judgment of the lower Court be reversed and that the Defendants be granted the relief requested in their Counterclaim for a Declaratory Judgment finding the Defendants and their successors in interest are entitled to possession of the disputed real property.

#### STATEMENT OF FACTS

In this action some of the Defendants are owners and involved in subdividing the property. The remaining Defendants are purchasers of lots which lie along the area of the disputed parcel of real property. The Plaintiffs have recently purchased the adjoining acreage which to this time has been used in part for an orchard and also for undeveloped pasture and some crop land. Both of the adjoining parcels of land are located in what has been an essentially rural area near Ogden but which is now experiencing increased residential development. In preparation of the plats for the subdivision, which was performed at the behest of

the Defendant developers, it was discovered that one of the survey lines in the subdivision plat varied from the existing fence. Contemporaneously with purchase of the adjoining property in May 1976, the Plaintiffs, without notice to any of the Defendants commenced construction of a chainlink fence along the line of the survey markers which had been placed during the subdivision survey work. The Defendants immediately objected and work on the new fence was suspended. Several months later action was commenced by the Plaintiffs for a Declaratory Judgment to which the Defendants filed a Counterclaim praying Judgment in their favor to the disputed property.

All the testimony of the witnesses familiar with the boundary and the pleadings of the Plaintiffs indicate that the fence has been in place for in excess of twenty (20) years. Defendants introduced a series of exhibits consisting of aerial photographs dating back to 1936, Defendants' Exhibits 2 and 3 all of which are admitted into evidence, show the existence of the fence. Plaintiffs' predecessor, Mr. Whiting, testified at page 18 of the transcript of trial that the fence had been in existence for over twenty-three (23) years and was there before he purchased the property in 1954.

The Plaintiffs claim that they are entitled to possession and allege in Paragraph 4 of the Complaint that for more than thirty (30) years Plaintiffs and predecessors have owned, occupied, used and paid the real estate taxes on the property above described. However, none of the testimony established an actual occupancy or use of the disputed premises. In fact the aerial photos above referred to show that the Plaintiffs'

property has been used up to the old fence line while the Defendants' property including the disputed area has remained undeveloped and was used as pasturage. At page 19 of the transcript Mr. Whiting stated that he had used the area east of the old fence property for pasture but under cross examination it was also shown that such use included all of the area east of the old fence including both the disputed area and the Defendants' property and a rental was paid for such use. No evidence was introduced by Plaintiffs to show that the fence was erected for any purpose or use other than as a boundary.

#### ARGUMENT

#### FIRST POINT

A BOUNDARY LINE WAS ESTABLISHED BY THE OLD FENCE AND HAS BEEN IN EXISTENCE FOR THIRTY (30) OR MORE YEARS DURING WHICH TIME IT HAS BEEN RECOGNIZED AND ACQUIESCED IN AS SUCH BOUNDARY BETWEEN THE PROPERTIES OF THE PLAINTIFFS AND THE DEFENDANTS AND THEIR PREDECESSORS IN INTEREST.

The existence of the fence line as a boundary is supported by Defendants' Exhibits 2 and 3 consisting of aerial photographs which extend back to 1936 and it will be noted in all of these that the property now owned by the Plaintiffs has had a distinct line, created by the old fence line, which is visible even on aerial photographs. In addition Defendants' Exhibits 4, 5, 6, 7, 8, and 9 are photographs of the area taken shortly before the trial which also show a fence line of ancient vintage. In addition Plaintiffs' counsel has admitted that the property was owned for twenty-three (23) years by Ray Whiting.<sup>1</sup> The

<sup>1</sup> See Transcript Page 3.



Plaintiff himself also admitted that the fence had been in place for at least twenty (20) years.<sup>2</sup> The Plaintiff's predecessor, Mr. Whiting, admitted that the fence was in its present location when he came into possession of the property which was over twenty-four (24) years prior to this action.<sup>3</sup> Mr. Whiting also had rented the pasture east of the old fence which is now the property of the Defendants and included the disputed area.<sup>4</sup> In addition there was some indication in the testimony that Mr. Whiting and the Defendants' predecessor, a Mr. Bybee, had at one time discussed maintenance of the subject fence line.<sup>5</sup>

The Plaintiffs rely on possession and use of the premises as part of the basis for their claim but the evidence shows that Plaintiffs' predecessor, Mr. Whiting, and another neighbor had for 10 to 15 years rented the tract, including the disputed area, now owned by the Defendants for pasture and apparently this was an annual rental agreement with Hilene Equipment Company, one of the Defendants.<sup>6</sup> The rental of the area is a further indication of long term acquiescence in the fence as the boundary of the property.

In the lower Court's Findings of Fact, Paragraph 3, it found that there was an old fence line which had existed for many years and the

<sup>2</sup> See Transcript Page 16.

<sup>3</sup> See Transcript Page 18.

<sup>4</sup> See Transcript Page 22.

<sup>5</sup> See Transcript Page 23.

<sup>6</sup> See Transcript Page 22.

balance of the evidence clearly shows that it has been in existence for an unknown time but certainly predating 1936.<sup>7</sup> Furthermore the contentions of the Plaintiffs that they have occupied the property is clearly rebutted by the testimony that the land now owned by the Defendants was rented from the Defendants for pasture and there is absolutely no evidence introduced of any claim of possession made by the Plaintiffs or their predecessors after the time of the survey which was completed by the Defendants.

Therefore the Final Judgment entered by the lower Court is not supported by the law as applied to the facts which are clearly shown. While the Plaintiffs allege that they had paid taxes on the property and introduced evidence of a tax receipt, this is not sufficient to create a concept of occupancy of the premises and in fact such a concept would be relevant only in an action in adverse possession. The Defendants have not alleged adverse possession nor has adverse possession been proved since this concept would require an open and notorious possession of the disputed tract by the Defendants as a separate entity. The facts as above cited clearly show that the only occupancy was on a rental agreement.

#### SECOND POINT

ONCE PASSAGE OF A PERIOD OF TIME SUFFICIENT TO ESTABLISH A BOUNDARY BY ACQUIESCENCE HAS BEEN ESTABLISHED THE CORRECTNESS OF THE BOUNDARY IS PRESUMED AND THEREAFTER, THE ONE ASSAILING SUCH BOUNDARY LINE HAS THE BURDEN OF OVERCOMING SUCH PRESUMPTION.<sup>8</sup>

7 See Exhibit 3 Aerial photograph and Transcript Page 25.

8 In fact in Motzkus vs. Carroll [7 Ut. 2d 237, 322 Pac. 2d. 391 at page 396] the Court states it even more forcefully in saying that where a party establishes acquiescence for a long period of time the proof is so conclusive that the opposing party is precluded from offering evidence to the contrary.

The lower Court found that a boundary by acquiescence arises only where the true boundary line is unknown, uncertain or in dispute and that the same was not proved by the Defendant.<sup>9</sup> In Brown vs. Millner [120 Ut. 16, 232 Pac. 2d. 202 at page 208] the Court states as follows,

"In some of the opinions of this Court on the subject of disputed boundaries, there are statements to the effect that the location of the true boundary must be uncertain unknown or in dispute before an agreement between the adjoining land owners fixing the boundary will be upheld, citing Tripp vs. Bagley, [74 Ut 57, 274 P. 912] in support thereof. Such statements should be understood to mean that if the location of the true boundary line is known to the adjoining owners they cannot by parole agreement establish the boundary elsewhere. As was pointed out in the Tripp case such an agreement would be in contravention of the statute of frauds.

"But the Tripp case does not require a party relying upon a boundary which has been acquiesced in for a long period of time to produce evidence that the location of the true boundary was ever unknown, uncertain or in dispute. That the true boundary was uncertain or in dispute and that the parties agreed upon the recognized boundary as the dividing line will be implied from the party's long acquiescence." (Emphasis supplied) [7 Ut. 2d 237, 322 P 2d 391].

In Motzkus vs. Carroll, [7 Ut. 2d. 237, 322 P 2d. 391] which was decided in 1958 there was a fact situation similar to this case. In that case there was a dispute which arose after a survey by the Plaintiffs which determined that the boundary line was about four feet over on the Defendant's property. The Plaintiff's predecessor in interest, Mr. Hansen, acquired and lived on the property for about twenty-three (23) years during which time he never claimed any right beyond the fence and Mr. Hansen's predecessors in turn had acquiesced in the boundary for a period of more

<sup>9</sup> This is discussed more fully in Point Number Three

than forty-five (45) years prior to the commencement of the action. Mr. Motzkus removed a house and started construction of motel units in September of 1954 and in so doing removed part of the old fence along the front portion of the disputed line. Thereafter the Defendants, Mr. and Mrs. Carroll, purchased the property and after purchasing it restored the destroyed portion of the old fence as near as they could to the old line, using some of the old posts which were located in the weeds and adding new steel posts where necessary. The Plaintiff contended that there was no evidence of any dispute or uncertainty made by the Defendants and also no evidence of an agreement between the predecessors that the fence should be the boundary line. In addition the Defendants, prior to their purchase, had been shown the survey line and made no objection to it when it was pointed out to them. Nevertheless the Supreme Court found in favor of the Defendants, reversing the lower Court, and set forth the doctrine that the Defendant is not required to produce evidence that the location of such line was in dispute or uncertain at the time the fence was established. The proof of the ancient line gives rise to a presumption that at the time of erection of the fence or other boundary the true boundary was in dispute or uncertain and that, at the least, the burden of showing there was no dispute or uncertainty is placed on the owners claiming such fact. The Court adds that after acquiescence for the required long period of time the proof is so conclusive that the opposing party is precluded from offering evidence to the contrary because such proof is immaterial. The Court then goes on to discuss the length of

time involved in establishing a boundary by acquiescence and whether it takes only seven (7) years or more than twenty (20) years but points out that in the case then before the Court it was more than twenty (20) years and that the boundary had been acquiesced in for all the period before the survey and that once a boundary was so established it was immaterial as to whether any of the Defendants had protested when the survey line was shown them because such knowledge, at the time, did not nullify the establishment of the boundary by acquiescence which had been completed prior to Defendants' purchase.<sup>10</sup>

The attempt to raise the chainlink fence along the survey line clearly did not nullify the fact that the boundary had already been established and acquiesced in many years before the survey was ever completed.<sup>11</sup>

Fuoco vs. Williams [389 P. 2d. 143 at page 145] states that there are four elements which must be shown by the person claiming title by acquiescence in order to raise the presumption that a binding agreement exists settling a dispute or uncertain boundary.

"These elements are: (1) occupation up to a visible line marked definitely by monuments, fences or buildings and (2) acquiescence in the line as a boundary, (3) for a long period of years, (4) by adjoining land owners. If these four elements exist then it is incumbent upon him who assails title by acquiescence to show by competent evidence that a boundary was not thus established. But if a party claiming title by acquiescence fails to carry his burden and raise the presumption then there is no case at all."

<sup>10</sup> Ibid at pages 396-397.

<sup>11</sup> Refer to Point Three infra for further discussion of the reasoning.

The Defendants contend that these elements have clearly been shown to exist and that the Plaintiff has in fact clearly failed to carry his burden of proof as required by law.

### THIRD POINT

THAT THE LOWER COURT ERRED IN FINDING THAT A BOUNDARY BY ACQUIESCENCE ARISES ONLY WHERE THE TRUE BOUNDARY LINE IS UNKNOWN, UNCERTAIN OR IN DISPUTE AND THAT THE SAME WAS NOT PROVED BY THE DEFENDANT.

The effect of the ruling of the lower Court has placed upon the Defendant the burden of proving the true boundary line is (1) unknown, (2) uncertain, or (3) in dispute and that the same must be proved by the Defendant. There is no practical way for the Defendant, after a passage of many years, to bring back the witnesses who may have been present when the actual boundary was established. In this case the proof clearly shows that the fence has been there back beyond the thirty (30) year period and beyond the memory of any witnesses that could be located. Therefore to require the Defendants to prove this by any facts, other than the clear existence of the boundary over a long period of time, is impossible because of the long years that have passed and in fact in this case we do not know how ancient the fence is but it could go back to the time when the area was first settled, but in any event, the actual circumstances when the fence was built are now lost in antiquity.

The opinion of the Court on this subject is within the language of Brown vs. Millner,<sup>12</sup> where the Court indicated that statements have

<sup>12</sup> OP. cit. Brown vs. Millner on page 208.

been made that the location of the true boundary must be uncertain, unknown or in dispute before an agreement between the adjoining land owners will be upheld, and the Court then added that the Tripp case, [Tripp vs. Bagley 74 Ut. 59, 276 P. 912], does not require the party relying upon the boundary which has been in existence for a long period of time to produce evidence that the location of the true boundary was ever unknown, uncertain or in dispute and that there was an agreement; in fact this is implied from the parties long acquiescence to the boundary.

In King vs. Fronk [14 Ut. 2d 135, 378 P. 2d 893] the Court discussed some of the concepts behind their decision to find a boundary by acquiescence in that case and stated that:

"Boundary by acquiescence looks to the settling of titles under circumstances where claimants--having slept on their claimed rights for a long time presently assert those rights for one reason or another, including appreciation of values, un-neighborly relations, or because of an equity measured by the length of the chancellor's foot,"

and then insist that the ancient boundary does not reflect the true boundary. The Court continues:

"It is significant that in most cases, a physical, visible means of marking the boundary was effected at a time when it was cheaper to risk the mistake of a few feet rather than argue about it, go to Court, or indulge the luxury of a survey, pursuance of any of which motives may have proved more costly than the possible but most expedient sacrifice of a small land area."<sup>13</sup>

"The rub comes when, after many years, land value appreciation tempts the vulnerability of a claimed ancient boundary. The struggle usually involves economics. Nothing is wrong in the urge to acquire or retain. But neither is there anything wrong in the law's expousal of a doctrine that says that with the passage of a long time, accompanied

13 Provonsha vs. Pittman [6 Ut. 2d. 26,305 P 2d. 468 (\*1957)];  
Harding vs. Allen [10 Ut. 2d. 370, 353 P 2d. 911 (1960)]

by an ancient visible line marked by monuments and other pertinent and particular facts, and with a do-nothing history on the part of the party concerned, can result in putting to rest titles to property and prevent protracted and often belligerent litigation usually attended by dusty memory, departure of witnesses, unavailability of trustworthy testimony, irritation with neighbors and the like. This idea is based upon the concept that we must live together in the spirit justifying repose or fixation of titles where there has been a disposition on the part of neighbors to leave ancient boundaries as is without taking some affirmative action to assert rights inconsistent with evidence of a visible, long-standing boundary." (Underlining supplied)

King vs. Fronk is similar in many circumstances and concerned boundary line between two city lots in Tremonton, Utah. For a substantial time these lots had been separated by a fence that was marked with visible monuments in 1926 and which had existed without protest until 1961. Stated another way it seems the Court is saying that Courts are not to be used to resurrect some ancient dispute to gain an advantage when the property increases in value, or possibly when the neighbors are feuding over a question and the absolute proof is now buried in the past nor will the Court now intervene to correct a mistake that was not important at the time and by the time the litigation is instigated the persons involved are either gone from the scene or years have faded their memories. In short the best evidence of what occurred in those times long past is the physical evidence that is present at the time, namely the fence, which has served as a boundary line and was visible at the time litigation was commenced.

#### FOURTH POINT

THAT THE PLAINTIFFS HAVE INTRODUCED NO EVIDENCE THAT THE TRUE BOUNDARY WAS KNOWN AT THE TIME THE FENCE LINE AND BOUNDARY WERE FIRST ESTABLISHED, NOR THE DATE THAT IT WAS SO ESTABLISHED OR THAT THE EXISTING



FENCE WAS ESTABLISHED FOR ANY PURPOSE OTHER THAN A BOUNDARY BETWEEN THE PROPERTIES OF THE PLAINTIFFS AND DEFENDANTS.

The exact age of the fence line goes back beyond the recollection of any of the witnesses and according to the testimony of Mr. Whiting, previously referred to,<sup>14</sup> who testified that the fence was in existence when he purchased the property twenty-three (23) years prior to the date of the hearing in 1977, and also aerial photograph, Exhibit No. 3, which was taken in 1936 and to which reference has previously been made. Therefore it is clearly established that the fence has been in existence for more than thirty (30) years prior to the time Plaintiffs asserted an interest in the disputed property. Concerning the time necessary to establish a presumption of boundary by acquiescence, the Court directs itself to this problem in *Motzkus vs. Carroll*,<sup>15</sup> at which point the Court discusses whether it takes only seven (7) years or more than twenty (20) years but concluded that more than twenty (20) years had expired in that case and therefore the acquiescence was established.

In *King vs. Fronk*<sup>16</sup> the decision states that two decisions of the Court suggest a period of less than twenty (20) years to perfect a title by acquiescence, each authored by different Justices of the Court, the Court did not make any decision on a period less than twenty (20) years but stated

<sup>14</sup> See page 18 of testimony.

<sup>15</sup> Op. cit. *Motzkus vs. Carroll* [7 Ut. 2d. 237, 322 P. 2d. 391 at pages 396-397]

<sup>16</sup> Op. cit. [4 Ut. 2d. 135, 378 P. 2d. 893 at page 897]

that:

"boiled down, it seems to us that the establishment of a boundary by acquiescence may be predicated upon the existence of a visibly monumented line persisting for at least twenty (20) years or upwards, shown specifically or circumstantially, in order to meet or exceed the requirements of acquiring rights by prescription. It may be pointed out that it would be novel if one might acquire prescriptive rights in twenty (20) years without marking a given area with monuments, while one merely erecting a fence which remained in place for 10, 12 or 15 years could acquire the same rights in a lesser period."

The Court concluded that only in rare circumstances would the Court consider the equitable doctrine where more than twenty (20) years has passed.

In *Holmes vs. Judge* [31 Ut. 269, 87 P. 1009] it was stated that the requirements for boundary by acquiescence are that the line must be visible, marked by monuments, fences or buildings and recognized for a long period of years. In that case it is stated there was no evidence as to how the fence and buildings came to be erected, that there was no evidence of a dispute concerning the true boundary or that any question about the boundary was raised until shortly before that action was commenced. In the case now before the Court there is no evidence as to how, when or where the fence was erected but as previously stated it goes back beyond the memory of any witnesses and at this point is the best evidence that it was a boundary because it has been acquiesced in as such over an unknown number of years.

#### FIFTH POINT

THAT THE STATUTE OF FRAUDS IS NOT APPLICABLE TO THE FACTS IN QUESTION WHICH FACTS ARE GOVERNED BY THE PRINCIPLE OF BOUNDARY BY ACQUIESCENCE.

Counsel for the Plaintiffs has contended that to deny the Plaintiffs possession to the disputed parcel violates the statute of frauds.<sup>17</sup> But the facts in this matter do not raise the question of the statute of frauds. This question is raised by a transfer where landowners have agreed to move the known boundary, which would have to be proved by the Plaintiff, and there is absolutely no proof to this effect. Rydalch vs. Anderson [37 Ut. 99, 107 P. 25 at page 29] states that

"agreements of this nature (speaking of boundaries by acquiescence) are not within the statute of frauds because they are not considered as extending title. They do not operate at a conveyance so as to pass title from one to the other, but proceed upon the theory that the true line of separation is in dispute and to some extent unknown and in such cases the agreement serves to fix the line to which the title to each extends."

Tripp vs. Bagley<sup>18</sup> recognizes that where the landowners know the location of the true boundary line they may not establish a valid boundary line by mere parole agreement and citing other cases states that if the adjoining owners agree on a division line knowing it is not the true line with the purpose of transferring the land then this is not an adjustment of uncertainties or doubts but is an attempt to convey or release land from one to the other. Land cannot be conveyed by moving fences or changing monuments and if the real object is a transfer of land then it would be void as a transfer without writing and could not pass title. However such facts are not proved in the evidence, nor for that

<sup>17</sup> See testimony page 59 transcript

<sup>18</sup> Op. cit.[276 P. 912 at pages 917-918.]

matter even alleged in the pleadings wherein the Plaintiff commenced this action.

#### SIXTH POINT

THAT THE LOWER COURT BASED ITS DECISION, IN PART, UPON A FINDING IN EQUITY THAT NONE OF THE PARTIES POSSESSION WOULD BE INTERRUPTED AND THAT THERE ARE NO INEQUITIES IN HOLDING TO THE DESCRIBED BOUNDARIES AS DETERMINED BY THE RECENT SURVEY. THIS FINDING IS IN ERROR IN THAT IT IS NOT SUPPORTED BY THE EVIDENCE NOR IS IT RELEVANT.

No evidence was presented at the trial by the Plaintiffs of a complete survey of Plaintiffs' entire property, in fact the survey relied upon at the trial was one commissioned by the Defendants and would only establish the Plaintiffs' east boundary. There is no equitable loss to the Plaintiffs shown at the trial, such as their lot being narrower than the call of their deed and it is entirely possible that they have the full amount of property called for in their deed and that their west boundary line may be off as much or possibly even more than the one which is in dispute on the east portion of Plaintiffs' tract. Therefore no overriding case in equity has been shown which would possibly bring it within the dicta of King vs. Fronk which stated that there might be rare cases where the Court would intervene on equitable grounds <sup>19</sup> in fact the body of the case law addressing itself to boundary by acquiescence does not, except for some dicta as mentioned above, rely upon equity as a grounds for determining claims based upon boundary by acquiescence which is in fact itself an equitable doctrine established for the purpose of allowing

19 Op. cit. King vs. Fronk [14 Ut. 2d. 135, 378, P. 2d. 893 at page 897]

long established and accepted boundaries, which may not be legally exact, to remain unchanged and unchallenged. To attack an equitable doctrine with equity would be redundant unless the evidence was sufficient to justify such an end and that clearly has not been the situation in the case now before the Court. It has been held equitable in the boundary by acquiescence cases to let boundaries of over twenty (20) years duration rest in peace.

In *Hobson vs. Panguitch Lake Corporation* [530 P. 2d. 792] the facts involved a strip of mountain land which had been divided into 40 acre tracts and a hand held compass had been used to locate the purported west boundary line of one of the tracts with stakes being driven along said line. Six years later there was a conveyance and apparently the subject fence had been in place for approximately ten (10) years. The Court stated that land cannot be transferred by oral agreement and distinguished it from the doctrine of boundary by acquiescence which it said required that:

"in the interest of preserving the peace and good order of society the quietly resting bones of the past, which no one seems to have been troubled or complained about for a long period of years, should not be unearthed for the purpose of stirring up controversy, but should be left in repose."

However clearly the Court decided that ten (10) years was not a sufficient passage of time and this is based upon the sound reasoning that after ten (10) years the parties were still available to testify as to the exact facts which had transpired at the time that particular boundary was established, therefore bringing that case within the clear exception which has been contemplated by the Court in a long line of boundary cases.

## CONCLUSION

The Defendants believe that the evidence introduced clearly shows a boundary, observed by the parties, and their predecessors in interest, of long standing. The witnesses were not able to establish exactly when the fence line was established and the aerial photographs indicate that it is more than thirty (30) years old. Under these facts we believe that the law clearly states that the boundary is and was established several years ago and that either the Plaintiffs are precluded from introducing evidence, or at the very least that it is their burden to show that a boundary by acquiescence has not been established under the clear holdings of a long line of cases which is punctuated by *Hobson vs. Panguitch Lake Corporation* which case involved a substantially shorter period of time. Boundary by acquiescence is an equitable doctrine which seeks to establish the principle that boundaries which have existed over long periods of time will not be charged and that this in no way controvenes the statute of frauds nor does payment of taxes or any concept of adverse possession have any relevancy under the facts. For these reasons the Defendants feel the matter should be remanded to the District Court with directions to enter Judgment in favor of the Defendants on their Counterclaim. In fairness to the Plaintiffs the Court could also direct that the lower Court conduct such further proceedings as are necessary to determine the exact legal description of the existing boundary so that a decree quieting title could be entered on the disputed premises thereby transferring the tax burden directly to the Defendants who now own the various parcels which are involved.

Respectfully submitted,  
Arden E. Coombs  
Attorney for Defendants and Appellants