

1948

Rocky Mountain Honey Co., Inc. v. Marion R. Crystal and Delsa N. Crystal : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

E. L. Schoenhals; Attorney for Appellant;

Recommended Citation

Brief of Appellant, *Rocky Mountain Honey Co. v. Crystal*, No. 7243 (Utah Supreme Court, 1948).
https://digitalcommons.law.byu.edu/uofu_sc1/965

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In the Supreme Court of the State of Utah

ROCKY MOUNTAIN HONEY CO., INC.,

Appellant,

vs.

MARION R. CRYSTAL, and

DELSEA N. CRYSTAL, his wife,

Respondents.

} Case
No. 7243

BRIEF OF APPELLANT

FILED

NOV 22 1948

E. L. SCHOENHALS,

Attorney for Appellant.

CLERK, SUPREME COURT, UTAH

POINTS ARGUED

Page

1. Court reviews assessment in absence of fraud, gross injustice or mistake contrary to statute and pleadings 3
2. Irregularities cannot void tax sale, decision contra.... 4-6
3. Jurisdiction fixed in city unless two-thirds of the property owners properly file objections, none filed.. 5
4. Attack upon sale permitted only before Board of equalization, and no such attack made..... 9
5. Statute places burden on Respondent to show tax invalid, record lacks any evidence to justify findings or decree 9
6. Statute excludes all proceedings unless, as a condition PRECEDENT, all of the following exist:
 - (a) Valid objection by two-thirds of owners.
 - (b) Payment of the tax under protest.
 - (c) Notice of intention to sue stating:
 1. Grounds
 2. Grievance
 - (d) Action filed within 60 days after notice.
 - (e) Jurisdiction limited to returning money..... 10

Respondent cannot show existence of even one.

7. Failure to appear before Board of Equalization constitutes waiver of every objection, Respondent shows no appearance, yet Court finds objections.....10-11
8. Court extinguishes lien without requiring Respondent to reimburse Appellant for taxes paid..... 11
9. Right-of-way grant by deed from title owner ignored 11
10. Easement acquired by prescription ignored..... 12
11. Right to maintain ditch without interference ignored 12
12. Remedy for removal of gravel from right-of-way ignored 12

I N D E X

	Page
Argument	3
Branting vs. Salt Lake City—47 U 296, 153 P 995.....	6
Errors	2
Facts	1
Hester vs. Collector of Taxes—217 Mass 422, 105 N.E. 631	8
Jordan vs. City of Olive Hill—162 S.W. 2nd 229.....	9
Stott et al vs. Salt Lake City—47 U 113, 151 P. 988.....	4
STATUTES OF UTAH CITED	
Utah Code Annotated 1943	
15-7-38	9
15-7-39	10
15-7-40	5
15-7-41	3

In the Supreme Court of the State of Utah

ROCKY MOUNTAIN HONEY CO., INC.,

Appellant,

vs.

MARION R. CRYSTAL, and

DELSA N. CRYSTAL, his wife,

Respondents.

Case
No. 7243

STATEMENT OF FACTS

The Appellant, plaintiff in the lower Court, claimed:

1. In the first cause of action a piece of property $3\frac{1}{2}$ rods by 10 rods under a tax sale of the property to Salt Lake City Corporation. Plaintiff herein acquired same by a deed from Salt Lake City. The tax sale was a sale upon a sewer assessment.

2. In the second cause of action a right-of-way over a 10 foot strip on the south of the same property which Appellant claims to own by virtue of the tax sale and supports the same by a deed from a former owner of the said right-of-way under chain of title, see Exhibit H for the said deed, and Exhibit S, entry #24 where the grantor acquired same prior to Respondents.

3. In the third and fourth cause of action Appellant claims a right-of-way over said 10 foot strip by reason of a prescriptive easement.

4. In the fifth cause of action Appellant seeks to establish a right of access by the crossing of the said right-of-way above to other property owned by Appellant for the purpose of cleaning a ditch on same and also to establish Appellant's right to maintain said ditch at a certain depth and enjoining Respondents from interfering with said ditch and flow and also for damages accruing to Appellant by reason of the said Respondent blocking the natural flow and refusing to permit Appellant right to clear debris from same, causing damage to Appellant's property.

5. In the sixth cause of action Appellant seeks to recover for damage sustained by Respondents' removal of gravel and hard surfaced material from the said right-of-way.

The said Respondents have a general denial to all causes of action and also claim to have been the owner and entitled to possession of the property for more than seven (7) years.

Respondents also seek to quiet title to the said property and to enjoin appellants from claiming same or said right-of-way.

From judgment for respondent on all causes of action and granting Respondents affirmative relief and extinguishing any tax lien Appellant appeals.

E R R O R S

FIRST CAUSE

1. No evidence to support the findings, and findings contrary to the evidence.

2. Judgment is contrary to law and not supported by proper findings.

3. Refusal of Court to grant new trial.

4. Giving Respondent affirmative equitable relief declaring tax sale void and extinguishing the tax lien.

SECOND CAUSE

5. Findings are not supported by the evidence and are contrary to the evidence.

6. Judgment is against the law and not supported by the findings.

THIRD AND FOURTH CAUSES

7. No evidence to support the findings concerning adverse use.

8. No finding to support the Judgment.

9. Judgment contrary to law and evidence.

FIFTH CAUSE

10. Findings contrary to evidence and no evidence to support same.

11. Judgment contrary to the evidence and the law.

12. Failure to find on two material issues.

(a) Right of Appellant to maintain said ditch.

(b) Right to enjoin Respondents from interfering with same.

SIXTH CAUSE

13. No findings to support the Judgment.

14. Judgment contrary to the evidence and law.

A R G U M E N T

FIRST CAUSE OF ACTION

15-7-41 U.C.A. '43 provides:

“ * * Such assessment and finding of benefits shall not be subject to review in any legal or equitable

able action, except for fraud, gross injustice or mistake. (C. L. 17, § 679, 692.)

The legislature has spoken. The Court is without jurisdiction to review the matter render any judgment holding as the Court did in the case at bar. This is particularly true since it will be noted that Respondent did not bring itself within the exception by pleadings, findings of fact or otherwise with respect to the exceptions noted in the statute, to-wit: fraud, gross injustice, or mistake.

15-7-41 U.C.A. '43 is the same section as Comp. Laws of Utah 1917, 679-692, and the Supreme Court of this state has heretofore with respect to this section decided as follows:

STOTT et al vs. SALT LAKE CITY, UTAH

151 Pac. 988 — 47 Utah 113

“ * * Assessments and finding of benefits shall not be subject to review in any legal or equitable action except for fraud, gross injustice, or mistake. * * ”

“That is, *it is not enough merely to show that some provision of a statute or ordinance (where the matter is not jurisdictional) has not been complied with*, but ordinarily it must further be made to appear that the party complaining should prevail as a matter of justice and good conscience. This Respondents have utterly failed to so do.”

“ * * A failure, therefore, to comply with the ordinance, no doubt constituted an irregularity; but such an irregularity could not rob the council of jurisdiction. * * If such can be done now, then the Respondents have discovered an easy way to obtain an improvement which is beneficial to their property in the form of a permanent sidewalk, without pay-

ing for it or for any part of the cost of construction. In view that the omission complained of was not jurisdictional, Respondents cannot now avail themselves of the objection."

"The authorities are very numerous, and practically unanimous, to the effect that where a taxpayer desires to enjoin the collection of a tax levied to pay the cost of a public improvement for which his property is assessed he, except for fraud or collusion, or jurisdictional defects, *must move timely, and if any particular remedy is provided by law, must pursue that remedy.* * * "

" * * The judgment in the case at bar, however, unconditionally relieves the property owners from paying anything, although there is not a particle of evidence in the record that the walk in question is worthless. * * "

15-7-40 U.C.A. '43

"If the owners of two-thirds of the property mentioned do not file such objections, the governing body shall have jurisdiction to order the making of the improvements mentioned in said notice."

Here the legislature has prescribed the only way the city may lose jurisdiction.

Respondents can show nowhere in the record that two-thirds of property owners objected or that any one objected. Jurisdiction must be conceded.

Appellant moreover has from the record shown a strict compliance with all state laws and even city ordinances in the sale in question, and this was not necessary under the Scott case supra.

The findings paragraphs 7 and 8, R 57 and 58, are the only findings upon which the judgment awarded could

possibly be sustained. These findings are contrary to the evidence, see uncontradicted evidence Exhibits V, W and Y, E, V, D, A and R 68, 69.

In the Branting case below, failure to have complied with any one of findings 7 or 8 would not in any "event rob the city of jurisdiction."

BRANTING vs. SALT LAKE CITY

153 Pac. 995 — 47 Utah 296

" * * After the law was amended, but without publishing a new notice of intention, the Appellant advertised for bids as required by the statute for the construction of the sewer in question, and the lowest responsible bid it obtained for the construction of the sewer amounted to \$2.15 per front foot. * * where any taxpayer who felt aggrieved could be heard respecting the justness or validity or equality of the assessment and levy of the tax as afore-said. The respondent did not appear nor offer any objection to the assessment and levy of the tax as proposed, and the tax was accordingly assessed and levied to the amount of \$2.15 per front foot, which was in excess of the estimated cost, as before stated. * * "

"Since the Legislature might have dispensed with any estimate, the failure of the council to make any would doubtless be held an irregularity which might be waived by a failure to protest."

" * * While it is now well established that in levying special taxes all jurisdictional requirements must be strictly complied with, yet it is equally well settled that all statutory requirements *are not jurisdictional*, and that a departure from the latter constitute irregularities merely which must be timely objected to by the taxpayer or they may be deemed

waived. Courts may not add to the statutory requirements, *nor have they the right to declare an act jurisdictional which is not made so by the statute.* * * *

“ * * We are of the opinion, therefore, that the District Court erred in holding that the estimate under our statute was jurisdictional, and that in levying the tax in excess of such estimate the Appellant exceeded its power or jurisdiction, and that for that reason the amount of the tax in controversy here was invalid.”

These cases hold that should the lower Court have been justified in making such findings as contained in paragraph 7 and 8, R 57 and 58, which, of course, it was not, that still it is error to hold the tax sale void. The Court was, therefore, twice wrong. First, in making such a finding contrary to the evidence, which evidence proved beyond all reasonable doubt that the contrary was the case. Second, the findings under the statute and the law cannot support the decree.

Exhibit “S”, the certificate in the abstract before entry 28, shows the special sewer assessment. Respondents acquired the property at entry 50 almost 14 years after said assessment and notice of said assessment. At the time of the assessment and the sale the property consisted of a parcel as described in the certificate just prior to entry 28 which included a single piece, part being in Lot 7 and part in Lot 8. The land in controversy in this litigation was under all tax notices and descriptions part of a larger parcel as a unit with its westerly boundary abutting Pugsley Street, said westerly boundary being in Lot. 7.

At the time of the publication of Exhibit “U”, the abstract, Exhibit “S” shows all the property outlined in green

on the plat to belong to the same person. Exhibit "U" had published thereon also Exhibit "A". Note the bottom of page 1 on Exhibit "A" shows the assessment to be on both sides of Pugsley Street and the plat shows the property to abut Pugsley Street, also Exhibit "A" shows in the center of page 2 that the assessment is to the "ENTIRE DEPTH." It also describes the property by lot and block. Exhibit "D" again describes the property as does "E", any one of which was sufficient notice, and since the property now claimed was included in that described. Under this evidence paragraph 6 of R 57 is contrary to the evidence.

When the assessment was levied the property was all owned by one person. This property abutted on PUGSLEY Street. It was part in Lot 7 and part in Lot 8. The property was assessed for general taxes and the special taxes as a unit and as provided in the notice TO THE ENTIRE DEPTH, which included the very property at issue. Respondents tried in the lower Court to make something of the fact that years after the assessment and tax sale the owner broke the land in two and deeded part to Respondents. If such an ingenious, clever device could relieve property of a proper tax, for special assessment, all owners could deed one inch of the front of their property to someone and claim the balance of the back was free from sidewalk, sewer and street assessment.

The Courts have recognized this and have uniformly held.

HESTER vs. COLLECTOR OF TAXES

217 Mass. 422, 105 N.E. 631

"Where it appeared that, at the time of the passage of the order for the construction of a sewer, the land assessed was one tract, it was held that the

fact that subsequently the owner divided the land into several lots and sold them to different persons did not prevent the assessment of the land as a unit, since "the assessment when made constituted a lien upon the land covered by it, and this lien relates back to the time of the passage of the order."

See also:

JORDAN vs. CITY OF OLIVE HILL

162 S.W. 2nd 229

STATE vs. COMBS

106 S. W. 2nd 61

Exhibits "V", "W" and "Y" show notices were mailed, and there is no evidence to the contrary. These are not jurisdictional in any event and the evidence all shows that notices were mailed. Paragraph 7 of the findings, R 57, is not only unsupported by any evidence as is paragraph 8 of the findings, but under Utah cases above cited these are not jurisdictional and "constitute irregularities which must be timely objected to or deemed waived." Such objection must be by two-thirds of property mentioned.

15-7-38 U.C.A. '43

This section precludes any attack upon the sale unless same was made to governing body sitting as a board of equalization.

The record is *bare* of any showing by Respondents of such an attack or complaint.

15-7-38 above also provides:

"THE BURDEN OF PROOF TO SHOW SUCH TAX OR PART THEREOF INVALID, INEQUITABLE OR UNJUST RESTS UPON THE PARTY WHO BRINGS SUCH SUIT."

Respondents have failed to carry this burden and have failed to make even a *prima facie* case of jurisdictional defect or irregularity while Appellant has by overwhelming evidence shown the sale to be valid in every detail. Respondents might claim that Appellant now takes an inconsistent position in claiming under statutes quoted that the Court is without jurisdiction to declare the tax sale void and grant the relief given Respondents, and then quoting a section which mentions the word suit. Note, however, that as a condition *precedent* to the right of the Court to have jurisdiction or grant relief the section requires:

1. Payment of the tax under protest.
2. Notice of intention in writing of not only intention to sue to recover, but also a statement of the grounds and the grievance.
3. Commencement of action within 60 days "But not later" after date of filing of written notice.

Respondents do not even pretend that any one of the above has been complied with, yet hope to sustain the Court's decree declaring the sale void and no reimbursement on the flimsy findings of paragraphs 7 and 8.

15-7-39 U.C.A. '43

This section provides:

"Every person * * who fails to appear before such board of equalization and review and make any and *every* objection he may have to such tax shall be deemed to have *waived* all and *every objection* to such levy."

Respondents have shown no compliance with this section. Respondents have waived objections and the legislature having spoken, the Court was without jurisdiction to grant the order entered.

The Court erred in not holding that Respondents waived EVERY OBJECTION and particularly when the record was silent of any objections being made by Respondents at any time. The Court certainly erred in permitting the Respondents to enjoy all the benefits of the improvements without any of the tax burden and even granting affirmative relief in equity enjoining Appellant from claiming the land without requiring a reimbursement for Appellant with respect to the tax lien. The cases on this are too numerous to require citations. The tax sale should be held valid.

SECOND CAUSE OF ACTION

Exhibit H is a deed from the Utah Oil Refining Company to Appellant. Exhibit "S", entry 24, shows that the said grantor of Appellant acquired the property through chain of title from a predecessor in the chain of title to the said Respondents. The said Respondents took the property subject to this right-of-way and the grantor of Appellant had the right to give unto the said Appellant by a deed said interest, which was done by Exhibit "H". R. 335 shows the attempt of the Respondents to vary this written instrument by a parole which, of course, is contrary to law, and notwithstanding this fact R 338 shows definitely that the said grantor of plaintiff did take said deed for the purpose of maintaining a right-of-way and said grantor could, therefore, properly convey this interest to the said Appellant.

Paragraph 3 of R 58 and 59 is directly contrary to the evidence and there is absolutely no evidence to support such finding, and paragraph 4 following is also contrary to the evidence shown in R 95 to 112 and 134 to 178 and 378 to 429.

The evidence is almost conclusive of the continued use of the said right-of-way by many people, and even by a cripple who had no trouble going through same, and from the record as here disclosed there was never a time that this right-of-way was not used by all the people in the rear for more than twenty-one years. It is quite clear from the facts of the deed given as well as the adverse use that the lower Court should be reversed on the Second Cause of Action.

THIRD AND FOURTH CAUSES OF ACTION

With respect to the Third and Fourth Causes of action, what has been said with respect to the Second Cause of Action with respect to adverse use is adopted as argument with respect to the Third and Fourth Causes of Action, and please also note from R 162 that the evidence is uncontradicted of a prescriptive use of this property as a means of crossing in the year 1918. The defendant has no evidence to the contrary as well as all of the record above recited showing cripples, children and vehicles using said right-of-way continuously and adversely.

FIFTH CAUSE OF ACTION

The evidence, R 100, a statement of a disinterested witness, discloses that the plaintiff was prevented from cleaning the ditch and R 166, and particularly R 170-171, 230 and 231 of the record discloses that not only the plaintiff, but the defendant, at R 377-378 admitted moving the supporting walls around the ditch. A material issue before the Court to be determined was whether the ditch was upon the plaintiff's land or defendants' land, and whether the plaintiff had the right to maintain said ditch. The Court made no findings on either issue. Paragraph 4, R 60, is contrary to the evidence and not supported by the evi-

dence, see R 100 and R 172. See also the finding of the defendant itself in R 61, wherein the defendant admits removing the gravel supporting the sides of the ditch.

SIXTH CAUSE OF ACTION

R 165 is uncontradicted and shows that Appellant paid for and hauled gravel on the driveway.

That Respondents removed same to Appellant's damage is even found in paragraph 2, R 61 of the findings, yet the Court finds for Respondents No Cause of Action.

Respectfully submitted,

E. L. SCHOENHALS,

Attorney for Appellant.