

1954

In the Matter of the Estate of James John Latsis : Appellants' Answer Brief fo Petition for Rehearing and to Brief of Amici Curiae

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.

White, Wright & Arnovitz; Gustin, Richards & Mattson; James W. Beless, Jr.; Attorneys for Petitioners and Appellants;

Recommended Citation

Response to Petition for Rehearing, *Latsis*, No. 7954 (Utah Supreme Court, 1954).
https://digitalcommons.law.byu.edu/uofu_sc1/1903

This Response to Petition for Rehearing 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**

In the Matter of the Estate of JAMES
JOHN LATSIS (Also sometimes known
as "LATSES"),
Deceased. }

**APPELLANTS' ANSWER BRIEF TO PETITION
FOR REHEARING AND TO BRIEF
OF AMICI CURIAE**

**WHITE, WRIGHT & ARNOVITZ
GUSTIN, RICHARDS &
MATTSSON,
JAMES W. BELESS, JR.,**
*Attorneys for Petitioners
and Appellants.*

I N D E X

	<i>Page</i>
STATEMENT OF POINTS	1
ARGUMENT	2
CONCLUSION	8

TABLE OF CASES

In re Christensen's Estate, 17 Utah 412, 53 Pac. 1003.....	5
Jackson Land & Livestock Company v. State Tax Commission Utah, 259 P. 2d 1084.....	4
Norville v. State Tax Commission, 98 Utah 170, 97 P. 2d 937	3
In re Raleigh's Estate, 48 Utah 128, 158 Pac. 705.....	4
State v. Bates, 22 Utah 65, 61 Pac. 905.....	6
Tiller v. Norton, Utah, 253 P. 2d 618.....	7

STATUTES

Section 74-4-5, Utah Code Annotated 1953.....	2
---	---

TEXTS

31 Am. Jur. 91 Section 430.....	5
---------------------------------	---

IN THE SUPREME COURT of the STATE OF UTAH

In the Matter of the Estate of JAMES
JOHN LATSIS (Also sometimes known
as "LATSES"),
Deceased.

} Case No.
7954

APPELLANTS' ANSWER BRIEF TO PETITION FOR REHEARING AND TO BRIEF OF AMICI CURIAE

STATEMENT OF POINTS

POINT 1.

THE DECREE OF OCTOBER 9, 1945, IS EITHER CONDI-
TIONAL OR VOID AS TO ITS DISTRIBUTIVE CLAUSE.

POINT 2.

AN ATTORNEY APPOINTED UNDER SECTION 75-14-
25, UTAH CODE ANNOTATED, 1953, CANNOT COMPROMISE A CLAIM WITHOUT CONSENT OF THE HEIR.

POINT 3.

A VOID JUDGMENT MAY BE ATTACKED AT ANY
TIME AND IN ANY PROCEEDING.

Appellants have grouped their argument of the three points set forth in their statement of points under one argument for the reason that they are entirely intermingled and related.

ARGUMENT

The decree of October 9, 1945, is either conditional or void as to its distributive clause.

In the Brief of Amici Curiae at page 22, counsel make the following statement:

“The authority comes not from the Court, but from the legislature. And the authority of the legislature over such matters of probate and succession is absolute.”

Under this statement, which we think is correct, how do counsel overcome Section 74-4-5 of Utah Code Annotated, 1953, which in part provides:

“Succession in absence of will or marriage contract. When any person having title to any estate, not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed unless otherwise expressly provided in this title or in the Probate Code, subject to the payment of his debts, in the following manner:” (Italics ours)

Under this statute the District Court had no authority to make distribution of the estate in any other manner than appellants have claimed in their petition and as in-

dictated by Justice Crockett in the Supreme Court decision herein. Lacking the consent and approval of the heirs, the decree of October 9, (R. 125-133) and the decree of February 27, (R. 97) are either conditional or void. This is true regardless of the fact that the court may have jurisdiction of the res and of the persons. See our reply brief at pages 11, 12 and 13.

There is no question but that in the wording of the stipulation and the decree of February 27 the parties considered the decree a conditional decree and as this court has held, the conditions have not been fulfilled. If, however, the decree is not held to be a conditional decree, the decree is then void for Mr. Cotro-Manes did not have the power or authority to enter into the stipulation of settlement or to agree to the entry of a decree binding the heirs whereby they would be deprived of their rights to their just proportion of the property in the estate.

Counsel ask in their brief, "What reliance, if any, may now be placed upon 75-14-25, Utah Code Annotated, 1953?" As we have just indicated, they contend that the authority comes not from the court but from the legislature. The legislature took the act verbatim from California. The California court had construed the legislation as of the time of its adoption by Utah. The legislation should be construed by the prior decisions of California. This court has held to this principle: *Norville v. State Tax Commission*, 98 Utah 170, 97 P. 2d 937. *In re*

Raleigh's Estate, 48 Utah 128, 158 Pac. 705. *Jackson Land & Livestock Company v. State Tax Commission*, Utah, 259 P. 2d 1084.

Counsel in considering this section while stating that a number of other states have similar statutes, do not cite any authority showing a different construction placed on a similar statute. The construction of this statute, as set forth in the decision of this court, is correct and supported by the authorities.

Counsel cite cases covering the question of conclusiveness of a judgment. In all of the cases cited, the court states that they are conclusive unless an inspection of the record establishes invalidity and shows the same to be void. An examination of the record in this case clearly discloses this to be the case.

The order of October 9, 1945, points out that N. J. Cotro-Manes was not an attorney selected or employed by appellants but appointed by the court:

“That in said proceedings it was ordered that attorney N. J. Cotro-Manes, theretofore employed, and appointed by the court, to represent said heirs was to receive out of said sum of \$10,000.00, as his attorney's fees the sum of \$2,000.00
* * *” (R. 126)

A void decree can be assailed or attacked at any time. It is of no value.

31 Am. Jur., Sec. 430, p. 91 :

“A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce it. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigant in the same position they were in before the trial.”

In re Christensen's Estate, 17 Utah 412, 53 Pac. 1003, the court states at page 1007 :

“No appeal can be necessary from a judgment that is entirely and absolutely void. Such judgments and decrees are of no effect, and parties endeavoring to execute them may be treated as trespassers. As we have seen, ‘a judgment pronounced by a tribunal having no authority to determine the matter in issue is necessarily and incurably void, and may be shown to be so in any collateral or other proceeding in which it is drawn in question.’ Again the same author says: ‘A void judgment is, in legal effect, no judgment. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All

acts performed under it, and all claims flowing out of it, are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress.' Freem. Judgm. 117, 120."

See also *State v. Bates*, 22 Utah 65, 61 Pac. 905. There can be no question but what the proceeding in this case is a direct attack upon the validity of the order of October 9, 1945. The petition challenging the validity was filed in the same court that issued the order and in the same proceeding. The parties to that proceeding are parties to this proceeding. The power and authority for Mr. Cotro-Manes to act on behalf of these heirs is clearly challenged in the petition filed by appellants, which states as follows:

"That as shown by the files and records of this case, these heirs did not appoint counsel to appear for them in these probate proceedings for the reason that they were unaware of the pendency of these proceedings. That when these probate proceedings were instituted, upon his own motion the Honorable A. H. Ellett, one of the Judges of this Court appointed N. J. Contro-Manos, an attorney duly admitted to practice before the bar of this state, to act as attorney for the non-resident heirs of this estate. That the non-resident heirs were not advised of the pendency of these proceedings by the attorney appointed by the court to act for them and that the said attorney did not advise and consult with the petitioners concerning the affairs of this estate, nor advise them as to their rights and duties con-

cerning the affairs of this estate, nor advise them as to their rights and duties concerning the administration of this estate.” (R. 184-185, Paragraph #5)

Under Point 2 counsel state in their brief that the validity of the judgment was not involved in the matter presented on appeal. This is answered by the allegation in the petition above referred and by the statement in appellants’ original brief, page 26, which reads in part:

“It is our contention that inasmuch as the conditions imposed on the order of February 27, 1945, were never completed, and as that order was subsequently incorporated in the order of October 9, 1945, that subsequent order was in fact a nullity as far as any distribution was concerned and until a distribution in accordance with the laws of succession is made this estate is still open and the fiduciaries continue to be responsible until a complete and final distribution is made.”

This case is entirely different from the case of *Tiller v. Norton*, Utah, 253 P. 2d 618. In that case the court had jurisdiction to determine heirship. As set forth in the facts of the decision, a search had been made to locate the children of the defendant. Upon failure to locate the children after those searches and upon allegations that the claimant was the only heir surviving, the court held that Grace Carson was the sole surviving heir and made distribution accordingly. There is no analogy between the Tiller case and this case. Here the court

lacks the power to vary from the statutory rule of distribution and any such variance constitutes a void judgment.

Counsel question the confidence of appellants in this present proceeding because they commenced a suit to quiet title on the real property involved in the estate. The two actions are proper and both are necessary for the reason that this action directly attacks the validity of the decree and makes the administrators responsible for an accounting, whereas the suit to quiet title requires removal of the encumbrances caused by conveyances made after the entry of the invalid decree.

CONCLUSION

We respectfully submit the decision of the Supreme Court does not in any manner place a burden upon the "marketability and mortgageability" of real property nor add any inconvenience or costs to abstractors, title insurance companies and others examining titles. On the equities of the situation purchasers from Virginia Latsis would have recourse to warranties, if any, of those in privity and probably in some instances to title insurance. The court has already pointed out the complete absence of authority of the attorney purporting to represent the non-resident heirs, the failure of the condition precedent and the reference to the conditional order in the purported decree of distribution, all of which clearly ap-

pears on the judgment roll. To hold other than has heretofore been held would excuse those who are bound by the record from taking heed of that which is apparent. The decision is clear, concise and correctly states the law. The motion for a rehearing should be denied.

Respectively submitted,

WHITE, WRIGHT & ARNOVITZ
GUSTIN, RICHARDS &
MATTSSON,
JAMES W. BELESS, JR.,

*Attorneys for Petitioners
and Appellants.*