

1953

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

Utah Supreme Court

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In the Supreme Court of the State of Utah

ROGER FARRER, et al.,
Plaintiffs and Appellants,

vs.

VIVIAN D. JOHNSON, et al.,
Defendants and Respondents.

CASE
NO. 8076

BRIEF OF RESPONDENTS

Appeal from the Fourth Judicial District Court of the
State of Utah, Honorable R. L. Tuckett, Judge.

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In the Supreme Court of the State of Utah

ROGER FARRER, et al.,
Plaintiffs and Appellants,

vs.

VIVIAN D. JOHNSON, et al.,
Defendants and Respondents.

**CASE
NO. 8076**

BRIEF OF RESPONDENTS

STATEMENT OF CASE

These three cases, civil numbered 16,935, 16,936, and 16,937, by stipulation of the parties, were consolidated for trial and were tried jointly on December 15 and 16, 1952. The plaintiffs in each of their respective amended complaints claimed title to the described lands and sought to have title quieted. In their respective answers the defendants denied plaintiffs' claim of title to said lands and counterclaimed in each case that they were the owners in possession thereof. Defendants further claimed plaintiffs' respective actions were barred by statutes of limitations. The court made and entered findings of fact, conclusions of law, and decree in

each case in favor of defendants. From these judgments the plaintiffs have appealed. We will hereinafter refer to appellants as plaintiffs and respondents as defendants.

STATEMENT OF FACTS

At the trial it was undisputed that the land described in each of plaintiffs' amended complaints adjoins the Utah Lake Meander Line and extends South thereof to the water's edge of Utah Lake. Also, these lands border the lands described in defendants' counterclaims which lie North of said Meander Line. The disputed lands are popularly known in this community as Utah Lake "accretion ground." (Defendants' Exhibit 2). (R. 69-70).

The disputed lands were never patented by the United States of America or the State of Utah, and none of the parties hereto deraign title from a patentee thereof. (Defendants' Exhibit 3) (R. 70, 71, 72 and 151).

The land to the North of the said Utah Lake Meander Line was patented by the United States of America to one Simon P. Eggertson in 1872. Defendants deraign title to these patented grounds through mesne conveyances from this patentee, as shown in the Abstracts received in evidence as defendants' Exhibits 4 and 5. The Abstract, Exhibit 4, shows the descent of title to defendants in cases 16,935 and 16,936 in part, and the Abstract, defendants' Exhibit 5, shows the descent of title to defendants in case 16,936 in part and case 16,937. These patented lands now owned and possessed by defendants lie immediately North, and, with the exception of a narrow strip along the Meander Line, hereinafter noted, they immediately adjoin the said accretion ground on the North. Defendants' predecessor, Simon P. Eggertson, conveyed most of these lands

in defendants' chain of title November 6, 1873. Defendants' Exhibit 4, Entry 3, and Defendants' Exhibit 5, Entry 2). It should be noted that the Warranty Deed from Simon P. Eggertson to George T. Peay, from which plaintiffs attempt to deraign title, was dated June 16, 1883, some 10 years after the conveyance from the patentee to defendants' predecessor. Defendants described these patented lands in the first paragraph of the descriptions contained in their respective counterclaims. Defendants' lands are platted within the red lines shown on defendants' Exhibit 2, and their relative position to the disputed lands is also there shown.

As indicated above, the disputed lands lying adjacent to defendants' said patented lands and South of the Meander Line extending to the water edge of the Lake are known as "accretion ground." There has never been any United States or Utah State patents issued covering these lands. Plaintiffs seek to deraign title in each case, other than 16,935, from Simon P. Eggertson, as patentee. Plaintiffs' Exhibits A, B, C, Entries 1 and 2 of each). But the said Eggertson Patent did not cover any of the lands described in the said George T. Peay deed. (Defendants' Exhibit 3). The lands described in this Eggertson-Peay deed all lie South of the Meander Line, and were never patented at all.

Plaintiffs' claim is based principally upon tax titles in each of their cases. The plaintiffs in cases 16,936 and 16,937, after procuring their tax titles from Utah County, did procure quit-claim deeds from the successors to George T. Peay, to whom the lands described in those cases were distributed in the George T. Peay probate proceedings. (Plaintiffs' Exhibits B and C). But in 16,935 no such quit-claim

deed was procured, and plaintiffs rely absolutely on the tax title. (Plaintiffs' Exhibit A).

The witness Maurice Bird, Utah County Treasurer, and his uncontradicted evidence establishes that the assessment rolls in his office, of which he is the official custodian, showing the tax sales on the properties described in the respective complaints for the years when the tax sales were made, 1930 through 1937, contain no Auditor's Affidavit and that there was no evidence that any had ever been attached. (R. 192-105).

Plaintiffs made no claim in these suits to the lands lying North of the Utah Lake Meander Line. There seems to be a small strip of land lying immediately North of the Meander Line and bounding defendants' patented ground on the South which was not conveyed by Simon P. Eggertson to defendants' predecessors. (Defendants' Exhibit 2). Title to this narrow strip still rests in the Simon P. Eggertson estate. But that it was understood to have been conveyed to defendants' predecessors is shown by an abortive attempt to convey it in 1901 by the Simon P. Eggertson heirs to the defendants' predecessor, Thomas L. Vincent. (Defendants' Exhibit 7) (R. 138). In any event, defendants and their predecessors have always occupied this strip along with their other lands. (R. 113-149).

Defendants and their predecessors in title have at all times paid all the taxes levied and assessed against the patented part of their disputed lands. (R. 118 and 136) (Defendants' Exhibit 6). The accretion part, the disputed lands, has never been assessed to them, and they had no knowledge of the disputed lands being assessed for taxes to any one until these lawsuits were commenced. (R. 118, 119, 137, 140-141). It is undisputed that comparable ac-

cretion land in the same general area to the East of defendants' farm has never been assessed for taxation purposes.

Defendants and their predecessors have been in actual, peaceable, open, notorious, exclusive, and uninterrupted possession of the disputed lands under claim of title adverse to all the world for more than seven years prior to the commencement of these actions, and for upwards of 50 years prior thereto (R. 113-149); and that all during that period defendants and their predecessors have fenced and maintained same, cultivated, cropped, and have made large expenditures thereon for irrigation and drainage purposes. The said lands lying between the Lake water edge and the Meander Line constituted an average area of about 70 acres during more than 50 years last past. (R. 11, 135). The defendants and their predecessors during all of that period have protected it by a substantial enclosure, cultivated and improved it, and have expended labor and money on it for irrigation purposes amounting to about \$2,000.00, or about \$28.57 per acre. (R. 75-83, 87-90, 94-97, 106-113, 115-117, 130-135).

That defendants' predecessors, Thomas L. Vincent and Ralph Vincent, his son, defended legal actions over the West fence boundary line of the disputed lands, once in 1801, which controversy was settled by agreement (Defendants' Exhibit 4, Entry 13), once in 1942, where damages to crops growing on the disputed accretion ground was recovered by them (See *Ralph Vincent v. Federal Land Bank, et al.*, Civil No. 12,230, Trial Court), and also when one Jesse Evans was put off the land when he attempted to assert a right under a State of Utah lease in the 1930's. (R. 130, 132, 137).

All three of the plaintiffs' cases were filed February 4,

1952, and neither the plaintiffs nor their predecessors have ever been in possession of same. (R. 4, 161, 181).

STATEMENT OF POINTS

POINT I. THE TRIAL COURT MADE NO ERROR IN FAILING TO QUIET TITLE TO THE LAND IN QUESTION IN PLAINTIFFS.

(a) Th Tax Sale Proceedings In Each Of The Instant Cases Were Fatally Defective Because The Required Auditor's Affidavit Was Never Attached To The Pertinent Assessment Rolls.

(b) Apart From The Void Tax Titles The Claims of Plaintiffs In The Instant Cases Are Barred By The Provisions Of Our Law Requiring Them To Be "Seised Or Possessed Of The Property Within Seven Years Before The Commencement Of The Action".

POINT II. THE TRIAL COURT DID NOT COMMIT ERROR BY FAILING TO FIND AND FORECLOSE LIENS FOR TAXES PAID BY PLAINTIFFS ON THE LANDS IN QUESTION AFTER HOLDING THEIR CLAIMED TAX TITLES VOID.

POINT III. THE TRIAL COURT CORRECTLY FOUND IN FAVOR OF DEFENDANTS AND QUIETED THEIR TITLE TO THE DISPUTED LANDS.

(a) Defendants Record Title To Adjacent Patented Lands Entitled Them To The Disputed Lands Under The Accretion Doctrine.

(b) Defendants Acquired Title To The Disputed Lands By Adverse Possession Thereof For Upwards Of 50 Years.

ARGUMENT

POINT I. THE TRIAL COURT MADE NO ERROR IN FAILING TO QUIET TITLE TO THE LAND IN QUESTION IN PLAINTIFFS.

Upon this record, and there is no substantial dispute in the evidence, it is defendants' position that the plaintiffs' claim of title to the disputed land fails, and that defendants should be adjudged to be the owners thereof and their title quieted.

(a) The Tax Sale Proceedings In Each Of The Instant Cases Were Fatally Defective Because The Required Auditor's Affidavit Was Never Attached To The Pertinent Assessment Rolls.

The plaintiffs' tax title to the disputed lands is bad in each case, and their claims based thereon must fail. Tax titles to be valid must be based on tax assessment and sale procedures strictly in accordance with the statutes providing thereon. Whoever sets up a tax title must show that all the requirements of the law have been complied with. *Bolognese v. Anderson, et al.*, (1935) 87 U. 450, 44 P2d. 706, and other Utah cases cited in the Utah Report at page 453. The Tax Deed made in accordance with the provisions of either 59-10-64(5) or 59-10-62, U. C. A., 1953, is prima facie evidence of all proceedings subsequent to the preliminary sale. However, the Auditor's Affidavit required by law to be attached to the assessment roll in which the tax sale is recorded is a condition precedent to a valid Tax Deed based thereon. *Telonis v. Staley, et al.*, (1943) 104 U. 537, at pages 544-5, 144 P2d. 514. *Jenkins v. Morgan* (1948) 113 U. 534, at page 540, 196 P2d. 871. In each of the instant cases it was proved conclusively from the evidence of

Maurice Bird, the Utah County Treasurer, that no affidavit was attached to the assessment rolls in which the tax sales of any of plaintiffs' lands appear for the years 1930 through 1937, and there was no evidence that such affidavits had been so attached. This evidence was held to be conclusive in *Jenkins v. Morgan*,¹ supra. In that case the County Treasurer and his deputy testified they had examined all assessment rolls for 1917 and 1939 and found no Auditor's Affidavits attached thereto and no evidence of such affidavits ever having been so attached. The court held that this uncontradicted evidence was sufficient to support a finding that the affidavits were not attached to the assessment rolls as required by law. A new presumption was here found to have been established that officers will perform their duties and if the document cannot be found where it ought to be under the law, that the same never existed, the court saying, pages 541-2, Utah Report:

"The record shows the testimony of the County Treasurer and his Deputy that they had examined all assessment rolls for 1917 and 1937 and had failed to find any auditor's affidavits attached thereto or any appearance of there ever having been any auditor's affidavits so attached. This testimony stands uncontradicted and under the rule adopted in *Tree v. White*, supra, the evidence is sufficient to support the finding of the trial court. In that case we adopted the rule found in *Hall v. Kellogg*, 16 Mich. 135, as follows.

"The law presumes that all officers entrusted with the custody of public files and records, will perform their official duty by keeping them safely in their offices. Where a paper is not found where, if in existence, it ought to be deposited or recorded, the presumption therefore arises that no such document has ever been

in existence. * * * Until this presumption is rebutted, it must stand as proof of such non-existence' " (171 P.2d 400)."

It follows that the tax title in each of plaintiffs' cases much fail because the Auditor's Affidavit was never attached to the pertinent assessment rolls as required by law. Inasmuch as plaintiffs do not claim title as having descended to them from George T. Peay in connection with case 16,935, the failure of the tax title therein is conclusive and precludes their recovery in that case.

(b) Apart From The Void Tax Titles The Claims Of Plaintiffs In The Instant Cases Are Barred By The Provisions Of Our Law Requiring Them To Be "Seised Or Possessed Of The Property Within Seven Years Before The Commencement Of The Action."

The plaintiffs' respective claims of title in these suits are barred by the provisions of the statute of limitations hereinafter set forth. These are actions brought for the recovery of real property within the meaning of Sections 78-12-5 and 6, U. C. A., 1953, 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 counter claim 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 coun-

terclaim 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."

Plaintiffs are barred under either or both of the foregoing sections for the reason that they have never been "seised or possessed" of the property to which they seek to quiet their title within seven years before the commencement of their actions or before the committing of the act in respect to which the actions are prosecuted. The plaintiffs, nor their predecessors, have never been "seised or possessed" within the meaning of these statutes. A person with the bare legal title, to say nothing of void tax title, is not seised or possessed as required by this law. In 38 Words and Phrases, page 513, the term "seised" is defined, quoting a Minnesota case, as follows:

"The title of the owner of a freehold estate is described by the word 'seisin', or 'seisin in fee'; yet in a proper legal sense the holder of the legal title is not 'seised' until he is fully invested with possession, actual or constructive. When there is no adverse possession, the title draws to it the possession. There can be but one actual seisin, and this necessarily includes possession; and hence an actual possession in hostility to the true owner works a disseisin. Thus, in a statute limiting the time for the commencement of actions to recover real property, unless the plaintiff was seised or possessed of the premises within a certain time, the term 'seised' is not used in contradistinction to 'possessed', so as to admit of an interpretation that the legal title or ownership only would be sufficient to prevent the statute running as against the true owner, though a stranger be in the actual occupancy—'pedis

possessione'—of the land in dispute. *Seymour v. Carli*, 16 N. W. 495, 31 Minn. 81."

The Minnesota case has been reaffirmed on this particular point in *Mellenthin v. Brantman* (1941) (Minn.) 1 N. W. 141, at page 143.

The Utah statute 78-12-7, U. C. A., 1953, cited by counsel (App. Br. 25) and *Bank of Vernal v. Uintah County, et al.*, _____U._____, 250 P2d. 581 (App. Br. 26) construing same in connection with 78-12-5 and 6, U. C. A., 1953, affirm the rule of the foregoing Minnesota cases. Sylabus 5 of the Pacific report reflects the holding of the court in the *Bank of Vernal* case, pages 581-2:

"In quiet title action brought by a bank which had purchased involved realty at mortgage foreclosure sale and was entitled to presumption of possession under statutory provision that in action for recovery or realty or possession thereof, person establishing legal title shall be presumed to have been possessed thereof within time required by law, and that occupancy thereof by another shall be deemed to have been in subordination to legal title, unless realty has been held and possessed adversely to legal title for seven years prior to commencement of action, defendant's evidence was insufficient to rebut presumption of possession which inured to bank. U. C. A., 1943, 104-2-5 to 104-2-7."

In the instant cases there could be no presumption of title in the owner under 78-12-7 because "it appears that the property had been held and possessed adversely to such legal title for seven years before the commencement of the action." Indeed, on this record such adverse possession existed for upwards of 50 years before this action was commenced.

The record in the instant cases shows that neither the plaintiffs nor any of their predecessors have ever been seised or possessed of the disputed lands at any time. Their claims, therefore, are barred by the foregoing limitations statutes.

POINT II. THE TRIAL COURT DID NOT COMMIT ERROR BY FAILING TO FIND AND FORECLOSE LIENS FOR TAXES PAID BY PLAINTIFFS ON THE LANDS IN QUESTION AFTER HOLDING THEIR CLAIMED TAX TITLES VOID.

In their brief plaintiffs are claiming that they are entitled to a lien upon the disputed lands for amounts paid Utah County for same and rely upon 59-10-65, U. C. A., 1953, asking that same be foreclosed if the Court finds their tax titles bad. We believe this contention is a tacit admission of defendants' position that plaintiffs' tax titles are invalid. However, it is our contention, despite 59-10-65, that plaintiffs have no tax lien against these lands, and consequently there is nothing to be foreclosed. Let's briefly examine this statute and its background.

Section 59-10-65, U. C. A., 1953, was passed by the 1951 Legislature (L. 1951, Ch. 96) as a new Section 80-10-68.1 in U. C. A., 1943, and it provides as follows:

"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, in-

terest, 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 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 validity 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 any time within one year after such effective date."

This section was apparently passed to change the law announced by our Supreme Court in *Anson v. Ellison*, 104 U. 576, 140 P2d. 653. In that case the plaintiff purchased an invalid tax title for \$275.58 and took conveyance by quitclaim deed from Salt Lake County. The tax title being held bad, plaintiff claimed a lien for the amount she had paid the county and asked that it be foreclosed. The trial court denied the relief and on appeal the Supreme Court affirmed, saying, among other things: (Pacific Report, 655)

"We seriously doubt in any event that the plaintiff could turn this action to quiet title into an action to foreclose a lien, but we lay aside this procedural ques-

tion and turn to the merits of plaintiff's argument. As already pointed out, it is doubtful that the stipulation that a certificate of sale had been issued is sufficient to show a valid levy and assessment, and a valid lien will not arise from an invalid levy and assessment. Although it may be that when a tax is subsequently properly levied the lien may relate back to the first of January of the year that proper levy should have been made."

We seriously doubt that the foregoing statute can convert and change a suit-to-quiet-title into an action to foreclose a tax lien without doing violence to the constitutional guarantee of due process of law. In any event, after giving this section full effect, it does not give plaintiffs the right to foreclose tax liens in the instant case. It should be noted that the said law contains the provision that every person who purchases an invalid tax title:

" . . . shall . . . 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"

Thus, plaintiffs' right to a lien is conditioned on whether or not the county had a lien prior to the sale to them and only to that extent. The nature and extent of the county's tax lien is provided for in 59-10-3, U. C. A., 1953, as follows:

"Every tax upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of real estate is a lien upon the land and improvements; which several liens attach as of the 1st day in January of each year."

In *Anson v. Ellison*, *supra*, this section was interpreted and it was there held that "a valid lien will not arise from an invalid levy and assessment." Only lands that are lawfully assessed give rise to valid tax liens. The disputed lands were not lawfully assessed, and even if all levy and assessment steps had been taken, as provided by law, no tax lien could possibly arise in favor of the county, or at all. As was held in *Plutus Mining Co. v. Orme*, 76 U. 286, 289 P. 132, where the assessed property was not within the limits of the taxing authority the assessment is unlawful and invalid. As already indicated above, the disputed lands were unpatented Utah Lake accretion lands. The first assessment ever made thereon seems to have been for the year 1914 (Plaintiffs' Exhibits A, B, and C), indicating that some 30 years elapsed after the conveyance of Simon P. Eggertson to George T. Peay before an attempt to assess them was made. The land described in the said Eggertson-Peay deed seems to be the only accretion ground ever to be assessed in the area. This is perhaps because either (1) it was supposed to be United States land, or (2) it was thought to be Utah State land, or (3) it was accretion ground and not productive because submerged so much of the time. When Utah became a state its inhabitants disclaimed all right, title, and interest in unappropriated public lands within its boundary, leaving such lands in the ownership of the United States. (Constitution of Utah, Article III, Second). The property of the United States, or of this State, is exempt from taxation. (59-2-1, U. C. A., 1953). These disputed lands were unappropriated public lands, and the Eggertson attempt to convey them to Peay was abortive and a nullity, as was the subsequent attempt to assess and tax same. Utah County acquired no lien by virtue of the in-

valid proceedings in these cases. Therefore, the plaintiffs' liens claimed under 59-10-65 must fail.

POINT III. THE TRIAL COURT CORRECTLY FOUND IN FAVOR OF DEFENDANTS AND QUIETED THEIR TITLE TO THE DISPUTED LANDS.

(a) Defendants' Record Title To Adjacent Patented Lands Entitled Them To The Disputed Lands Under The Accretion Doctrine.

It is undisputed that the defendants have the record title to the patented lands lying North of the Meander Line and on the North boundary of the disputed lands. Title to same has descended to defendants by mesne conveyances from Simon P. Eggertson, patentee. We take the position that such ownership carried with it ownership of the accretion lands to the high water mark at Statehood. *Provo City v. Jacobson*, _____ U. _____, 217 P2d. 577. No one makes a claim here, nor is there any proof, that the State had title to the disputed lands at Statehood. Therefore, the defendants by reason of their ownership of the patented lands own the disputed lands to the water's edge. The above mentioned Eggertson's heirs deed shows their recognition of defendants' and their predecessors' patented ground title to the Meander Line. Thus, defendants' record title to the said patented ground amply sustains their right to the ownership of the disputed lands.

(b) Defendants Acquired Title To The Disputed Lands By Adverse Possession Thereof For Upwards Of 50 Years.

But apart from their said record ownership of the disputed lands, defendants have acquired title thereto by adverse possession. The defendants' predecessor, Thomas L.

Vincent, took possession of the disputed lands under written instruments in 1884, 1892, and 1898 (Defendants' Exhibit 4, Entry 5, and Exhibit 5, Entries 5 and 6), and ever since then he and his successors in title, including the defendants, have continuously occupied same under claim of right, fenced, cultivated, cropped, pastured, and adversely held same against all the world and paid all taxes lawfully assessed against same. All the requirements as to adverse possession under written instruments, as provided for in Section 78-12-9, U. C. A., 1953, have been met and complied with by the defendants and their predecessors for more than seven years before the filing of the defendants' counterclaims. Indeed, for upwards of 50 years the defendants and their predecessors (1) have usually cultivated and improved the disputed lands and (2) have built and protected same by a substantial enclosure.

Also, the defendants and their predecessors have met all requirements as to adverse possession, even if their claim were not founded upon a written instrument, as required by Section 78-12-11, U. C. A., 1953. The record shows that the defendants and their predecessors for upwards of 50 years have (1) protected the disputed lands in their possession by a substantial enclosure consisting of fences, (2) that all during said period these lands have been usually cultivated and improved by them, and (3) labor and money have been expended for the purpose of irrigating and draining the said lands in a sum amounting to more than \$5.00 per acre, as hereinabove shown.

Also, the defendants have fully complied with the provisions of Section 78-12-12, U. C. A., 1953, which provides as follows:

"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 the 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."

The defendants and their predecessors have continuously and adversely possessed the disputed lands for more than seven years, as required by the foregoing statute. Furthermore, they have paid all taxes levied and assessed against the same "according to law", as required thereby. There is no provision in our law which permits assessment of unpatented lands belonging either to the United States or the State of Utah. Indeed, the Utah Lake accretion grounds generally, other than the George T. Peay lands, have never been assessed for taxation purposes, and as shown by the evidence in this case, the same are still not assessed or taxed. The theory is that due to the rise and fall of the waters of the Lake the accretion lands are extremely uncertain as to their utility value. The record in the instant case shows that they are presently completely submerged by the water of the lake. Over the years the assessment and taxing of the patented ground adjacent thereto is all that is required of those who possess the accretion lands bordering same. The fact that an assessment was made against the disputed lands does not make such assessment valid, and, in fact, results in unlawful assessment. If taxes were not lawfully assessed against these lands, then the adverse claimant is not required by the foregoing section to pay such taxes and may acquire title with-

out doing so. *Utah Copper v. Chandler* (1914) 45 U. 85, 142 P. 1119.

CONCLUSION

The trial court committed no error in making its findings, conclusions, and decree in favor of defendants. It is abundantly clear from the record in each of the instant cases that the claims of the plaintiffs are barred by the statute of limitations, as above set forth. But apart from that, the plaintiffs have failed to show by a preponderance of the evidence, or at all, any record title in themselves. It is further established by this record that the plaintiffs' claimed tax titles are invalid. And, finally, the disputed lands were never assessable. Utah County never became entitled to tax liens thereon. Consequently, the plaintiffs are not entitled to liens for the amounts paid the County for same. The evidence overwhelmingly establishes that the defendants own the disputed lands (1) because they are the record owners of the patented grounds to which the disputed lands attach, and (2) if such were not the fact, defendants have acquired title to same by adverse possession. Defendants have been rightfully adjudged by the lower court to be the owners of the said lands and to have their title thereto quieted, and the judgment of the lower court should be affirmed.

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