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Roger Farrer et al v. Vivian Johnson et al : Brief of Appellants

Utah Supreme Court

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**IN THE SUPREME COURT
OF THE STATE OF UTAH**

ROGER FARRER, ET AL,

**Plaintiffs and
Appellants,**

v.

Case No. 8076

VIVIAN D. JOHNSON, ET AL,

**Defendants and
Respondents,**

APPELLANTS' BRIEF

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ROGER FARNER, ET AL,

Plaintiffs and
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Case No. 8076

VIVIAN D. JOHNSON, ET AL,

Defendants and
Respondents,

STATEMENT OF FACTS

The three cases here involved, Nos. 16935, 16936 and 16937, in Utah County, were consolidated for trial. Trial was held April 8, 1953. Separate Findings, Conclusions and Judgments were rendered for each of the three cases by the Fourth Judicial District Court, in and for Utah County, State of Utah. R. 20-30, 172-180, 182-200. That pursuant to said judgments the court quieted title in defendants to the lands in question and it is from these judgments that appellants appeal.

Appellants hereafter will be denominated as plaintiffs and respondents as defendants.

With reference to Case No. 16939, the facts are as follows: Plaintiffs in this suit rely upon a quit-claim deed from Utah County to plaintiffs to establish their title to the land in question. On December 27, 1947, a quit-claim deed was issued by Utah County to these plaintiffs to the disputed land. At page 33 of plaintiffs' Exhibit A, Abstract of Title No. 30177, Utah Title Co., there is shown a quit-claim deed from Utah County to plaintiffs. Plaintiffs also introduced at the trial the County Recorder's record showing the record of tax sales for 1936 and read into the record the particulars contained in said tax sale record which is contained in Book 46, page 157. Plaintiffs also introduced the County Recorder's record showing the quit-claim deed from Utah County to these parties as contained in Book 384, page 474. These records from the County

Recorder's office were brought into the court for this hearing by a deputy of the County Recorder and were properly identified and the matter contained therein read into the record. R. 42-50. The tax sale record shows as does the abstract (plaintiffs' Exhibit A, page 28) that the property in question was a portion of a larger parcel belonging to Edwin A. Peay, which was sold to Utah County for non-payment of taxes. Edwin A. Peay, also known as Edwin Arthur Peay, received the property in question along with other land pursuant to a decree of the Fourth Judicial District Court, in and for Utah County, State of Utah, in the matter of the estate of George T. Peay. (See Entries Nos. 14, 15, 16 and 17 of Plaintiffs' Exhibit A). George T. Peay received the land in question along with other land pursuant to a deed from Simon P. Eggerson to George T. Peay. (See Entry No. 2, Plaintiffs' Exhibit A). Simon P. Eggerson received title under U. S. Patent dated July 10, 1872, recorded August

30, 1873, in the Utah County Recorder's office, to the northwest quarter of the southeast quarter, Lots 1, 2 and 3, Section 10, Township 7 South, Range 2 East, Salt Lake Base and Meridian, bounding the Utah Lake meander line on the north, and immediately north of the lands that are in dispute in these cases. The said disputed lands extending south from the said meander line to the water's edge of the Utah Lake. The lands to which plaintiffs are asserting title in these cases are south of the Utah Lake meander line, extending to the water, and are part of the accretion ground adjacent to the Simon P. Eggerson patented lands. (See Entry No. 1, plaintiffs' Exhibit A; also pre-trial order, R. 13, 14).

The taxes upon the land in question have always been assessed to the record owner, i.e. plaintiffs or their predecessors in interest and have never been assessed to anyone else and no one but plaintiffs or their predecessors in interest has paid any taxes upon said land.

(See plaintiffs' Exhibit A).

The evidence further shows that on December 29, 1947, plaintiffs paid \$104.27 for a quit-claim deed from Utah County to the land in question; that they paid real property taxes to Utah County as follows: 1948 - \$39.38; 1949 - \$6.32; 1950 - \$7.41; 1951 - \$7.50; 1952 - \$6.77. (R. 55). Plaintiffs' Exhibit D is a photostat of the County Recorder's plat showing the land in question and also the surrounding land. The particular piece in this action is denominated on the plat by Serial No. F-2287. Said parcel of land was part of a larger parcel which was sold to Utah County for delinquent taxes and never redeemed. The plat, Exhibit D, shows the boundaries of the original parcel and the smaller parcel which was quit-claimed by Utah County to plaintiffs. Plaintiffs' Exhibit G, a blue-print map of these same sections, was made at the time the George T. Peay estate was probated and was drawn by a civil engineer, Mr. S. P. Stewart. Located in the righthand

side of the map is the parcel of land which is shown to have formerly belonged to the George T. Peay estate. The parcel of land in question is a portion of this larger piece which belonged to George T. Peay at the time of his death.

Defendants' Exhibits 2 and 3 as well as Plaintiffs' Exhibits D and G, show that there exists between the disputed lands and the defendants' patented land to the north, a strip of patented ground which was patented to Simon P. Eggerson and which yet remains in the Simon P. Eggerson estate.

With reference to Case No. 16336 the facts are as follows: Plaintiffs introduced in evidence the Abstract of Title duly certified No. 30176, Utah Title Company (Plaintiff's Exhibit B). On page 33 of said abstract is contained the abstract of a warranty deed from Ruth P. Farrer to Roger Farrer to the land in question, Roger Farrer being the plaintiff in this case. There is a chain of title from

Roger Farrer, the present plaintiff, back to the original patentee. On pages 14, 15, 16 and 17 of Exhibit B there is a decree of the District Court of the Fourth Judicial District, in and for Utah County, State of Utah, in the matter of the estate of George T. Peay, deceased, wherein this parcel of land was decreed and distributed to Ruth P. Farrer. George T. Peay during his lifetime was the owner of this and other parcels of land in this vicinity and received title thereto from Simon P. Eggerson. (See page 2 of Plaintiff's Exhibit B, wherein Simon P. Eggerson deeded this land to George T. Peay). Simon P. Eggerson received title under U. S. Patent dated July 10, 1872, recorded August 30, 1873, in the Utah County Recorder's office, to the northwest quarter of the southeast quarter, Lots 1, 2 and 3, Section 10, Township 7 South, Range 2 East, Salt Lake Base and Meridian, bounding the Utah Lake meander line on the north and immediately north of the lands that are in dispute in these

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cases, the said disputed lands extending south from the said meander line to the water's edge of Utah Lake. The lands to which plaintiffs are asserting title in these cases are south of the Utah Lake meander line, extending to the water, and are part of the accretion ground adjacent to the said Simon P. Eggerson's patented land. (See page 1, Exhibit B; also pre-trial order R. 13, 14). Plaintiff also introduced in evidence the tax sale record and the quit-claim deed from Utah County showing that the land in question was deeded from Utah County to Ruth P. Farrer in 1941. The tax sale record from the County Recorder's office was read in evidence. This tax sale record is contained in Book 46, record of tax sales, page 157. The quit-claim deed from Utah County to Ruth P. Farrer is contained in Book of Deeds 346, page 72 of the County Recorder's records. Said information was read into the record and became a part of the evidence. (See plaintiff's Exhibit B; also R. 42-50).

The parcel of land in question has always been assessed to plaintiffs or their predecessors in interest and no one but plaintiffs or their predecessors in interest has ever paid any taxes on said land. (See Plaintiff's Exhibit B).

Plaintiff's Exhibit D is a photostat of the County Recorder's plat showing the land in question and the surrounding land. The particular land in question is denominated by the Serial No. P-2299.

The record also shows that in 1941 Ruth P. Farrer, plaintiff's predecessor in interest, paid to Utah County for a quit-claim deed to the land in question \$28.48; in 1946 \$224.46 as a tax redemption by Ruth P. Farrer; in 1952 \$235.16 tax redemption by plaintiff; in 1952 \$12.31 general property taxes paid by plaintiff. (See R. 55, 56).

With reference to Case No. 16937 the facts are as follows: Plaintiffs introduced in evidence Abstract of Title No. 28832 of the Utah Title Co., (Plaintiffs' Exhibit C). Said

abstract shows a chain of title in Roger Farrer and J. Austin Cope, plaintiffs in this action, back to the original patentee. At page 25 of Exhibit C there is a quit-claim deed from William W. Peay and Maud L. Peay, his wife, to Roger Farrer and J. Austin Cope, plaintiffs, to the land in question. At page 14, 15, and 16 of plaintiffs' Exhibit C there is a decree of the District Court of the Fourth Judicial District, in and for Utah County, State of Utah, in the matter of the estate of George T. Peay, deceased, wherein William W. Peay, the grantor of the present plaintiffs, received the property under decree of the court from the George T. Peay estate. At page 2 of the abstract, Exhibit C, there is a warranty deed from Simon P. Eggerson to George T. Peay showing a conveyance of a larger parcel of ground which contains the land in question. Simon P. Eggerson received title under U. S. Patent dated July 10, 1872, recorded August 30, 1873, in the Utah County Recorder's office, to the

northwest quarter of the southeast quarter, Lots 1, 2 and 3, Section 10, Township 7 South, Range 2 East, Salt Lake Base and Meridian, bounding the Utah Lake meander line on the north and immediately north of the lands that are in dispute in these cases; the said disputed lands extending south from the said meander line to the water's edge of Utah Lake. The lands to which plaintiffs are asserting title in these cases are south of the Utah Lake meander line, extending to the water, and are part of the accretion ground adjacent to the Simon P. Eggerson patented land. (See page 1 of the abstract, Exhibit C; also pre-trial order R. 13, 14).

At page 23 of the abstract, Exhibit C, there is a quit-claim deed from Utah County to plaintiffs conveying all right, title and interest of Utah County to these plaintiffs. Plaintiffs introduced the tax sale record of the County Recorder's office, Book 36, page 162, and also the quit-claim deed contained

in Book of Deeds 344, page 174. The matter contained in the records of the County Recorder's office was read into the record. R. 42-50. Plaintiffs also introduced Exhibit D, a photostatic copy of the plat, as recorded in the office of the County Recorder, showing the land in question. Said land is found on the map, plaintiffs' Exhibit D, under Serial No. F-2203.

Said land in question has always been assessed for tax purposes to the person holding the record title. There is no showing of any taxes having been paid by anyone other than the record owners, i.e., plaintiffs and their predecessors in interest. (See plaintiffs' Exhibit C). The record also shows that plaintiffs paid to Utah County on August 28, 1947, \$145.90 for a quit-claim deed to the land in question and subsequent thereto paid real property taxes as follows: 1948 - \$57.70; 1949 - \$10.19; 1950 - \$10.91; 1951 - \$11.04; 1952 - \$9.57. (R. 16).

The Findings of Fact, Conclusions of Law and Decrees as rendered by the court in all three of said cases are substantially identical with the exception of the differences in legal descriptions for the parcels of real property involved. The court pursuant to said decrees held that title was quieted in defendants and that plaintiffs had no right, title or interest in any of the disputed lands. The court further held that the tax deeds received by plaintiffs from Utah County were invalid for the reasons: (1) that the land had not been sold according to law as no auditor's affidavit was attached to the assessment rolls; (2) that the lands were not subject to assessment and tax by Utah County. Based upon such conclusions, the court held there was no tax lien to foreclose as prayed for in plaintiffs' complaints. The court further held that the disputed lands bordered on the patented lands of defendants to the north in spite of the undisputed evidence of both plaintiffs and

defendants that such was not the case and that there was still a strip of patented land held by Simon P. Eggerson subsequent to the conveyance to defendants' predecessors in interest. (See plaintiffs' Exhibits D and G and defendants' Exhibits 2 and 3. R. 102, 103).

With reference to the question of whether the auditor's affidavit was attached to the assessment rolls, defendants called Maurice C. Bird, County Treasurer for Utah County, who testified as follows:

"Q. Have you examined the assessment rolls for the years 1930, '31, '32, '33, '34, '35, '36 and '37?

A. The particular roll - one roll is all.

Q. And particularly with respect to tax sales on property owned or on property assessed in the name of Edwin A. Peay on Utah Lake down that way, and also property assessed in the name of Ruth P. Farrer, and property assessed in the name of Wm. W. Peay?

A. The three particular pieces of property.

Q. The three particular pieces of land?

A. Yes.

Q. And are those particular pieces of land the same as indicated to you as being involved in this lawsuit?

A. That's right.

Q. Now, did you examine all of the assessment rolls of Utah County for the years I have mentioned?

A. Not all of them.

Q. I mean covering these particular pieces of property.

A. That's right.

Q. And will you state whether or not you found any auditor's affidavit attached to any or either of those tax rolls?

A. I found that there was no affidavit attached to any of them.

Q. Was there ever any affidavit that had been attached?

A. Not to my knowledge.

Q. And that is true for the assessment rolls for 1930 through 1937, both inclusive?

A. That's right.

MR. BALLIF: You may cross examine.

(Cross examination by Mr. McCullough)

Q. You say you found no auditor's affidavits, Mr. Bird?

A. That's right.

Q. Where did you look in the assessment rolls?

A. I looked in the front and back where

they usually have them stamped.

Q. In the front and in the back?

A. Of the roll, yes sir.

Q. And those are the only two places you looked?

A. That's right.

Q. They could have been someplace else, couldn't they?

A. That is the customary place they put them.

Q. You didn't look through the roll, did you then?

A. I didn't look page by page, no.

Q. You just looked in the front and the back?

A. That's all.

MR. McCULLOUGH: That's all.

(Re-Direct Examination by Mr. Ballif)

Q. Where were the customary places for those affidavits to be?

A. In the front or back of the book.

Q. Of the assessment roll?

A. That's right.

Q. And were they there?

A. No.

Q. Was there any evidence of them ever being there?

A. Not to my knowledge, I couldn't see anything.

Q. And to your knowledge is there any other place in the Treasurer's office of Utah County that you could look for those?

A. Not that I know of. I found one or two on the front page or the back page and I looked in both of those when I was examining the rolls.

Q. And you found none?

A. That's right.

Q. And you looked in the customary places where they should be?

A. That's right." (R. 103-105).

STATEMENT OF POINTS

POINT I. THE LOWER COURT ERRED IN FAILING TO QUIET TITLE IN PLAINTIFFS TO THE LANDS IN QUESTION.

(a) IN CASES NOS. 16936 AND 16937 PLAINTIFFS PROVED RECORD TITLE IN PLAINTIFFS TO THE LANDS IN DISPUTE IN SAID CASES.

(b) DEFENDANTS FAILED TO SHOW ADVERSE POSSESSION OF ANY OF THE LANDS IN QUESTION

WITHIN THE MEANING OF THE STATUTE.

(c) IN ALL THREE CASES PLAINTIFFS PROVED VALID TAX DEEDS FROM UTAH COUNTY TO PLAINTIFFS CONVEYING THE LANDS IN QUESTION.

POINT II. IN THE EVENT THIS COURT HOLDS THAT PLAINTIFFS' RECORD TITLES ARE INVALID AND ALSO THAT PLAINTIFFS' TAX TITLES ARE INVALID, THEN THE TRIAL COURT ERRED IN FAILING TO FORECLOSE PLAINTIFFS' TAX LIEN IN ACCORDANCE WITH SECTION 59-10-65, UTAH CODE ANNOTATED, 1953.

(a) PURSUANT TO THE PROVISIONS OF 59-10-65, UTAH CODE ANNOTATED, 1953, PLAINTIFFS HAD A LIEN FOR TAXES AND INTEREST AS EXPENDED BY THEM UPON THEIR TAX TITLES BEING HELD INVALID.

(b) THE LANDS IN QUESTION WERE SUBJECT TO TAX BY UTAH COUNTY.

ARGUMENT

I. THE LOWER COURT ERRED IN FAILING TO QUIET TITLE IN PLAINTIFFS TO THE LANDS IN QUESTION.

(a) IN CASES NO. 16936 and 16937 PLAINTIFFS PROVED RECORD TITLE IN PLAINTIFFS TO THE

LANDS IN DISPUTE IN SAID CASES.

In Cases No. 16936 and 16937 plaintiffs proved record title in plaintiffs to the lands in dispute in said cases. In Case No. 16936 plaintiff showed record title to the land in question to be in plaintiff based upon the following entries in the abstract: Page 33, a warranty deed from Ruth P. Farrer to the plaintiff. Pages 14, 15, 16 and 17 of Exhibit B, a decree of the District Court of the Fourth Judicial District, in and for Utah County, State of Utah, in the matter of the estate of George T. Peay, deceased, wherein the land was decreed and distributed to Ruth P. Farrer. Page 2 of Exhibit B shows a deed to the land from Simon P. Eggerson to George T. Peay. Page 1, Exhibit B, shows a patent from the U. S. of America to Simon P. Eggerson to the land adjacent and to the north of the lands in dispute. The pre-trial order of the court (R. 13, 14) reads as follows:

Par. 3: "That Simon P. Eggerson received title under U. S. Patent dated July 10,

1872, recorded August 30, 1873, in the Utah County Recorder's office, to the northwest quarter of the southeast quarter, Lots 1, 2 and 3, Section 10, Township 7 south, Range 2 East, Salt Lake Base and Meridian, bounding the Utah Lake meander line on the north and immediately north of the lands that are in dispute in these cases, the said disputed lands extending south from the said meander line to the water's edge of Utah Lake."

Par. 4: "That the lands to which plaintiffs are asserting title in these cases are south of the Utah Lake meander line, extending to the water and are part of the accretion ground adjacent to the Simon P. Eggerson patented land."

Similarly in Case No. 16937 plaintiffs showed record title in plaintiffs based upon the following evidence: A quit-claim deed from William W. Peay and Maud L. Peay to plaintiffs (page 25, Exhibit C). Pages 14, 15 and 16 of Exhibit C, a decree of the District Court of the Fourth Judicial District, in and for Utah County, State of Utah, in the matter of the estate of George T. Peay, deceased, wherein William W. Peay, the grantor of the present plaintiffs, received the property under decree of the court in the George T. Peay estate. Page 2 of Exhibit C, a warranty

from Simon P. Eggerson to George T. Peay.

Page 1, Exhibit C, a patent from the U. S. of America to Simon P. Eggerson to the land adjacent and to the north of the lands in dispute. Furthermore, the pre-trial order (R. 13, 14, Pars. 3 and 4 as quoted above) is also pertinent in this case.

Based upon the pre-trial order that these lands in dispute are accretion lands, it therefore follows that they are subject to the general law as pertaining to accretion and reliction. Said disputed lands being accretion lands are appurtenant to the patented land or upland which was patented to Simon P. Eggerson by the U. S. of America. It is only upon said lands being specifically conveyed that they are separated from the upland, which in this case is the patented land received by Simon P. Eggerson from the United States. The law of accretion as pertaining to these particular lands is very ably set forth in the text, American Law of property, Vol. 3. The following sections are pertinent:

Par. 15.32: "What amounts to the same limitation is the holding of several cases that when the boundary fixed by a deed is a specified line, without recognizing that it coincides with a water line, the land conveyed stops at that line and the grantor has in effect reserved the right to subsequent accretion."

Par. 15.33: " * * * Not but that, even after the process of the accretion or reliction is completed, the accreted or relicted land is considered as appurtenant to the upland to which it is attached so that, unless excepted, it passes with any conveyance of the latter. However, after title to it has become vested it assumes separate character the same as any other land and may be conveyed not merely as an adjunct of the upland but separate from it, and, like other land, it may be transferred by a general description but like other land, a definite, precise description is to be preferred."

Par. 15.28: "For the doctrine of accretion to be applicable, it is necessary that there shall be a water bed and that the land for which the addition is claimed shall at the time thereof have extended to the water's edge. Any separation of the claimant's land from the shore line defeats his right to accretions or relictions by reason of the fact that they attach instead to the intervening strip. * * *

Par. 15.27: "Effect on boundaries and title of changes in waterlands. * * * The doctrine applies not only to land owned by private parties but to that of

the Federal Government, a state, a county, or a municipal corporation.
* * * Regardless of the foundation for the doctrine of title by accretion, it serves as a substitute for patents and deeds in the case of many parcels of land, and as a link in the chain of title to large tracts which were former lake beds. When a private party thus acquires title to land which formed part or all of a water bed which was owned by the Federal Government, or by a state, it constitutes the means by which private title is initiated. When instead it results in a change of boundaries in the adjoining lands of private parties it serves the same purpose as a deed in its effectiveness as a transfer of title. Under either situation the riparian owner acquires a vested title of which in the one case he cannot be deprived by a subsequent patent, or statute, or in the other by a deed of the former owner.
* * *

Both plaintiffs and defendants claim title back through the original patentee, Simon P. Eggerson. However, it is clear that Simon P. Eggerson in deeding the land to defendants did not deed all of the patented land which he held and which land was adjacent to the accretion lands here in dispute. The evidence as shown by the exhibits of both plaintiffs and defendants (plaintiffs' Exhibits D and E; defendants' Exhibits 2 and 3) show clearly that there is a

strip of land still remaining in the Simon P. Eggerson estate which was never conveyed either to plaintiffs or defendants. The fact that Simon P. Eggerson subsequently deeded the ground, and in which deed he described it by meets and bounds, gives good title to plaintiffs.

The lower court in its Findings of Fact, Pars. 5, 6 and 7, would have us believe contrary to the evidence of both plaintiffs and defendants, that the lands here in dispute border on the patented lands of the defendants. However, such is not the case as can be seen by the exhibits, the maps and surveys submitted in evidence by both plaintiffs and defendants and to which there can be no dispute. The defendants in receiving title to their ground did not receive title to that strip of ground which borders on the accretion lands, the lands here in dispute. Such being the case, the defendants under the law of accretion as heretofore set forth have no claim whatsoever upon the disputed accretion lands.

Section 78-12-7, Utah Code Annotated, 1953, reads as follows:

"In every action for the recovery of real property or the possession thereof, a person establishing a legal title to the property shall be presumed to have been possessed thereof within the time required by law; and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title unless it appears that the property has been held and possessed adversely to such title for seven years before the commencement of this action."

The presumption of possession as set forth in this statute was never overcome in this case. However, the lower court in its Conclusions of Law, stated that the causes of action of plaintiffs were barred by Sections 78-12-5 and 78-12-6, which provide as follows:

"No action for the recovery of real property or for the possession thereof shall be maintained, unless it appears that the plaintiff, his ancestor, grantor or predecessor, was seized or possessed of the property in question within seven years before the commencement of the action."

"No cause of action, or defense or counterclaim to an action, founded upon the title to real property or to rents or profits out of the same, shall be effectual unless it appears that the person

prosecuting the action, or interposing the defense or counterclaim, or under whose title the action is prosecuted or defense or counterclaim is made, or the ancestor, predecessor or grantor of such person was seized or possessed of the property in question within seven years before the committing of the act in respect to which such action is prosecuted or defense or counterclaim made."

In the case of **BANK OF VERNAL v. UINTAH COUNTY, ET AL**, a decision rendered November 20, 1952, 250 P. 2d 581, the court had before them this problem and it was held in that case that the presumption of possession set forth by 78-12-7 overcomes the provisions of Sections 78-17-5 and 6.

(b) DEFENDANTS FAILED TO SHOW ADVERSE POSSESSION OF ANY OF THE LANDS IN QUESTION WITHIN THE MEANING OF THE STATUTE.

Defendants failed to show adverse possession of any of the lands in question within the meaning of the statute. Section 78-12-12, Utah Code Annotated, 1953, provides:

"Possession must be continuous, and taxes paid. In no case shall adverse possession be considered established under the provisions of any section of

this code, unless it shall be shown that the land has been occupied and claimed for a period of seven years continuously, and that the party, his predecessors and grantors, have paid all taxes which have been levied and assessed upon such land according to law."

There can be no dispute from the evidence in the record that the defendants have never paid the taxes assessed upon the disputed lands. The only taxes paid by the defendants have been on the lands which they received under deed from Simon P. Eggerson (R. 102, 103, 118, 119) and have nothing whatsoever to do with the accretion lands which are here under dispute. Only the plaintiffs or their predecessors in interest have paid taxes upon the disputed accretion lands here in question. These lands furthermore have never been assessed or taxed to anyone other than plaintiffs or their predecessors in interest. The testimony of defendants' own witness shows that the taxes upon these lands have never been paid by defendants or their predecessors in interest. (R. 102, 103, 118, 119). Such being the case

defendants cannot establish adverse possession under the statute and as such the presumption as set forth in Section 78-12-7 continues and the record title in the plaintiffs is conclusive.

(c) IN ALL THREE CASES PLAINTIFFS PROVED VALID TAX DEEDS FROM UTAH COUNTY TO PLAINTIFFS CONVEYING THE LANDS IN QUESTION.

In all three cases plaintiffs proved a valid tax deed from Utah County to plaintiffs conveying title to the lands in question. The introduction by plaintiffs of the tax sale records and also the quit-claim deed record from the County Recorder's office, establishes a prima facie case of the validity of all tax sale proceedings and the validity of the quit-claim deed. (See Sec. 59-10-64, subparagraphs (5) and (7) Utah Code Annotated, 1953). The defendants never overcame the prima facie existence of the validity of the deed and tax sale proceedings. The defendants attempted to show by bringing in the County Treasurer that there had been no affidavit attached to

the assessment rolls, and that therefore the tax sale proceedings were invalid. It should be noted at this point the testimony of Maurice Bird, the County Treasurer, as set forth more particularly in plaintiffs' statement of facts, wherein he stated that he looked in the front of the assessment book and in the back. However, he did not look anyplace else and could not say whether the auditor's affidavit was contained in another location in the assessment roll. It is plaintiffs' contention that such testimony establishes nothing. The defendants failed to maintain the burden of showing the lack of the auditor's affidavit and the testimony of the County Treasurer, Maurice Bird, establishes nothing more than the fact that he does not know whether the auditor's affidavit was contained in the assessment roll or not. Defendants argue that since the auditor's affidavit was not in the front of the book or the back of the book that it was not located in the assessment roll.

Certainly there is no requirement under the provisions of the statute that the affidavit be located in the front of the book or the back of the book. Section 59-8-7 provides as follows:

"On or before the third Monday of September the County Auditor must deliver the corrected assessment roll to the County Treasurer, with an affidavit attached thereto and subscribed by him as follows: * * *"

It is certain that if the defendants had asked the County Treasurer to search the assessment roll that they would have found the auditor's affidavit. Merely the fact that it was not located in the front of the book or the back of the book is indicative of nothing.

POINT II. IN THE EVENT THIS COURT HOLDS THAT PLAINTIFFS' RECORD TITLES ARE INVALID AND ALSO THAT PLAINTIFFS' TAX TITLES ARE INVALID, THEN THE TRIAL COURT ERRED IN FAILING TO FORECLOSE PLAINTIFFS' TAX LIEN IN ACCORDANCE WITH SECTION 59-10-65, UTAH CODE ANNOTATED, 1953.

(a) PURSUANT TO THE PROVISIONS OF 59-10-65, UTAH CODE ANNOTATED, 1953, PLAINTIFFS

**HAD A LIEN FOR TAXES AND INTEREST AS EXPENDED
BY THEM UPON THEIR TAX TITLES BEING HELD INVALID**

Section 59-10-65 provides as follows:

"Purchaser of Invalid Tax Title--Purchaser's Lien--Extent of Lien--Priority of Lien--Foreclosure of Lien.--Every person who has purchased or shall hereafter purchase any invalid tax title to any real property in this state shall from the effective date of this act have a lien against such property for the recovery of the amount of the purchase price paid to the county therefor to the extent that the county would have a lien prior to the sale by the county, but in no event shall the lien be greater than the amount of taxes, interest, and penalties, or the amount actually paid whichever is smaller; provided however, taxes paid by the purchaser for subsequent years after the purchase from the county shall be included in the amount secured by said lien, which has not already been recovered. Such lien shall have the same priority against such property as the lien for the delinquent taxes which were liquidated by such purchase except that it shall not have preference over any right, title or interest in or lien against such property acquired since the purchase of such tax title and prior to the effective date of this section for value and without notice and such lien shall bear interest at the legal rate for a period of not to exceed four years. Such lien shall be foreclosed in any action wherein the invalidity of such tax title is determined. If such lien is not foreclosed at the time of the determination of the invalidity of such tax title, any later action to foreclose

such lien shall be forever barred, provided that where such determination was made prior to the effective date of this section, such action may be commenced at anytime within one year after such effective date."

The statute is explicit in this, that upon the court finding that plaintiffs had purchased invalid tax deeds to the lands in question, there arose a lien in their favor for the amount paid for such tax titles, plus the taxes paid for the subsequent years by the plaintiffs and interest at the legal rate for four years. The statute is also very explicit in that said lien shall be foreclosed in the action wherein the invalidity of said tax title is determined. The facts of this case as set forth in the Statement of Facts are squarely in point and within the provisions of the statute.

(b) THE LANDS IN QUESTION WERE SUBJECT TO TAX BY UTAH COUNTY.

Plaintiffs' argument with respect to the law of accretion and the fact that the lands in dispute are accretion lands, as set forth

in Point I (a) of plaintiffs' argument, are incorporated herein for purposes of this question. The lands, being located in Utah, and in Utah County, and title being acquired through the patentee who had title to the land under the law of accretion, are subject to tax by Utah County. Section 59-1-1, Utah Code Annotated, 1953, provides:

"All tangible property in this state, not exempt under the laws of the United States or under the Constitution of this state, shall be taxed in proportion to its value as hereinafter provided.* * *

Section 59-2-1 provides in part:

"The property of the United States, of this state, counties * * * shall be exempt from taxation."

In the case of *JUDGE V. SPENCER*, 15 U 242, 48 P. 1097, this court early recognized the established rule, which is therein stated as follows:

"In order to relieve any species of property from its due and just proportion of burden of government, language relied on, as creating exemption from taxation, should be so clear as not to admit of reasonable controversy about its meaning, since all doubt must be resolved against exemption."

In other words, the burden is upon the defendants to show the property was not subject to taxation by Utah County and the exemption under which it is claimed to be relieved of such burden. The defendants in no way established such exemption, and they did not even attempt to establish such exemption.

CONCLUSION

In conclusion plaintiffs submit that the judgments of the lower court should be reversed and judgments entered in accordance with the plaintiffs' Statement of Points set forth herein.

Respectfully submitted,

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