

1940

Louis L. Marks v. White Fawn Milling Corporation,
Walker Bank & Trust Company, and T. H.
Humphreys : Consolidated Abstract of Record

Utah Supreme Court

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Joseph Chez; Attorney General; G. A. Giles; Assistant Attorney General; E. J. Skeen; Special Assistant Attorney General;

Recommended Citation

Abstract of Record, *Marks v. White Fawn Milling Corporation et al*, No. 6229 (Utah Supreme Court, 1940).
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IN THE SUPREME COURT OF THE STATE OF UTAH

LOUIS L. MARKS,

Plaintiff,

v.

WHITE FAWN MILLING CORPO-
RATION, a Utah Corporation,

Defendant,

WALKER BANK & TRUST COM-
PANY,

*Receiver,
Respondent,*

T. H. HUMPHERYS, State Engineer
of the State of Utah, a Creditor,

Appellant.

No. 6229

T. H. HUMPHERYS, State Engineer
of the State of Utah,

*Plaintiff,
Appellant,*

v.

MAXFIELD FEED & COAL, INCOR-
PORATED, a Corporation, Successor
in Interest to White Fawn Milling
Corporation, a Utah Corporation,

*Defendant,
Respondent.*

No. 6287

CONSOLIDATED ABSTRACT OF RECORD

No. 6229

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Special Assistant

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IN THE SUPREME COURT OF THE STATE OF UTAH

LOUIS L. MARKS,

Plaintiff,

v.

WHITE FAWN MILLING CORPO-
RATION, a Utah Corporation,

Defendant,

WALKER BANK & TRUST COM-
PANY,

Receiver,

Respondent,

T. H. HUMPHERYS, State Engineer
of the State of Utah, a Creditor,

Appellant.

No. 6229

T. H. HUMPHERYS, State Engineer
of the State of Utah,

Plaintiff,

Appellant,

v.

MAXFIELD FEED & COAL, INCOR-
PORATED, a Corporation, Successor
in Interest to White Fawn Milling
Corporation, a Utah Corporation,

Defendant,

Respondent.

No. 6287

No. 6229

SUMMARY OF PLEADINGS AND JUDGMENT

On May 29, 1939 the plaintiff, Louis L. Marks, commenced an action against the White Fawn Milling Corporation upon a \$10,000.00 unsecured note. It contains the usual allegations and, in

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addition, alleges that the defendant was badly involved financially and that "unless a receiver is appointed, the creditors, as well as the corporate defendant, will suffer great loss and irreparable injury." The prayer is for a judgment on the note and the appointment of a receiver.

1-5 A receiver was appointed on June 10, 1939, and notice to creditors was given requiring the filing of claims on or before August 19, 1939.

8 The appellant filed his claim on or about June 21, 1939, alleging that the defendant was indebted as follows:

"Prorata assessments for water distribution purposes on the Utah Lake and Jordan River system made by authority granted to the State Engineer by Section 100-5-1, Revised Statutes of Utah, 1933, as follows:

1937.....	\$142.40
1938.....	120.96
1939.....	111.96

TOTAL.....\$375.32

11 Preference is claimed under the provisions of Title 100, Revised Statutes of Utah, 1933."

In a petition for approval, allowance of claims, disallowance of claims, and authority to pay dividend, the receiver alleged that in the liquidation of

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the White Fawn Milling Corporation and the sale of the property and otherwise, it has recovered the sum of approximately \$10,000.00. The various claims filed are listed and where the claim of preference is questioned, the items are discussed in some detail. In Par. IV, Subsection (d), it is alleged "that the claim of T. H. Humpherys, as State Engineer of the State of Utah, in the sum of \$375.32, should be denied as a preferred claim and allowed as a common claim, for the reason that said claim is merely for costs and expenses incurred under the provisions of Section 100-5-1, Revised Statutes of Utah, 1933, and which provision does not provide that such charges shall be a lien and have any rights of priority over other claims." The
 22 appellant made a timely objection in writing to that part of the petition, in which the receiver recommended the denial of the claim as a preferred claim, basing the objection upon the provisions of Title 100, Revised Statutes of Utah, 1933, as
 23-26 amended. In an order dated December 22, 1939 and filed December 27, 1939, the court adopted the recommendations of the receiver as to the appellant's claim and disallowed it as a preferred claim, but allowed it has a common claim.

ASSIGNMENT OF ERRORS

Comes now the appellant and assigns the following error:

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The court erred in making and entering the order and judgment dated December 22, 1939 and filed December 27, 1939, disallowing the appellant's claim as a preferred claim.

No. 6237

(Title of Court and Cause)

COMPLAINT

The plaintiff complains of the defendant, and for cause thereof alleges:

- 1 1. That the plaintiff is, and all times mentioned herein, has been the duly appointed, qualified and acting State Engineer of the State of Utah, and the defendant, Maxfield Feed and Coal, Incorporated, is a corporation organized and existing under the laws of the State of Utah, with its principal place of business at Salt Lake City.
2. That the plaintiff, pursuant to the provisions of Section 100-5-1, Revised Statutes of Utah, 1933, as amended, appointed water commissioners to distribute the waters of the Jordan river for the years 1937, 1938, 1939 and for several years prior thereto, and during the said time the defendant and its predecessors in interest used water from said Jordan river for milling and other industrial purposes and during said period water from said source was distributed by the Water Commissioner to the defendant and its

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predecessors in interest and to other water users entitled thereto, according to their respective rights.

3. That annual assessments were duly levied, as provided by statute, to defray the expense of distributing the water of the said Jordan river, including the salary of the Water Commissioner and said expense was prorated among the various water users, including the defendant and its predecessors, according to established rights, and the quantity of water actually delivered to each water user and the share of the expense to be paid by each user was fixed with reference to the priority of the defendant's water right, to the amount of water actually delivered, and to all available records of measurement.

4. That the share of the defendant and its predecessor in interest of the said expense for the year 1937 was \$142.40; for the year 1938 it was \$120.96 and for the year 1939 it was \$111.96, aggregating in all \$375.32.

5. That on or about the 10th day of January, 1940, the sum of \$93.83 was paid on account of said delinquencies and the balance of \$281.49 is now due and owing.

6. That on or about the 5th day of March, 1940, the plaintiff notified the defendant that unless the said balance of \$281.49 was paid forthwith,

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it would be forbidden the use of water from Jordan river, as provided by Section 100-5-1 of the Revised Statutes of Utah, but nevertheless the defendant has refused to pay said delinquency and plaintiff believes that unless the defendant is restrained and enjoined by this court from using water from said Jordan river, the defendant will continue to refuse to pay said delinquent water assessments, all of which will seriously and irreparably hamper the plaintiff in the performance of his official duty to collect water assessments.

WHEREFORE the plaintiff prays for an order requiring the defendant to appear at a time certain, and show cause, if any it has, why it should not be forbidden the use of the water of Jordan river until delinquent water assessments in the sum of \$281.49 are paid in full. Plaintiff prays for general relief and for costs of this proceeding.

JOSEPH CHEZ

Attorney General

G. A. GILES

Assistant Attorney General

E. J. SKEEN

Special Assistant

Attorney General

Duly verified.

Filed March 16, 1940.

Transcript

(Title of Court and Cause)

ORDER TO SHOW CAUSE

4 It appearing to the court from the verified complaint herein that the defendant is a user of the water of Jordan river for milling and industrial purposes, as the successor in interest to the White Fawn Milling Corporation; that pursuant to the provisions of Section 100-5-1, Revised Statutes of Utah, 1933, the plaintiff appointed a Water Commissioner to distribute the waters of Jordan river to the defendant and to others, which Commissioner did distribute said water during the years 1937, 1938 and 1939, and that pursuant to said section, assessments were levied for the payment of the expenses and salary of the Water Commissioner, and said assessments against the defendant's water right amounted to \$375.32, no part of which has been paid, except the sum of \$93.83, leaving a balance due of \$281.49, which sum the defendant refuses to pay.

Upon motion of E. J. Skeen, Special Assistant Attorney General, one of the attorneys for the plaintiff

IT IS ORDERED that the defendant be and appear before this court on the 26th day of March, 1940, at 2 o'clock p. m., and there show cause, if any it has, why it should not be forbidden the use of the water of Jordan river until such delinquent

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assessments are paid in full, and why plaintiff should not be granted general relief in the premises.

Dated this 18th day of March, 1940.

(Signed) M. J. BRONSON
Judge.

Filed March 18, 1940.

(Title of Court and Cause)

ANSWER

Comes now the defendant above named and
10 in answer to plaintiff's Complaint admits, denies
and alleges as follows:

I.

Admits the allegations contained in paragraphs 1, 2 and 3, except this defendant denies that the defendant or its predecessor used any water from the 10th day of June, 1939, to and including the 6th day of November, 1939, during which said time Walker Bank & Trust Company had charge of said property as Receiver of the White Fawn Milling Corporation.

II.

In answer to paragraph 4 of plaintiff's Complaint defendant denies that the share of the defendant for the year 1937 was \$142.40, for the year 1938 was \$120.96, for the year 1939 was

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\$111.96, but further answering said paragraph alleges that said sums were assessed against the predecessors in interest of said defendant and that the total amount thereof was \$375.32.

III.

In answer to paragraph 5 of plaintiff's Complaint defendant admits that there was paid to plaintiff on or about the 10th day of January, 1940, the sum of \$93.83, but denies each and every other allegation contained in said paragraph.

IV.

In answer to paragraph 6 of plaintiff's Complaint defendant admits the allegations contained therein except it denies that "all of which will seriously and irreparably hamper the plaintiff in the performance of his official duty to collect water assessments." And further answering said paragraph defendant alleges that if the court finds that there is any sum due or owing for water used by this defendant since said defendant acquired said property, it is now willing to pay said sum.

Further answering plaintiff's Complaint defendant alleges as follows:

That the White Fawn Milling Corporation is a Utah Corporation, organized and existing under and by virtue of the laws of the State of Utah.

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2. That on the 10th day of June, 1939, Walker Bank & Trust Company was appointed Receiver of all of the assets and affairs of said White Fawn Milling Corporation, and that said Walker Bank & Trust Company is still the duly qualified and acting Receiver of said company.

3. That on or about the 22nd day of June, 1939, the plaintiff above named filed with said Receiver a claim in the sum of \$375.32 for assessments levied against said White Fawn Milling Corporation for the use of water out of the Jordan River. That at said time the plaintiff claimed that said claim was and should be allowed as a preferred claim.

4. That thereafter, on or about the 22nd day of December, 1939, the above entitled court made and entered its order after due and proper hearing disallowing the claim of plaintiff as a preferred claim and allowing the claim as a common claim.

5. That thereafter, on or about the 10th day of January, 1940, the Receiver paid to the plaintiff as a dividend upon its claim the sum of \$93.83.

6. That on or about the 6th day of November, 1939, pursuant to an order of the above entitled court made and entered on the 21st day of August, 1939, the said Walker Bank & Trust Com-

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pany, as Receiver of the White Fawn Milling Corporation, did make, execute and deliver to the defendant a Receiver's Deed, copy of which is attached hereto, marked Exhibit "A" and made a part hereof as if set out herein, and thereby conveyed to the defendant together with other property the water rights mentioned in plaintiff's Complaint.

WHEREFORE, defendant prays that the Order to Show Cause and plaintiff's Complaint be dismissed, that the defendant receive its costs herein expended, and for such other and further relief as the Court may deem proper in the premises.

EDWARD F. RICHARDS

Attorney for Defendant.

Duly verified.

Filed March 28, 1940.

EXHIBIT "A"

RECEIVER'S DEED

KNOW ALL MEN BY THESE PRESENTS:

13 THAT WHEREAS, on the 29th day of May, 1939, Louis L. Marks, as plaintiff, filed his petition and thereby commenced a civil action in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah against White Fawn Milling Corporation, defendant, num-

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bered on the docket of said court as Case No. 63050 praying, among other things, for an appointment of a Receiver to take charge and control of the real and personal property and all assets of said corporation; and,

WHEREAS, upon the filing of said petition an order to show cause was issued and a hearing had thereon on the 8th day of June, 1939 and that after said hearing on the 20th day of June, 1939, Walker Bank & Trust Company was appointed Receiver of all of the assets and property, both real and personal, belonging to the said White Fawn Milling Corporation and was ordered to proceed with the discharge of said trust with full power to manage, operate, marshall, conserve, preserve and liquidate the affairs and property of said corporation, subject to the order of appointment and the further orders and directions of said court; and,

WHEREAS, on the 10th day of June, 1939, said Walker Bank & Trust Company did take and file the oath and acceptance of said receivership and take possession of all real and personal property of the said White Fawn Milling Corporation; and,

WHEREAS, on the 29th day of June, 1939, said Receiver filed in said cause an application petitioning and asking said court for an order to sell the real and personal property of said corporation and thereafter the court, having found that due and proper notice of the hearing of said petition had been given and upon hearing evidence to support said petition, found that it would be necessary and to be best interests of the creditors of said corporation to sell the real and personal

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property of said corporation to pay its debts and made and entered an order on the 11th day of July, 1939 authorizing your Receiver to sell said personal property; and,

WHEREAS, said Receiver pursuant to said order gave notice of the terms and conditions for the sale of said property by publishing notice in the Salt Lake Tribune, a newspaper of general circulation of Salt Lake County, State of Utah, for a period of time ordered by said court; and,

WHEREAS, said Receiver did prior to the 29th day of July, 1939 receive a bid from the Star Flour Mills for the purchase of the flour mill, plant, house, land, water rights located in Salt Lake County, State of Utah, and trade marks and trade name, one Chevrolet truck, one Ford truck and certain office equipment; and,

WHEREAS, thereafter a petition for confirmation of said sale was filed on the 2nd day of Aug., 1939 and due notice of the hearing of said petition having been given in accordance with the order of the court and the matter coming on regularly for hearing, at which time other bids were made for said property, and the court having determined, after a full hearing in said matter, that the bid of Maxfield Seed & Coal Company, a corporation, in the sum of Eighty-one Hundred (\$8100.00) Dollars for the flour mill, plant, house, land and water rights, located in Salt Lake County, State of Utah, and hereinafter described, and the trade name and trade marks of said corporation was the best and highest bid, entered its order approving and confirming the sale of said property to the said Maxfield Seed & Coal Company, and said Receiver, as aforesaid, was by said

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court ordered upon the receipt by said Receiver of the purchase money for said real property, trade marks and trade name to convey said property to the purchaser, Maxfield Seed & Coal Company and deliver to it, the possession of said property, all of which will more particularly appear by the records of said court, to which reference is hereby made.

15 NOW, THEREFORE, Walker Bank & Trust Company, as Receiver of said White Fawn Milling Corporation, by virtue of the powers vested in it by law under the statutes in such cases made and provided and in consideration of the premises and the sum of Eighty-one Hundred (\$8100.00) Dollars, receipt whereof is hereby acknowledged, and under and by virtue of the Orders of said court, does hereby give, grant, bargain, sell and convey unto said Maxfield Seed & Coal Company its successors and assigns forever all of the estate, title and interest of the said White Fawn Milling Corporation in and to the following described real estate situate in Salt Lake County, State of Utah:

Beginning at a point 5 chains and 25 links West and 10 links North from the Southeast corner of the Northeast $\frac{1}{4}$ of Section 14, Township 3 South, Range 1 West, Salt Lake Meridian, running thence North 7 deg. 30' East 1 chain 16 links; thence North 88 deg. 40' East 11 chains, more or less to the West bank of the Jordan River; thence North 25 links; thence South 88 deg. 40' West along the South line of County Road 11 chains; thence North 7 deg. 30' East 75 links; thence South 88 deg. 40' West along line of fence and row of trees 7 chains 6 links; thence

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South 24 deg. West along West bank of large water ditch 40 links; thence South 88 deg. 40' West along center of County Road 1 chain, 50 links; thence South 3 deg. 40' East 1 chain, 65 links to Cottonwood Tree on East bank of aforesaid large ditch; thence East 8 chains 35 links to point of beginning, being in and a part of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 14 and part of Lot 2 in Section 13, Township and Range aforesaid, containing 2 acres, more or less.

Also all right, title and interest and claim in and to certain Right of Way for a millrace made and executed by George Wesley Beckstead and 13 others to Archibald Gardner on April 11, 1881, connecting with the above described tract and recorded May 14, 1881, in Book "Q" of Deeds, pages 975-76-77, of the records of Salt Lake County; together with the millsite on said tract and all milling and equipment therein as well as the rent, issues and profits from said real property, mill and equipment.

TOGETHER with all improvements therein situated and all appurtenances thereunto belonging or in any wise appurtenant.

TO HAVE AND TO HOLD the same with all of the privileges and appurtenances belonging thereto, to said Maxfield Seed & Coal Company, its successors and assigns, forever, as fully and completely as Walker Bank & Trust Company, Receiver as aforesaid, by virtue of said judgments, orders, rights, order of sale and confirmation thereof, and the statutes made and provided for such case might or should sell or convey the same.

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IN WITNESS WHEREOF, Walker Bank & Trust Company, as Receiver of the White Fawn Milling Corporation as aforesaid, has hereunto set its hand and seal this 31st day of August, 1939.

WALKER BANK & TRUST COMPANY
Attest:

Secretary

Vice-President

Receiver of White Fawn
Milling Corporation.

Duly Acknowledged.

BILL OF EXCEPTIONS

The case was submitted upon the following stipulation:

- 26 MR. SKEEN: May it be stipulated, Mr. Richards, that the water right now owned by the defendant, Maxfield Feed & Coal Co., Inc., a corporation, upon which the assessments referred to in the complaint were levied once belonged to the White Fawn Milling Corporation; that the water right constituted a part of the assets of the White Fawn Milling Corporation when it went into receivership; that thereafter the receiver conveyed certain real estate for a consideration to the Maxfield Feed & Coal, Inc., and that the water right upon which these assessments were levied by the state engineer was appurtenant and a part of the property so conveyed; and, further, that the amounts stated in the complaint as the

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amounts now due and owing are correct amounts; that they were assessments regularly and duly levied by the state engineer as provided by Section 100-5-1, and all such assessments were levied prior to the receivership and prior, of course, to the transfer to the Maxfield Feed & Coal, Inc.?

MR. RICHARDS: So far as I know that is true. I have not examined the abstract carefully on this property or the water rights, but I know it was the intention of the receiver to transfer whatever rights they had in and to the water.

MR. SKEEN: I understand, Mr. Richards, you will enter into the stipulation I have already stated in the record.

MR. RICHARDS: Yes, with this qualification; as I say, I have not examined the title of the water rights or anything like that.

MR. SKEEN: To clarify the matter, you will stipulate to everything I suggested except the chain of title of the water right.

MR. RICHARDS: What do you want stipulated outside of my answer? I contend I set out everything in my answer.

MR. SKEEN: That the assessments are proper and duly levied and assessed.

MR. RICHARDS: That is the amount set forth in the complaint prior to receivership?

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THE COURT: Yes; sometimes the equity of those assessments are questioned.

MR. RICHARDS: No, there is no question here as to that.

IT IS FURTHER STIPULATED that the following stipulation was made a part of the proceedings before the Hon. Allen G. Thurman on the 11th day of April, 1940, at 2:00 o'clock P. M., and should be a part of the bill of exceptions herein:

IT IS HEREBY STIPULATED between E.
31 J. Skeen, Edward F. Richards, and W. W. Ray that the plaintiff, T. H. Humpherys, filed a claim for \$375.32 against the White Fawn Milling Corporation claiming the same to be preferred and that on the 22nd day of December, 1939, the court in the receivership matter disallowed the claim of plaintiff and allowed it as a common claim; that thereafter the receiver paid to the plaintiff on the 10th day of January, 1940, upon said claim, the sum of \$93.83, and said sum was accepted by plaintiff upon written stipulation that such acceptance would not prejudice his appeal from the order disallowing said claim; that on the 6th day of November, 1939, pursuant to an order of the above-entitled court made on the 21st day of August, 1939, Walker Bank & Trust Company, as Receiver of said White Fawn Milling Corporation, executed and delivered to the defendant a re-

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ceiver's deed conveying to said defendant the property and water rights mentioned in plaintiff's complaint.

Dated this 22nd day of July, 1940.

(Signed) EDWARD F. RICHARDS
Attorney for Respondents

(Signed) JOSEPH CHEZ
Attorney General

(Signed) G. A. GILES
Assistant Attorney General

(Signed) E. J. SKEEN
*Special Assistant
Attorney General*

(Title of Court and Cause)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial before the Honorable Allen G. Thurman, one of the Judges of the above-entitled court, on April 11, 1940 at 2 o'clock p. m., E. J. Skeen, Special
19 Assistant Attorney General, appearing as attorney for the plaintiff; Edward F. Richards, appearing as attorney for the defendant; and W. W. Ray, appearing as amicus curiae, the court having heard a stipulation of facts and being fully advised in the premises, now makes the following

FINDINGS OF FACT

(1) That the plaintiff is and at all times mentioned herein has been the duly appointed, qualified, and acting State Engineer of the State of Utah, and the defendant—Maxfield Feed & Coal, Incorporated—is a corporation organized and existing under the laws of the State of Utah with its principal place of business at Salt Lake City;

(2) That the defendant is the owner of a right to the use of water of the Jordan river for milling purposes, said right having been acquired on the 31st day of August, 1939 by receiver's deed from Walker Bank & Trust Company, receiver of the White Fawn Milling Corporation, a corporation; that said water right was owned by the said White Fawn Milling Corporation during the irrigation seasons of 1937, 1938, and 1939, and during said years said White Fawn Milling Corporation operated its said mill and used the waters of Jordan river pursuant to said water right;

(3) That the plaintiff, pursuant to the provisions of Section 100-5-1, Revised Statutes of Utah, 1933, as amended, appointed water commissioners to distribute the waters of Jordan river for the years 1937, 1938, and 1939, and during the said time, as aforesaid, the White Fawn Milling Corporation, a corporation, predecessor

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in interest of the defendant, used water from the Jordan river for milling and other industrial purposes and during said period the water from said source was distributed by the water commissioner to defendant's said predecessor and to other water users entitled thereto according to their respective rights;

(4) That annual assessments were duly levied as provided by statute to defray the expense of distributing the water of the said Jordan river, including the salary of the water commissioner, and said expense was prorated among the various water users, including the defendant and its predecessor, according to established rights;

(5) That the share of the said expense levied and assessed against the White Fawn Milling Corporation, predecessor in interest of the defendant, and against the water right formerly owned by the said White Fawn Milling Corporation and now owned by the defendant was \$142.40 for the year 1937, \$120.96 for the year 1938, and \$111.96 for the year 1939, aggregating in all, \$375.32;

(6) That on the 10th day of June, 1939, Walker Bank & Trust Company was appointed receiver of all of the assets of the White Fawn Milling Corporation and is still the duly appointed, qualified, and acting receiver of said company; that on or about the 22nd day of June, 1939, the

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plaintiff filed with the receiver a claim in the sum of \$375.32 for assessments levied against said White Fawn Milling Corporation as a preferred claim, and thereafter, on or about the 22nd day of December, 1939, the above-entitled court made and entered an order disallowing the claim of the plaintiff as a preferred claim and allowing it only as a common claim; that thereafter, on or about the 10th day of January, 1940, the receiver paid to the plaintiff as a dividend upon its claim the sum of \$93.83, which payment was accepted by the plaintiff upon a stipulation by the said receiver that such acceptance would not prejudice plaintiff in any of his rights to proceed to collect the balance by this suit or otherwise and without prejudice to his right to appeal from the said order disallowing said claim as a preferred claim; the balance due on said assessment is \$281.49;

(7) That on or about the 5th day of March, 1940, the plaintiff notified the defendant that unless the balance of \$281.49 were paid forthwith, it would be forbidden the use of water from Jordan river, as provided by Section 100-5-1, Revised Statutes of Utah, but nevertheless the defendant has refused to pay the said delinquency and will continue to refuse to make said payment.

From the foregoing findings of fact, the court now draws the following

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CONCLUSION OF LAW

(1) That the defendant is entitled to a judgment of this court dismissing the above-entitled cause.

Dated this 15th day of May, 1940.

ALLEN G. THURMAN

Judge

(Title of Court and Cause)

DECREE

This cause having come on regularly for trial before the Honorable Allen G. Thurman, one of the Judges of the above-entitled court, on April 11, 1940 at 2 o'clock p. m., E. J. Skeen, Special Assistant Attorney General, appearing as attorney for the plaintiff; Edward F. Richards, appearing as attorney for the defendant; and W. W. Ray, appearing as amicus curiae, the court having heard a stipulation of facts and being fully advised in the premises, and having made its findings of fact and conclusion of law herein,

IT IS ORDERED, ADJUDGED, AND DECREED that the above-entitled cause may be and it is hereby dismissed.

Dated this 15th day of May, 1940.

ALLEN G. THURMAN

Judge

Transcript

(Title of Court and Cause)

ASSIGNMENT OF ERRORS

Comes now the appellant and assigns the following errors:

(1) The court erred in concluding that the plaintiff's complaint herein should be dismissed;

(2) The court erred in making and entering the judgment and decree, dated the 15th day of May, 1940, dismissing the above-entitled cause.

JOSEPH CHEZ

Attorney General

G. A. GILES

Assistant Attorney General

E. J. SKEEN

Special Assistant

Attorney General