

1960

# Rennold Pender v. Mose Alix et al : Brief of Intervening Plaintiff and Respondent Leon Brown in Answer to Appellant's Petition for and Brief on Rehearing

Utah Supreme Court

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Boyden, Tibbals, Staten & Croft;

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

RENNOLD PENDER,  
*Plaintiff & Appellant,*

vs.

MOSE ALIX, et al,  
*Defendants & Respondents,*

vs.

LEON BROWN,  
*Intervening Plaintiff  
& Respondent.*

FILED

OCT 17 1960

Supreme Court, Utah

Case No. 9167

BRIEF OF INTERVENING PLAINTIFF AND  
RESPONDENT, LEON BROWN, IN ANSWER TO  
APPELLANT'S PETITION FOR, AND BRIEF  
ON REHEARING.

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RESPONDENT, LEON BROWN, IN ANSWER TO  
APPELLANT'S PETITION FOR, AND BRIEF  
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INTRODUCTION

Appellant has filed with this Honorable Court a "Petition For, and Brief On Rehearing," whereby Appellant Rennold Pender seeks to bring before this Court for re-consideration the decision rendered by the court herein on the 24th day of August, 1960. Respondent, Leon Brown, makes reply and answer to said Petition For, and Brief On Rehearing, as follows:—

## POINT RELIED UPON

APPELLANT DOES NOT BRING ANY NEW MATTERS BEFORE THE COURT, NOR SHOW ANY MISCONSTRUCTION BY THE COURT WHEREBY THE DECISION OF THIS COURT HERETOFORE MADE IN THIS CAUSE IS INCONSISTENT WITH THE PRIOR ESTABLISHED DECISIONS OF THE COURT. APPELLANT'S PETITION FOR REHEARING AND BRIEF ON REHEARING ARE MERELY AN ARGUMENT WITH THE DECISION OF THE MAJORITY OF THE COURT.

## ARGUMENT

Rule 76 (e) (1) of the Utah Rules of Civil Procedure provides:—

“Within 20 days after the filing of the decision of the Supreme Court, either party may petition the Court for a rehearing. The Petition shall state briefly the points wherein it is alleged that the appellate court has erred. The petition shall be supported by a brief of the authorities relied upon to sustain the points listed in such petition. \* \* \*”

It thus appears that a petition for rehearing may, under the Rule quoted, be filed as a matter of right. This has been so in Utah since the early days of this Court. At an early date, however, the Court found itself confronted with the necessity of establishing some restrictions on the granting of petitions for rehearing. In the case of *Ducheneau v. House*, Sup. Ct. of Utah July 3, 1886, 4 U. 483, 11 P. 618, this court said:—

“The petition for rehearing states no new facts or grounds for a reversal of the judgment of the lower court. It is mainly a reargument of the case. We have repeatedly called attention to the fact that no rehearing will be granted where nothing new and important is offered for our consideration. We again say that we cannot grant a rehearing unless a strong showing therefor be made. A reargument, or an argument with the Court upon the points of the decision, with no new light given, is not such a showing. The rehearing is denied.”

To the same effect is the case of *Jones v. House* decided by the Court the same day and appearing at 4 U. 484, 11 P. 619.

In the case of *Cummings et ux. v. Nielson, et al*, 42 U. 157, 129 P. 619, this Honorable Court set forth in somewhat more detail its views with respect to the showing required before a petition for rehearing would be granted. In that case a petition for rehearing was filed before the Court and on January 29, 1913, the Court handed down its decision denying the petition. The Honorable Justice Frick wrote the opinion in which McCarty, C. J., and Straup, J., concurred. We quote from Page 624 of the report as set out in the Pacific Reporter:—

(11) We desire to add a word in conclusion respecting the numerous applications for rehearings in this court. To make an application for a rehearing is a matter of right, and we have no desire to discourage the prac-

tice of filing petitions for rehearings in proper cases. When this court, however, has considered and decided all of the material questions involved in a case, a rehearing should not be applied for, unless we have misconstrued or overlooked some material fact or facts, or have overlooked some statute or decision which may affect the result, or that we have based the decision on some wrong principle of law, or have either misapplied or overlooked something which materially affects the result. In this case nothing was done or attempted by counsel, except to reargue the very propositions we had fully considered and decided. If we should write opinions on all the petitions for rehearings filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and, if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases. Let it again be said that it is conceded, as a matter of course that we cannot convince losing counsel that their contentions should not prevail, but in making this concession let it also be remembered that we, and not counsel must ultimately assume all responsibility with respect to whether our conclusions are sound or unsound. Our endeavor is to determine all cases correctly upon the law and the facts, and, if we fail in this, it is because we are incapable of arriving at just conclusions. As a general rule, therefore, merely to reargue the grounds originally presented can be of little, if any, aid to us. If there are some reasons, however, such as we have indicated above, or other good reasons, a petition for rehearing should be promptly

filed, and if it is meritorious, its form will in no case be scrutinized by the Court.

There is no merit to the present petition, and it is therefore denied."

Insofar as the writer has been able to determine, the decisions quoted are the law of the State and announce the rule of this Court with respect to the granting of petitions for re-hearing.

The petition of the Appellant in this case, makes no pretense of setting forth any new matter. Appellant's point (1) of his Petition for Rehearing was argued extensively in Appellant's Brief on Appeal as Point No. II, and as Point III of his Reply Brief on Appeal. Point (2) raises no new questions, nor does it present any matter which was not previously considered by this Court and by the trial court. Appellant changes emphasis by seeking to withdraw from the admissions of his pleadings and of his brief and reply brief on appeal, and to now belatedly present the case as though handled on default. Such is not the fact. Appellant had multitudinous opportunities to put respondent to his proof on the issue of whether the County Deed to Leon Brown was a tax deed and conveyed the County Tax Title, but never did so. Throughout the case the Appellant has accepted the deed as a tax deed and as conveying a tax title, and has not denied this either by pleading or by brief on appeal. Appellant's point



(3) is nothing but reargument of Point III of his Brief on Appeal and of a portion of Point III of his Reply Brief on Appeal. Point (4) of the Petition for Rehearing is merely a restatement of the arguments of Point IV of the Appellant's brief on appeal.

It is noted that Appellant does not cite a single authority in his Petition for Rehearing with which the decision rendered by this Court is inconsistent, nor does appellant present anything which was not considered by this Court previously, with the solitary exception that appellant quotes liberally the dissenting opinion of Chief Justice Crockett filed in the instant case. The writer assumes that the dissent of Chief Justice Crockett does not constitute new material for the Court's consideration, as it is assumed that the majority of the Court had been favored with the Chief Justice's views prior to the handing down of the decision.

The decision of the Court handed down in the instant case is entirely consistent with the previous holding of this Court in like cases, particularly the case of *Hansen v. Morris*, 3 U. 2d 310, 283 P. 2d 884 and *Petersen v. Callister*, 6 U. 2d 359, 313 P. 2d 814.

## CONCLUSION

No new material having been presented for the Court's consideration in Appellant's petition for Rehearing and Brief in Support Thereof, Respondent Leon Brown respectfully submits to the Court that the Petition should be denied and the decision previously rendered herein by the Court should be affirmed.

Respectfully submitted,

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