1971

Mabel S. Johnson v. Sandy City Corporation : Brief of Respondent

In The Supreme Court of the State of Utah

MABEL S. JOHNSON, et. al.

Plaintiff and Respondent

vs.

SANDY CITY CORPORATION,

Defendant and Appellant

BRIEF OF RESPONDENT

Appeal from the Judgment of the
District Court, Salt Lake County, Hon.
M. Hanson, Presiding.

MYRNA MAE NEBEKER
Suite 212, Phillips Petroleum Building
Salt Lake City, Utah.
Attorney for Respondent

ROBERT D. CROFTS, ESQ.,
Felt Building,
Salt Lake City, Utah; and
JOHN B. ANDERSON, ESQ.,
115 South Main Street,
Salt Lake City, Utah.
For the Appellant

TABLE OF CONTENTS

Page

STATEMENT OF THE NATURE OF THE CASE 1

STATEMENT OF FACTS 2

DISPOSITION IN THE LOWER COURT .. 6

RELIEF SOUGHT ON APPEAL 6

ARGUMENT 6

POINT I

THE JUDGMENT AND PROCEEDINGS IN THE LOWER COURT ARE PRESUMED TO BE CORRECT BY THE REVIEWING COURT ON APPEAL. 6

POINT II

AN APPEAL IS LIMITED TO THE PROCEEDINGS IN THE DISTRICT COURT UPON WHICH JUDGMENT IS BASED. 8

POINT III

THE PROVISIONS OF UTAH CODE ANNO. (1953) § 10-3-1 MUST BE STRICTLY CONSTRUED. 11

POINT IV

APPELLANT'S ARGUMENTS IN SUPPORT OF "SUBSTANTIAL COM-

TABLE OF CONTENTS—Continued

Page

PLIANCE" ARE NOT FOUNDED UPON UTAH LAW. 17

CONCLUSION 22

CASES CITED

Application of Peterson, 92 Utah 212, 66 P2n 1195, (1937) 15

Atwood v. Cox, 88 Utah 437, 55 P 2d 377 (1936) .. 9

Baugh v. Criddle, 19 Utah 2d 361, 431 P 2d 790 (1967) 16

Burton v. Zions Co-operative Mercantile Institution, 122 Utah 360, 249 P 2d 514 7

Charleton v. Hackett, 11 Utah 2d 389, 360 P 2d 176 (1961) 7

Coombs v. Perry, 2 Utah 2d 381, 275 P 2d 680 (1953) 7

Corbet v. Corbet, 24 Utah 2d 378, 476 P 2d 430 (1970) 8

Crane v. Board of Sup'rs of L. A., 62 P 2d 189 (1936) Cal. 20

Daisy Distributors, Inc. v. Local Union 976, 8 Utah 2d 124, 329 P 2d 414 (1958) 8

Farwell v. Cohen, 28 N E 35, (1891) Ill. 17

Hadley v. Wood, 9 Utah 2d 366, 345 P 2d 197 (1959) 8

Leithead v. Adair, 10 Utah 2d 282, 351 P 2d 956 (1960) 7

Page

Miles v. Wells, 22 Utah 55, 61 Pac 534 (1900) 14

Nagle v. Club Fountainblue, 17 Utah 2d 125, 405 P 2d 345 (1965) 7

People v. Ellis, 97 N. E. 697, 235 Ill 369 (1912) 18-19

Petty v. Gindy, 17 Utah 2d 32, 404 P 2d 30 (1965) 7

Plautis Mining Co. v. Orme, 76 Utah 286, 298 P 132 11-15

Rafferty v. Corina, 285 Pac 94, Cal (1955) 20

Salt Lake City v. Sutter, 61 Utah 533, 216 Pac 234 15

Spokane County v. Glover, 2 Wash 2d 162, 97 P 2d 628 14

Taylor v. Johnson, 15 Utah 2d 342, 298 P 2d 382 (1964) 8

Toledo v. People, 225 Ill, 425, 80 NE 283 19

Tucker Realty Inc. v. Nunley, 16 Utah 2d 97, 396 P 2d 410 (1964) 7

Universal Investment Co. v. Carpets, Inc., 16 Utah 2d 336, 400 P 2d 564 (1965) 8

Utah Rapid Transit Co. v. Ogden City, 89 Utah 2d 546, 58 P 2d 1 (1936) 13

Wendleboe v. Jacobson, 10 Utah 2d 344, 353 P 2d 178 (1959) 8

AUTHORITIES CITED

Charles S. Rhyne, MUNICIPAL LAW, p. 31 14

TABLE OF CONTENTS—Continued

Page

STATUTES CITED

Utah Code Annotated, (1953) Section 10-3-1 ..... 1, 2, 9, 10, 11, 20, 21

CONSTITUTIONAL PROVISIONS

CONSTITUTION OF UTAH, Article 11, Sec. 5 15

In The Supreme Court of the State of Utah

MABEL S. JOHNSON, et. al.
Plaintiff and Respondents

vs.

SANDY CITY CORPORATION,
Defendant and Appellant

Case No. 12592

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This action brought by the Plaintiff-Respondents before this Court on an Original Petition for a Writ of Quo Warranto for the purpose of Ousting the Defendant-Appellant from exercising governmental authority over the areas annexed on March 20, 1968, November 27, 1968, October 22, 1969, and October 14, 1970, located adjacent to the westerly City Limits of Sandy City for the reason that such annexations were null and void from their inception for lack of compliance with the Provisions of Utah Code Anno., (1953) 10-3-1, said writ having been made returnable before the Third Judicial District Court, In and For Salt Lake County, State of Utah.

STATEMENT OF FACTS

Four areas were Annexed to the City of Sandy, in Salt Lake County, State of Utah, lying to the west of the existing city limits, said annexations were defective for failure to comply with the provisions of Utah Code Anno. (1953) 10-3-1. The annexation of March 20, 1968, purported to annex an area approximately 675 feet by 1466 feet extending from east to west from State St., to 150 West Street in Salt Lake County at approximately 8500 South (Exhibit 1-P) (R-9).

No ordinance was recorded in the office of the Salt Lake County Recorder to make such annexation complete, (T-3-R-105) until June 9, 1971, this action having been originally filed in the Supreme Court of the State of Utah on the 12th day of April, 1971. Annexations of November 27, 1968 (Exhibit 2-P) October 22, 1969 (Exhibit 3-P) and October 14, 1970 (Exhibit 4-P) were annexed to the City Limits of the Defendant-Appellant Municipality, without the required Petitions in Writing signed by the majority of the owners, of 1/3 in value of the property annexed, Defendant Appellant was ordered by the Honorable Judge Merrill K. Faux, on the 7th day of May, 1971, (R-62), pursuant to Respondent's Order to Show Cause, to produce the original petition upon which action was taken by the City Council of Sandy City to annex the four areas as shown on Exhibits P-1, P-2, P-3 and P-4.

The record reveals no compliance with the Order of May 7, 1971.

Appellant's Brief incorrectly states facts upon which no evidence was presented to the Lower Court, (Appellants Brief 3-4). No evidence of a Petition for any of the four annexations were received by the Lower Court. No evidence was offered that a regularily scheduled City Council meeting was held on March 20, 1968. No proof of posting of any ordinances were offered to the Court. Which proof, if offered would have been immaterial pursuant to Utah Code Anno. (1953) 10-3-1, which does not require posting of the annexation ordinances. No testimony was offered as to the delivery of an ordinance to the City Manager, and by the City Manager to "another" for delivery to the Salt Lake County Recorder's Office for recordation. No evidence was offered the City provided any services to the area annexed on March 20, 1968.

Respondents objected to the intrusion upon their unincorporated area by the City of Sandy and various time March 12, 1964 (R 23-32), July 10, 1970 (R 40-42), November 13, 1970 (R 43-50), by means of petitioning Sandy City, and the Board of County Commissioners of Salt Lake County. The Petitioners sought redress from the actions of the Defendant-Appellants from the Attorney General of the State of Utah (R-11) and denial was made to the Plaintiffs of the

action by the Attorney General's office for the purpose of entitling the Plaintiffs to bring a Writ of Quo Warranto before this Court (R-5).

Two hearings were held on the Plaintiff's Motion to Show Cause why the Writ of Quo Warranto should not issue from the Court. On May 7, 1971 Judge Merrill K. Faux heard the arguments of Counsel, and received in evidence Plaintiff's P-1, P-2, P-3 and P-4. The transcript of that hearing was not prepared for this Court on appeal. By stipulation of Counsel a trial date was set for June 1, 1971 to hear the issues as to the annexations shown in Exhibit P-1 in the interest of narrowing the scope of examination, and upon the express agreement that if the first annexation was invalid, the Writ could be issued without further trial, but if the first issue was decided in Defendant's favor the additional time would be given to inquire into the other annexations.

Postponement was granted to the Defendants for the time set for trial to the 15th day of June, 1971, Judge Stewart M. Hanson having reviewed the pleadings on file herein, and having received Memorandum of Law and Proposed Pre-Trial Order prepared by the attorney for Respondents, (R 64-72), and submitted to the Court on the 9th day of June, 1971, pursuant to the Order of Judge Merrill K. Faux, that such memorandum be submitted one week before hearing. No memorandum of Law or Proposed Pre-Trial Order was

submitted by attorney for Appellants pursuant to such Order. The Trial Court Judge Stewart M. Hanson, having narrowed the hearing to argument of Counsel, and receiving no testimony (R-118 T-16 L-18) or evidence of compliance by the Defendant with the provisions of U.C.A. 10-3-1 permitted the Appellant's to submit a brief within five days on the point of "substantial compliance" (R-113 T-11 L-25) which "brief" does not appear in the record of this Matter. Judgment was entered on June 25, 1971, together with Findings of Fact and Conclusions of Law. Appellants filed Notice of Appeal on the 23rd day of July, 1971, from the Judgment rendered on the 25th day of June 1971. Appellants brief addresses only that portion of the Judgment which is set forth in paragraph (a) of the descriptions of territory from which Defendant's were ousted (R-83).

Defendant-Appellant has on the 27th day of October 1971 caused an annexation Ordinance to be passed and recorded on the 29th day of October 1971, in the office of the Salt Lake County Recorder, annexing substantially the same property which was as described in the Judgment paragraph (a), (R-83), together with an additional territory. Wherefore the subject matter of the appeal is moot and should be stricken from the Calendar of this Court.

DISPOSITION IN THE LOWER COURT

Writ of Quo Warranto was granted the Plaintiffs-Respondents, and a Judgment ousting the Defendants from the Exercise of Governmental control and declaring the annexations of March 20, 1968, November 27, 1968, October 22, 1969, and October 14, 1970, null and void from their inception and granting the other relief sought in Respondents Petition for Writ of Quo Warranto was entered by Judge Stewart M. Hanson, One of the Judges of the Third Judicial District Court, in and for Salt Lake County, State of Utah on the 25th day of June 1971.

RELIEF SOUGHT ON APPEAL

Respondents pray this Court to affirm the Judgment of Writ of Quo Warranto, entered on the 25th day of June 1971 in the Lower Court.

ARGUMENT

POINT I

THE JUDGMENT AND PROCEEDINGS IN THE LOWER COURT ARE PRESUMED TO BE CORRECT BY THE REVIEWING COURT ON APPEAL.

Point One has been overwhelmingly supported by this Court, the Court having set forth its opinion of

presumption of validity on appeal of the judgment in *Tucker Realty, Inc. v. Nunley,* 16 Utah 2d 97, 396 P 2d, 410 (1964) as follows:

> We first note the basic remise on appeal: that the judgment is presumed to be correct, and that the burden of establishing its invalidity is upon the party attacking it.

Not only is there a presumption of validity on appeal of the judgment and proceeding in the lower court, but the burden is on the Appellant affirmatively to demonstrate error, and in the absence of such the judgment must be affirmed by the reviewing Court. *Leithead v. Adair,* 10 U 2d 282, 351 P 2d 956; *Coombs v. Perry.* 2 U. 2d 381, 275 P 2d 680. On appeal the judgment of the trial court is presumptively correct and every reasonable intendment must be indulged in by the appellants Court in favor of it. *Burton v. Zions Co-operative Mercantile Institution,* 122 Utah 360, 249 P 2d 514; *Nagle v. Club Fontainblue,* 17 U. 2d 125, 405 P. 2d 345; *Petty v. Gindy Manufacturing Corporation,* 17 U. 2d 32, 404 P. 2d 30.

This proposition of law is correct and is binding upon the appellant Court whether the proceedings in the lower Court are before a Judge only or a Judge and Jury.

Other cases supporting this proposition are *Charlton v. Hackett,* 11 Utah 2d 389, 360 P. 2d 176; *Univer-*

sal Investment Company v. Carpets, Inc., 16 U 2d 336, 400 P. 2d 564; *Taylor v. Johnson,* 15 U 2d 342, 298 P. 2d 382; *Wendelboe v. Jacobson,* 10 U. 2d 344, 353 P. 2d 178; *Hadley v. Wood,* 9 U. 2d 366, 345 P. 2d 197; *Daisy Distributors, Inc. v. Local Union* 976, Joint Council 67, *Western Conference of Teamsters,* 8 U. 2d 124, 329 P. 2d 414.

POINT II

AN APPEAL IS LIMITED TO THE PROCEEDINGS IN THE DISTRICT COURT UPON WHICH JUDGMENT IS BASED.

Following the Notice of Appeal entered in this Court on July 23, 1971, and some 34 days after the statutory time had elapsed for filing objections to the Judgment, the Defendants caused to be entered by the District Court, amended Findings of Fact, Conclusions of Law and Judgment on August 8, 1971. These matters appear in the record as transmitted from the Lower Court. This Court should disregard any matter appearing in the Record subsequent to the entry of the June 25, 1971 appealed from.

In the recent case of *Corbet v. Corbet,* 24, Utah 2d 378, 472 P 2d 430, (1970) Chief Justice Crockett stated:

> On appeal to this Court we review the Judgments and orders appealed from on the basis

> of the record, upon which the trial court acted, and do not permit the supplementing of our record with matters not before the trial court.

This is in keeping with the long recognized proposition of Law acknowledged by this Court that "excess of Jurisdiction is lack of Jurisdiction, in regard to that judicial action which exceeds jurisdiction", *Atwood v. Cox,* 88 Utah 437 55 P 2d 377 (1936).

Justice Wolfe, in the above cited opinion from an issue involving an extraordinary writ stated:

> It would appear that excesss of jurisdiction means a case in which the court has initially proceeded properly within its jurisdiction but steps out of the jurisdiction in the making of some order or in the doing of some judicial act.

It is clearly apparent that the amended Judgment of August 8, 1971 represented such a "Lack of Jurisdiction" and the judgment of June 25, 1971, appealed to this Court by timely Notice of Appeal on July 23, 1971, by the Defendant-Appellant, is the Judgment which Respondent's request this Court to affirm.

Appellants Brief is limited to a single argument, the issue of whether the provisions of Utah Code Anno. (1953) 10-3-1, are to be strictly construed, as applied to the requirement of recording of an ordinance of annexation in the office of the County Recorder.

The Trial Court entered in its Findings of Fact (R-80) that as to the territory described in paragraph A above:

> (1) The annexation ordinance was not recorded in the office of the Salt Lake County Recorder together with the plat describing such territory proposed for annexation.
> (2) That no evidence was presented to this Court of a petition upon which said ordinance should have been inacted.

Findings of Fact numbered 7, 8 and 9, (R-81) referred to the Respondent's 2nd, 3rd, and 4th Causes of Action, and as to each alleged annexation found that the Appellants presented no evidence of petitions (upon which the City Council acted upon in enacting annexation ordinanced.)

Upon such Finding of Fact, the Court entered its Conclusions of Law, in part as follows: (R-81)

1. That the annexations of the territory described in the above Findings of Fact were not in strict compliance with the provisions of Utah Code Anno. (1953) 10-3-1.
2. That the statute must be strictly followed and the Defendant having failed to strictly comply with the statute makes the annexations a nullity.

POINT III

THE PROVISIONS OF UTAH CODE ANNO. (1953) 10-3-1, MUST BE STRICTLY CONSTRUED.

Utah Code Anno. (1953) 10-3-1 provides the specific acts to complete an annexation:

> A copy of the ...plat...shall at once be filed in the office of the County Recorder together with a certified copy of the ordinance. . . and thereupon such annexation shall be deemed complete. . .

Perhaps the best ruling supporting the Conclusions of Law entered by the Trial Court in the instant case is found on page 297 of *Plautis Min. Co. v. Orme,* supra, wherein the Court addressed the question of when a severance from a city would be complete.

> When the Legislature has enacted a law which in plain unambiguous language says that a severance of territory shall be complete when the decree is entered and certified copies thereof together with plats recorded in the office of the County Recorder and of the Secretary of State, the Courts are not authorized in holding that under such circumstances the severance is not complete. Webster's New International Dictionary defines "complete" as meaning with no part, item or element gone, free from deficiency, entire, perfect consummate."

The acts required by Utah Code Anno. (1953) 10-3-1, in order to annex unincorporated territory to

City Limits as clearly set forth in "plain, unambigous language" setting forth the duties of (1) the property owners desiring to annex territory to a city, and (2) the duties of the City Authorities.

The property owners desiring to be annexed must do the following acts:

1. Cause an accurate Plat or Map of the territory to be made under the supervisions of the City Engineer or of a competent surveyor.
2. File in the office of the City Recorder or Town Clerk of the City a certified copy of the plat, together with a petition in writing, signed by a majority of the real property owners (qualifications omitted).

These actions are jurisdictional upon which the City Council may obtain its jurisdiction to consider the question of annexation and act according to the law in respect thereof.

The City Authorities are then given the responsibility, by the statute to perform certain acts as follows:

1. Vote upon the question at the "next regular meeting."
2. "If two-thirds of all members of the city council, vote for such annexation, an *Ordinance shall* be passed declaring the annexation of such territory. . . .

3. Take immediate steps to "complete the annexation as follows:

> "A copy of the map or plat duly certified *shall be at once* filed in the office of the County Recorder, together with a certified copy of the Ordinance declaring such annexation, and *thereupon* such annexation shall be deemed *complete*. . . ."

In the case of *Utah Rapid Transit Co. v. Ogden City et al,* 89 Utah 546, 58 P 2d 1, (1936) this Court stated:

> It is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner.

Appellants contend that the failure to record an annexation ordinance until the week before the hearing in this matter, should not affect the validity of the alleged annexation. This Contention cannot be condoned by This Court. The Statute specifically provides that the ordinance '*Shall* at once be filed," giving a time to do the specified act.

Each requirement in the annexation powers of the municipal government are specified in the Statute in terms of mandatory actions to effectuate a valid annexation.

Statutory interpretation of words in the Statutes of the State of Utah must be given their obvious meaning, In *Miles v. Wells,* 22 Utah 55, 62, 61 Pac 534 (1900) the Court stated:

Where there is no ambiguity, the language must be taken as the expression of the legislature's intention, unless other provisions of the statute clearly show that the language was used in a sense different from its natural and ordinary meaning.

The repeated use of the word shall, in the annexation statute requires the actor to do certain acts, the ommission of any of the several requirements of the statute being fatal to the validation of the annexation.

In Spokane County ex rel. *Sullivan v. Glover,* 2 Wash. 2d 162, 97 P. 2d 628, 631 the Washington Supreme Court had occasion to construe the term "shall' as follows:

> As a general rule, the word "shall", when used in a statute, is imperative and operates to impose a duty which may be enforced, while the word "may" is permissive only and operates to confer discretion. . .

Provisions for annexation which extend the boundaries of a municipality was unknown as Common Law. Charles S. Rhyne in his volume, *Municipal Law,* Published by National Institute of Municipal Law Officers, (1957), has stated that "The power of annexation

did not exist in Common Law and therefore, cities, towns, and villages may annex additional territories only as provided by legislation or the State Constitution," Municipal Law, (1957) page 31.

The Constitution of Utah, Article 11, Section 5 provides that:

> The Legislature by general law shall provide for the incorporation, organization, and classifications of cities and towns in proportion to population, which laws may be altered and amended, or repealed.

It has been stated by the Supreme Court of the State of Utah, in *Salt Lake City v. Sutter,* 61 Utah 533, 216 Pac 234 (1923):

> "Whatever power or authority municipalities in this State have, is derived from the Legislature."

In the Application of Peterson, 92 Utah 212, 66 P.2d 1195, (1937) the Court stated:

> "The creation of a city and the fixing of its boundaries is essentially a legislative and not a judicial function. *Plautis Mining Company v. Orme,* 76 Utah 286, 298 P 132, 135:1 McQuillion on Municipal Corporation (2d Ed 416; Const. Utah, Article 11, Section 5. Likewise the changing of the territorial limits of a city

or town is a legislative function. . . .
. . . . *In Plautis Mining Co. v. Orme,* supra, the Supreme Court of Utah said:

> "In the consideration of the question here presented for review it is well to keep in mind . . . that the changing of the territorial limits of a city is legislative and not a judicial function. . . . ."

More recently in the Utah Supreme Court in the case of *Baugh v. Criddle,* 19 Utah 2d 361, 431 P 2nd 790, stated:

> "When a statute gives a new and unusual remedy and directs how the right to the remedy is to be acquired or enjoyed and how it is to be enforced. The Act should be strictly construed; and the validity of all acts done under the authority of such an Act will depend upon the compliance with its terms."

It is apparent from the reading of *Jensen v. Bountiful,* 20 Utah 2d, page 159, 435 P. 2nd 284 (1967). That the Court has upheld the strict compliance with the statutory provisions rule applicable in annexation cases. The Court therein stated that the City had urged that the number of signatures should be determined by the owners shown on the recorder's record and not those shown on the assessment rolls. The court in answer to this contention stated:

> "Difficulty with such urgence is that the statute says nothing about the recorders records as a test of eligibility, but only the owners shown on the assessment rolls. If this Court should make the obvious substitution contended for, it would result in judicial legislation—a luxury not indulgeable by this Court."

Concurring in the result of the majority opinion, Justice Ellett stated:

> "I concur in the result, but do it solely on the grounds that the statute was not followed by the Defendant, in that the City Council voted on the petition for annexation at a specially called meeting. The statute under which the City Council is required to act is Section **10-3-1**, Utah Code Anno., **1953**."

POINT IV

APPELLANT'S ARGUMENTS IN SUPPORT OF "SUBSTANTIAL COMPLIANCE" ARE NOT FOUNDED UPON UTAH LAW.

Appellant has misquoted the law of other jurisdictions to this Supreme Court in it's brief and it becomes necessary, therefore, to correct the misleading statements and quotations.

The Case of *Farwell v. Cohen,* 28 N. E. 35, Ill. (1891) was cited by the Appellant for the proposition that provisions for filing certified copies of ordinances

with the County Recorder are merely directory in nature. The quotation appearing on page 9 of Appellant's brief is a direct quotation from the case of *People v. Ellis,* 97 N. E. 697, 700, 253 Ill. 369 (1912), and the fact situation set forth in Appellant's brief are likewise the facts of *People v. Ellis,* supra.

Appellant's quote appearing on page 10, appellant's brief, purporting to be from the *Farwell* case is again a direct quote from the *Ellis* case to the point of the . . . which is the completion of the *Ellis* quotation the final phrase being a paraphrase and not a quotation verbatum.

The case of *Farwell v. Cohen,* regards an assignment for benefit of creditors, the ultimate issue being the jurisdiction of a county court over the assets of a voluntary assignment for benefit of creditors and has no relevancy upon this Courts determination upon the requirement of strict compliance with the Annexation Statute.

People v. Ellis, challenged the deannexation of a single tax payors land in a barred collateral attack brought to collect taxes for an 8 year period of time when taxes were not assessed upon the disconnected area. The instant action by the Respondents was a direct and not a collateral attack and has no similarity with the requirements of the 1912 Illinois Court matter.

Appellant's Brief page 8, sets forth in the last sentence as follows:

> The Court went on to hold that as to the question of the petition being on file—The town clerk could not find a petition in his office nor a record of petition....

As the *Ellis* case did not hold the above, I shall set forth in full the partial quotation:

> [T]he burden in a collaterial action is on the party alleging a want of jurisdiction to prove the fact. That was decided in two cases where elections had been held in townships adopting the labor system under the road law. Such an election could not be held without a petition in compliance with the statute, but it was decided that proof that the town clerk could not find in his office any petition, or record of a petition, under which an election could have been held was not sufficient and did not even raise an inference that no petition was filed. ***Toledo, St. Louis,* & *Western Rail Road Co. v. People,*** 225 Ill. 425, 80 N. E. 283 et seq.

The Ellis Court found that the ordinance of disconnection in question had in fact been filed "and the disconnection was made as requested by the petition."

Appellant would have this Court believe that the issue in the California Case qouted on page 11, appel-

lant's brief, was an annexation proceeding. The quoted case, *Crane v. Board of Sup'rs of L. A. County,* 52 P 2d 189 (Cal) (1936) concerned the jurisdiction of a School Board to change its boundaries, there being no similarity between the statutory provisions therein cited and the provisions of Utah Code Anno. (1953) 10-3-1.

In *Rafferty v. Corina,* 285 Pac 2d 94, Cal (1955) cited by Appellants, the issue involving the filing of the certificate with the Secretary of State was brought before that Court due to the fact that between the date of passage of the annexation and the date of recording, a Legislative enactment had been passed changing the required procedure. The prior statute being held applicable to the annexation in point.

Throughout the arguments of Appellant, no Utah cases are cited to support the Appellant's contentions, with the exception of the disagreement of the importance of this Court's opinion in *Jenson v. Bountiful City,* 20 U 2nd 159, 435 P 2d 284, (1967).

Respondent submits that the position of this Court as to statutory construction was expressed in *Ringwood v. State,* 8 U 2d 287, 333 P 2d 943, (1959) wherein this Court stated:

> We remain aware of the requirements of our law that our statutes are to be given a liberal interpretation to effectuate their purpose. That having been said, however, it must also be rec-

> ognized that where a statute charges one with a duty or imposes a burden or penalty, it must do so with sufficient clarity and definiteness that one of ordinary intelligence will understand what he is required to do. . . .

Where a statute sets forth in consecutive order each step to be taken to effectuate the annexation as is done in Utah Code Anno. (1953) 10-3-1, there seems to be no doubt that it is clear, definite, and that the City Councilmen, and the officers of the City, are deemed to be of ordinary intelligence and should understand what the statute requires to complete the legislative function of annexation.

CONCLUSION

Strict Compliance with the provisions of Utah Code Anno., (1953) 10-3-1, is required to effect a valid annexation of territory lying contiguous to an incorporated city. The failure to strictly comply with the provisions of petitioning and preparation of maps and plats, together with all of the qualifying requirements for eligibility of the signors of the petitions and preparations of such petitions and plats will not vest the City Council with jurisdiction to enact an ordinance of annexation. Failure of the City officials to comply with the provisions of the time for voting upon the petitions, the number of affirmative votes, and the recording of the plat and the ordinance declaring the annexation, as

specified in the statute results in an invalid attempt to annex, and not the "complete" legislative act of the City.

Wherefore, a writ of Quo Warranto lies to oust the Defendants from exercising any governmental control over the areas invalidly annexed, and the Judgment of June 25, 1971, issuing the Writ of Quo Warranto, ousting the Defendants from exercising any Governmental Control over the areas which were annexed by invalid procedures and declaring such annexations to be null and void from their inception, should be affirmed by this Court.

Respectfully submitted:

MYRNA MAE NEBEKER

212 Phillips Petroleum Building
Salt Lake City, Utah 84101

Attorney for Plaintiffs,-Respondents