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Frank S. Naylor v. Rachel H. Jolley, Hugh E. Jolley and William S. Jolley, Executors of the Last Will and Testament of Reuben G. Jolley, Deceased; Frances Marion Jolley, Henry C. Jolley, Lila Jolley Muelstein, Leo V. Jolley, Pearl Jolley Daniels, Hugh K. Jolley and William S. Jolley : Assignments of Error

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

FRANK S. NAYLOR,

Appellant,

vs.

RACHEL H. JOLLEY, HUGH E.
JOLLEY and WILLIAM S. JOL-
LEY, Executors of the Last Will
and Testament of REUBEN G.
JOLLEY, Deceased; FRANCES
MARION JOLLEY, HENRY C.
JOLLEY, LILA JOLLEY MUEL-
STEIN, LEO V. JOLLEY, PEARL
JOLLEY DANNIELS, HUGH K.
JOLLEY and WILLIAM S.
JOLLEY,

Respondents.

ASSIGN-
MENTS
OF
ERROR

Comes now the appellant and makes the following assignments of error:

1.

The court erred in making and entering a judgment of non-suit herein for the reason that the contract of sale, Exhibit "A," to the complaint (Abs. 8) provides that the sellers, respondents herein, undertook and agreed to furnish an abstract of title to the land described

showing the fee and unencumbered marketable title in the sellers, respondents, and it appears from the evidence (Abs. 37) that the sellers refused to furnish an abstract of title and it further appears from the evidence (Abs. 39 and 40) that the sellers were not the owners of the land which they contracted to sell and on the contrary that an undivided one-fifth of one tract was owned by George J. Kelley (Abs. 45) and that said title was not cleared until long after notice of forfeiture of the contract by the sellers, if at all. (Tr. 25, 26, 44-A, B. E. 121.)

2.

The court erred in holding that sellers, respondents herein, could and did legally terminate the contract of sale while refusing to clear title to said property and to produce an abstract showing title in them (Abs. 51, Tr. 44-A, B. E. 28, 121.)

3.

The court erred in holding that the appellant as purchaser was not entitled to an abstract showing clear title in the sellers and to use the contract of purchase with such an abstract for the purpose of financing the purchase of said property. (Abs. 10-51, Tr. 6, 44-a, B. E. 39, 41.)

4.

The court erred in making and entering judgment in favor of the respondents and against the appellant. (Abs. 51, Tr. 44-a, B. E. 121.)

J. D. SKEEN, E. J. SKEEN,
Attorneys for Appellant.