

2001

H.H. Henderson and Wade M. Johnson, co-partners doing business under the firms name and style of Henderson and Johnson v. Hooper Sugar Company and Bankers Trust : Unknown

Utah Supreme Court

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OF THE
STATE OF UTAH

H. H. HENDERSON and
WADE M. JOHNSON, co-
partners doing business under
the firm name and style of
HENDERSON and JOHNSON,
Plaintiffs and
Respondents,

vs.

HOOPER SUGAR COMPANY,
a corporation,
Defendant and
Respondent,

and

BANKERS TRUST COMPANY,
a corporation,
Garnishee and
Appellant,

and

ERNEST R. WOOLLEY,
GUARDIAN FIRE INSUR-
ANCE COMPANY, a corpora-
tion,
CONTINENTAL CASUALTY
COMPANY, a corporation,
IDAHO STATE BANK OF
TWIN FALLS, IDAHO, a
corporation,
FIRST NATIONAL BANK OF
KEMMERER, WYOMING, a
corporation, and
HEBER C. CARVER, Trustee
in Bankruptcy of the Hooper
Sugar Company,
Defendants in Gar-
nishment Proceedings
and Respondents.

H. H. HENDERSON and
WADE M. JOHNSON, co-
partners doing business
under the firm name and
style of HENDERSON and
JOHNSON,

Plaintiffs and
Respondents,

vs.

PINGREE SUGAR COMPANY,
a corporation,
Defendant and
Respondent,

and

BANKERS TRUST COMPANY,
a corporation,
Garnishee and
Appellant,

and

ERNEST R. WOOLLEY,
WELLS FARGO NEVADA
NATIONAL BANK OF SAN
FRANCISCO, a corporation,
JOB PINGREE,
REPUBLIC CASUALTY
COMPANY, a corporation, and
HARRY S. YOUNG, Trustee
in Bankruptcy of the
Pingree Sugar Company,
Defendants in Gar-
nishment Proceedings
and Respondents.

No. 4197

No. 4202

ABSTRACT OF RECORD

DICKSON, ELLIS, PARSONS & ADAMSON,

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

H. H. HENDERSON and
WADE M. JOHNSON, co-
partners doing business under
the firm name and style of
HENDERSON and JOHNSON,
Plaintiffs and
Respondents,

vs.

HOOPER SUGAR COMPANY,
a corporation,
Defendant and
Respondent,

and
BANKERS TRUST COMPANY,
a corporation,
Garnishee and
Appellant,

and
ERNEST R. WOOLLEY,
GUARDIAN FIRE INSUR-
ANCE COMPANY, a corpora-
tion,
CONTINENTAL CASUALTY
COMPANY, a corporation,
IDAHO STATE BANK OF
TWIN FALLS, IDAHO, a
corporation,
FIRST NATIONAL BANK OF
KEMMERER, WYOMING, a
corporation, and
HEBER C. CARVER, Trustee
in Bankruptcy of the Hooper
Sugar Company,
Defendants in Gar-
nishment Proceedings
and Respondents.

No. 4197

H. H. HENDERSON and
WADE M. JOHNSON, co-
partners doing business
under the firm name and
style of HENDERSON and
JOHNSON,
Plaintiffs and
Respondents,

vs.

PINGREE SUGAR COMPANY,
a corporation,
Defendant and
Respondent,

and
BANKERS TRUST COMPANY,
a corporation,
Garnishee and
Appellant,

and
ERNEST R. WOOLLEY,
WELLS FARGO NEVADA
NATIONAL BANK OF SAN
FRANCISCO, a corporation,
JOB PINGREE,
REPUBLIC CASUALTY
COMPANY, a corporation, and
HARRY S. YOUNG, Trustee
in Bankruptcy of the
Pingree Sugar Company,
Defendants in Gar-
nishment Proceedings
and Respondents.

No. 4202

ABSTRACT OF RECORD

The following is an abstract of the Transcript on Appeal in each of the herein entitled causes, both included in a single abstract pursuant to an order of this court

therefor. This abstract contains a brief statement of the contents of each pleading and paper embodied in the respective transcripts and sets forth fully the substance of the pleadings, the evidence and the points relied upon for the reversal of the respective judgments appealed from. Unless otherwise specifically designated, the numbers in the margin refer to the pages of the transcript in the case of Henderson and Johnson, Plaintiffs vs. Hooper Sugar Company, Defendant, Bankers Trust Company, Garnishee and Appellant, et al., herein, No. 4197.

1, 2 **Complaint in case of Henderson and Johnson, Plaintiffs vs. Hooper Sugar Company, Defendant, et al.**

(Title of Court and Cause)

It is alleged in substance that between March 1, 1919, and July 1, 1920, plaintiffs had performed legal service at defendant's solicitation of the reasonable value of \$3,000.00, no part of which had been paid. Prayer for judgment accordingly. Complaint filed August 14, 1920.

83, 84, **Writ of Garnishment in case of Henderson and**
85 **Johnson, Plaintiffs, vs. Hooper Sugar Company,**
 Defendant, and Proof of Service thereof on Gar-
 nishee, Bankers Trust Company.

This writ was issued August 14, 1920, was received by the Sheriff of Salt Lake County, August 16, 1920, and was served by him upon Garnishee, Bankers Trust Company, the same day.

87 **Answer of Garnishee in case of Henderson and Johnson vs. Hooper Sugar Company.**

This answer was filed August 26, 1920. Denied indebtedness to the defendant, and in answer to the second interrogatory stated:

“On June 22, 1920, Bankers Trust Company received from Ernest R. Woolley, and now holds, unendorsed certificates for shares of the common

and preferred capital stock of Interstate Sugar Company, a Utah corporation as follows:

Certificate for 2700 shares preferred in name of Pingree Sugar Company,

Certificate for 30,000 shares common in name of Pingree Sugar Company,

Certificate for 3000 shares preferred in name of Hooper Sugar Company,

Certificate for 20,000 shares common in name of Hooper Sugar Company,

it being stipulated by said Bankers Trust Company, upon receipt of said certificates, that the same were to be held by said Bankers Trust Company, as Trustee, for the use and benefit of said Pingree Sugar Company and said Hooper Sugar Company and its creditors and stockholders and to be distributed to the said Sugar Companies respectively and their respective creditors and stockholders when they shall deliver or cause to be delivered to Bankers Trust Company, Trustee, the necessary papers and documents, setting forth and defining the respective rights of said Sugar Companies, and their respective creditors and stockholders in and to said shares of stock in said Interstate Sugar Company."

The subsequent stipulation for and the amendment of this answer renders the answer irrelevant to any issue before this court.

3. 4 Summons and Proof of Service thereof upon the Defendant, Hooper Sugar Company.

Summons served upon defendant September 1, 1920, by delivering copy to Job Pingree, its President.

5 Judgment by Default in case of Henderson and Johnson vs. Hooper Sugar Company.

This judgment recites that defendant, Hooper Sugar Company, having been duly served with process and having failed to appear and answer the complaint, the time for answer having expired and the default of the defendant having been entered according to law, judgment was

rendered in favor of the plaintiffs and against the defendant in the sum of \$3,133.00 with interest thereon at the rate of 8% per annum from January 22, 1921, the date of entry thereof.

7, 8 **Order of July 10, 1923, in case of Henderson and Johnson vs. Hooper Sugar Company.**

An order made on plaintiffs' ex parte application directing garnishee, Bankers Trust Company, to deliver the certificates of capital stock here in question to the Sheriff of Salt Lake County.

9-15 **Motion in case of Henderson and Johnson vs. Hooper**
incl. **Sugar Company.**

Motion of Garnishee, Bankers Trust Company, to set aside order of July 10, 1923, last here in above referred to.

16, 17 **Stipulation in case of Henderson and Johnson vs. Hooper Sugar Company.**

Pursuant to this stipulation the ex parte order of July 10, 1923, was set aside, and the filing of Garnishee's Amended Answer ordered.

18-32 **Garnishee's Amended Answer in case of Henderson**
incl. **and Johnson vs. Hooper Sugar Company.**

(Title of Court and Cause)

Comes now Bankers Trust Company, a corporation, the above named garnishee, and by leave of court first had and obtained files this, its amended answer to the writ of garnishment served in the above entitled cause upon said garnishee on the 16th day of August, 1920, and herein denies, admits and alleges:

First Interrogatory: Are you in any manner indebted to the defendant, either in property or money, and is the same now due? If not due, when is the same to become due? State full particulars.

Answer: No, neither now nor upon the 16th day of August, 1920, nor at any time since said date.

Second Interrogatory: Have you in your possession, in your charge or under your control any property, effects, goods, chattels, rights, credits or choses in action of said defendant, or in which it is interested? If so, state what is the value of the same and state fully all particulars.

Answer:

1. Bankers Trust Company is now and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Utah and thereby was at all said times, and is now, endowed with all the powers conferred by law upon trust companies, including the power to execute trusts of every description; and said Bankers Trust Company is now and at all said times was engaged in the conduct of said business of a trust company in the State of Utah and elsewhere with its principal place of business in Salt Lake City, of said State.

2. On the 22d day of June, 1920, one Ernest R. Woolley delivered to Bankers Trust Company an agreement in writing without date between Pingree Sugar Company, Hooper Sugar Company, Pingree-Idaho Sugar Company and certain stockholders and creditors of said corporations, respectively, of the first part, and said Ernest R. Woolley, of the second part, whereby said first parties undertook and agreed to sell to second party, free and clear of any and all liens, claims and encumbrances whatsoever, certain property therein described and thereby the second party agreed to purchase the said property and cause the same to be transferred to a corporation thereafter to be formed under the corporate name of "Interstate Sugar Company," and to issue and

deliver to the parties therein named certain shares of preferred and common stock of the Interstate Sugar Company in payment thereof. Among the parties to whom such delivery was required to be made was said Hooper Sugar Company. An accurate copy of said agreement is hereto appended, identified as Garnishee's Exhibit A.

3. Coincident with the delivery of said agreement to said Bankers Trust Company, Ernest R. Woolley deposited with said Bankers Trust Company certain certificates of the preferred and common stock of Interstate Sugar Company, among which was one certificate for 3000 shares of preferred and one certificate for 20,000 shares of common stock of Interstate Sugar Company in the name of Hooper Sugar Company. And said Ernest R. Woolley then and there directed Bankers Trust Company to retain said certificates until the performance of said agreement by the parties of the first part therein, among whom was Hooper Sugar Company. Bankers Trust Company thereupon accepted said certificates of stock but upon the express stipulation by said Ernest R. Woolley that said certificates were to be held by Bankers Trust Company, as Trustee, under and pursuant to the terms and provisions of said agreement for the use and benefit of said Hooper Sugar Company and its creditors and stockholders, and to be distributed to said Hooper Sugar Company, its creditors and stockholders when said company, creditors and stockholders should deliver to Bankers Trust Company, Trustee, the necessary papers and documents setting forth and defining the respective rights of said Hooper Sugar Company and its creditors and stockholders in and to said shares of stock.

4. That said agreement was one for the sale to Ernest R. Woolley "free and clear of any and all liens,

claims and encumbrances of whatsoever nature or description" of the property therein enumerated, and said shares of stock constituted a substantial part of the consideration to be paid when said purchase should be consummated. By said instrument it was agreed as a condition to the consummation of said purchase and to the delivery of said certificates of stock and execution of said trust that

"* * * the outstanding bonds of said Pingree Sugar Company shall be surrendered and cancelled and the trust deed or mortgage heretofore given by said Pingree Sugar Company to secure payment of said bonds shall be released and discharged and cancelled of record; * * *"

and that,

"* * * All capital stock of said Hooper Sugar Company now pledged and held as collateral shall be delivered to the Bankers Trust Company with directions to deliver the same to said Woolley upon the deposit with said Bankers Trust Company of the securities hereinafter agreed by him to be deposited with said Bankers Trust Company."

but said agreement has not been performed in either of said particulars, nor have there been delivered to Bankers Trust Company the necessary papers and documents setting forth and defining the respective rights of said Hooper Sugar Company, its creditors and stockholders in and to said shares of stock in Interstate Sugar Company; that said trust is now and always has been since its creation an uncompleted executory trust wherein no title to said certificates or shares of stock has passed to said Hooper Sugar Company. That on the 12th day of July, 1922, said Ernest R. Woolley notified Bankers Trust Company that said agreement had not been performed and the title to said stock still remained in said Ernest R. Woolley and that said Bankers Trust Com-

any should not under any circumstances release said stock or any part of it without the consent of said Woolley and said Ernest R. Woolley still claims to be the owner thereof.

5. That upon the 19th day of June, 1920, a special meeting of the Board of Directors of defendant, Hooper Sugar Company, was held, whereby authorization was given for the execution of said purchase agreement and the delivery thereof to garnishee, Bankers Trust Company, of said certificates of stock by the latter to be held in trust as hereinbefore stated, and in evidence of said authority a resolution was duly adopted by the Board of Directors of said defendant at said meeting, copy whereof was thereupon served upon Bankers Trust Company and by said resolution it was provided that—

“subject to the consent of its creditors, this corporation do sell to said Woolley all of its real and personal property, contracts, claims and assets for \$300,000.00 par value of the preferred capital stock and \$200,000.00 par value of the common capital stock of said Interstate Sugar Company, such stock to be delivered to Bankers Trust Company of Salt Lake City, to be held by it as Trustee for this corporation, its creditors and stockholders.”

6. That upon the 5th day of November, 1920, a special meeting of the Board of Directors of the defendant, Hooper Sugar Company, was held, whereby authorization was given for the distribution of said stock to approved claims of creditors of Hooper Sugar Company by the following resolution, duly adopted:

“RESOLVED: That the capital stock of the Interstate Sugar Company, constituting the assets of this Company, held by the Bankers Trust Company of Salt Lake City as trustee for this company and its creditors, be distributed to creditors of the company whose claims have been ap-

proved, in the following amount, and to the following named creditors:

	Amount of Note	Preferred Stock	Common Stock
"Natl. Bank of Commerce, Ogden, Utah	\$ 25,000.00	18,000.00	12,600.00
Frank Pingree, Salt Lake City, Utah	30,000.00	21,600.00	14,400.00
Frank Pingree, Salt Lake City, Utah	20,000.00	14,400.00	9,600.00
P. T. Wright, Salt Lake City, Utah	30,000.00	21,600.00	14,400.00
1st Natl. Bank of Kemmerer, Wyo.	15,000.00	10,800.00	7,200.00
1st Natl. Bank of Kemmerer, Wyo. (O. B. Gilson)	10,000.00	7,200.00	4,800.00
1st Natl. Bank of Kemmerer, Wyo. (J. H. Riley)	15,000.00	10,800.00	7,200.00
State Bank of Provo, Utah,	7,500.00	5,400.00	3,600.00
National Bank of Commerce, Ogden, Utah	1,500.00	1,080.00	720.00
J. N. Ireland & Co.	10,000.00	7,200.00	4,800.00
J. N. Ireland & Co. (J. Pingree)	10,000.00	7,200.00	4,800.00
McCormick & Co., Bankers, (C. Pingree)	32,500.00	23,400.00	15,600.00
National City Bank	30,000.00	21,600.00	14,400.00
1st Natl. Bank of Layton	4,000.00	2,880.00	1,920.00
1st Natl. Bank of Preston	4,500.00	3,240.00	2,160.00
Coml. Natl. Bank of Smith- field	3,700.00	2,664.00	1,776.00
Knight Trust & Savings Bank Stockgrowers Bank of Pocatello, Idaho	25,000.00	18,000.00	12,000.00
Charles D. Boettcher	30,000.00	21,600.00	14,400.00
E. R. Woolley	20,000.00	14,400.00	9,600.00
E. R. Woolley	20,000.00	14,400.00	9,600.00
E. R. Woolley	4,500.00	3,240.00	2,160.00
McCormick & Co., Bankers, (L. Pingree)	32,500.00	23,400.00	15,600.00
Amount of Claims			
Henderson & Johnson	3,000.00	2,160.00	1,440.00
DeVine, Stine & Gwilliam	5,000.00	3,600.00	2,400.00
Total	\$381,500.00	271,080.00	185,720.00

"AND BE IT FURTHER RESOLVED: That the said Trustee be authorized and directed to cause proper transfers of the said stock in accordance with the foregoing list, notify said creditors to surrender notes or other evidences of indebtedness, take proper releases, and thereupon to deliver stock of the Interstate Sugar Company in the respective amounts to the respective named creditors.

"AND BE IT FURTHER RESOLVED:

That the balance of the stock of the Hooper Sugar Company held by the trustee, to-wit: 36 shares preferred and 13, 424 shares common, be held by the trustee for further direction as to distribution.

“AND BE IT RESOLVED: That the Secretary of the Company be directed to properly certify a copy of this Resolution to the said trustee as its authority in the premises.”

That so far as Bankers Trust Company is advised, the creditors enumerated in said resolution still have and claim as against said Hooper Sugar Company the shares of capital stock thereby allotted to them. A copy of the foregoing resolution duly certified by the Secretary of said company was served upon Bankers Trust Company upon the 8th day of November, 1920, as evidence of its authority as therein provided.

7. That under date of December 4, 1920, one Job Pingree addressed a letter to garnishee, Bankers Trust Company, and thereby directed the issuance and delivery by said Bankers Trust Company of certain of said shares of stock in said Interstate Sugar Company in manner, as follows:

“This letter will be your authority to issue in the name of Frank Pingree stock certificates accrued to me in connection with the adjustment of the Hooper Sugar Company claims, for whom you are acting as Trustee, and I ask that you have the Interstate Sugar stock, both preferred and common, representing my interest in those claims issued as above indicated.”

8. That on the 11th day of November, 1920, in the case of Guardian Fire Insurance Company v. Hooper Sugar Company, then pending in the District Court of the Second Judicial District of the State of Utah in and for Weber County, a writ of garnishment was served upon Bankers Trust Company, whereby all interest, if any, of Hooper Sugar Company in said shares of stock

of Interstate Sugar Company was attached and garnisheed.

9. That on the 11th day of November, 1920, in the case of Continental Casualty Company v. Hooper Sugar Company, then pending in the District Court of the Second Judicial District of the State of Utah in and for Weber County, a writ of garnishment was served upon Bankers Trust Company and thereby all interest of Hooper Sugar Company, if any, in said shares of stock of Interstate Sugar Company was attached and garnisheed.

10. That on the 3d day of December, 1920, in the case of Idaho State Bank of Twin Falls, Idaho, v. Hooper Sugar Company and Parley T. Wright, then pending in Second Judicial District Court of the State of Utah in and for the County of Weber, a writ of garnishment was served upon Bankers Trust Company and thereby all interest of Hooper Sugar Company, if any, in said shares of stock of Interstate Sugar Company was attached and garnisheed.

11. That on the 4th day of March, 1921, in the case of Idaho State Bank of Twin Falls v. Hooper Sugar Company and Parley T. Wright, a writ of execution was served upon Bankers Trust Company, reciting a judgment against Hooper Sugar Company for \$34,438.00, with interest at 7% per annum from the 18th day of February, 1921, and \$18.90 costs.

12. That on the 27th day of July, 1921, in the case of First National Bank of Kemmerer v. Hooper Sugar Company a writ of execution was served upon Bankers Trust Company reciting a judgment against said Hooper Sugar Company for \$19,163.75, with interest at the rate of 8% per annum thereupon from July 26, 1921, and in the same case on the 9th day of June, 1921, a writ of ex-

ceution was served upon said Bankers Trust Company, reciting a judgment for \$15,000.00 and \$1,510.82, with interest thereupon from the 12th day of December, 1919, at -----% per annum, and \$1500.00 attorney's fees, together with costs in the amount of \$13.20.

13. That Bankers Trust Company is informed and believes that on the 17th day of June, 1921, a petition in bankruptcy was filed in the United States District Court in and for the District of Utah and that on July 8, 1921, said Hooper Sugar Company was declared a bankrupt and that said Hooper Sugar Company has not as yet been discharged. That on the 8th day of March, 1923, demand was made upon Bankers Trust Company by Heber C. Carver, Trustee in Bankruptcy, of the Hooper Sugar Company, for the immediate delivery of all stock of the Interstate Sugar Company standing in the name of Hooper Sugar Company, and particularly for certain certificates, one for 3,000 shares of the preferred and one for 20,000 shares of the common stock of the Interstate Sugar Company, standing in the name of the Hooper Sugar Company.

14. That said deposit or trust has required the nearly constant attention of Bankers Trust Company ever since the receipt thereof, to-wit, the 22d day of June, 1920, has necessitated the employment of counsel in the protection and administration thereof and the interest therein of those who may be determined the rightful owners thereof; that Bankers Trust Company has earned and is entitled to substantial compensation for its services therein and to be reimbursed for the expense necessarily incurred by it in the administration of said trust and Bankers Trust Company claims a lien upon said deposit for such compensation and reimbursement adverse to said Henderson & Johnson and said Hooper

Sugar Company and all other claimants thereto.

Third Interrogatory: Do you know of any debts owing to the said defendant, whether due or not due, or any property effects, goods, chattels, rights, credits or choses in action belonging to it or in which it is interested and now in the possession or under the control of others? If so, state the particulars.

Answer: No.

WHEREFORE, Bankers Trust Company prays:

1. That it be given an opportunity to make a showing to this court of the services rendered by it in the administration of said trust and the expenses by it therein incurred and that this court determine and fix reasonable compensation to trustee therefor and an allowance by reason of expense therein by it incurred to which it shall be fairly entitled, and that the amount so fixed and determined by way of compensation and expense incurred be allowed a priority and said Bankers Trust Company be awarded a lien upon said shares of stock and said deposit first and prior to the claims or demands of all persons whomsoever of whatever nature or kind.

2. That said Ernest R. Woolley be interpleaded as a defendant in said garnishee action and that all other persons having or claiming any interest in or to said deposit and shares of stock, whether or not herein enumerated or referred to, be likewise interpleaded in said garnishee action and service had upon all said parties as provided by law to the end and purpose that this court shall bring before it and within its jurisdiction all parties having or claiming any interest in said deposit and accomplish as to all said parties a complete and final adjudication of their several rights, titles or interests therein and that Bankers Trust Company be afforded as to each and all said parties the protection of such final adjudica-

tion and decree before it shall be required to part with the possession of said deposit or shares of stock or to deliver the same into this court or to any officer thereof, or otherwise.

Bankers Trust Company

By John K. Hardy, Vice-President

Verified December 4, 1923.

Filed December 6, 1923.

Copy of the within Garnishee's Amended Answer received and service admitted this 6th day of December, 1923.

HENDERSON & JOHNSON,

By L. DALLINOR,

Attorneys for Plaintiffs.

Defendant's Exhibit A

Pingree Sugar Company, Hooper Sugar Company, Pingree-Idaho Sugar Company, and the undersigned stockholders and creditors of said corporations, respectively, hereby agree to the sale to ERNEST R. WOOLLEY of the following assets, free and clear of any and all liens, claims and encumbrances of whatsoever nature or description:

1. The Corcoran Sugar factory of said Pingree Sugar Company located at Corcoran, California together with such portion thereof as has been shipped to Whitney, Idaho, and consisting of all machinery, tools and appliances constituting said plant; also all interest or claim held or claimed by said Pingree Sugar Company in or to the Hooper Sugar Company, its sugar factory and capital stock, and agree that the outstanding bonds of said Pingree Sugar Company shall be surrendered and cancelled and the trust deed or mortgage heretofore given by said Pingree Sugar Company to secure payment of said bonds shall be released and discharged and cancelled of record; also all interest or claim held or claimed by

said Pingree Sugar Company in or to the capital stock of the Pingree-Idaho Sugar Company and any of its property or assets.

2. All of the real and personal property, contracts, claims and assets of the Hooper Sugar Company. All capital stock of said Hooper Sugar Company now pledged and held as collateral shall be delivered to the Bankers Trust Company with directions to deliver the same to said Woolley upon the deposit with said Bankers Trust Company of the securities hereinafter agreed by him to be deposited with said Bankers Trust Company.

3. All of the real and personal property, contracts, claims and assets of the Pingree-Idaho Sugar Company.

Said Woolley agrees to purchase the said property and cause the same to be sold, assigned, transferred and delivered to Interstate Sugar Company, which shall have a capital stock of \$1,000,000 of preferred and 1,250,000 of common capital stock, with \$250,000 cash in its treasury, and to cause to be issued and paid for said property hereinafter agreed to be sold and purchased, the following amount of common and preferred capital stock of said Interstate Sugar Company:

(a) To said Pingree Sugar Company: \$270,000 of preferred and \$300,000 of common capital stock of said Interstate Sugar Company;

(b) To said Hooper Sugar Company: \$300,000 of the preferred capital stock and \$200,000 of the common capital stock of said Interstate Sugar Company.

The stock so to be issued to said Pingree Sugar Company and to said Hooper Sugar Company shall be delivered to Bankers Trust Company of Salt Lake City, Utah, as Trustee, for the use and benefit of said Pingree Sugar Company and said Hooper Sugar Company and its creditors and stockholders.

Said Woolley further agrees to cause said Interstate

Sugar Company to relieve said Pingree-Idaho Sugar Company of its indebtedness as the same is listed in "Exhibit A" attached hereto and made a part hereof, and subject to the conditions specified in said exhibit.

Appropriate action shall be taken as quickly as the same may lawfully be done, by the respective boards of directors and stockholders of said Pingree Sugar Company, Hooper Sugar Company and Pingree-Idaho Sugar Company, to approve, ratify and confirm the sale of the properties of said companies.

Upon deposit with said Bankers Trust Company of said securities by said Woolley as hereinabove provided for, proper deeds, conveyances, bills of sale and assignments shall be executed for said property and said Woolley or said Interstate Sugar Company placed in immediate possession thereof.

Ernest R. Woolley

Pingree National Bank

By E. P. Ellison, Its President

Creditor

Hooper Sugar Co. stock 305 shares E. P. Ellison.

Pingree Sugar Co. stock shares E. P. Ellison

17 shares Pingree S. Co. L. E. E.

L. E. Ellison, 75 shares Hooper S. Co.

Morris H. Ellison, 5 shares Hooper S. Co.

Jean E. Skeen, 5 shares Hooper S. Co.

Evan L. Ellison, 5 shares Hooper S. Co.

James E. Ellison, 5 shares Hooper S. Co.

Marion E. Cowley, 5 shares Hooper S. Co.

John Parley Ellison, 5 shares Hooper S. Co.

Anette E. Stevenson, 5 shares Hooper S. Co.

and Alice E. Adams, 5 shares Hooper S. Co.

by E. P. Ellison.

J. H. Riley 60 shares Hooper S. Co.

J. H. Riley, Pingree Sugar Co. sto.

First Nat'l Bank of Layton, by

C. E. Ellison.

James Pingree, 534 shares Hooper S.

First Nat'l Bank Coalville, James Pingree

Hooper Sugar Co. by Job Pingree, its Pres.
 Job Pingree, 140 Hooper Sugar Company
 Job Pingree, Pingree Sugar Company stock

Idaho State Bank of Twin Falls, \$10,000 Pingree Sugar
 Co. Notes, by J. H. DeVine, its attorney,

Stock Growers Bank and Trust Co., Pocatello, Ida.

\$30,000 Pingree
 Sugar Co.
 Notes

\$30,000 Hooper
 Sugar Co.
 Notes

D. R. Pingree, 50 shares Hooper Stock
 by J. H. DeVine, its attorney

C. E. Ellison, Director Hooper Sugar Co.

P. T. Wright, Director Creditor and Stockholder of
 Hooper Sugar Co.

J. H. Riley, Director Creditor and Stockholder of Hooper
 Sugar Co.

O. B. Gilson, Director, Creditor and Stockholder of
 Hooper Sugar Co.

Job Pingree, Director, Creditor and Stockholder of
 Hooper Sugar Co.

James Pingree, Director of Hooper Sugar Company.

S. E. Pingree, Director and Stockholder of Hooper Sugar
 Co. 123 shares Hooper Sugar Co.

James Pingree—Stockholder and Creditor Hooper Sugar
 Co., but not including \$65,000 note held by McCornick
 & Co.

Pingree Sugar Co.

by James Pingree, Pres.

James Pingree, shareholder and creditor, Pingree Sugar
 Company.

O. B. Gilson, Director, Creditor and Stockholder Pingree
 Sugar Co.

E. A. Nickerson, Director, Creditor and Stockholder Pin-
 gree Sugar Co.

Job Pingree, Director, Creditor and Stockholder Pingree
 Sugar Co.

E. P. Ellison, Director and Stockholder Pingree Sugar
 Co.

Pingree-Idaho Sugar Co.

by James Pingree, Pres.

- James Pingree, Creditor, Director and Shareholder, Pingree-Idaho Sug. Co.
 O. B. Gilson, Creditor, Director and Shareholder, Pingree-Idaho Sug. Co.
 E. A. Nickerson, Director and Shareholder, Pingree-Idaho Sug. Co.
 Job Pingree, Director and Shareholder, Pingree-Idaho Sugar Co.
 E. P. Ellison, Director and Shareholder, Pingree-Idaho Sug. Co.
 E. A. Nickerson, 300 shares stock Hooper Sugar Co.
 LeGrande Pingree, 132 shares Hooper Sugar Company.
 S. E. Pingree, 163 shares Hooper Sugar Company.
 10 shares Pingree.

PINGREE-IDAHO SUGAR COMPANY BILLS PAYABLE

Pingree-Idaho Sugar Company Bills Payable

- Pay roll Corcoran \$600.00
 Freight charges not exceeding \$4000 and to cover only materials actually delivered to second party.
 Invoices not exceeding \$9000 and to cover only materials actually delivered to second party.
 Sundry \$1,000 for which invoices are to be rendered to the second party.
 Feed Mill not exceeding \$1,400.00 and to cover only materials delivered to second party.
 Outleben Bros. Architect, \$5,977.68.
 Drafts issued, \$16,500.00, for which invoices are to be rendered to second party.
 Ogden Iron Works, \$4,000.00.
 Pingree Sugar Co. for beet seed, \$29,195.63, but second party is to pay only on actual weights at the rate of 40c per pound for seed delivered to farmers and at the rate of 33c for the remainder to be adjusted by Waterhouse and Nickerson.
 Steel contract, \$58,200.00.
 Engines and generators, \$25,922.00.
 Site at Whitney, \$25,000.00.
 The second party shall not be required to pay for or upon any article covered in any of the foregoing items unless such article is delivered to the second party.
 McCornick & Co. Bankers as Pledges
 by M. H. Sowles, V. P. and Cashier.

The Agency Co. by R. W. Sloan, Pres., 170 shares Hooper Stock.

R. W. Sloan, Pingree Sugar Co., Stockholder.

W. E. & Thos. Sloan (RWS) Co. Stockholder.

Guardian Fire Ins. Co., by Walter Cox, Sec'y.

The National City Bank of Salt Lake City, Creditor by Frank Pingree, Cashier.

L. J. Bratager, Trustee, (Hooper note, Apr. 28, 1920, \$20,000.00).

The First National Bank of Berkeley, \$40,000.00 notes and Pingree Sugar Co. Bonds.

By Pierce, Critchlow & Barrett, its attorneys.

33-36 **Plaintiffs' Reply and Answer to Garnishees' Amended**
incl. **Answer in case of Henderson and Johnson vs. Hooper Sugar Company.**

(Title of Court and Cause)

Come now the plaintiffs, HENDERSON and JOHNSON, and file this their reply and answer to the amended answer of the Bankers Trust Company, garnishee.

I.

ANSWERING PARAGRAPHS numbered two (2), three (3) and four (4) of the Bankers Trust Company's amended answer to the second interrogatory admit that on or about the twenty-second (22nd) day of June, Nineteen Hundred Twenty (1920), one Ernest R. Woolley delivered to the Bankers Trust Company an agreement in writing, which agreement in writing is as set out in the garnishee's exhibit "A" and admit that at the time said agreement was delivered said Woolley left with the Bankers Trust Company a certificate for three thousand (3,000) shares of preferred, and a certificate for twenty thousand (20,000) shares of common, stock of the Interstate Sugar Company, which stock was issued in the name of the Hooper Sugar Company, and these plaintiffs allege that said stock, before it was issued to the Hooper Sugar Company, belonged to the Interstate Sugar Company, and except as hereinbefore admitted and alleged,

these plaintiffs deny each and every allegation contained in said paragraphs numbered two (2), three (3), and four (4).

II.

ANSWERING PARAGRAPHS five (5), six (6) and seven (7) of the amended answer of the Bankers Trust Company to the second interrogatory, these plaintiffs deny any knowledge or information thereof sufficient to form a belief and upon this ground deny each and every allegation contained therein.

III.

ANSWERING PARAGRAPHS eight (8), nine (9), ten (10) and eleven (11) of the amended answer of the Bankers Trust Company to the second interrogatory, these plaintiffs allege that the writ of garnishment served upon the Bankers Trust Company by the plaintiffs in this action was prior to the garnishments and executions set out in said paragraphs.

IV.

THESE PLAINTIFFS ANSWERING PARAGRAPH twelve (12) of the amended answer of the Bankers Trust Company to the second interrogatory deny any knowledge or information thereof sufficient to form a belief and on this ground deny each and every allegation contained in said paragraph twelve (12) of said amended answer of the Bankers Trust Company.

V.

ANSWERING PARAGRAPH thirteen (13) of the amended answer of the Bankers Trust Company to the second interrogatory these plaintiffs admit that on the seventeenth (17th) day of June, Nineteen Hundred Twenty-one (1921), a petition in bankruptcy was filed in the United States District Court in and for the District of Utah and that on July Eighth (8th), Nineteen Hun-

dred Twenty-one (1921), the said Hooper Sugar Company was declared a bankrupt and that Heber C. Carver was the duly appointed and acting trustee in bankruptcy in said proceedings, and these plaintiffs allege that Heber C. Carver, as such trustee in bankruptcy, under the jurisdiction of the bankruptcy court, for a valuable consideration, assigned all of his right, title and interest as trustee in and to said stock hereinbefore mentioned, to the Pioneer Sugar Company, and these plaintiffs further allege that the Pioneer Sugar Company, as successor in interest to Heber C. Carver, Trustee, is willing and consents that said Bankers Trust Company may turn over the certificates of shares of stock of the Interstate Sugar Company issued in the name of the Hooper Sugar Company, to the Sheriff of Weber County, State of Utah, in pursuance of the writ of garnishment heretofore issued out of this Court in the above entitled action.

VI

THESE PLAINTIFFS ANSWERING PARAGRAPH numbered fourteen (14) of the amended answer of the Bankers Trust Company to interrogatory number two, deny each and every allegation contained therein.

AND THESE PLAINTIFFS FURTHER ANSWERING SAID AMENDED ANSWER OF THE BANKERS TRUST COMPANY, ALLEGE:

That the stock of the Interstate Sugar Company that was deposited in the Bankers Trust Company on or about June Twenty-second (22nd), Nineteen Hundred Twenty (1920), was deposited by Ernest R. Woolley as President of the Interstate Sugar Company, and that said stock belonged to the Interstate Sugar Company and was given by the Interstate Sugar Company in purchase of the sugar plant of the Hooper Sugar Company in Weber

County, State of Utah, and the Hooper Sugar Company has transferred, in consideration of said shares of stock, all of its right, title and interest in said sugar plant to the said Ernest R. Woolley and the said Ernest R. Woolley thereafter transferred the same property to the Interstate Sugar Company, and that during the time of said transfers the said Ernest R. Woolley was President and General Manager of the Interstate Sugar Company and acted for and on behalf of the Interstate Sugar Company, and that on June Twelfth (12th), Nineteen Hundred Twenty-two (1922), or at any other time, the said Ernest R. Woolley had no interest whatsoever in or to said stock of the Interstate Sugar Company that was so deposited with the Bankers Trust Company for the benefit of the Hooper Sugar Company.

WHEREFORE, these plaintiffs pray for an order and judgment of this Court that the Bankers Trust Company turn over said certificates of shares of stock, hereinbefore set out, to the Sheriff of Weber County, State of Utah, to be sold under an execution issued out of the above entitled Court in favor of the plaintiffs.

HENDERSON & JOHNSON,

Attorneys for the Plaintiffs.

Verified December 15, 1923.

Filed December 15, 1923.

37 **Order in case of Henderson and Johnson vs. Hooper Sugar Company.**

Order that Ernest R. Woolley, Guardian Fire Insurance Company, Continental Casualty Company, Idaho State Bank of Twin Falls, Idaho, First National Bank of Kemmerer, Wyoming and Heber C. Carver as Trustee in Bankruptcy of Hooper Sugar Company, be interpleaded as defendants in the garnishment proceedings. The order declares the necessity of interpleading these

parties defendants, for a full determination of the garnishment proceedings. The order was made and entered December 18, 1923.

39 **Notice in case of Henderson and Johnson vs. Hooper Sugar Company.**

This notice is one to appear and is directed to the interpleaded defendants last above enumerated and pursuant to said order dated December 18, 1923. This notice bears upon its face the clerk's stamp entering default of Ernest R. Woolley and Heber C. Carver, the latter as Trustee in Bankruptcy of Hooper Sugar Company. The date of entry of default so appearing is February 28, 1924.

42 **Sheriff's Certificate in case of Henderson and Johnson vs. Hooper Sugar Company.**

Certificate of Benjamin R. Harries, Sheriff of Salt Lake County, Utah, to the service of the notice to appear last named upon Ernest R. Woolley on December 20, 1923.

43 **Appearance in case of Henderson and Johnson vs. Hooper Sugar Company.**

Appearance of Heber C. Carver, Trustee in Bankruptcy of Hooper Sugar Company, dated December 22, 1923, filed January 5, 1924.

45 **Answer of Continental Casualty Company to the Amended Answer of Bankers Trust Company, Garnishee, in the case of Henderson and Johnson vs. Hooper Sugar Company.**

50 **Answer of Idaho State Bank of Twin Falls, Idaho, to Garnishee's Amended Answer in case of Henderson and Johnson vs. Hooper Sugar Company.**

55 **Answer of Guardian Fire Insurance Company to Garnishee's Amended Answer in case of Henderson and Johnson vs. Hooper Sugar Company.**

The three answers last above enumerated, i. e., those

of Continental Casualty Company, Idaho State Bank of Twin Falls, Idaho and Guardian Fire Insurance Company, respectively, are the same as that of the plaintiffs to Garnishee's Amended Answer hereinbefore set out in full with only the following respective differences:

The Continental Casualty Company by its answer alleged that on November 11, 1920, it caused a writ of garnishment to be served upon the garnishee, Bankers Trust Company, in a suit against the defendant, Hooper Sugar Company, wherein it obtained a judgment against that defendant on October 31, 1921, in the sum of \$2,106.75 and \$18.90 costs. Garnishee answered this writ of garnishment that it had in its possession the certificates of stock involved herein. Continental Casualty Company accordingly asserted a lien upon the Stock represented by the certificates in question, and prayed a marshalling of all liens thereupon.

Idaho State Bank of Twin Falls, Idaho by its answer alleged that on December 3, 1920, it caused a writ of garnishment to be served upon the garnishee, Bankers Trust Company, in a suit against the defendant, Hooper Sugar Company, wherein it obtained a judgment against that defendant on February 18, 1921, in the sum of \$34,438.00 and \$18.90 costs. Idaho State Bank of Twin Falls, Idaho, accordingly asserted a lien upon the certificates of stock and also prayed a marshalling of all liens thereupon.

Guardian Fire Insurance Company by its answer alleged that on November 9, 1920, it caused a writ of garnishment to be served upon the garnishee, Bankers Trust Company, in a suit against the defendant, Hooper Sugar Company, wherein it obtained a judgment against that defendant on October 31, 1921, in the sum of \$266.25 and \$18.90 costs. Guardian Fire Insurance Company accordingly asserted a lien upon these certificates of

stock and prayed a marshalling of all liens thereupon.

The plaintiffs appeared as attorneys for each, Continental Casualty Company, Idaho State Bank of Twin Falls, Idaho and Guardian Fire Insurance Company.

60-65 **The two several answers of First National Bank of
incl. Kemmerer, Wyoming, to Garnishee's Amended An-
 swer in case of Henderson and Johnson vs. Hooper
 Sugar Company.**

These answers admitted the allegations contained in paragraphs 1 to 11, both inclusive, of the second interrogatory of Garnishee's Amended Answer, denied all others, and alleged judgments in its favor against Hooper Sugar Company, one rendered June 8, 1921, for the sum of \$18,024.02 upon which a writ of execution issued June 9, 1921, and was thereafter served upon the garnishee, Bankers Trust Company. The second judgment was rendered July 15, 1921, for the sum of \$19,163.75 upon which execution issued in the month of January of 1922, and was subsequently served upon garnishee, Bankers Trust Company. Wherefore, First National Bank of Kemmerer, Wyoming prayed that the priorities resulting from service of writs of garnishment and execution be adjudicated and the property attached be sold and distributed accordingly.

67 **Order in case of Henderson and Johnson vs. Hooper
 Sugar Company.**

This is an order for the default of the defendants in garnishment proceedings, Ernest R. Woolley and Heber C. Carver as Trustee in Bankruptcy of the Hooper Sugar Company. The order recites the due service of the order and notice to appear upon Ernest R. Woolley, his failure to plead for which the time had then expired, the appearance of Heber C. Carver as such trustee, and the latter's failure to plead, the time for so doing having expired. Wherefore, the defaults of each Ernest R. Wool-

ley and Heber C. Carver as such trustee were entered. The order was dated February 28, 1924.

- H. and J.
P.S.Co.) 1, 2 **Complaint in case of Henderson and Johnson, Plaintiffs, vs. Pingree Sugar Company, Defendant, et al.**

(Title of Court and Cause)

It is alleged in substance that between the first day of January, 1920, and the first day of December of the same year the plaintiffs had performed legal services at the request of the defendant of the reasonable value of \$10,000.00, no part of which had been paid. Prayer for judgment accordingly.

Verified January 19, 1921.

Filed January 20, 1921.

- H. and J.
P.S.Co.) 66-68 incl. **Writ of Garnishment in case of Henderson and Johnson, Plaintiffs vs. Pingree Sugar Company, Defendant, and Proof of Service thereof on Garnishee, Bankers Trust Company.**

This writ was issued January 20, 1921, was received by the Sheriff of Salt Lake County, January 21, 1921, and was served by him upon the garnishee, Bankers Trust Company, the same day.

- H. and J.
P.S.Co.) 69 **Answer of Garnishee in case of Henderson and Johnson vs. Pingree Sugar Company.**

This answer was filed January 29, 1921, and was the same as the previous answer of this garnishee in the case of Henderson and Johnson, vs. Hooper Sugar Company hereinbefore described. As in the case of Henderson and Johnson vs. Hooper Sugar Company the subsequent stipulation for and the amendment of this answer renders the answer irrelevant to any issue before this court.

- H. and J.
P.S.Co.) 3 **Summons and Proof of Service thereof upon the Defendant, Pingree Sugar Company.**

Summons served upon the defendant, Pingree Sugar

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Company, January 21, 1921, by delivering a copy thereof to James Pingree, its President.

4, 5 **Judgment by Default in case of Henderson and Johnson vs. Pingree Sugar Company.**

This judgment recites that the Pingree Sugar Company having been duly served with process and having failed to appear and answer the complaint, the time for answer having expired and the default of the defendant having been entered according to law, judgment was rendered in favor of the plaintiffs and against the defendant in the sum of \$10,000.00 with interest thereon at the rate of 8% per annum from the 18th day of February, 1921, the date of entry thereof.

70-73 **Writ of Execution in case of Henderson and Johnson vs. Pingree Sugar Company, Proof of Service**
incl. **and Return.**

This writ of execution was issued March 2, 1921, upon judgment obtained by Henderson and Johnson against the Pingree Sugar Company last hereinbefore referred to. This writ was served by the Sheriff of Salt Lake County upon Bankers Trust Company March 3, 1921. The sheriff on March 16, 1921, received from Bankers Trust Company the following statement, which he mailed to the Clerk of the Court below:

“BANKERS TRUST COMPANY
Salt Lake City, Utah,
March 12, 1921.

Legal Department.

Mr. C. Frank Emery,

Sheriff of Salt Lake County,
City.

My Dear Sir:

On the 4th inst., you served on the Bankers Trust Co., an execution issued out of the District Court in and for the county of Weber, State of Utah, in an action entitled H. P. Henderson and Wade M. Johnson Co-Partners, doing business

under the firm name and style of Henderson & Johnson, plaintiffs against Pingree Sugar Co., a corporation, defendant. With the request that we furnish you a statement as to any property of the Defendant, in our possession.

In reply, you are advised that on June 22, 1920, the Bankers Trust Co. received from Ernest R. Woolley, and now holds, unendorsed certificates for shares of the common and preferred capital stock of Interstate Sugar Company, a Utah corporation, as follows:

Certificate for 2700 shares preferred, in name of Pingree Sugar Co.

Certificate for 30,000 shares common, Pingree Sugar Co.

Certificate for 3000 shares preferred, Hooper Sugar Co.

Certificate for 20,000 shares common, Hooper Sugar Co.

it being stipulated by said Bankers Trust Company, upon receipt of said certificates, that the same were to be held by said Bankers Trust Company, as Trustee, for the use and benefit of said Pingree Sugar Company and said Hooper Sugar Company, and its creditors and stockholders, and to be distributed to the said Sugar Companies respectively and their respective creditors and stockholders when they shall deliver or cause to be delivered to Bankers Trust Company, Trustee, the necessary papers and documents setting forth and defining the respective rights of said sugar companies, and their respective creditors and stockholders in and to said shares of stock in said Interstate Sugar Company.

Since the receipt of the above mentioned certificates, garnishments have been served upon the Bankers Trust Company in the following entitled actions pending in the district court of Weber County, Utah: 1. Henderson & Johnson vs. Hooper Sugar Company, garnishment served August 16, 1920. 2. Guardian Fire Insurance Company against Hooper Sugar Company, garnishment served November 11, 1920. 3. Continental Casualty Company against Hooper Sugar

Company, garnishment served November 11, 1920. 4. Idaho State Bank of Twin Falls against Hooper Sugar Company and Parley T. Wright, garnishment served December 3, 1920. 5. Henderson and Johnson against Pingree Sugar Company, garnishment served January 21, 1921. 6. Job Pingree against Pingree Sugar Company, garnishment served January 21, 1921. 7. Republic Casualty Company against Pingree Sugar Company, garnishment served February 21, 1921. (this last mentioned case is pending in the district court of Salt Lake County).

We have not, as yet, received the necessary instruments showing the respective rights in the above mentioned stock certificates of the Pingree Sugar Company or Hooper Sugar Company, or their respective creditors or stockholders. Consequently, we are not able to say, what is the interest of the Pingree Sugar Company in said certificates. Whatever that interest is, however, it must be subject to whatever rights have been attached to it by reason of the aforementioned garnishments and also subject to the charges of the Bankers Trust Company against it for its services in holding said certificates.

We do not feel that it would be at all practicable for the certificates mentioned to be sold by you, under the execution until some proper adjudication may be had that will determine the interest of the Pingree Sugar Company therein. We have no other property in our possession or subject to our control belonging to the Pingree Sugar Company other than that which is mentioned, or have we knowledge of any.

Yours very truly,

D/R

C. G. Douglas."

- 14, 15 **Order of July 10, 1923, in case of Henderson and Johnson vs. Pingree Sugar Company.**
- 6-13 **Motion in case of Henderson and Johnson vs. Pin-**
incl. **gree Sugar Company.**
- 16, 17 **Stipulation in case of Henderson and Johnson vs.**
 Pingree Sugar Company.

The three documents last hereinbefore enumerated

are substantially the same as the corresponding Order, Motion and Stipulation in the case of Henderson and Johnson, vs. Hooper Sugar Company, and pursuant to the stipulation last enumerated, the ex parte order of July 10, 1923, was set aside and the filing of Garnishee's Amended Answer ordered.

(H. and J.
s. P.S.Co.) 18-28 **Garnishee's Amended Answer in case of Henderson
incl. and Johnson vs. Pingree Sugar Company.**

This amended answer is to the writ of garnishment served upon Bankers Trust Company January 21, 1921. Answering the first interrogatory: Any indebtedness is denied either upon January 21, 1921, or at any time thereafter. The answer to the second interrogatory is the same as that by the same garnishee in the case of Henderson and Johnson vs. Hooper Sugar Company, except in the following differences:

Paragraphs one and two are the same and three is the same, except that one certificate for 2700 shares of preferred and one certificate for 30,000 shares of common stock of Interstate Sugar Company is in the name of Pingree Sugar Company.

Paragraph four is the same.

Paragraphs 5, 6, 7, 8, 9 and 10 are as follows:

"5. That on the 21st day of January, 1921, in the case of Job Pingree v. Pingree Sugar Company, then pending in the District Court of the State of Utah, Second Judicial District, in and for the County of Weber, a writ of garnishment was served upon Bankers Trust Company, whereby all interest, if any, of the Pingree Sugar Company in said shares of stock of Interstate Sugar Company was attached and garnisheed.

"6. That on the 21st day of February, 1921, in the case of Republic Casualty Company vs. Pingree Sugar Company, then pending in the District Court of the Third Judicial District of the State of Utah, in and for Salt Lake County a writ

of garnishment was served upon Bankers Trust Company and thereby all interest of said Pingree Sugar Company, if any, in said shares of stock of said Interstate Sugar Company was attached and garnisheed.

"7. On the 3d day of March, 1921, in the case of Job Pingree v. Pingree Sugar Company, a writ of execution was served upon Bankers Trust Company, reciting a judgment for \$76,340.00, with interest at% per annum from March 2, 1921, and for \$11,490.00, with interest at 6% per annum from February 18, 1921, and \$19.50 costs.

"8. That on the 29th day of July, 1921, in the case of Republic Casualty Company v. Pingree Sugar Company, a writ of execution was served upon Bankers Trust Company reciting a judgment for \$1992.40, with interest at 8% per annum from June 21, 1921, and \$43.20 costs.

"9. That in an action pending in the District Court for the Second Judicial District of the State of Utah in and for Weber County, wherein Wells Fargo Nevada National Bank of San Francisco, a national banking association, was plaintiff and James Pingree, O. B. Gilson and Job Pingree were defendants, the plaintiff Wells Fargo Nevada National Bank caused a writ of garnishment to be served upon Bankers Trust Company on April 27, 1921, whereby all interest of said defendants in or to said capital stock of Interstate Sugar Company in the name of Pingree Sugar Company was attached and garnisheed.

"10. Bankers Trust Company is informed and believes that on the 8th day of August, 1921, a voluntary petition in bankruptcy was filed by the Pingree Sugar Company in the District Court of the United States for the Northern District of California, Southern Division, and that on the 19th day of September, 1921, said court adjudged said Pingree Sugar Company a bankrupt and that said Pingree Sugar Company has not as yet been therein discharged."

Paragraph eleven is the same as paragraph fourteen in the Hooper case.

Paragraph twelve is as follows:

"12. That Union Trust Company of San Francisco is the trustee under that certain mortgage or deed of trust executed by Pingree Sugar Company to said Union Trust Company of San Francisco, as such trustee, the release and discharge whereof is made by agreement, garnishee's Exhibit A, to condition the consummation of said purchase hereinbefore referred to, and Bankers Trust Company is informed and believes that said trustee has or claims some interest in and to said deposit and shares of capital stock."

The answer to the third interrogatory is "no" in each case, and the prayer is the same as is the date of service and filing.

(H. and J.
vs. P.S.Co.)

29-33
incl.

Plaintiffs' Reply and Answer to Garnishee's Amended Answer in case of Henderson and Johnson vs. Pingree Sugar Company.

(Title of Court and Cause)

Come now the plaintiffs, HENDERSON and JOHNSON, and file this their reply and answer to the amended answer of the Bankers Trust Company, garnishee.

I.

ANSWERING PARAGRAPHS numbered two (2), three (3) and four (4) of the Bankers Trust Company's amended answer to the second interrogatory, these plaintiffs admit that on or about the twenty-second (22nd) day of June, Nineteen Hundred Twenty (1920), one Ernest R. Woolley delivered to the Bankers Trust Company an agreement in writing, which agreement in writing is as set out in the garnishee's exhibit "A", and admit that at the time said agreement was delivered said Woolley left with the Bankers Trust Company a certificate for twenty-seven hundred (2700) shares of preferred, and a certificate of thirty thousand (30,000) shares of common, stock of the Interstate Sugar Company, which stock was issued in the name of the Pingree Sugar Company, and

these plaintiffs allege that said stock, before it was issued to the Pingree Sugar Company, belonged to the Interstate Sugar Company, and except as hereinbefore admitted and alleged, these plaintiffs deny each and every allegation contained in said paragraphs numbered two (2), three (3), and four (4).

II.

ANSWERING PARAGRAPHS numbered five (5), six (6), seven (7) and eight (8) of the Bankers Trust Company's amended answer to the second interrogatory, these plaintiffs allege that the writ of garnishment served upon the Bankers Trust Company by the plaintiffs in this action was prior to the garnishments and executions set out in said paragraphs.

III.

ANSWERING PARAGRAPH numbered nine (9) of the Bankers Trust Company's amended answer to the second interrogatory, these plaintiffs deny any knowledge or information sufficient to form a belief, and on this ground deny each and every allegation contained in said paragraph numbered nine (9).

IV.

ANSWERING PARAGRAPH numbered ten (10) of the Bankers Trust Company's amended answer to the second interrogatory, these plaintiffs admit that on the eighth (8th) day of August, Nineteen Hundred Twenty-one (1921) a voluntary petition in bankruptcy was filed by the Pingree Sugar Company in the District Court of the United States for the Northern District of California, Southern Division, and that on the Nineteenth (19th) day of September, Nineteen Hundred Twenty-one (1921) said Court adjudged said Pingree Sugar Company a bankrupt.

THESE PLAINTIFFS ALLEGE that said bankruptcy court appointed Harry S. Young as Trustee in Bankruptcy of the said Pingree Sugar Company and that

said Harry S. Young as such trustee in bankruptcy, under the jurisdiction of the bankruptcy court, for valuable consideration, sold, assigned and delivered all of his right, title and interest as trustee in bankruptcy in and to said stock hereinbefore mentioned, to the Interstate Sugar Company, and these plaintiffs further allege that said Interstate Sugar Company, as successor in interest of the said Harry S. Young, trustee in bankruptcy, is willing and consents that said Bankers Trust Company may turn over the certificates of shares of stock of the Interstate Sugar Company issued in the name of the Pingree Sugar Company to the sheriff of Weber County, State of Utah, in pursuance of the writ of garnishment heretofore issued out of this court in the above entitled action.

V.

ANSWERING PARAGRAPH numbered eleven (11) of the amended answer of the Bankers Trust Company to the second interrogatory, these plaintiffs deny each and every allegation contained therein.

VI.

ANSWERING PARAGRAPH numbered twelve (12) of the amended answer of the Bankers Trust Company to the second interrogatory these plaintiffs admit that the Union Trust Company is trustee under that certain mortgage or deed of trust executed by the Pingree Sugar Company to the said Union Trust Company, which deed of trust and mortgage is mentioned in garnishee's exhibit "A."

THESE PLAINTIFFS DENY that the said Union Trust Company, as trustee, has, or claims some interest in or to said shares of stock of the Interstate Sugar Company so deposited with the Bankers Trust Company.

AND THESE PLAINTIFFS FURTHER ANSWERING the amended answer of the Bankers Trust Company to the second interrogatory allege that the

stock of the Interstate Sugar Company that was deposited in the Bankers Trust Company on or about June Twenty-second (22nd), Nineteen Hundred Twenty (1920), was deposited by Ernest R. Woolley as President of the Interstate Sugar Company and that said stock belonged to the Interstate Sugar Company and was given by the Interstate Sugar Company in purchase of the sugar plant of the Pingree Sugar Company in California, and that the Pingree Sugar Company, in consideration of said shares of stock, transferred all of its right, title and interest in and to said sugar plant to the said Ernest R. Woolley and that the said Ernest R. Woolley immediately after the transfer of said plant to himself transferred said plant to the Interstate Sugar Company, and that during the time of said transfers the said Ernest R. Woolley was president and general manager of the Interstate Sugar Company and acted for and on behalf of the Interstate Sugar Company, and that on June Twelfth (12th), Nineteen Hundred Twenty-two (1922), or at any other time, the said Ernest R. Woolley had no interest whatsoever in or to said stock of the Interstate Sugar Company that was so deposited with the Bankers Trust Company for the benefit of the Pingree Sugar Company.

WHEREFORE, these plaintiffs pray for an order and judgment of this Court that the Bankers Trust Company turn over said certificates of shares of stock hereinbefore set out, to the sheriff of Weber County, State of Utah, to be sold under an execution heretofore issued out of the above entitled court in favor of the plaintiffs, and that plaintiffs have such other and further relief as may be just.

HENDERSON & JOHNSON,
Attorneys for Plaintiffs.

Verified December 15, 1923.

Filed December 15, 1923.

H. and J.
P.S.Co.) 34-35 **Order in case of Henderson and Johnson vs. Pingree
Sugar Company.**

Order that Ernest R. Woolley, Wells Fargo Nevada National Bank of San Francisco, a corporation, Job Pingree, Republic Casualty Company, a corporation, and Harry S. Young, Trustee in Bankruptcy of the Pingree Sugar Company, be interpleaded as defendants in the garnishment proceedings. The order declares the necessity of interpleading these parties defendants for a full determination of the garnishment proceedings. The order was made and entered December 18, 1923.

H. and J.
P.S.Co.) 36-38 **Notice in case of Henderson and Johnson vs. Pin-
incl. gree Sugar Company.**

This notice is one to appear and is directed to the interpleaded defendants last above enumerated and pursuant to said order dated December 18, 1923. This notice bears upon its face the Clerk's stamp entering default of Ernest R. Woolley, Wells Fargo Nevada National Bank of San Francisco and Harry S. Young, Trustee in Bankruptcy of Pingree Sugar Company, and the date of this notice is February 28, 1924. This notice was served upon Ernest R. Woolley December 20, 1923.

H. and J.
P.S.Co.) 39 **Appearance of Republic Casualty Company in case of
Henderson and Johnson vs. Pingree Sugar Company.**

This appearance acknowledges service of the order and notice making it a party in the garnishment proceedings in said action, and Republic Casualty Company accordingly enters its appearance therein.

Filed January 5, 1924.

H. and J.
P.S.Co.) 40 **Appearance in case of Henderson and Johnson vs. Pin-
gree Sugar Company.**

This appearance is by Wells Fargo Nevada National
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Bank of San Francisco and Harry S. Young, Trustee in Bankruptcy of the Pingree Sugar Company, and is an acknowledgment of service of the order and notice making them parties defendant in the garnishment proceedings.

Filed January 5, 1924.

41-45 **Reply and Answer of the Defendant, Job Pingree to**
incl. **the Amended Answer of Garnishee, Bankers Trust**
 Company, in case of Henderson and Johnson vs.
 Pingree Sugar Company.

This answer is the same as that of plaintiffs to Garnishee's Amended Answer with only the following differences:

The defendant, Job Pingree, by his answer alleged that on January 20, 1921, had as plaintiff begun a suit against the Pingree Sugar Company, and that on that day had caused a writ of garnishment to be issued and served upon Bankers Trust Company, January 21, 1921, to which garnishee answered that it had in its possession the certificates of stock herein involved. Job Pingree procured a judgment in that suit entered therein on February 18, 1921, for the sum of \$76,340.00 and \$11,490.00 and costs \$19.50. Job Pingree accordingly asserted a lien upon the stock represented by the certificates in question, and prayed a marshalling of all liens thereupon. The plaintiffs appeared as attorneys for the defendant in garnishment proceedings, Job Pingree.

Verified January 10, 1924.

Filed January 11, 1924.

46-48 **Answer of Republic Casualty Company to Garni-**
incl. **shee's Amended Answer in case of Henderson and**
 Johnson vs. Pingree Sugar Company.

This answer admits paragraphs 1, 2, 3, 6, 7, 8 and 10 of the Garnishee's Amended Answer to the second interrogatory contained in the writ of garnishment,

Alleges lack of information sufficient to form a belief and consequently denies the allegations contained in paragraphs 4, 5, and 9 of the Garnishee's Amended Answer, and generally denies all other allegations in the Amended Answer contained not so admitted. This defendant then alleges a judgment in its favor in a suit by it against Pingree Sugar Company, entered June 21, 1921, for the sum of \$1,992.40 and \$43.20 costs. That immediately after the institution of said suit, being on or about February 21, 1921, the Republic Casualty Company had caused a writ of garnishment to be served upon Bankers Trust Company, and on July 28, 1921, had caused a writ of execution to be issued in that case. Republic Casualty Company accordingly asserted a lien upon the certificates of stock in question and prayed a marshalling of all liens thereupon. Messrs. Gustin and Pence of Salt Lake City, Utah, appeared as attorneys for the Republic Casualty Company.

Verified January 17, 1924.

Filed January 18, 1924.

and J. P.S.Co.)	49-51 incl.	Answer of First National Bank of Kemmerer, Wyoming, to the Amended Answer of Bankers Trust Company, Garnishee, in case of Henderson and Johnson vs. Pingree Sugar Company.
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By this answer the allegations contained in paragraphs 1 to 11, both inclusive, of the Garnishee's Amended Answer to the second interrogatory were admitted, all others were denied. It was further alleged that a judgment in favor of the First National Bank of Kemmerer, Wyoming against the defendant, Pingree Sugar Company, had been rendered in a suit between said parties, August 23, 1921, for the sum of \$12,753.47; that thereafter execution issued thereupon and was placed in the Sheriff's hands for levy. Wherefore, First National Bank of Kemmerer, Wyoming prayed that the

priorities resulting from service of writs of garnishment and execution be adjudicated, and the property attached be sold and distributed accordingly. Appearance by Messrs. Dickson, Ellis, Parsons and Adamson.

Verified February 1, 1924.

Filed February 2, 1924.

52, 53 **Order in case of Henderson and Johnson vs. Pingree Sugar Company.**

This is an order entering the default of the defendants in garnishment proceedings, Ernest R. Woolley, Wells Fargo Nevada National Bank of San Francisco and Harry S. Young, Trustee in Bankruptcy of Pingree Sugar Company. The order recites the due service of Order and Notice to appear upon Ernest R. Woolley and the appearance of Wells Fargo Nevada National Bank of San Francisco and Harry S. Young, said trustee, through their attorney, J. D. Skeen. Each of said defendants failed to plead in the garnishment proceedings and the time for so doing having then expired.

Made and Entered February 28, 1924.

BILL OF EXCEPTIONS

Henderson and Johnson vs. Hooper Sugar Company.

Served upon the plaintiffs and the defendants in garnishment proceedings, Guardian Fire Insurance Company, Continental Casualty Company, Idaho State Bank of Twin Falls, Idaho, First National Bank of Kemmerer, Wyoming and Ernest R. Woolley, August 12, 1924, and upon the defendant, Hooper Sugar Company, and the defendant in garnishment proceedings, Heber C. Carver, Trustee in Bankruptcy for Hooper Sugar Company, August 25, 1924. Settled, allowed and thereafter filed upon stipulation of all parties September 2, 1924.

Henderson and Johnson vs. Pingree Sugar Company.

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Served upon the plaintiffs and the defendants in garnishment proceedings, Job Pingree, Republic Casualty Company and Ernest R. Woolley, on August 12, 1924, and on the defendants in garnishment proceedings, Wells Fargo Nevada National Bank of San Francisco, and Harry S. Young, Trustee in Bankruptcy of Pingree Sugar Company, August 23, 1924, and on the defendant, Pingree Sugar Company, September 12, 1924, Pingree Sugar Company declining to propose any amendments thereto. Settled and allowed pursuant to stipulation of all parties, except the defendant, Pingree Sugar Company, September 18, 1924.

Filed after settlement September 20, 1924.

BE IT REMEMBERED that the above entitled causes on the amended answer of Bankers Trust Company, garnishee therein, and the issues thereupon, came on for trial before the above entitled court, the Hon. James N. Kimball presiding, without a jury, on the 4th day of March, 1924, Messrs. Henderson and Johnson appearing as attorneys for themselves, the plaintiffs in each of said causes, and also as attorneys for the defendants in said garnishment proceedings in the case of said plaintiffs vs. Hooper Sugar Company, Guardian Fire Insurance Company, Continental Casualty Company and Idaho State Bank of Twin Falls, Idaho. And in the case of said plaintiffs vs. Pingree Sugar Company the defendant in garnishment proceedings, Job Pingree; Bankers Trust Company, the garnishee in each of said causes and the defendant in garnishment proceedings, First National Bank of Kemmerer, Wyoming, appearing by their counsel, Messrs. Dickson, Ellis, Parsons and Adamson; and Republic Casualty Company, a defendant in garnishment proceedings in the case of Henderson and Johnson vs. Pingree Sugar Company appearing by its

counsel, Mr. Joseph T. Pence; the several defaults of each the defendants in said garnishment proceedings in said causes, Ernest R. Woolley, Heber C. Carver as Trustee in Bankruptcy of Hooper Sugar Company, Harry S. Young as Trustee in Bankruptcy of Pingree Sugar Company and Wells Fargo Nevada National Bank of San Francisco, a corporation, having been duly entered, each having failed to plead herein. Whereupon said parties so announcing themselves ready for trial, the following proceedings were had.

MR. PARSONS: If the court please I desire to make a statement before we proceed with this matter.

(Tr. 9
B. of E.)

THE COURT: There are two of these matters, one is where—the case of Henderson & Johnson vs. Hooper Sugar Company and the other Henderson & Johnson vs. Pingree Sugar Company, both proceedings on garnishment I presume involve the same facts and can be heard together.

MR. PARSONS: I should think so, your honor.

MR. HENDERSON: I think so; they can be consolidated so far as we are concerned.

THE COURT: Well, the evidence will be taken and the judgment, whatever it is, entered in each case.

(Garnishee's Exhibits A, B, C and D Marked.)

MR. PARSONS: The amended answer of the Bankers Trust Company as garnishee in each of these proceedings was filed in this court on the 6th of December last. At that time Ernest R. Woolley's interest was set up in those amended answers, and subsequently, I believe, by order made by this court on the 18th of December last, Ernest R. Woolley and other parties were interpleaded. Now, it seems that this order was served upon Ernest R. Woolley on the 20th of December last. On the 18th, we are informed, Ernest R. Woolley made an as-

signment of all his interest in the stock involved in this trust to George E. Sanders, and I am submitting to your honor a copy of that assignment as it comes into our possession marked Garnishee's Exhibit "D." On the 15th of January last, George E. Sanders, by his attorneys, Marioneaux, King and Schulder served upon the Bankers Trust Company this letter:

"Gentlemen:

You will please take notice hereby that George E. Sanders of Salt Lake City, Utah, has heretofore acquired and is now the owner of all of the interest heretofore owned or possessed by Ernest R. Woolley of, in and to 500,000 of the common stock and 750,000 of the preferred stock of the Interstate Sugar Company, which said stock is now held in escrow by you.

of E. 4)

And you are hereby notified not to deliver said stock or any part thereof to any person or persons without an order from me."

When that letter was received it was brought to our attention as counsel, and I personally advised Mr. Hardy merely to acknowledge it, for I believed at the time that whatever interest Mr. Sanders had acquired from Woolley was still represented in this proceeding, and that Mr. Woolley would appear and set up his interest here as a party in these actions. Accordingly Mr. Hardy replied, as vice-president of the Bankers Trust Company, by letter of January 17th last addressed to Marioneaux, King & Schulder as follows:

"Gentlemen:

Acknowledgment is made of the receipt of your communication of January 15th written on behalf of George E. Sanders and notifying us that Mr. Sanders has acquired and is now the owner of the interest heretofore owned or possessed by Ernest R. Woolley in certain shares of common and preferred stock of the Interstate Sugar Company held by us in escrow."

Very truly yours,"

That is where the matter remained until last Sunday afternoon when I was advised by Mr. King that it was the contention of Mr. Sanders that Mr. Woolley had no interest in this deposit at the time the order was served upon him and making him a party and bringing him in; that the assignment had occurred on the 18th of December and that they felt it was the duty of the Bankers Trust Company for its protection to ask leave to file an amended answer in this suit, making Mr. Sanders a party, and yesterday afternoon I communicated that fact to Mr. Hardy, and yesterday afternoon also, George E. Sanders by his attorney served this letter upon the Bank- (B. of E. ers Trust Company, dated March 3, 1924:

“Gentlemen:

On January 15, 1924, we forwarded you, as attorneys for George E. Sanders, notice that he had theretofore acquired and was then the owner of all the interest theretofore owned or possessed by Ernest R. Woolley, of, in and to 500,000 shares of the common stock and 570,000 shares of the preferred stock of the Interstate Sugar Company, which said stock is now held by you in escrow, and on January 17, 1924, you wrote and acknowledged receipt of said communication.

Supplementing our letter of January 15, 1924, we hereby notify you that George E. Sanders heretofore acquired all of the interest in and to all of said stock above referred to and heretofore claimed to be owned by the Pingree Sugar Company, a corporation, or the Trustee in Bankruptcy of said Corporation, and also all of the interest claimed to be owned by the Hooper Sugar Company, a corporation, or the Trustee in Bankruptcy, and all interest claimed therein by the Pioneer Sugar Company, a corporation, or the Interstate Sugar Company, a corporation, and you are hereby notified not to deliver said stock or any part thereof to any person or persons without an order from me.

You are further notified that all of said inter-

est from the said Ernest R. Woolley and said corporations, and the said Trustee in Bankruptcy were transferred and delivered to the said George E. Sanders on and prior to the 18th day of December, 1923.

Yours very respectfully,

GEORGE E. SANDERS,

By MARIONEUX, KING & SCHULDER,

His attorneys."

of E. 6)

These letters I have read have been identified as Garnishee's Exhibits A. B. C. and the assignment as "D". In the light of that information it occurs to us that there may be some merit in the position taken by Mr. Sanders, in view of the fact that on the 20th of December when Mr. Woolley was served with the order of this court bringing him in as a party Mr. Woolley had no interest, and that on that day the interest was that of Mr. Sanders. In view of this situation amended answers have been prepared on behalf of this garnishee. They are identical in all respects with the answers already filed with this exception, that in the case against the Hooper Sugar Company there have been added to paragraph 4 the following: "That since the filing of the first amended answer herein, which said answer was verified on December 4, 1923, one George E. Sanders served written notice upon this garnishee setting forth that he, at and prior to the 18th day of December, 1923, acquired all the right, title and interest of Ernest R. Woolley in the Pingree Sugar Company and its trustee in bankruptcy, the Hooper Sugar Company and its trustee in Bankruptcy, the Pioneer Sugar Company, a corporation, and the Interstate Sugar Company, a corporation, in and to all of the preferred and common stock of the Interstate Sugar Company held in escrow by this garnishee and as set forth and described in Garnishee's Exhibit "A" attached hereto and that he as such assignee of all of said

stock now claims to be the owner thereof and as such owner to be entitled to the possession of the certificates of stock so held by this garnishee, and the said George E. Sanders by his notice heretofore served upon this garnishee has directed and forbidden this garnishee to release such stock or any part thereof without his consent; that the said George E. Sanders claiming to be the owner of said stock is an interested and proper party to this proceeding and should be made a party hereto by order of this court.” (B. of E.

A similar paragraph has been added to the amended answer of the Bankers Trust Company as garnishee in the Pingree case. Accordingly we ask leave of court on behalf of this garnishee to file in these proceedings its second amended answer.

MR. HENDERSON: We object to any such proceedings as that. When these proceedings were commenced and Mr. Woolley was served he was the owner of this stock, now Sanders knew all about it and was urging these proceedings to be taken. Mr. Sanders was in my office when your Honor was there on Friday and asked for this case to go over, saying that he intended to intervene between then and now, and upon that request Mr. Sanders and his attorney, Mr. Schulder, postponed the trial of that action from Saturday until Tuesday. This Bankers Trust Company hearing has been delayed through one thing or another. Of course, your honor is not interested in the matters that underlie all this, but that is all it is. Now, there is no intent here, so far as Mr. George E. Sanders is concerned to proceed with this lawsuit. He knows all about it and the Bankers Trust Company is not going to be injured at all if Mr. George E. Sanders is not here, because Mr. George E. Sanders at any time even after this property is (B. of E. 8

ordered turned over, if he has any interest in it, can commence an independent action if he so desires. I know this Bankers Trust Company is assumed to be the guardian of about every person down there that Mr. Woolley has made a suggestion of. They started in here to fight for Woolley and from Woolley gone to Sanders.

MR. PARSONS: Of course, that is not true, there is no justification for a statement of that kind.

MR. HENDERSON: There is a justification for it and it is shown in the proceedings, and may it please your honor, I object at this time to Mr. George E. Sanders being made a party unless he comes in here and asks for it. He asked your Honor, through his attorney Mr. Schuller on last Friday to postpone the trial of this case, saying that he intended to come in, but instead of his asking for it he has gotten the Bankers Trust Company to ask for it.

MR. PARSONS: The only reply I want to make to that, I think the Bankers Trust Company might well resent the statement that its function here has been the protection of Mr. Woolley. There is nothing in the record to justify it.

THE COURT: Well, the court assumes that the Bankers Trust Company has a right to file its answer here and take it they do so, but under the circumstances of this case and the attitude which is assumed now, the court will deny leave to amend and deny the request that you have Mr. Sanders made a party defendant in this case as to this garnishee.

MR. PARSONS: Exception.

THE COURT: You may proceed, gentlemen.

MR. HENDERSON: At the present time may it please your Honor, I think the mode of procedure here under this action and under the allegations of the Bank-

ers Trust Company in their reply, they allege (B. of E. that certain garnishments were served on them, which we admit, and I think the pleadings which are admitted will show the order in which these garnishments were levied, and now the only thing here at the present time is they claim to be entitled to a reasonable compensation.

THE COURT: There were several defendants—several parties made defendants in this case, Mr. Henderson, whose names I don't remember. What is the state of the pleadings as to those?

MR. HENDERSON: Well, we will take up the first case. We will take up the case of the Pingree Sugar Company. Now, Ernest R. Woolley's default has been entered; the Wells Fargo Nevada National Bank's default has been entered; Job Pingree is represented by our firm; the Republic Casualty Company is represented by Mr. Pence of Salt Lake, and Harry S. Young, trustee in bankruptcy of the Pingree Sugar Company, default has been entered. Mr. Pence is here. So that all the parties seem to be here in the case of Henderson & Johnson vs. Pingree Sugar Company. In the case of Henderson & Johnson vs. Hooper Sugar Company, Bankers Trust Company, garnishee, Ernest R. Woolley, Guardian Fire Insurance Company, Continental Casualty Company, Idaho State Bank of Twin Falls, First National Bank of Kemmerer, and Heber C. Carver, trustee in bankruptcy of the Hooper Sugar Company and Ernest R. Woolley's defaults have been entered. The Guardian Fire Insurance Company is represented by us, the Continental Casualty Company is represented by us and the Idaho State Bank of Twin Falls. It is only a question of notice, when the garnishment was served and I think that is admitted under the pleadings.

and we told them we would attend to that for them. The First National Bank of Kemmerer is represented by the same parties who represent the Bankers Trust Company, Heber C. Carver, trustee in bankruptcy of the Hooper Sugar Company, default has been entered so the parties are all here, outside of those whose defaults have been entered.

THE COURT: Now, what is the claims of those who have appeared?

MR. HENDERSON: I will read the answer of the Idaho State Bank of Twin Falls.

(Pleadings read by Mr. Henderson).

THE COURT: There is one thing that is stated in that answer of the Hooper Sugar Company pending the disposition of that stock, I have forgotten what the date of that was, that seems to be denied.

MR. HENDERSON: They deny it in toto.

THE COURT: I think the burden of that matter would be with the garnishee, the Bankers Trust Company, and of course you deny the expenses and compensation of the Bankers Trust Company for administering the trust, that would throw the burden on the Bankers Trust Company. Now, so far as Ernest R. Woolley is concerned, there has been a statement made here, on which I denied leave to amend, but there has been a statement made here that there is an assignment made by Woolley of his interest, whatever it was, to Mr. Sanders. Sanders has not appeared here, I would much prefer that he had—but so far as Woolley's interest is concerned, I think if the Bankers Trust Company is defending either under Woolley or Sanders, it is their business to show what the interest of Woolley was, or is, at the time the stocks were deposited with it or at this time, for that matter. I see nothing in the answer that requires any proof

on the part of the judgment creditor, the garnishment creditor, except the non-payment of the judgment, except that it has recovered final judgment and that there is a garnishment or execution and attachment.

MR. HENDERSON: It wasn't any attachment, it (B. of E. was a writ of garnishment issued, issued originally.

THE COURT: The burden will be on you to show that you had obtained your final judgment as against the garnishee because you would have no right for an order or judgment against it until the final judgment of the main creditor. It seems to me that is about all that is necessary for the garnishee to prove here. As I remember it, the answer of the garnishee sets out these other attachments or service of writs of garnishment, and I think fixes the date in their answer. It seems to me under the issues as presented here, about the only thing the Bankers Trust Company has got to do is to show what interest Woolley or Sanders has, and also show what their expenses, or what they claim to be their expenses and compensation. This same matter has been before this court sometime since upon motions to set aside the order heretofore made directing the delivery of that stock to the sheriff of Salt Lake County for sale under execution. As I understand it now, the record shows that the order was vacated and an order made upon all of these parties who are made parties defendants—to be made parties defendant, to be served with process. There was a great deal of testimony taken and introduced on that motion as I remember it. Whether that is considered a part of this proceeding at this time, or whether you want that testimony taken anew—

MR. PARSONS: Perhaps I may clarify that by saying, your Honor, that the position of the Bankers Trust Company is that all interested parties be brought

into the case, that such are the proper ones to litigate this question of title, the Bankers Trust Company is not interested in that.

THE COURT: They were all brought in who were alleged to be interested at the time the order was made. I think under the circumstances, Mr. Sanders on this application to be substituted for Woolley here, he has not made any such application. He can proceed either in the name of Woolley or have himself substituted.

MR. PARSONS: We are not proceeding under the name of anyone but ourselves, your Honor.

THE COURT: I understand that.

MR. PARSONS: Is it your Honor's conclusion that we proceed in that matter—we proceed first with the taking of testimony?

THE COURT: You proceed and show what your expenses were and your claim for compensation.

JOHN K. HARDY, a witness called in behalf of the garnishee, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is John K. Hardy. I am Vice-President and managing officer of the Bankers Trust Company, the garnishee in this action.

Garnishee's Exhibits "E" and "F" severally offered and received in evidence, and were in words and figures as follows, to-wit:

"E"

THE NATIONAL BANK OF COMMERCE
Ogden, Utah.

November 8, 1920.

"Bankers Trust Co.,
Salt Lake City, Utah.

Gentlemen:

Herewith certified copy of the minutes of the special meeting of the Board of Directors of the

Hooper Sugar Company, held on November 5th, which is self explanatory.

Yours truly,

J. H. RILEY,
Cashier."

"F"

"Minutes of a special meeting of the Board of Directors of the Hooper Sugar Company held at the National Bank of Commerce, Ogden, Utah, on the fifth day of November, A. D. 1920, at the hour of 3:30 o'clock P. M.

"A special meeting of the Board of Directors of the Hooper Sugar Company was duly called and held at the office of the National Bank of Commerce at Ogden, Utah, on the 5th day of November, 1920, at 3:30 P. M. There were present Job Pingree, P. T. Wright, Frank Pingree and J. H. Riley of the members of the Board.

"The meeting was called for the purpose of authorizing the distribution of the stock of the Interstate Sugar Company, constituting the assets of the Company, to creditors of the Hooper Sugar Company, whose claims have been approved. After some discussion by the members of the Board, the following resolution was presented:

"RESOLUTION

"RESOLVED; That the capital stock of the Interstate Sugar Company, constituting the assets of this Company, held by the Bankers Trust Company of Salt Lake City as trustee for this company and its creditors, be distributed to creditors of the company whose claims have been approved, in the following amount and to the following named creditors:

	"Amount of Note	Preferred Stock	Common Stock
"National Bank of Commerce, Ogden, Utah	\$25,000.00	18,000.00	12,000.00
"Frank Pingree, Salt Lake City, Utah	30,000.00	21,600.00	14,400.00
"Frank Pingree, Salt Lake City, Utah	20,000.00	14,400.00	9,600.00
"P. T. Wright, Salt Lake City, Utah	30,000.00	21,600.00	14,400.00
"First National Bank of Kem- merer, Wyoming	15,000.00	10,800.00	7,200.00
"First National (O. B. Gilson)....	10,000.00	7,200.00	4,800.00

"First National (J. H. Riley).....	15,000.00	10,800.00	7,200.00
"State Bank of Provo, Utah.....	7,500.00	5,400.00	3,600.00
"National Bank of Commerce, Ogden, Utah	1,500.00	1,080.00	720.00
"J. N. Ireland & Co.....	10,000.00	7,200.00	4,800.00
"J. N. Ireland & Co. (J. Pingree)	10,000.00	7,200.00	4,800.00
"McCornick & Company, Bankers (C. Pingree)	32,500.00	23,400.00	15,600.00
"McCornick & Company, Bankers (L. Pingree)	32,500.00	23,400.00	15,600.00
"National City Bank.....	30,000.00	21,600.00	14,400.00
"First National Bank of Layton..	4,000.00	2,880.00	1,920.00
"First National Bank of Preston..	4,500.00	3,240.00	2,160.00
"Commercial National Bank of Smithfield	3,700.00	2,664.00	1,776.00
"Knight Trust & Savings Bank....	25,000.00	18,000.00	12,000.00
"Stockgrowers Bank of Pocatello, Idaho	30,000.00	21,600.00	14,400.00
"Charles D. Boettcher.....	20,000.00	14,400.00	9,600.00
"E. R. Woolley.....	20,000.00	14,400.00	9,600.00
"E. R. Woolley.....	4,500.00	3,240.00	2,160.00
"Amount of Claim			
"Henderson & Johnson.....	3,000.00	2,160.00	1,440.00
"Devine, Stine & Gwilliam.....	5,000.00	3,600.00	2,400.00
Total.....	\$381,500.00	271,080.00	185,720.00

"AND BE IT FURTHER RESOLVED: That the said trustee be authorized and directed to cause proper transfers of the said stock in accordance with the foregoing list, notify said creditors to surrender notes or other evidences of indebtedness, take proper releases, and thereupon to deliver stock of the Interstate Sugar Company in the respective amounts to the respective named creditors.

"AND BE IT FURTHER RESOLVED: That the balance of the stock of the Interstate Sugar Company held by the trustee, to-wit, 20136 shares preferred and 13,424 shares common be held by the trustee for further direction as to distribution.

"AND BE IT RESOLVED: That the Secretary of the Company be directed to properly certify a copy of this Resolution to the said trustee as its authority in the premises.

"Which resolution, upon being put to vote was passed unanimously by the Board. There being no further business, the meeting adjourned, subject to call.

"J. H. RILEY,
Secretary.

"I, J. H. RILEY, do hereby certify that I am the Secretary of the Hooper Sugar Company, a corporation, and further certify that the foregoing is a true and correct copy of the Minutes of the meeting of the Board of Directors of the Hooper Sugar Company held on the 5th day of November, 1920, at 3:30 o'clock P. M.

"J. H. RILEY.

Garnishee's Exhibit "F" was served upon the garnishee, Bankers Trust Company, on November 9, 1920. (B. of E.

Garnishee's Exhibit "G" was offered and received in evidence, and was in words and figures as follows, to-wit: (B. of E.

"THE NATIONAL CITY BANK,
of Salt Lake City

"Dec. 4th, 1920.

"Bankers Trust Company,

"Salt Lake City, Utah.

"Gentlemen:

"This letter will be your authority to issue in the name of Frank Pingree, stock certificates accruing to me in connection with the adjustment of the Hooper Sugar Company claims for whom you are acting as Trustee, and I ask that you have the Interstate Sugar stock, both preferred and common, representing my interest in those claims, issued as above indicated.

"Yours very truly,

"JOB PINGREE."

Garnishee's Exhibit "G" was received by Bankers Trust Company December 8, 1920.

Garnishee's Exhibits "H" and "I" were severally offered and received in evidence. Exhibit "H" is a writ of execution served upon Bankers Trust Company in the case of First National Bank of Kemmerer, Wyoming, against the Hooper Sugar Company, and Garnishee's Exhibit "I" is an execution issued out of the District Court of Salt Lake County in the case of the First National Bank of Kemmerer, Wyoming, vs. (B. of E. I.

Hooper Sugar Company, a corporation and J. H. Riley.

E. 19) The certificates of stock of Interstate Sugar Company constituting the subject matter of this controversy were delivered to Bankers Trust Company June 22, 1920, and that stock has been continuously in the possession of Bankers Trust Company ever since.

E. 20) The papers in this trusteeship were received on June 22, 1920. The papers that were delivered to the Trust Company consisted of a contract between Ernest R. Wooley and certain stockholders and creditors of the Hooper Sugar Company and the Pingree Sugar Company, together with others, stock in the Inter-

E. 21) state Sugar Company issued in favor of the Pingree Sugar Company and Hooper Sugar Company carrying a total value of \$1,070,000. Subsequently there was filed with us a second copy of the contract executed by some three individuals—there was filed with us an agreement at a later date between the Knight Trust & Savings Bank, holders of Pingree bonds and shortly after the reception of the papers of the Trust Company at the time we received them we issued our receipt; there was delivered to us Certificate No. 13 for 270,000 shares of the preferred stock of the Interstate Sugar Company, issued to the Pingree Sugar Company, unendorsed; Certificate No. 14 for 300,000 shares of the preferred stock of the Interstate Sugar Company issued to the Hooper Sugar Company, unendorsed; Certificate No. 14 for 300,000 shares of the common stock of the Interstate Sugar Company issued in favor of the Pingree Sugar Company, unendorsed; and Certificate No. 15 for 200,000 shares of the common stock of the Interstate Sugar Company issued to Hooper Sugar Company, unendorsed. These certificates of stock in the Interstate Sugar Company were issued in error. It was discovered that

the certificates of stock deposited with the trustee had been issued in number of shares equal to the par value of the stock in dollars, and on a later date, August 19th, we were furnished with certificates as follows: No. 15, preferred stock of the Interstate Sugar Company issued in favor of the Pingree Sugar Company for 2700 shares; No. 16, common stock, Interstate Sugar Company issued in favor of the Pingree Sugar Company for 30,000 shares; No. 16, preferred stock of the Interstate Sugar Company issued to the Hooper Sugar Company for 3,000 shares; No. 17, common stock of the Interstate Sugar Company issued in favor of the Hooper Sugar Company for 20,000 shares. The par value of preferred stock is \$100.00 per share, and common stock is \$10.00 per share. (B. of E.)

On August 16, 1920, the trustee, Bankers Trust Company, was served with a writ of garnishment in the case of Henderson & Johnson vs. Hooper Sugar Company. That was shortly after the reception of the papers by the trustee, which garnishment was duly answered on November 11, 1920. The trustee was then served with writ of garnishment in the case of Guardian Fire Insurance Company vs. Hooper Sugar Company, which garnishment was answered on December 3rd. On November 11, 1920, the trustee was served with garnishment in the case of Continental Casualty Company vs. Hooper Sugar Company, which was answered on November 11, 1920. On December 3, 1920, the trustee was served with garnishment in the case of Idaho State Bank of Twin Falls vs. Hooper Sugar Company and Parley T. Wright, which garnishment was answered on December 3, 1920. (B. of E.) On January 21, 1921, the trustee was served with a writ of garnishment in the case of Henderson & Johnson vs. Pingree Sugar Company, which garnishment was answered on January 27, 1921. On January 21, 1921, the trustee was served with a writ of gar-

nishment in the case of Job Pingree vs. Pingree Sugar Company, which garnishment was answered on January 27, 1921. On April 27, 1921, the trustee was served with a writ of garnishment in the case of the Wells Fargo Nevada National Bank vs. James Pingree and others, which garnishment was answered on April 29, 1921. On February 21, 1921, the trustee was served with a writ of garnishment in the case of the Republic Casualty Company vs. Pingree Sugar Company, which was answered February 26, 1921. On July 27, 1921, in the case of the First National Bank of Kennerly vs. Hooper Sugar Company the trustee was served with a writ of execution on June 9, 1921. In the case of the First National Bank of Kennerly vs. Hooper Sugar Company the trustee was served with a writ of execution on March 1, 1921. The trustee was served with a writ of execution in the case of the Idaho State Bank of Twin Falls vs. Hooper Sugar Company, Parley T. Wright on July 28, 1921. The trustee was served with a writ of execution in the case of Henderson & Johnson vs. Pingree Sugar Company on February 4, 1921. The trustee was served with a writ of execution in the case of Job Pingree vs. Pingree Sugar Company on July 28, 1921. The trustee was served with a writ of execution in the case of the Republic Casualty Company vs. Pingree Sugar Company on May 18, 1921. The trustee was required to and did make answer to all writs of attachment and of execution.

On March 9, 1923, the trustee was served with a copy of the reply of Wells Fargo Nevada National Bank to the answer of Bankers Trust Company as garnishee in the case of the Wells Fargo Nevada National Bank vs. James Pingree and O. B. Gilson. The trustee was served with written demand by Heber C. Carver, trustee in bankruptcy for the Hooper Sugar Company, for the delivery to said trustee of all the stock held by the Bankers Trust

Company, to which demand reply was made by Bankers Trust Company, as trustee, under date of March 19, 1923. On November 8, 1920, the trustee received from the Secretary of the Hooper Sugar Company a certified copy of minutes of a special meeting of the Board of Directors of that company directing the trustee to transfer and distribute to the creditors of the Hooper Sugar Company the stock of said sugar company standing in the name of the Hooper Sugar Company. I think the letter of transmittal was dated the 8th and received by us on November 9th. Under date of February 5, 1921, Mr. H. A. MacMillan submitted to the trustee the question as to whether or not the Bankers Trust Company as holder of various papers and stock of the Interstate Sugar Company was willing to permit an arrangement whereby the stock of said Interstate Sugar Company deposited with the Bankers Trust Company for the benefit of stockholders and creditors of the Pingree Sugar Company may be forwarded to the trustee under the bond issue then standing against the Pingree Sugar factory to be substituted as security under said bond issue. Mr. MacMillan explained that the Board of Directors of the Pingree Sugar Company was to meet and pass a resolution requesting the release of the buildings, machinery and equipment from the trustee, and the holders of bonds were to lend their consent to such release and a substitution as security of the stock of the Interstate Sugar Company, by this to permit the removal of the Corcoran mill at Whitney, Idaho, it being understood that if such substitution were effected a suit in foreclosure would be instituted under the supervision of the trustee of the Pingree Sugar Company. Under date of May 28, 1921, Mr. Frank Pingree notified the trustee that he held order of Job Pingree against the Hooper Sugar Company for \$150.00, and asked that we make a record of this claim so

that distribution of securities held by the Bankers Trust Company would not be made unless this claim was considered with all the others. Correspondence in connection with this trusteeship was had with the First National Bank of Coreoran, California; with the legal departments of the San Joaquin Power & Light Corporation, Bakersfield & Kern Electric Railway Company, Midland Counties Public Service Corporation, and the Fresno City Water Company, and all court proceedings arising out of the Henderson & Johnson garnishment and writs of execution have involved an attendance in court and resulted in litigation that found its way to the Supreme Court. In the case of the Republic Casualty Corporation vs. Pingree Sugar Company, the Sheriff of Salt Lake County served notice of sheriff's sale of the stock in the hands of the Bankers Trust Company, such sale to be held on August 8, 1921. In connection with the notice of sale demand was made for the surrender of the stock to be sold under the sheriff's sale. Now, in addition to all these matters of court and files of record, this trusteeship has been active continuously practically since it came into the hands of the trustee. Not only attorneys representing the parties of interest to it have called upon the trustee for information, but the parties at interest themselves have called. Demands not only from the court, but from attorneys and individuals to turn over this stock have been made on numerous occasions. We have been threatened with court action for not turning the papers over, and all of this has resulted in preparing answers to the garnishments and writs of execution, and we had to employ counsel, or engage the services of our general counsel in representing us in court.

The par value of the stock of the Interstate Sugar Company that came into our possession by way of this trust is \$1,070,000.00. I know nothing of its intrinsic

value, nor did I at the time it came into our possession.

I have been managing officer of Bankers Trust Company for a period of five years, and during that time have upon many occasions in court proceedings fixed the compensation of our company for services as receiver and trustee and other services of a similar nature as this, and in the performance of my duties as such manager during that period of time I have had immediate charge and supervision of all the trust company has done in the administration of its various trusts. In my opinion a reasonable fee for the trust company for its services in this trust would be \$4,280.00; for reimbursement for cash outlays, \$174.54. That fee is arrived at on the basis of the fees we charge as fees for acceptance of trusts one-tenth of one per cent of the value of the property accepted in trust only, the fee ranging from one-tenth to one-twentieth of one per cent. I have based that on one-twentieth of one per cent for four years and a closing fee of one-tenth of one per cent, taking the value of \$1,070,000.00 which was the face value of this stock. (B. of E. (B. of E. (B. of E.

In the course of my service as managing officer of Bankers Trust Company I have had occasion to fix in proceedings in court in matters of this kind, counsel fees rendered for our company. Bankers Trust Company has and was required to employ counsel to advise it in matters relating to the administration of this trust, and almost immediately after the stock came into our possession, and on at least four occasions submitted to counsel matters which involved a legal opinion rendered by counsel, and the Trust Company was compelled also to appear in court with counsel in connection with the case of Henderson & Johnson vs. the Hooper Sugar Company and vs. the Pingree Sugar Company, and that matter was carried to the Supreme Court of this state. I don't know that I can elaborate (B. of E. (B. of E. (B. of E.

of E. 36) further upon the service rendered to the Trust Company by these attorneys in this matter. Bankers Trust Company has incurred an obligation to pay a reasonable attorney's fee to its counsel for services rendered in this matter.

of E. 37) I don't know whether or not the outstanding bonds of the Pingree Sugar Company have been surrendered or cancelled, or the trust deed or mortgage referred to as given by the sugar company to secure payment of said bond, has been released or discharged of record.

of E. 38) The following provision is contained in the agreement upon which this trust was predicated, to-wit:

"The capital stock of said Hooper Sugar Company now pledged and held as collateral shall be delivered to the Bankers Trust Company with directions to deliver the same to said Woolley upon the deposit with said Bankers Trust Company of the securities hereinafter agreed by him to be deposited with said Bankers Trust Company," has not been performed.

of E. 44) Garnishee's Exhibit "A" was offered and received in evidence, and was in words and figures as follows, to-wit:

"Salt Lake City, Utah,
"January 15, 1924.

"Bankers Trust Company,
"Salt Lake City.
"Gentlemen:

"You will please take notice hereby that George E. Sanders of Salt Lake City, Utah, has heretofore acquired and is now the owner of all of the interest heretofore owned or possessed by Ernest R. Woolley of, in and to 500,000 of the common stock and 750,000 of the preferred stock of the Interstate Sugar Company, which said stock is now held in escrow by you.

"And you are hereby notified not to deliver

said stock or any part thereof to any person or persons without an order from me.

“George E. Sanders

“By Marioneaux, King & Schulder,

“His Attorneys.”

Garnishee's Exhibit “C” was offered and received (B. of E. 4) in evidence, and was in words and figures as follows, to-wit:

“Salt Lake City, Utah,
“March 3, 1924.

“Bankers Trust Company,

“Salt Lake City, Utah.

“Gentlemen:

“On January 15, 1924, we forwarded you, as attorneys for George E. Sanders, notice that he had theretofore acquired and was then the owner of all of the interest theretofore owned or possessed by Ernest R. Woolley, of, in and to 500,000 shares of the common stock and 570,000 shares of the preferred stock of the Interstate Sugar Company, which said stock is now held by you in escrow, and on January 17, 1924, you wrote and acknowledged receipt of said communication.

“Supplementing our letter of January 15, 1924, we hereby notify you that George E. Sanders heretofore acquired all of the interest in and to all of said stock above referred to and heretofore claimed to be owned by the Pingree Sugar Company, a corporation, or its Trustee in Bankruptcy of said Corporation, and also all of the interest claimed to be owned by the Hooper Sugar Company, a corporation, or its Trustee in Bankruptcy, and all interest claimed therein by The Pioneer Sugar Company, a corporation, or the Interstate Sugar Company, a corporation, and you are hereby notified not to deliver said stock or any part thereof to any person or persons without an order from me.

“You are further notified that all of said interest from the said Ernest R. Woolley and said corporations, and the said Trustees in Bankruptcy were transferred and delivered to the said George

E. Sanders on and prior to the 18th day of December, 1923.

“Yours very respectfully,
“GEORGE E. SANDERS,
“By Marioneaux, King & Schulder,
“His Attorneys.”

of E. 48)

Garnishee's Exhibit “D” was offered and received in evidence, and was in words and figures as follows, to-wit:

“(Copy)

“ ‘ A S S I G N M E N T ”

“KNOW ALL MEN BY THESE PRESENTS:

“That for and in consideration of \$1.00 and other valuable considerations, I hereby sell, assign, transfer and set over unto George E. Sanders of Salt Lake City, Utah, all my right, title and interest of, in and to \$500,000. of the common stock and \$570,000. of the preferred stock of the Interstate Sugar Company, which said stock is now held by the Bankers Trust Company of Salt Lake City, Utah, in escrow. And this assignment shall authorize and empower the said George E. Sanders to take and receive said stock from said Bankers Trust Company and to execute the necessary and proper receipts therefor, as fully as I might do in the premises.

“IN WITNESS WHEREOF, I have hereto set my hand this 18th day of December, 1923.

“Witness:

“N. VanDan, Jr.

(“Signed) “Ernest R. Woolley.”

(Garnishee's Exhibits “A,” “C” and “D” were admitted for the purpose of showing that Bankers Trust Company was notified by George E. Sanders of the fact that the latter claimed to be an assignee of Ernest R. Woolley.)

of E. 49)

I might add only in connection with the administration of this trust that I have been subpoenaed as a witness to produce these papers; first in the United States Court by Mr. Henderson in the case against

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Mr. Pingree. I have been subpoenaed twice as a witness in the City Court in Salt Lake in connection with the actions against Ernest R. Woolley.

THE COURT: Were you subpoenaed by the State?

WITNESS: By the state in the City Court cases.

THE COURT: Did you get your compensation there?

CROSS EXAMINATION BY MR. HENDERSON

I have testified that \$4,280.00 was a reasonable fee to the Bankers Trust Company for the work done by it in reference to this trust or escrow. (B. of E. 5)

THE COURT: That included the \$174.00?

WITNESS: It was inclusive.

This item of \$174.54, money paid out by Bankers Trust Company is made up by the following items:

\$8.49, account expenses for trip to Ogden with witnesses. I didn't bring the ledger date on that, but I think it was the first trip that we came up last summer in this suit.

\$4.00, on account of second trip.

\$68.40, on account of transcript of proceedings here and costs in connection with the appeal \$93.65.

\$93.65, to the Supreme Court which was the cost in the writ of prohibition against this court from the Supreme Court last fall. This is the only sum paid out on this account so far as our records show; (B. of E. 5)

all of these expenses being incidental to the trial of this matter last summer.

The fee of \$4,280.00 is based upon the theory that the stock is worth \$1,070,000.00, and Bankers Trust Company's fee were the stock practically worthless. I explained that our fee was based on the acceptance fee of one-tenth of one per cent which is customary fee for

trusteeship; that the standard fees were from one-tenth to one-twentieth of one per cent per annum for the time that it is carried, and one-tenth on the closing fee. My testimony of \$4,280.00 is based on the minimum charge we make for trusteeships, but that fee does include compensation for the trouble we have been to. It covers the entire service of the trustee. This fee includes all court work, everything in connection with the trust with the exception of the attorneys' fee and that only for special counsel in connection with the court cases. I may put it this way: In charging our fee that we have fixed on this, it is supposed to cover services rendered in connection with that trust unless they are of an extraordinary nature where they might be increased. Our fee of \$4,280.00 to which I have testified includes all matters I have testified to. It is all the work we have done in connection with this trusteeship, and includes everything with the exception of the attorneys' fee. We would have charged \$4,280.00 whether any garnishment had been served or not, or whether we had had any law suits or not, but that fee covers all service in connection with this trusteeship, and this takes into consideration both garnishments and lawsuits. The fee of \$4,280.00 is the minimum fee, and is based upon the valuation of \$1,070,000.00. Our fee is based on the services that we rendered. Trust Companies have adopted what they call a standard fee for trust services, and in charging for this service which we have rendered, we have applied to this service the minimum fee which would be charged for trusteeships. The fee is fixed according to American Bankers Trust Company's schedule according to the responsibility and the risk assumed by the trustee. Now, the minimum acceptance fee as agreed upon by trust

companies in the United States is one tenth of one per cent of the value of the property coming in. In other words, if we are called upon to issue bonds and act as a trustee we receive an acceptance fee of one tenth per cent of the value of the bonds issued, and the schedule is twenty-five cents for certification of each bond with an agreed figure taken for payment of interest, then with the closing fee on it. The schedule we have figured this fee on, as near as it can be worked out, is based on what I regard as the minimum of charges for a trusteeship. It was a difficult matter to arrive at an exact fair charge on this, for the reason that I draw a fair salary from the trust company—it has not been because of the desire to dispute the people who had rights, but with the desire to maintain the integrity and respect that the trust company had given. We were put to all this trouble and I have applied to it what I regard as a minimum fee for similar services. (B. of E. 5)

THE COURT: Is that commission charged on the par value or the market value?

ANSWER: I mean the par value, and in this instance unless the trustee had understood that the stock had a value, because property was being turned over for the stock, we would have had a more definite understanding.

QUESTION: I know that, did you have an understanding when the stock was deposited there.

ANSWER: Only this, Mr. Woolley, when he deposited it stated that he would pay us a fee of from ten to fifteen thousand dollars. I should say if the market value of this stock were one dollar this was an extremely reasonable fee by reason of all the labor that has been attached to it and by reason of the responsibility which we assumed. The first time I consulted an at-

torney was when Mr. Woolley brought the papers down. I called Mr. A. C. Ellis and consulted him on June 22, 1920. We have not paid Mr. Ellis anything for that service, nor has he sent us a bill for it. Mr. Ellis has a retainer from the Trust Company of \$25.00 per month, but that retainer did not include such services as that rendered by him to us at that time. Upon that occasion Mr. Ellis dictated a letter which I signed. That
of E. 57) was all he did upon that occasion. The next time I employed an attorney was when the garnishments were served. I think your garnishment first. The answer to your garnishment was prepared by Mr. Douglas, our office attorney, after consultation with Mr. Ellis, and thereupon it was re-submitted to Mr. Ellis. Mr. Ellis did not submit a bill for that service. There was no charge for Mr. Douglas' service. I haven't a complete memorandum of my calls upon counsel, but I have a recollection as I have testified. I can't give this now chronologically. We had to consult attorneys when you served written notice on us if we let any of that stock go we would perhaps render ourselves liable. Had to consult attorneys when Mr. Woolley served notice on us in that particular. We consulted attorneys and had written opinion when the Hooper Sugar Company furnished this certified copy of its resolution with relation
of E. 58) to the distribution of this stock. The written opinion I have referred to was from the firm of Dickson, Ellis & Adamson. I haven't the opinion with me, and there was no charge made at that time for it. I don't remember the next time I called upon counsel. I testified that I had to call on them very frequently with relation to these demands which have been made upon us for delivery of the stock. Our attorneys advised us to hold it until we had a court adjudication of the rights of

the parties in this contract, the position they have always taken. I am not giving the occasions to you chronologically upon which I consulted counsel, I am simply picking out the items as they occur to me. I think the next consultation was on the request Mr. Herbert MacMillan made for the substitution of the stock of the Interstate Sugar Company, taking of the bonds of the Pingree Sugar Company, that matter was gone into very thoroughly with him. We concluded we couldn't deliver the stock to him. There was no separate bill rendered us by our counsel for that service. I presume the next item was when the Sheriff gave notice of the sale of this stock. The Sheriff of Salt Lake County published the date of sale and made demand for the stock. Our attorneys were consulted at that time to direct the trustee, and directed the trustee not to turn the stock over to the Sheriff for that sale. Our counsel prepared for us the answers that were given to the Sheriff and the various writs of execution that were served on us. I think the next important thing was when an order was taken out of this court to deliver the property or the stock to the Sheriff. Upon that occasion we had been brought into court on an order that was taken in an ex parte motion. We had no notice of it until we were nearly in contempt of court. I stated from the stand to the court that the only thing we wanted was to be protected in the delivery of that stock as against an action by any party who had an interest in it. I think our counsel at that time had in mind that the only way we would be safe from such an action was to bring the parties into court and have the question finally litigated there. I had hoped we had done so, but I wondered today whether we had. I am not now insisting that the stock should be turned over because of the conditions of the contract of

(B. of E.

of E. 60) June 19, 1920, have not been carried out or anything of that kind. I understood this hearing today would bring in all parties who should claim an interest whatsoever in this matter into court and the court here would give an adjudication of those rights. In connection with the presentation of the facts with relation to the claim of Mr. Sanders are matters that came up, however, in the second letter only, and I felt we owed it to the court to present that matter to the court. We have no interest in this other than it shall go, and when it does go out of our hands we are amply protected against any action of any creditor. Mr. Sanders talked to me for the first time last evening at 6:00 o'clock. Mr. Sanders' attorneys Marioneaux, King & Schulder talked to me last night about 6:00 o'clock in Ogden in the presence of Mr. Sanders. About a week ago Mr. King called over the telephone in relation to this matter, and they have not talked to me about what our position would be in this matter. None of them have talked—they have stated that the trustee unquestionably would be entitled to some compensation, but I never discussed with them the compensation.

of E. 61) I remember talking to you, Judge Henderson, in August of this year. Our fee was mentioned but not in any amount. I said I did not know what our fee would be but it would be reasonable. You said the stock was worthless; I didn't say it was. At that time I didn't contradict, but I have since, being informed it has value, but it is not upon such value that I fix our fee of \$4280.00. You told me at that time that if we would turn that stock over to the Sheriff you would give a release from the trustees in bankruptcy or from the assignee of the trustee in bankruptcy in behalf of the creditors of the Hooper and Pingree Sugar Companies, but you didn't tell me you would give me a release from Mr.

Woolley. I knew Mr. Woolley owned this stock, because I had a contract that showed he owned it, a contract. In the light of developments yesterday that he (B. of E.) had transferred his right to Mr. Sanders, I don't think Mr. Woolley is the owner of that stock today, but Mr. Woolley has never informed me,—he hasn't to this day, that he doesn't own that interest. Practically all of the costs of \$174.54 was incurred in suing out the writ of prohibition against this court. I don't know whether or not we lost in that case, the very fact that we are today here for the purpose of having all the rights adjudicated is rather evidence we won in that case. I want to charge for what I regard as very good legal advice, and I think the fact we are here today to adjust these matters proves it.

THE COURT: Didn't the Supreme Court in disposing of that case give a judgment for costs against someone?

MR. PARSONS: I don't remember, your Honor, but the court held the writ of prohibition was not the proper remedy. Our remedy was by appeal. I presume the costs were awarded to the defendant in our application for a writ of prohibition so far as the suit was concerned. I have no positive recollection about it. (B. of E.)

THE COURT: That would be the defendant's costs, according to that.

MR. PARSONS: As between the Trust Company and that defendant in that suit, but I take it that has nothing whatever to do with the proper allowance to this trustee for a reasonable expenditure in the defense of this trust company. The awarding of costs in that suit related to that suit only and not to allowance for the trustee for expenses reasonably incurred by him.

THE COURT: That is very true, the greater part of that \$174.00 were expenses or court costs incurred in suing out that writ.

RE-DIRECT EXAMINATION

of E. 64)

BY MR. PARSONS: In my judgment a reasonable attorneys' fee for the services rendered by counsel that I have enumerated in response to Judge Henderson's questions would be \$2500.00.

RE-CROSS EXAMINATION

of E. 65)

of E. 66)

BY MR. HENDERSON: This \$2500.00 will cover the drawing of the receipt to Mr. Woolley. I have not figured the amount applicable to that item in dollars and cents, but I have had it—gone over it rapidly. In the light of future developments I would say that the advice he gave us on that receipt was worth \$1500.00 to the trustee at least, but that isn't the way upon which I base my judgment as to what the fee should be. Mr. Ellis has told us what he wanted as a fee, but has not rendered it in a form of a written bill. When you asked me what I thought the preparation of this receipt by Mr. Ellis was worth to the trustee, I put it at \$1500 because I thought it was of very great value. I don't know how to segregate the fee as to just what that service would be worth. I am estimating it on the full time on the full amount I charged, the total of the services. I think Mr. Ellis was busy on that receipt perhaps an hour and a half or two hours, and I think his services in that regard was worth \$1500.00 to the trustee of the Bankers Trust Company. It was worth that sum to the Bankers Trust Company because I think we were protected under the trust receipt that we gave. There is nothing in this evidence that we have been fighting for Woolley—I am not representing Woolley. I have no interest in Mr. Woolley, I resent

the charge you made against us this morning that we were representing Mr. Woolley. We are not representing Mr. Woolley except as to any rights he may have already. With relation to attorney's fees, I don't know just how many days we have been in court. We have been in court two or three days in Ogden; we have been in the Supreme Court twice. I assume that a firm like Dickson, Ellis & Adamson is entitled to \$100.00 for attendance in court and to certain preparations of those actions; their brief and opinion which they have rendered to us with relation to our rights under the trusteeship and our responsibilities under it. For that service I say in my judgment a reasonable charge is \$2500.00. Whether we get anything out of this we expect to pay them whatever they bill us for. They have rendered us no bill, but Mr. Ellis told us that he wanted \$2500.00 for this service. He told us that, when the question of this hearing with you about the settlement of fees, I don't remember what day is was. Mr. Ellis first told us what parties ought to be interpleaded, I think, when Mr. MacMillan came to us and wanted to know if we would release the papers—what they could do to get us to release it. I told them if they could get all the parties into court—bring them under one jurisdiction and get a court order of that kind that we would release it on a bond, provided he made the sky the limit of that bond. At that time Mr. Ellis discussed the possibility of their attempting to have this whole matter thrown into one suit in equity, as I understood it, to have all the parties in interest brought in. Mr. Ellis advised us that everybody should be brought in so that the rights could be litigated when this order was taken out of this court. That was when he gave us his definite view on it. Prior to that time he had discussed it on numerous occasions in con-

(B. of E.)

nection with the attachment which had been made. Yes, he had thought it necessary prior to December of 1923, that everybody should be made parties. Mr. MacMillan talked to us about this stock, I suppose along about the time you got your garnishment out.

THE COURT: Was that when he wanted to substitute Pingree bonds for stock?

ANSWER: No, that was an entirely separate discussion when he wanted to substitute the Hooper—or rather the Interstate Sugar Company for the Pingree bonds. The talk I had with Mr. MacMillan when he wanted to substitute the Pingree bonds for the Interstate stock was February 5, 1921. That would be about seven months, a little over six months after the reception of the trust. That wasn't the time I talked with Mr. MacMillan about having everybody brought into court, although we may have discussed that question at that time. I don't recollect that counsel advised us that it wasn't necessary to bring in everybody, and that we didn't have to turn the stock over to the Sheriff.

C. C. PARSONS, being first duly sworn, testified as follows:

I became a member of the firm of Dickson, Ellis, Parsons & Adamson on the 1st of July, 1923. On or about the 10th of July, possibly a few days after that, the matter of an ex parte order obtained from this court in Judge Barker's division directing the Bankers Trust Company to deliver over to the sheriff of either Salt Lake or Weber County all of the stock of the Interstate Sugar Company held by it by reason of the Woolley trust with which this proceeding is concerned, came to my attention, and from then on until today in my opinion it is a very conservative estimate to

say that at least one month of my time has been devoted to these matters. Upon the ex parte order just mentioned, motions to vacate the same, the necessary affidavits were prepared and two hearings were heard before this court. The motion was denied, and writs of prohibition were asked of the Supreme Court directed to this court on the theory that the necessary parties had not been brought into that proceeding and that a final determination of the issues there involved could not be had, and with that order in force the Bankers Trust Company would be subject to very great liabilities at the suit of E. R. Woolley or any other interested party not brought in and made subject to the judgment in that suit. I personally prepared a brief in that matter of some forty-seven pages; argued the matter in the Supreme Court and that court held that a writ of prohibition was not the proper remedy, that we had an adequate remedy by appeal which was the remedy we should take if we sought to review that ex parte order and this court's action upon our motion for the vacation of it. Shortly after that decision Mr. Henderson voluntarily consented to the vacation of the order of July 10th that we had been resisting and we in turn agreed to file an amended answer specifically bringing in all the parties interested of whom we were aware. We did that. The amended answer in each case being that heard today. On that amended answer various parties were brought in and I and my associates were called upon to examine the various pleadings filed and to keep in touch with the proceedings at all times up to today. In my opinion \$2500.00 is a reasonable attorney's fee for the services rendered in this trust from the time that I came into the matter. That is, from July 10, 1923, and subsequent thereto.

CROSS EXAMINATION

(B. of E. 2)

BY MR. HENDERSON: The \$2500.00 includes hearing we had last summer. I have considered the \$2500.00 as applicable to the whole proceeding in the protection of this trust because of the serious—we regard it serious, and I haven't any question but what it was a serious possible liability that the Bankers Trust Company would have incurred had they yielded to the ex parte order you obtained and delivered that stock accordingly. I wanted to bring and have the court make everybody a party who claimed to have any interest in this stock. You were doing just the contrary—you did not make any of these interested parties parties to this proceeding. We wanted to get your order set aside, and the very theory of our application was that you had not made them parties to it in your proceeding, the interested parties that should have been brought in. Our theory was that this court lacked jurisdiction, because it didn't have the proper party before it. That was our theory in this court, and it was also our theory in the Supreme Court upon our applications for writ of prohibition. I haven't segregated our charge in suing out the writ of prohibition. I would say that \$2500.00 was an exceedingly reasonable charge for all the service rendered during the period of my connection with this matter. My contention is that Bankers Trust Company cannot be compelled to turn over this property until they are protected in so doing, and that an order of this court doesn't protect it unless all parties are properly before it and within its jurisdiction.

THE COURT: Now, what other parties do you suggest?

MR. PARSONS: Those enumerated in the resolution of the Hooper Sugar Company directing this trustee to make certain distribution of this stock.

THE COURT: You heard Sanders' testimony here when this matter was last heard before me, didn't you?

MR. PARSONS: Yes, I was present. I can't say that I recall it all.

(B. of E.)

THE COURT: In the light of his testimony what right do you think Sanders could acquire from Ernest R. Woolley that would prejudice your company in case they turned over that stock?

MR. PARSONS: I don't know, I only know this: That they have exhibited to us this assignment of December 18th.

THE COURT: I am aware of that.

MR. PARSONS: And all these other matters; now, if they are interested in good faith—we can't deny that they are, that they have an interest, I take it the law is they should be permitted to be brought in and be heard.

THE COURT: Well now, Woolley was a party to this action in making a demand at the time his case was heard before in this matter, he was made a party, served with process and he became the assignee of that claim, and he is entitled to be substituted here on his own motion, isn't he?

MR. PARSONS: You mean Sanders being substituted—I think he would be on his own motion.

THE COURT: Sanders has known for some days that he was claiming that assignment.

MR. PARSONS: Yes, your honor, I think that he could be substituted on his own motion. Whether he is obligated to come into court and make that motion, I am not sure. I am inclined to think that the duty is upon the plaintiffs in this suit to bring him in by reason of the information we have been furnished now. Now, as to Sanders' interests, it seems to me that they are claiming

an interest that they have obtained of a more recent date than last July.

THE COURT: He says all his right, title and interest—Woolley's right, title and interest was assigned. Of course that paper is not before the court except for one purpose, to show that you had notice of the assignment.

MR. PARSONS: Yes, I take it that is its only purpose and for that purpose I presume it is a matter of interest to the court, and for that purpose I would like to read this one paragraph:

“Supplementing our letter of January 15, 1924, I hereby notify you that George E. Sanders heretofore acquired all of the interest in and to all of said stock above referred to and heretofore claimed to be owned by the Pingree Sugar Company, a corporation, or its trustee in bankruptcy of said corporation; and also all of the interest claimed to be owned by the Hooper Sugar Company, a corporation, or its Trustee in Bankruptcy, and all interest claimed therein by the Pioneer Sugar Company, a corporation, or the Interstate Sugar Company.”

Now, your Honor, I don't know anything more about it than this letter.

MR. HENDERSON: Who is that signed by?

MR. PARSONS: George E. Sanders.

THE COURT: You were in this court when the matter was up before, you remember that the assignment was made by the Trustee of the Hooper Sugar Company to the Interstate Sugar Company and the assignment made by the trustee of the Pingree Sugar Company to the Pioneer Company and the Pioneer Company to the Interstate Company for all this stock.

MR. PARSONS: I wouldn't deny what your honor says, but my recollection of that testimony is such I would not attempt to repeat it. I don't recall it.

THE COURT: There were such instruments here

and those assignments were all made subject—that is, the Pioneer Company, as I remember, on orders made by the Federal Court in which the bankruptcy proceedings were pending. (B. of

MR. PARSONS: Under the George E. Sanders' assignments he has acquired all of the interest of the Interstate Sugar Company.

THE COURT: George E. Sanders is President of the Interstate Company, so he testified at that hearing, and I can't see how he could acquire any interest other than the interest which would accrue to the Interstate Company.

MR. PARSONS: The thing that impressed me about this, Woolley was made a party. The amended answer of the trustee was filed on December 6th, at which time evidently Woolley had not assigned his interest, and on the 18th an order was obtained making Woolley a party. On that day apparently he made this assignment. Now, on the 20th, the notice or the court's order making him a party was served upon him. I believe the rule to be, he is not a party until the actual service of that order.

THE COURT: I presume that is true.

MR. PARSONS: So it seems on the 20th when the order was served, he had no interest here. As to the other matter, the resolution from the Hooper Sugar Company actually directing the distribution of this stock, designating the amount, the persons to whom the stock should be given, there has been no rescission of that, apparently.

THE COURT: Yes, I understand that.

MR. PARSONS: That is more than four months prior to the filing of the petition for bankruptcy, so apparently that order is not affected by the bankruptcy proceeding.

EXAMINATION BY MR. HENDERSON:

Yes, Mr. Schulder and Mr. King, attorneys for Mr. Sanders have talked with me in the last day or so relative to our motion here to make Sanders a party. My first talk was Sunday Afternoon in the office when Mr. King telephoned me and explained to me this assignment and the fact that when Woolley was served with the court's order making him a party he had no interest and called upon the Bankers Trust to make Sanders a party at this time by filing an amended answer. Mr. King knew of this hearing and he wanted us to make that motion here this morning. Mr. Schulder is here in court now. He is a member of Mr. King's firm. I know nothing of the employment of any attorneys by Mr. Sanders. I don't know for what purpose Mr. Schulder is here. I don't know anything about it. I know his firm signed these notices. It was something more than a request that we make this motion here to have Mr. Sanders made a party—it was a direction that it was the duty of this trustee to do that in the protection of its own interest. We take no particular pleasure in making the application, and would much prefer, Judge Henderson, that you would get all these parties in who are within the jurisdiction of this court. I think I asked Mr. King why they didn't intervene.

J. T. PENCE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PARSONS: My name is J. T. PENCE. I reside in Salt Lake City, Utah. I am a member of the bar of that State and engaged in the practice there. I have been in court this morning and have heard the testimony of Mr. Hardy and that of Mr. Parsons,

and the testimony wherein Mr. Hardy specified the occasions upon which the Bankers Trust Company had called upon counsel for service and advice in the administration of this trust. I think I would not disagree with the testimony that was offered that \$2500.00 is a reasonable attorneys' fee for the service rendered and so designated. (B. of E.)

CROSS EXAMINATION

I think that is a reasonable attorneys' fee, whether the stock is worth five dollars or a hundred thousand, basing it on the testimony, what testimony I have heard in this case.

Garnishee, Bankers Trust Company, rests.

There were offered on behalf of the plaintiff and received in evidence, the judgments against the Garnishee, Bankers Trust Company, respectively, in each of cases, Henderson and Johnson vs. Hooper Sugar Company, No. 7300, and Henderson and Johnson vs. Pingree Sugar Company, No. 7489, both dated the 10th day of July, 1923, bearing the signature of George S. Barker, Judge. (B. o. E.)

RUSSELL G. SCHULDER, called as a witness by the plaintiffs, being first duly sworn, testified as follows: (B. of E.)

DIRECT EXAMINATION

My name is RUSSELL G. SCHULDER. I am practicing law in the State of Utah and other places. I know George E. Sanders. I can't say that I am here today representing his interest or interests. I am here, however, watching the proceedings in this matter. Of course, it would be—not watching the proceedings in his interest, but to learn about the proceedings, what is taking place here today. I saw Mr. Sanders last evening, so I know he was in the state last night, and my advice was he was

not going to leave the state. He is not here today because he had other matters to attend to, I think.

NO CROSS EXAMINATION

E. 85
incl.)

There were offered on behalf of the plaintiff and received in evidence, the following:

Case No. 7399—Continental Casualty Company, a corporation vs. Hooper Sugar Company, a corporation, judgment in favor of the plaintiff and against the defendant for the sum of \$2,106.75 and \$18.90 costs, entered October 31, 1921.

Case No. 7400—Guardian Fire Insurance Company, plaintiff, vs. Hooper Sugar Company, for the sum of \$266.25 and \$18.90 costs, dated the 31st of October, 1921.

Case No. 7424—Idaho State Bank of Twin Falls, Idaho, plaintiff vs. Hooper Sugar Company and Parley P. Wright, defendants, judgment dated February 18, 1924, for the sum of \$34,438.00 and \$18.90 costs.

Case No. 7490—Job Pingree, plaintiff, vs. Pingree Sugar Company, defendant, judgment dated February 18, 1921, for \$76,340.00 and \$11,490.00.

Counsel for the Republic Casualty Company offered a certified copy of a judgment in favor of that company and against the Pingree Sugar Company in the sum of \$19,092.42, with costs amounting to \$43.20; judgment was dated June 21, 1921.

And it was then and there stipulated between counsel there appearing that these judgments should be considered and be as alleged in the pleadings.

E. 88)

On behalf of the National Bank of Kemmerer there were offered and received in evidence the following:

Interpleaders' Exhibit "K", being a certified copy of a judgment entered in the District Court of the Third Judicial District for Salt Lake County, on July 27, 1921, by First National Bank of Kemmerer, Wyoming against Hooper Sugar Company, a corporation and J. H. Riley, for the sum of \$19,163.75.

Interpleaders' Exhibit "L", being a certified copy of a judgment entered in the District Court of the Third Judicial District for Salt Lake County on the 10th day of June, 1921, in favor of the First National Bank of Kemmerer, Wyoming and against the Hooper Sugar Company, in the principal sum of \$15,000.00, interest \$1510.82, attorneys' fees \$1500.00, costs \$13.20.

Interpleaders' Exhibit "M", being a certified copy of a judgment entered in the District Court of the Third Judicial District for Salt Lake County on September 3, 1921, in favor of the First National Bank of Kemmerer, Wyoming and against the Pingree Sugar Company for the sum of \$12,753.47.

(B. of E.

JAMES H. RILEY, a witness called by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is JAMES H. RILEY. I am Vice-President of the National Bank of Commerce. Prior to my holding that office in that bank, I was its Cashier for a period of ten or twelve years. I have also been Secretary of the Hooper Sugar Company, and recall a contract that was made between the Hooper Sugar Company and one, Ernest R. Woolley some time in June, 1920, and pursuant to that contract the Hooper Sugar Company made a deed to Ernest R. Woolley. There was offered by plaintiff and received in evidence, identified as Plaintiff's Exhibit "2", copy of a warranty deed from the Hooper Sugar Company, grantor to Ernest R. Woolley, grantee, dated the 19th day of June, 1920, and bearing recording data stating its record June 22, 1920. I remember executing that deed. That deed covered beet property of the Hooper Sugar Company where the plant is located, that is, what property they owned.

(B. of E.

(B. of E.
to 96 in

There was offered by plaintiff and received in evidence, identified as Plaintiff's Exhibit "3", a warranty

deed from Ernest R. Woolley and wife to Interstate Sugar Company, dated June 22, 1920, recording data thereon stating its record on the same day.

(E. 96
00 incl.)

Plaintiff offered and the same was received in evidence a bill of sale, identified as Plaintiff's Exhibit "4", dated as of the 19th day of June, 1920, by Hooper Sugar Company to Ernest R. Woolley, and bearing recording data stating its record on June 26, 1920.

E.105)

During the year 1921, I had occasion to make an investigation of the value of the stock of Interstate Sugar Company in the possession of Bankers Trust Company, and found it had no value and so stated in sworn schedules in bankruptcy of the Hooper Sugar Company.

E.106)

E.107)

CROSS EXAMINATION

BY MR. PARSONS:

I have been Secretary of the Hooper Sugar Company ever since it was organized, which was early in 1919. Garnishee's Exhibit "F" is a resolution of the Hooper Sugar Company certified by me, and the letter accompanying it, Garnishee's Exhibit "E" is a letter written and signed by me. A resolution was adopted at a special meeting of the Board of Directors of the Hooper Sugar Company, held on the 5th day of November, 1920. The Hooper Sugar Company transferred all of its property to the Interstate Sugar Company through Ernest R. Woolley. I don't remember how many acres of land there was, but it was all the property owned by the Hooper Sugar Company at Hooper, real estate and sugar factory. I think the sugar factory was a 400 ton mill. I think it cost about \$800,000. It was built in 1919. In addition to that there was the personal property around the plant, consisting of supplies, the cost of which I have no idea. All I ever did as

E.108)

E.109)

Secretary of the Company was to sign checks, payroll checks and checks for purchases. I don't remember that I have ever signed a financial statement of that company. I had a general knowledge as to the value of the company's assets, which knowledge was predicated upon some investigation as to its assets, and the character and value thereof. I had visited the plant a number of times and knew what they were doing. I concluded the plant, the property, all the assets of this company were worth about \$800,000.00 as I have stated. The land without the plant was worth probably \$50.00 per acre, and my recollection is that there were about forty acres. After the plant was erected, dwelling houses were also erected, but the latter after the Hooper Sugar Company sold or gave its plant away. These dwellings were not erected by the Hooper Sugar Company. The mill was erected during the year 1919, completed in the fall of 1919, and it was operated by the Hooper Sugar Company. The Hooper Sugar Company, as I remember it, spent about \$300,000 for putting in place and the erection of the factory, that is, putting in and placing of the machinery, and they gave five hundred thousand dollars' worth of their stock at that time to the Pingree Sugar Company for the machinery. There were beet contracts. During the year 1919 they had only a small acreage. I don't remember what it was. I suppose these beet contracts were transferred to the Interstate Sugar Company through Woolley also. I have no idea as to their value at the time of the transfer. I don't remember whether I included them or not in reporting the assets of this company, but in my appraisal of \$800,000.00 as the value of the plant, the beet contracts were not included, nor was the business built up by the Hooper Sugar Company in-

cluded, nor the good will or any of the intangibles that enter into value included. The Hooper Sugar Company was paid by way of consideration, 3000 shares of the preferred stock and 20,000 shares of the common stock of Interstate Sugar Company. The transfer of the property was to be made free from encumbrance, and I think that was done, so that a plant was conveyed of the value of \$800,000.00 for the stock of the Interstate Sugar Company now held by the Bankers Trust Company and issued in the name of Hooper Sugar Company. I don't (E.113) know whether or not the Hooper Sugar Company has ever parted with that stock.

W. F. FISHER, a witness called by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HENDERSON:

My name is W. F. FISHER, and I am Deputy County Clerk. As such deputy I have in my possession certain files that are on record in the Clerk's office. I have here file No. 7574, Edwin A. Stratford, plaintiff vs. Interstate Sugar Company, et al., defendants, this being the original file.

(E.114) Plaintiff offered the complaint in that action and the same was received in evidence over the objection and exception of the garnishee, Bankers Trust Company.
 (E.115) Plaintiff then offered the complaint in intervention of Union Trust Company in that case, and the same was received in evidence over the objection and exception
 (E.116) of counsel for garnishee, Bankers Trust Company, and plaintiff offered in said case the following documents all of which were received in evidence likewise over the objection and exception of the garnishee, Bankers Trust Company:

The amended and supplemental answer of Interstate Sugar Company;

The order appointing a receiver of Interstate Sugar Company;

Consent of Ernest R. Woolley;

Separate answer of Pioneer Sugar Company;

Separate answer of Interstate Sugar Company;

Answer of Interstate Sugar Company to the complaint in intervention of Union Trust Company of San Francisco;

Answer of Pioneer Sugar Company to the complaint in intervention of Union Trust Company of San Francisco;

Order entered by this court in said action on Saturday, February 25, 1922;

(B.of E. 11)

Agreement made the day of December, 1922, between Walkers Brothers Bankers, a corporation, party of the first part; Assets Realization Company, a corporation, party of the second part; Union Trust Company, party of the third part; Columbia Trust Company as party of the fourth part; A. C. Sullivan, trustee, as party of the fifth part; Interstate Sugar Company, a corporation, party of the seventh part.

Stipulation signed by the same parties to that contract which was filed in this court and upon which a judgment later was based.

The final decree in that case.

THE COURT: All those offers now made, the instruments may be received in evidence. They weren't read. Do you consent that they be considered read?

(B.of E. 11)

MR. PARSONS: Yes, your Honor.

(B.of E. 12)

COMPLAINT

IN THE DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH.

EDWIN A. STRATFORD,

Plaintiff,

vs.

INTERSTATE SUGAR COMPANY,
a corporation, PINGREE

SUGAR COMPANY, a corporation,
 HOOPER SUGAR COMPANY,
 a corporation, PIONEER SUGAR
 COMPANY, a corporation,
 COLUMBIA TRUST COMPANY, a
 corporation, ERNEST R. WOOLLEY
 and A. C. SULLIVAN,
 Defendants.

It is alleged that on or about the 15th day of December, 1918, the defendant Pingree Sugar Company was the owner and in possession of real estate located at Visalia, Tulare County, State of California, improved with buildings, machinery and equipment constituting a beet sugar manufacturing plant, and was likewise the owner and in possession of real estate located at Corcoran in Kings County, California, upon which was another sugar manufacturing plant. That on said date the defendant Pingree Sugar Company executed and delivered to Union Trust Company of San Francisco, California, a deed of trust of all said property; that said deed of trust secured payment of a maximum indebtedness of \$1,000,000.00, to be evidenced by a series of bonds issued by said defendant, bearing date of December 15, 1918; that plaintiff, Edwin A. Stratford was the owner of bonds numbers 243 to 253, both inclusive; that after the execution and recording of said deed of trust, said Pingree Sugar Company without the knowledge or consent of the trustee or the plaintiff suffered and permitted the sugar factory located at Visalia to be dismantled and removed to Hooper in Weber County, Utah, and the defendant Hooper Sugar Company took possession of said plant and reerected the same during the year 1919 upon land located in Weber County, Utah, and described in the complaint; that on or about the 29th day of June, 1920, the defendants Hooper Sugar Company and Pingree Sugar Company delivered possession of said sugar factory to the defendants Interstate Sugar Com-

pany and Ernest R. Woolley "who have since been in the exclusive possession of said property." That Hooper Sugar Company, Ernest R. Woolley and Interstate Sugar Company were at all times aware of the existence of said deed of trust and the outstanding bonds thereby secured; that on or about the 27th day of January, 1921, the defendants Interstate Sugar Company and Ernest R. Woolley mortgaged this property by deed of trust to the defendant A. C. Sullivan, to secure payment of an indebtedness of \$500,000.00 to mature on or about July 1, 1921; that on the 9th day of March, 1921, the defendant Interstate Sugar Company made and delivered to the defendant Columbia Trust Company a second deed of trust upon said property to secure payment of a proposed bond issue of \$750,000.00; that some time in the early part of 1921, the defendants Ernest R. Woolley and Hooper Sugar Company entered into a contract with the defendant Pioneer Sugar Company, whereby the defendants Woolley and Hooper Sugar Company undertook to sell said property to said Pioneer Sugar Company, but that said sale had not been consummated; that the Pioneer Sugar Company asserts some interest in and to said property.

WHEREFORE, Plaintiff prays judgment:

That the defendant be enjoined from further encumbering said property or selling bonds secured by said deed of trust; that the latter be declared inferior to the claim of plaintiff for foreclosure of said first and prior mortgage, etc.

COMPLAINT IN INTERVENTION OF UNION

TRUST COMPANY OF SAN FRANCISCO.

EDWIN A. STRATFORD,

Plaintiff,

vs.

INTERSTATE SUGAR

COMPANY, et al.,

Defendants.

Alleges the execution and delivery of a deed of trust to plaintiff in intervention, Union Trust

Company of San Francisco by the defendant Pingree Sugar Company on or about the 11th day of December, 1918, covering the property therein described, situate in the Counties of Kings and Tulare, State of California, that thereby were secured by bonds of the Pingree Sugar Company to be issued to the amount of not to exceed \$1,000,000.00. That all of these bonds Pingree Sugar Company caused to be issued and delivered, and the same were then outstanding, unpaid and over due bonds of the par value of \$535,000.00; that thereafter some of the officers of the defendant Pingree Sugar Company, without the consent of plaintiff in intervention, caused the sugar factory located at Visalia in Tulare County, California, particularly described in said deed of trust to be dismantled and shipped to Hooper, Weber County, State of Utah, there to be reassembled and erected upon land particularly described in the complaint in intervention; that thereafter during the month of July, 1920, the defendants Pingree Sugar Company, Interstate Sugar Company and Ernest R. Woolley caused part of the sugar factory located at Corcoran in Kings County, California to be dismantled and shipped to Hooper, Weber County, State of Utah, and there to be made a part of the factory theretofore taken from Visalia, California to constitute the said Hooper Sugar Factory; that the defendant Hooper Sugar Company was organized for the purpose of taking over, erecting and operating such sugar factory; that thereafter said Hooper Sugar Company entered into an executory contract to sell said property to the Interstate Sugar Company and the said Interstate Sugar Company was fully informed of the limited and equitable title of said Hooper Sugar Company; that thereafter said Interstate Sugar Company caused a deed of trust to be executed and delivered to the defendant A. C. Sullivan to secure an indebtedness of Interstate Sugar Company of the maximum amount of \$500,000.00. That subsequent to the filing of the

original complaint in this action, said Interstate Sugar Company caused a second deed of trust to be executed and delivered to said Columbia Trust Company as trustee for the purpose of securing payment of bonds of the Interstate Sugar Company of the par value of \$750,000.00.

(B. of E. 1

WHEREFORE, Plaintiff in intervention prayed judgment for the appointment of a receiver of the said Hooper factory for the foreclosure of its mortgage, etc.

(B. of E. to 143 in

AMENDED AND SUPPLEMENTAL ANSWER OF INTERSTATE SUGAR COMPANY.

EDWIN A. STRATFORD,
Plaintiff,

vs.

INTERSTATE SUGAR
COMPANY, et al.,
Defendants.

The defendant Interstate Sugar Company joins in the request for the appointment of a receiver to take charge of all its assets, etc., and asks that JAMES J. BURKE of Salt Lake City be so appointed.

(B. of E. and 14

ORDER APPOINTING RECEIVER
EDWIN A. STRATFORD,
Plaintiff,

vs.

INTERSTATE SUGAR
COMPANY, et al.,
Defendants.

JAMES J. BURKE of Salt Lake City, Utah, was appointed receiver of the property and estate of the defendant Interstate Sugar Company. This order was dated the 26th day of September, 1921.

(B. of E. 1

CONSENT OF ERNEST R. WOOLLEY

Ernest R. Woolley consents to the issuance of receiver's certificates as prayed for by the receiver. Consent dated the 6th day of October, 1921.

SEPARATE ANSWER OF THE DEFENDANT
PIONEER SUGAR COMPANY

EDWIN A. STRATFORD,
Plaintiff,

vs.

INTERSTATE SUGAR COMPANY,
et al.,

Defendants,

and

UNION TRUST COMPANY OF
SAN FRANCISCO, a corporation,
Plaintiff in Intervention.

Alleges its only interest in the property involved to be that of a stockholder in the Interstate Sugar Company, which in turn, is alleged to be the owner of said property. This defendant denies that it had entered into any negotiations or contract for the purchase of said sugar factory.

SEPARATE ANSWER OF INTERSTATE
SUGAR CO.

EDWIN A. STRATFORD,
Plaintiff,

vs.

INTERSTATE SUGAR COMPANY,
et al.,

Defendants,

and

UNION TRUST COMPANY OF
SAN FRANCISCO, a corporation,
Plaintiff in Intervention.

Alleges that the sugar factory located at Visalia had been dismantled and removed to Hooper with the knowledge and consent of the trustee, Union Trust Company of San Francisco, and of the owners and holders of all the outstanding bonds secured by that trust deed. Admitted that on or about the 29th day of June, 1920, the defendant Interstate Sugar Company had purchased this "sugar factory from said Hooper Sugar Company or said Ernest R. Woolley," and alleges that it has been ever since the owner of the same.

ANSWER OF INTERSTATE SUGAR COMPANY TO THE COMPLAINT IN INTERVENTION OF THE UNION TRUST COMPANY OF SAN FRANCISCO

Alleges substantially as in its answer to the complaint, and denies that Hooper Sugar Company entered into an agreement with this defendant to sell said property to said defendant subject to said mortgage or deed of trust, or subject to the rights of said bondholders. Alleges as consideration to said trustee and bondholders for the release of said mortgage lien upon said property that Hooper Sugar Company was to deliver 5001 shares of its capital stock to Pingree Sugar Company for the use and benefit of said bondholders, and that this was done.

(B. of E.
156-158)

ANSWER OF PIONEER SUGAR COMPANY TO THE COMPLAINT IN INTERVENTION OF UNION TRUST COMPANY OF SAN FRANCISCO

Alleges ownership of 507 bonds out of a total issue of 535, also that this defendant owns a large amount of common and preferred stock of Interstate Sugar Company, and alleges that the filing and prosecution of the complaint in intervention of the Union Trust Company of San Francisco was without the consent of this defendant Pioneer Sugar Company, and contrary to its wishes and instructions.

(B. of E.
159-160)

ORDER OF COURT UPON RECEIVER'S PETITION FOR INSTRUCTIONS

Substitution of parties; bringing in of additional parties; time allowed to answer and fixing of attorney's fee was dated February 25, 1922.

(B. of E. 161)

CONSENT OF ERNEST R. WOOLLEY

This consent is to the continued operation by the receiver of the factory and business of Interstate Sugar Company and to the issuance of not exceeding \$300,000.00 of receiver's certificates for that purpose. It is dated September 1, 1922.

AGREEMENT

Agreement made the.....day of December, 1922, between Walker Brothers Bankers of the

(B. of E.
163-175)

first part, Assets Realization Company of the second part, Union Trust Company of San Francisco of the third part, Columbia Trust Company of the fourth part, A. C. Sullivan, trustee of the fifth part, Interstate Sugar Company of the sixth part and Pioneer Sugar Company of the seventh part.

This agreement states a compromise in settlement between the parties above named of all matters in dispute and litigation, and expressly of all claims asserted against said Interstate Sugar Company and its property on account of the so-called "Pingree Bonds" described in the complaint in intervention of the Union Trust Company of San Francisco. Among many other provisions that seem to us wholly immaterial to any issue here there is awarded to Union Trust Company of San Francisco \$125,000.00 par value of the bonds of Interstate Sugar Company secured by trust deed to Columbia Trust Company, together with a note for \$5,000.00, in consideration whereof Union Trust Company of San Francisco agrees to dismiss upon the merits its complaint in intervention and all other proceedings in which it is an actor in the District Court of Weber County, Utah, as well as its complaint in the District Court of the United States for the District of Utah. Interstate Sugar Company also agrees to authorize the issuance of 300,000 of second mortgage bonds for the purpose of taking up claims of its unsecured creditors, appearing under the heading ADDENDA. Reference is made to certain documents as having been placed in escrow with the Columbia Trust Company, among which is said to be a bill of sale from Harry Young as trustee in bankruptcy of the Pingree Sugar Company, purporting to transfer and deliver to Pioneer Sugar Company, 2700 shares of preferred and 30,000 shares of the common stock of Interstate Sugar Company "now on deposit with the Bankers Trust Company of Salt Lake City, Utah," together with an order in said bankruptcy proceedings authorizing the same; also as having likewise been placed in escrow with

(E.172)

said Trust Company a bill of sale from Heber C. Carver as trustee in bankruptcy of Hooper Sugar Company, purporting to transfer and deliver to Pioneer Sugar Company 3,000 shares of the preferred and 20,000 shares of the common stock of the Interstate Sugar Company, "which is now on deposit with the Bankers Trust Company of Salt Lake City, Utah," together with an order in said bankruptcy proceedings authorizing the same.

(B. of E. 176-183)

STIPULATION

Stipulation in accord with the foregoing agreement and bearing date of.....day of December, 1922. This stipulation is referred to in that agreement as Exhibit "C"

(B. of E. 184-194)

DECREE

EDWIN A. STRATFORD,

Plaintiff,

vs.

INTERSTATE SUGAR COMPANY, et al.,

Defendants,

and

UNION TRUST COMPANY OF
SAN FRANCISCO, a Corporation,
Intervenor.

This decree recites that default of Ernest R. Woolley had been entered for failure to plead, and that the cause had been submitted to the court for decision upon the written stipulation herein next preceding referred to. The decree is dated January 13, 1923, and thereby it was adjudged among other things that Interstate Sugar Company was then the owner and in possession and entitled to the possession (subject only to the temporary possession of the receiver) of the land and property therein described, subject to the lien of certain mortgages by said Interstate Sugar Company; that all claims affecting the title of said property of Interstate Sugar Company wherever situated within the State of Utah were declared to be without right, and the assertion of any such claim was enjoined and title

(B. of E. 184-194)

to all of said property of Interstate Sugar Company against the claims and demands of all the parties in interest in that suit and those claiming under them was quieted.

3. of E. 195)

II. H. HENDERSON, a witness called by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Johnson:

My name is II. H. Henderson, and I am one of the plaintiffs in this action. I am acquainted with Mr. Hardy, and have known him very well only the last year or year and a half. I met him before. I had four or five conversations with Mr. Hardy concerning the matter at issue here, these conversations taking place in Salt Lake City in the office of Bankers Trust Company. I don't want to be too sure of my dates, because I saw Mr. Hardy three or four different times. My recollection is that I saw him the first time and talked this matter over in either July or August of last year, after this court here had entered a judgment in these cases that was on trial directing the Bankers Trust Company to turn over this stock to the Sheriff of Salt Lake County.

of E. 196)

QUESTION: Now, what was that conversation?

MR. PARSONS: I object, your Honor, as irrelevant, incompetent and immaterial.

THE COURT: The objection will be overruled.

MR. PARSONS: Exception.

That conversation related to the turning over of this stock, the value of the stock and the proper way to handle this matter. Mr. Hardy said that he couldn't very well turn it over under that order because other people were making a demand upon him. I asked who those other people were, and he took out a piece of paper and read from it; that Henderson & Johnson had served a garnishment upon them upon such and such a date; Continental

Casualty Company, I think was the name, had served, then he enumerated a number of people who had served garnishments upon the stock that applied to the Pingree Sugar Company and that applied to the Hooper Sugar Company; and he further said that Mr. Woolley was making demand upon them that that stock not be turned over to anyone. I asked him why Woolley, he said Woolley claimed that the contract between him and the Interstate Sugar Company, the Hooper Sugar Company and the Pingree Sugar Company and the parties who had made it had not been carried out. "Well," I said to Hardy, "I don't know why he should make that, the Interstate Sugar Company, all of its assets were derived from the Hooper Sugar Company and from the Pingree Sugar Company," and then I went on and I said further, Woolley took over the assets of these companies, whatever it was; that is, all of the assets of the Interstate Sugar Company and he issued back to them capital stock out of that company, then he has gone and he has mortgaged these properties or disposed of them until the stock of the Interstate Sugar Company is not worth a dollar. He and I then talked over what the mortgages and claims were against the Interstate Sugar Company. (B. of E. 197)

MR. PARSONS: I ask that all of that testimony be stricken; it is wholly irrelevant, immaterial and incompetent.

THE COURT: I think the objection will be overruled. I will hear the testimony.

MR. PARSONS: Exception.

I asked him what he thought that the stock that he held there was worth. He said so far as he could find out he didn't think it was worth much of anything, but he said he didn't want to turn it over. I said: "Why don't

you bring it into court under this order and notify Woolley and any other person who claims to be interested in that stock, that under an order of court that you will turn it over to the court, and that if they claim any interest let them intervene." I said; "You don't have to fight Woolley's lawsuits." Well, he didn't know and he said it might be necessary for him to talk with their attorneys. I asked him who their attorneys were. Well, he said they had a young man there that gave them advice that was on a salary in the bank, but on what they considered important matters, Dickson, Ellis & Adamson—I don't think Mr. Parsons was in the firm at that time. He said that these garnishments had been served down there, and they had to look after it. Well, I said our attachment there was served first. He turned to his little memorandum, he said "Yes," I said: "We have the first claim as far as these attachments are concerned, have we not?" He said: "Yes." I said: "Ours was served when?" And he looked at his—I wanted to get the date of the service, and he gave it to me in August, 1920. Then I made him give me the dates of all the others that had been served upon him and he gave me that. I said: "There is nothing in this for you to fight over or have any fights, that the stock isn't worth anything." Now, I said, "as far as I am personally concerned I would like to see Mr. Woolley get in here, I don't like to see you fight Woolley's battles." Well, he said, "we are not concerned in Woolley but we won't fight him." I said: "To me it looks as though you were concerned with him because," I said, "if you have got any kind of a lawyer and he is making demand on that, unless you want to fight his battles you will have Woolley come in and fight his own battles. You don't have to fight Woolley's battles, and at that time I said if you re-

of E. 198)

lease that stock—he went on talking about the Hooper Sugar Company and the Pingree Sugar Company they were in the hands of the Bankruptcy court. “Well,” I said, “I will get you a release from all of those whereby you can turn it over.” I said: “If you will turn it over I will give you a release from everybody except Mr. Ernest R. Woolley, I think he is your henchman, you can treat with him while they will have to consult with their attorneys.” We talked there over an hour about the Interstate and about Woolley and Mr. Hardy said that they didn’t want to be connected up with Woolley, Woolley had done some things they didn’t want to be classed in with those things that Woolley had done, and they wanted me to further understand all the time that they were not fighting Mr. Woolley’s battles. I said: “You cannot make me believe that until you notify Mr. Woolley to come in here and fight his own battles.” They said that they would take that under consideration for a week. They took it under consideration for a week, what they would do, and I was down there again and went in to see Mr. Hardy.

MR. PARSONS: Your honor, at this point I would like to ask again that the testimony of this witness be stricken from the record as irrelevant, incompetent and immaterial, obviously self-serving. (B.of E. 1

THE COURT: Well, there is a great deal of it evidently not material or competent or relevant, but it is so mixed up with what may be competent that I think I will let it stand and deny your motion.

MR. PARSONS: Exception.

A. I went in to see Mr. Hardy and Mr. Hardy said that they had talked with their attorneys and that they would make a motion to set aside this judgment that had been entered up here in favor of the plaintiffs in this

action—in these actions, compelling the Bankers Trust Company to turn that stock over to the sheriff of Salt Lake County. I told him that if he would make the motion and have it made at once that I wouldn't take any further steps in the enforcement of the judgment we had. They said Mr. Parsons or somebody up there were preparing papers and they would get that out. I said: "Now, why don't you, if the court sets this aside—why don't you ask also—have your attorneys ask, that anybody that is interested in this stock or claims to be, be made parties to that action?" Well, he said, "I don't want to dictate what the attorneys will do." "Well," I said, you call their attention to it." "Well," he said, I will talk with them." The next session we had was the motion to set aside those two judgments that we had, that were entered, I think, on July 10th or July 12th, 1923. I don't think I saw Mr. Hardy again to talk with him—I may have seen him—I was in the bank and just spoke to him to talk about this matter, until this court had entered a judgment or order denying their motion to set aside those judgments of July the 12th, 1923. Two or three days after that was entered I stopped in there to see Mr. Hardy. "Well, I said to him, "you understand the court has denied that motion, now," I said "what are you going to do? Are you going to appeal?" "Well," he said, "I don't know whether we will appeal or whether we will take some other action." "Well," I said to him, "your attorney Parsons, during the trial there, or just at the conclusion of the trial said they probably would try and get it up on a writ of prohibition and my opinion is no writ of prohibition will lie, you have a remedy by appeal." I said to him "now, why can't we fix this thing up." I said, "you know Woolley hasn't got any interest anyway." Well he didn't know. He said

they were being guided more by their attorneys. "Well," I said to him, "it looks to me like your attorneys are trying to make a whole lot of unnecessary litigation. That is the way it appears to me." I said "of course, if you are not satisfied with that judgment up there you have a right to appeal; no doubt about that, and get a stay bond." "Well," he said, we don't want to give a stay bond if we can get out of it. He said "if the upper court will sustain it, then where will we be at." "We would like to take a proceeding that we won't be liable." "Well," I said, "if you will take your proceedings there I will hold off until you can get it up." He said, "it will be gotten out in the next few days." I said, "I am not going to wait all summer." Then I started in with him to see if we couldn't get some settlement. I said "This stock isn't worth anything, if we take the stock over we have got to pay—

MR. PARSONS: I suppose your honor, I may have the same objection to all of this without interposing.

THE COURT: I think the last conversation with Mr. Hardy may go out on my own motion. Now, that is up to the time he started to talk about the value. Now, whatever talk there was about the value there he can testify to.

MR. PARSONS: Exception.

(B.of E. 2)

MR. JOHNSON: May we have an exception.

A. I asked him how much their charges will be. He said: "I don't know." I said: "Are you going to charge up attorney's fees for these Woolley cases, lawsuits you have got. Well, he didn't know, he thought so. "Well, I said, "The fight now in my opinion here today looks as though it is going to be between you and I. I don't think the stock is worth anything at the present time. It might be worth something. We are going to know whether we

have got anything or whether we haven't." I think that was—well, I can't repeat all that was said at those conversations, because they took some time. Mr. Hardy said at that time he didn't think this stock had any value. It was on account of the mortgages. There was over a \$1,000,000.00 worth of mortgages on this property. The property at the time was not in the hands of the Interstate Company; It is not now. It was in the hands of the trustees appointed by the bond holders. I don't know whether you call it creditors or not. It was being run by three trustees or three persons that are appointed by the first bond holders. He said that stock wasn't of any value, but it might have—not any market value, but if it was held on to any time, if the sugar company could work it out, at any time the stock might be worth something. I have made an independent investigation as to the value of this stock. It has no market value.

MR. PARSONS: I ask that the answer of the witness go out. The witness has shown no qualification to testify as to the value of this stock. No proper foundation laid.

THE COURT: Well, strictly speaking that is true, he hasn't shown any qualification in one sense of the word, in another sense of the word he says he has made an investigation as to it. I think I will admit the testimony and you can cross-examine him.

The stock has no market value, but if the sugar business continues to run that stock may have some value in the future. I know in a general way what the attorneys for the Bankers Trust Company have done ever since the actual litigation started, because they have been in court here. In my opinion \$500.00 would be a large fee for them.

CROSS EXAMINATION

By Mr. Parsons:

I have testified that I made an investigation upon which to predicate my opinion as to the value of this stock. I have been to the plant with the President of the Interstate Sugar Company, visiting and looking it over, looking over the books of the company. Statements have been given to me showing just what their assets were. I have none of those statements with me. On talking with the President of the company himself and with other people who were interested in the sugar business—George E. Sanders was the President of the company—he made the statement to me that the stock had no market value. Sanders thinks the property has an intrinsic value. He thinks in time if the sugar business keeps up it will pay off the indebtedness, and in time the stock will be worth something. He thinks at the present time there is no market value. My investigation was made during last fall. We went out to the factory to look it over together. Sanders told me he thought the factory would earn between \$250,000.00 and \$300,000.00 this year. I asked him if he had a statement from the operating committee, and he said no, but he was going to get it, and he would send me a copy of it. He hasn't done so yet. I don't think any bonds were retired by reason of our operations last season, although I have no knowledge about that. The way I understood it was that \$250,000 or \$300,000 was net after paying running expenses. I don't know if that was net above the interest itself, but that would be applicable—he said \$250,000 to \$300,000 ought to be made applicable for the payment of interest and reducing the bond indebtedness, and he said another year—now, we have got to pay off three hundred fifty thousand dollars of the

bonds—of the first mortgage bonds before we can get possession, but he said another year we will be able to pay off \$350,000.00 worth of bonds and get possession of the factory. There were last fall—unless they paid them off since the sugar—there was \$750,000.00 first and second mortgage—\$300,000.00, I think a little over \$200,000.00 has been issued, and then there is Wooley's judgment against the factory for \$60,000.00, all together about \$1,000,000.00 indebtedness outstanding which carries interest at the rate of 8%. \$80,000.00 will take care of their total interest charges for the year, and the balance of \$250,000.00 or \$300,000.00 would be applicable to the payments of this indebtedness. I know of no negotiations at the present time or recently conducted for the sale of the stock involved here with the Havermeyers. I understand that Sanders has been East. Well, I am telling what Sanders tells me. Now, Sanders is also President of the Beet Growers Factory at Rexburg, Idaho. Sanders sent down East to see—I don't know but what it might have been Havermeyer whereby they were thinking maybe of taking over the Rexburg factory—or that is, they would buy the Rexburg Factory, but it would be bought through the Utah-Idaho Sugar Company. That was their talk with Mr. Havermeyer about this factory down here, but not for any stock sales. That the factory itself, if the price could be agreed upon, would be turned over to the Amalgamated. Mr. Sanders thought, the way he talked, the balance of the stock—well, all over and above the indebtedness—he didn't know, he talked in general terms, anywhere from \$100,000.00 to \$300,000.00, that is to say, the total outstanding stock would realize from \$100,000.00 to \$300,000.00 in the event these negotiations were respectfully concluded, but the stock in issue here is only one-half of

the stock, it isn't quite one-half of it.

The plaintiff rests.

(B. of E.)

JOHN K. HARDY, recalled on behalf of the garnishee, Bankers Trust Company, testified as follows:

RE-DIRECT EXAMINATION

By Mr. Parsons:

Garnishee's Exhibit "N" was identified, offered and received in evidence. Garnishee's Exhibit "N" is the original receipt of Bankers Trust Company to Ernest R. Woolley, dated June 22, 1920. This receipt was delivered to Mr. Woolley upon the occasion of the deposit with the Bankers Trust Company of the agreement and stock referred to in this hearing, being on the occasion of the creation of this escrow. Mr. Woolley came into the Trust Company with certain papers including stock issued by the Interstate Sugar Company and the agreement which he desired to leave with the Trust Company as trustee. He had prepared some form of receipt for these papers which he wanted us to sign, and when I went over the contract he had delivered I discovered the contract had provisions in it for certain duties or conditions to be performed by the trustee. I took the papers in connection with Mr. Woolley's receipt to Mr. A. C. Ellis, and asked him to go over the papers, and we agreed that the trustee or the Bankers Trust Company could not issue a receipt or execute a trust agreement until all parties in interest should deliver to us definite information as to what their rights were and how we were to distribute the property. Consequently we issued this memorandum receipt which is Garnishee's Exhibit "N." Garnishee's Exhibit "N" was in words and figures as follows, to-wit:

(B. of E.)

"Bankers Trust Company,
"Salt Lake City, Utah,

“June 22, 1920.

“RECEIVED FROM Ernest R. Woolley:

“Certified copy of a resolution of the Board of Directors of the Hooper Sugar Co. relating to the sale of the property of said Company, adopted June 19th, 1920.

“Agreement between certain stockholders and creditors of the Pingree Sugar Co., Hooper Sugar Co., and Pingree-Idaho Sugar Co., relating to the sale of enumerated assets.

“Ctf. No. 13 for 270,000 shares of the preferred stock of the Inter-State Sugar Co. issued to Pingree Sugar Company, unendorsed;

“Ctf. No. 14, for 300,000 shares of the preferred stock of the Inter-State Sugar Co. issued to Hooper Sugar Co., unendorsed.

“Ctf. No. 14, for 300,000 shares of the common stock of Inter-State Sugar Co. issued in favor of Pingree Sugar Co., unendorsed.

“Ctf. No. 15 for 200,000 shares of the common stock of the Inter-State Sugar Co. issued to Hooper Sugar Co., unendorsed;

“the said stock to be held by Bankers Trust Co., as Trustee for the use and benefit of said Pingree Sugar Co., and said Hooper Sugar Co., and its creditors and stockholders and to be distributed to the said Sugar Companies respectively, and their respective creditors and stockholders when they shall deliver or cause to be delivered to Bankers Trust Co., Trustee the necessary papers and documents, setting forth and defining the respective rights of said Sugar Companies and their respective creditors and stockholders in and to said shares of stock in said Inter-State Sugar Co.

“BANKERS TRUST COMPANY,

“By John K. Hardy, Vice-Pres.”

Leave is granted by the court to withdraw the original of Garnishee's Exhibit “N” and to substitute in lieu thereof the copy, identified as Garnishee's Exhibit “J.”

Q. I call your attention to this part of the exhibit—I am reading from Garnishee's Exhibit “J” “said stock

to be held by said Bankers Trust Company as trustee, for the use and benefit of said Pingree Sugar Company and said Hooper Sugar Company and its creditors and stockholders and to be distributed to the said Sugar Companies respectively and their respective creditors and stockholders when they shall deliver or cause to be delivered to Bankers Trust Company, Trustee, the necessary papers and documents, setting forth and defining the respective rights of said Sugar Companies and their respective creditors and stockholders in and to said shares of stock in said Interstate Sugar Company” I will ask you Mr. Hardy if there have been delivered to or tendered to you any papers or documents setting forth or defining those rights or interests? (B. of E.)

A. The only papers that would approach any definition of their rights was a resolution that was submitted to us and introduced in evidence of the Hooper Sugar Company, this resolution being Garnishee’s Exhibit “F.”

I was in the court room and heard the testimony of Judge Henderson relating to certain conversations I was alleged to have had with him, and my recollection thereof is this. The first conversation I had with Judge Henderson was on my return from California either the very last day of July or early in August of 1923, at which time I found on my desk a letter addressed to the Bankers Trust Company by Judge Henderson. I have that letter with me, and therein the Judge had mentioned the question of a fee to be charged by the Bankers Trust Company. He phoned me before he came to Salt Lake. He had had the matter up with W. W. Armstrong, president of the company and had been advised that I had handled (B. of E.)

the matter and had been asked to await my return. I don't remember the exact date, but it was about the time he called when the order had been taken out of this court to turn the papers over. The Judge discussed with me the value from his view-point of the stock held by us in escrow and expressed the opinion it had absolutely no value at that time. He stated that the operation during the preceding year had left a cash balance in the treasury of the Interstate Company, as I understand it, of about sixty thousand dollars. That in time it may work out. I did not know the value of the stock at that time. I did not tell him I knew the value of the stock. I did not state to him that it had no value. I did, however, state to him after his recitation of the judgment and the debts against this company that if his representations were true and correct in that particular the stock had no value. I discussed the case with him later when he sought to impose upon me his view as to how we should proceed and the fees and told him we had employed counsel who were instructing us as to how we should proceed. I sought to arrange an interview with Judge Henderson and our counsel in connection with one of the items that came up. I think that was on his first visit, with reference to our office attorney, Mr. Douglas. He discussed the question, I believe of the priority of the attachments which had been served against us, and later the Judge interviewed our counsel, Messrs. Dickson, Ellis & Adamson. That in brief is the conversation. The Judge did discuss the question of our fighting Ernest Woolley's lawsuits, at which time I explained to him that we found ourselves in a position where we feared Ernest Woolley bringing an action against the trustee more than we feared any creditor of

the company in the event we turned this property over without having proper authority or court instructions so to do. I have made some investigation as to the value of this stock but not like Judge Henderson. I have been at the plant but I am not qualified to testify as to the value of the stock like Judge Henderson. I can testify as to what I have heard. Mr. Sanders told me on Monday evening they had a deal for the sale of this property through Judge Rolapp as a result of which the stock now in the hands of the Bankers Trust Company would bring to the creditors \$225,000.00.

Garnishee, Bankers Trust Company, rests.

(B. of E.)

The Plaintiff rests.

WHEREUPON the hearing was continued until Saturday, March 8th, 1924, at 2 o'clock p. m. for argument.

(B. of E.)

Saturday, March 8th, 1924.

THE COURT: This is the time set for hearing the arguments in the case of the Bankers Trust Company against Henderson & Johnson.

MR. HENDERSON: May it please your Honor, at this time the plaintiffs in both of these actions ask to re-open the case for the introduction of further evidence. I will state to the court what that evidence is, if the court so desires.

THE COURT: You may state it.

MR. HENDERSON: This case was set for trial on February 29th. Mr. George E. Sanders in company with Mr. Schulder of the firm of Marioneaux, King & Schulder, came to my office—it was Friday afternoon, February 29th—and asked me to consent to requesting this court to have these cases—the trial of these cases that we are now engaged in, postponed for a few days or a week or ten days. I told them that I wouldn't consent;

that they could ask the court. While we were talking the court came into our office and at that time Mr. Sanders and Mr. Schulder asked your honor to postpone these cases, stating that Mr. King had been called to Butte and Mr. Schulder was engaged in other business and didn't know anything about the issues and that Mr. Sanders had succeeded to the rights of Mr. Woolley, and they wanted these cases continued until Mr. Sanders could see what he desired to do. The court asked me whether I would consent and I told him I would not.

THE COURT: You don't mean the court, you mean the judge of the court.

MR. HENDERSON: Not the court,—and then after some further talk with Mr. Sanders and at Mr. Sanders' request and Mr. Schulder's request, you then stated that in the morning that would be the day of the trial of these cases—that you would continue them until the following Tuesday, March 3rd, with the—

THE COURT: March 4th.

MR. HENDERSON: Or March 4th, with the understanding that there would be no further request for a continuance; that on March 1st, when your Honor convened court in pursuance of that statement to Mr. Sanders and Mr. Schulder, you postponed these cases for trial until the 4th day of March. Now, that statement can be taken as testimony. That is all I wish to testify.

MR. PARSONS: Your honor, I have no objection to opening the case for further testimony, but I don't think it should be done just at this time. I think that Mr. Schulder should have an opportunity to be present, also Mr. Sanders if he wants to be. He might desire to testify to something else that occurred at this conversation between Mr. Henderson and them in the absence of your honor.

THE COURT: Well, so far as that is concerned, Mr. Parsons, I remember the matter distinctly. The 29th was the Friday. In the afternoon along about four o'clock I was in the First National Bank Building and stepped into the office of Henderson & Johnson. Mr. Schulder accosted me just as I stepped in the door and said they were just coming up to the court house to make a motion in these cases. The conversation that went on there was about as Mr. Henderson has stated. I finally said, of course, the court has adjourned now until tomorrow morning and the conversation was carried on between Henderson, Schulder and Sanders looking to a stipulation for a continuance. They finally appealed to me. I said, of course, I wouldn't make any order here, the court not being in session. I finally said to them, however, Henderson still refuses to consent to a continuance, under the circumstances the court would, on convening in the morning—Saturday morning, enter an order continuing the matter until the 4th. All remarked that was what they asked for at that time and each of them said they pledged themselves that it should not work any further continuance of the case. I told Mr. Schulder at that time I entered the order I should specify in the order that no further continuance would be granted on their application. That order is in the files here. I think you will find it in the files in each of the cases.

(B. of E. 2)

THE COURT: I would like to make inquiry. Now, I suppose, Mr. Parsons and Mr. Henderson, that it is conceded in this case that the garnishments were served upon the Bankers Trust Company, the garnishee in this matter, in the order as shown by their answer to the garnishment.

MR. PARSONS: They are, yes.

MR. HENDERSON: I think that is true.

ARGUMENT

THE COURT: I am of the opinion that it was the duty of Mr. Sanders, who had notice of this litigation, and knowing when he took the stock from Woolley that the stock was in litigation, and knowing it was in litigation it was his duty to come in here and have himself substituted for the defendant. It is clear in my own mind if judgment should be ordered and that property delivered over now, that Mr. Sanders would have no recourse against the Bankers Trust Company for the reason that he had notice of this litigation and bought the stock on whatever interest Woolley had in it, knowing that the litigation was pending, and it was his duty to come in here and make himself a party or defend in the name of Woolley. Being the assignee he had the right to defend in the name of Woolley so far as that is concerned without making a new party defendant. Any assignee can do that. At any rate, as stated a while ago, if you see proper to tender that stock into court in connection with your answer under the circumstances of this case I will order that Mr. Sanders be made a party and make his answer in here. I would like to get all the parties before this court so that there will be no comeback on anybody.

MR. PARSONS: That is all we ask, your honor.

THE COURT: I think that there has not been a time, Mr. Parsons, since the service of that garnishment, or at least since you filed your amended answer that the Bankers Trust Company could not discharge itself as against all the parties by putting the stock in court along with your answer and ask that they be made parties defendant and litigate between themselves the title to this property; in that way the Bankers Trust Company would

be absolutely protected. Of course, then there would remain the question of whether there was any compensation coming to the company. That could be taken care of in that kind of litigation.

(FURTHER ARGUMENT)

THE COURT: The matter will be taken under advisement.

The above and foregoing constitutes all the testimony had and evidence adduced thereto and given in the foregoing proceedings had upon the trial of each of said causes.

Thereafter, to-wit, on the 5th day of April, 1924, the court made and entered its Findings of Fact, Conclusions of Law and Judgment in said causes as follows:

Findings of Fact and Conclusions of Law.

(Henderson and Johnson vs. Hooper Sugar Company)

THIS CAUSE came regularly on for trial on 69 the Fourth (4th) day of March, A. D. Nineteen Hundred Twenty-four (1924) before the HON. JAMES N. KIMBALL, Judge of Department Number Two (2) of the District Court of the Second Judicial District of the State of Utah, within and for Weber County, sitting without a jury, the default of the defendant in garnishment proceedings, ERNEST R. WOOLLEY, having been duly entered for not appearing or pleading herein, and the default of the defendant in garnishment proceedings, HEBER C. CARVER, Trustee in Bankruptcy of the Hooper Sugar Company, having been duly entered for not filing any pleading herein, the plaintiffs appearing as attorneys for themselves, the garnishee, BANKERS TRUST COMPANY of Salt Lake City, Utah, appearing by its counsel, Messrs. Dickson, Ellis, 70 Parsons and Adamson, the defendants in garnish-

ment proceedings, GUARDIAN FIRE INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY and IDAHO STATE BANK OF TWIN FALLS, IDAHO, appearing by their counsel, Messrs. Henderson and Johnson, the FIRST NATIONAL BANK OF KEMMERER, WYOMING, appearing by its attorneys, Messrs. Dickson, Ellis, Parsons and Adamson. Witnesses were sworn and oral and documentary evidence was introduced, and, after arguments by counsel for the respective parties hereto, said cause was taken under advisement by the Court, and

NOW, COMES THE COURT, and being fully advised in the premises, makes the following FINDINGS OF FACT and CONCLUSIONS of LAW.

FINDINGS OF FACT

Finding of Fact No. 1

That on the 22nd day of June, 1920, one Ernest R. Woolley delivered to the Bankers Trust Company of Salt Lake City, Utah, an agreement in writing, without date, between Pingree Sugar Company, Hooper Sugar Company, Pingree-Idaho Sugar Company and certain stockholders and creditors of said corporations, respectively, of the first part, and said Ernest R. Woolley, of the second part, whereby said first parties undertook and agreed to sell to second party a certain sugar factory known as the Hooper Sugar Company's factory, located in Weber County, State of Utah; that a copy of said agreement is attached to the amended answer of the Bankers Trust Company and is marked "Exhibit A."

That at the same time that the said Woolley deposited said contract with the Bankers Trust Company said Ernest R. Woolley also delivered to the Bankers Trust Company one certificate for three thousand (3,000) shares of the preferred, and one certificate for twenty

thousand (20,000) shares of the common stock of the Interstate Sugar Company issued in the name of the Hooper Sugar Company; that the par value of the preferred stock was One Hundred (\$100.00) Dollars a share, and the par value of the common stock was Ten (\$10.00) Dollars a share. That said stock was to be delivered to the Hooper Sugar Company in accordance with the terms of said "Exhibit A." That on the 12th day of July, 1922, the said Ernest R. Woolley notified the Bankers Trust

Company that said agreement, marked "Exhibit 71 A," had not been performed and that the title to said stock still remained in the said Ernest R. Woolley and that said Bankers Trust Company should not, under any circumstances, release said stock, or any part of it, without the consent of the said Ernest R. Woolley.

Finding of Fact No. 2

That on the 19th day of June, 1920, a special meeting of the Board of Directors of the defendant, Hooper Sugar Company, was held, and a copy of the resolutions of said Board of Directors was delivered to the Bankers Trust Company, as set out in Paragraph Five (5) of the amended answer of the Bankers Trust Company herein.

Finding of Fact No. 3

That upon the 5th day of November, 1920, a special meeting of the Board of Directors of the defendant, Hooper Sugar Company, was held and a copy of the resolution of said Board of Directors was delivered to the Bankers Trust Company, as is set out in Paragraph Six (6) of the amended answer of the Bankers Trust Company herein.

Finding of Fact No. 4

That on December 4th, 1920, one, Job Pingree, addressed a letter to the Bankers Trust Company, which

letter was received by the Bankers Trust Company as set out in Paragraph Seven (7) of the amended answer of the Bankers Trust Company herein.

Finding of Fact No. 5

That on August 14th, 1920, the plaintiffs herein, H. H. Henderson and Wade M. Johnson, as plaintiffs, filed an action against the Hooper Sugar Company, a corporation, as defendant in the above entitled Court, and on the 14th day of August, 1920 the said H. H. Henderson and Wade M. Johnson had a writ of garnishment issued out of the Clerk's office of said Court directed to the Sheriff of Salt Lake County to serve upon the Bankers Trust Company of Salt Lake City, Utah, and that said writ of garnishment was served upon said Bankers Trust Company at Salt Lake City, Utah, on August 16th, 1920, and that on January 22nd, 1921, judgment was entered in favor of the said H. H. Henderson and Wade M. Johnson and against the defendant, Hooper Sugar Company, in the sum of THREE THOUSAND, ONE HUNDRED THIRTY-THREE (\$3,133.00) DOLLARS.

Finding of Fact No. 6

That on November 9th, 1920, the GUARDIAN
72 FIRE INSURANCE COMPANY, a corporation,
as plaintiff, filed an action against the Hooper
Sugar Company, a corporation, as defendant, in the
above entitled Court, and that on said November 9th, 1920
said Guardian Fire Insurance Company had a writ of
garnishment issued out of the Clerk's office of said Court
directed to the Sheriff of Salt Lake County to serve upon
the Bankers Trust Company of Salt Lake City, Utah, and
that said writ of garnishment was served upon said Bank-
ers Trust Company at Salt Lake City, Utah, on November
11th, 1920; that on October 31st, 1921, judgment was
entered in said action in favor of the said Guardian Fire

Insurance Company and against the defendant, Hooper Sugar Company, in the sum of TWO HUNDRED SIXTY-SIX DOLLARS, TWENTY-FIVE CENTS (\$266.25) and EIGHTEEN DOLLARS, NINETY CENTS (\$18.90) costs.

Finding of Fact No. 7

That on November 9th, 1920, the CONTINENTAL CASUALTY COMPANY, a corporation, as plaintiff, filed an action against the Hooper Sugar Company, a corporation, as defendant, in the above entitled Court, and that on said November 9th, 1920 said Continental Casualty Company had a writ of garnishment issued out of the Clerk's office of said Court directed to the Sheriff of Salt Lake County to serve upon the Bankers Trust Company of Salt Lake City, Utah, and that said writ of garnishment was served upon said Bankers Trust Company at Salt Lake City, Utah, on November 11th, 1920; that on October 31st, 1921, judgment was entered in said action in favor of the said Continental Casualty Company and against the defendant, Hooper Sugar Company, in the sum of TWO THOUSAND, ONE HUNDRED SIX DOLLARS, SEVENTY-FIVE CENTS, (\$2,106.75) and EIGHTEEN DOLLARS, NINETY CENTS (\$18.90) costs.

Finding of Fact No. 8

That on the 2nd day of December, 1920, the IDAHO STATE BANK OF TWIN FALLS, IDAHO, a corporation, as plaintiff, filed an action against the Hooper Sugar Company, a corporation, as defendant, in the above-entitled Court, and that on said December 2nd, 1920 said Idaho State Bank of Twin Falls, Idaho had a writ of garnishment issued out of the Clerk's office of said Court directed to the Sheriff of Salt Lake County to serve upon the Bankers Trust Company of Salt Lake City,

73 Utah, and that said writ of garnishment was served upon said Bankers Trust Company at Salt Lake City, Utah, on December 3, 1920; that on February 18th, 1921, judgment was entered in said action in favor of the said Idaho State Bank of Twin Falls, Idaho, and against the defendant, Hooper Sugar Company, in the sum of THIRTY-FOUR THOUSAND, FOUR HUNDRED THIRTY-EIGHT DOLLARS (\$34,438.00) and EIGHTEEN DOLLARS, NINETY CENTS (\$18.90) costs.

Finding of Fact No. 9

That on the 4th day of March, 1921, in the case of Idaho State Bank of Twin Falls, Idaho, a corporation, plaintiff, versus the Hooper Sugar Company, a corporation, defendant, a writ of execution was served upon the Bankers Trust Company reciting a judgment against the Hooper Sugar Company for Thirty-four Thousand, Four Hundred Thirty-eight (\$34,438.00) Dollars and Eighteen Dollars, Ninety Cents (\$18.90) Costs, with interest thereon at the rate of eight per cent per annum from the 18th day of February, 1921.

Finding of Fact No. 10

That on the 27th day of July, 1921, in the case of the First National Bank of Kemmerer, Wyoming, plaintiff, versus the Hooper Sugar Company, defendant, a writ of execution was served upon the Bankers Trust Company reciting a judgment against the Hooper Sugar Company for Nineteen Thousand, One Hundred Sixty-three Dollars, Seventy-five Cents, (\$19,163.75) with interest thereon at the rate of eight (8) per cent per annum from July 26th, 1921, and in the same case on June 9th, 1921, a writ of execution was served upon said Bankers Trust Company reciting a judgment against the Hooper Sugar Company for Fifteen Thousand (\$15,000.00) Dollars and One

Thousand, Five Hundred Ten Dollars, Eighty-two Cents, (\$1,510.82) with interest thereon from the 12th day of December, 1919, at the rate of eight per cent per annum and Fifteen Hundred (\$1500.00) Dollars attorney's fees and costs amounting to Thirteen Dollars, Twenty Cents (\$13.20).

Finding of Fact No. 11

That on June 17th, 1921, that Hooper Sugar Company filed a petition in voluntary bankruptcy in the United States District Court, in and for the District of Utah, and that on July 8th, 1921, said Hooper Sugar Company was declared a bankrupt and that said Hooper Sugar Company has not yet been discharged from bankruptcy proceedings.

Finding of Fact No. 12

That HEBER C. CARVER was appointed Trustee in Bankruptcy of said Hooper Sugar Company in said United States District Court, in and for the District of Utah, and that on the 8th day of March, 1923, the said Heber C. Carver made demand upon the Bankers Trust Company for the immediate delivery to him of all stock of the Interstate Sugar Company standing in the name of the Hooper Sugar Company; said property was one certificate for three thousand (3,000) shares of preferred and one certificate for twenty thousand (20,000) shares of common stock of the Interstate Sugar Company issued in the name of the Hooper Sugar Company.

Finding of Fact No. 13

THE COURT FURTHER FINDS that the executions served in the case of the First National Bank of Kenmerer, Wyoming, against the Hooper Sugar Company were served upon the Bankers Trust Company after a petition had been filed for bankruptcy for the Hooper Sugar Company, and that the judgments obtained in said

action were obtained within four (4) months of the bankruptcy proceedings and that said action in said cause was filed against the Hooper Sugar Company within four months of bankruptcy proceedings, and that for this reason the First National Bank of Kemmerer, Wyoming, has no lien whatsoever against the stock of the Interstate Sugar Company standing in the name of the Hooper Sugar Company, on deposit with the Bankers Trust Company of Salt Lake City, Utah.

Finding of Fact No. 14

THAT A REASONABLE COMPENSATION to be allowed to the Bankers Trust Company for the care and custody of said stock so deposited with it for the benefit of the Hooper Sugar Company is TWO HUNDRED FIFTY (\$250.00) Dollars.

Finding of Fact No. 15

THE COURT FURTHER FINDS that the Bankers Trust Company of Salt Lake City is not the owner, or entitled to possession of said stock, to-wit, one certificate for three thousand (3,000) shares of preferred, and one certificate for twenty thousand (20,000) shares of common stock of the Interstate Sugar Company issued to and standing in the name of the Hooper Sugar Company, except that said Bankers Trust Company has a preferred lien against said stock in the sum of Two Hundred Fifty (\$250.00) Dollars.

Finding of Fact No. 16

THE COURT FURTHER FINDS that the writs of garnishment served upon the Bankers Trust Company of Salt Lake City, Utah, in the case of H. H. Henderson and Wade M. Johnson versus the Hooper Sugar Company, and in the case of Guardian Fire Insurance Company versus the Hooper Sugar Company, and in the case of Continental Casualty Company versus the Hooper

Sugar Company, and in the case of the Idaho State Bank of Twin Falls, Idaho, versus the Hooper Sugar Company, have never been dissolved and the same are still in full force and effect and are binding upon the property garnisheed in the hands of the Bankers Trust Company of Salt Lake City, Utah, to-wit, one certificate for three thousand (3,000) shares of preferred, and one certificate for twenty thousand (20,000) shares of common stock of the Interstate Sugar Company issued to and standing in the name of the Hooper Sugar Company.

Finding of Fact No. 17

THE COURT FURTHER FINDS that on June 19, 1920, the Hooper Sugar Company, in pursuance of Exhibit "A" mentioned in Finding of Fact No. One (1) herein, conveyed, by warranty deed, its sugar factory located in Weber County, State of Utah, to Ernest R. Woolley, which deed was filed for record and recorded on June 22nd, 1920, in the records of the County Recorder of Weber County, State of Utah, and that on the 22nd day of June, 1920, Ernest R. Woolley and wife conveyed, by warranty deed, said Hooper sugar factory to the Interstate Sugar Company, which deed was filed for record and recorded on June 22nd, 1920, in the records of the County Recorder of Weber County, State of Utah.

Finding of Fact No. 18

THE COURT FURTHER FINDS that the
 76 Bankers Trust Company, as garnishee, could have relieved itself from all responsibility, or liability, for the care and custody of the Interstate Sugar Company stock deposited with it for the benefit of the Hooper Sugar Company by delivering it to the sheriff in the first action that was brought, wherein H. H. Henderson and Wade M. Johnson, co-partners doing business under the firm name and style of Henderson & Johnson, were plain-

tiffs, and the Hooper Sugar Company, a corporation, was defendant.

THE COURT FURTHER FINDS that the Bankers Trust Company, as bailee of said stock, could have relieved itself from all responsibility, or liability, for the care and custody of the Interstate Sugar Company stock deposited with it for the benefit of the Hooper Sugar Company by filing an action in the district court, making all parties who claimed an interest in said stock parties defendant, and asking the Court for an order that said parties interplead and assert their interest.

As CONCLUSIONS OF LAW from the foregoing Findings

I

That the BANKERS TRUST COMPANY of Salt Lake City, Utah, shall immediately deliver to the Sheriff of Weber County, State of Utah, said certificates of shares of stock of the Interstate Sugar Company, issued to and standing in the name of the Hooper Sugar Company, one certificate for three thousand (3,000) shares of preferred, and one certificate for twenty thousand (20,000) shares of common stock, to be sold at public sale by the said Sheriff in the manner provided by statute for the sale of personal property under execution, and that out of the proceedings of said sale the said Sheriff shall retain his own costs and expenses of making said sale, and out of the balance of the proceeds, if any, shall pay to the Bankers Trust Company of Salt Lake City, Utah, Two Hundred Fifty (\$250.00) Dollars, together with interest thereon at the rate of eight per cent (8%) per annum from the date of the filing of the decree in this cause, or so much thereof as the same will pay.

II

If there are any other moneys remaining in

77 the hands of said Sheriff, after first paying the amounts hereinbefore set out, the balance of such proceeds shall be paid to the following named persons in the order and amounts hereinafter enumerated, or so much thereof as the same will pay, to-wit:

To H. H. HENDERSON and WADE M. JOHNSON, the sum of.....\$ 3,133.00
together with interest thereon from June 22nd, 1921, at the rate of eight per cent per annum.

To GUARDIAN FIRE INSURANCE COMPANY, the sum of..... 285.15
together with interest thereon from October 31st, 1921, at the rate of eight per cent per annum.

To CONTINENTAL CASUALTY COMPANY, the sum of..... 2,125.65
together with interest thereon from October 31st, 1921 at the rate of eight per cent per annum.

To IDAHO STATE BANK OF TWIN FALLS, IDAHO, the sum of..... 34,456.90
together with interest thereon from February 18, 1921, at the rate of eight per cent per annum.

III

That the FIRST NATIONAL BANK OF KEMMER, WYOMING, take nothing, and that the defendants in garnishment proceedings ERNEST R. WOOLLEY, and HEBER C. CARVER, Trustee in Bankruptcy of the Hooper Sugar Company, for their failure to plead in this action, and their defaults having been duly and regularly entered, take nothing.

IV

That if, after paying the above amounts, as hereinabove set out, there shall still remain in the hands of said Sheriff any further money, then the said Sheriff shall pay said money to the Clerk of this Court, to be here-

after disposed of as ordered by the Court.

V

AND THAT JUDGMENT SHOULD BE ENTERED ACCORDINGLY.

78 Dated at Ogden City, Weber County, State of Utah, this the Fifth (5th) day of April, A. D. Nineteen Hundred Twenty-four (1924).

JAMES N. KIMBALL,

Judge of the District Court of
Weber County, State of Utah.

Filed April 5, 1924.

Judgment

(Henderson and Johnson vs. Hooper Sugar Company)

THIS CAUSE came regularly on for trial on the Fourth (4th) day of March, A. D. Nineteen Hundred Twenty-four (1924) before HON. JAMES N.

79 KIMBALL, Judge of Department Number Two (2) of the District Court of the Second Judicial District of the State of Utah, within and for Weber County, sitting without a jury, Messrs. Henderson and Johnson appearing as attorneys for themselves and also as attorneys for the defendants in garnishment proceedings herein, Guardian Fire Insurance Company, Continental Casualty Company and Idaho State Bank of Twin Falls, Idaho, and Messrs. Dickson, Ellis, Parsons and Adamson appearing as attorneys for the garnishee herein, Bankers Trust Company, and the First National Bank of Kemmerer, Wyoming, the default of the defendants in garnishment proceedings, Heber C. Carver,

80 Trustee in Bankruptcy of the Hooper Sugar Company, and Ernest R. Woolley having been duly and regularly entered herein, oral and documentary evidence being introduced, arguments of counsel were heard

and said cause was taken under advisement by the Court; and

NOW, COMES THE COURT, and having filed its Findings of Fact and Conclusions of Law in writing herein, and being fully advised in the premises,

IT IS ORDERED, ADJUDGED and DECREED as follows:

1. That the Bankers Trust Company of Salt Lake City, Utah garnishee herein, immediately deliver to the Sheriff of Weber County, State of Utah, two certificates of stock of the Interstate Sugar Company issued and standing in the name of the Hooper Sugar Company, one certificate for three thousand (3,000) shares of preferred stock and one certificate for twenty thousand (20,000) shares of common stock of said Interstate Sugar Company.

2. That the said Sheriff of Weber County, State of Utah, immediately proceed to sell said stock according to sales of personal property under execution, as provided by statute, and that out of the proceeds of said sale said sheriff shall retain his own costs and disbursements incurred in making said sale, and out of the balance of the proceeds of said sale, if any there be, he shall pay to the Bankers Trust Company of Salt Lake City, Utah, the sum of TWO HUNDRED FIFTY (\$250.00) DOLLARS with interest thereon at the rate of eight per cent (8%) per annum from the date of the filing of this decree, or so much thereof as the proceeds of the sale of said stock will pay, after deducting the said sheriff's costs and disbursements incurred in making said sale, as hereinabove provided.

3. That after paying his own costs and disbursements incurred in making said sale and the Bankers Trust Company, as hereinbefore set forth, if there are

still proceeds in his hands from said sale, the said sheriff shall pay to Messrs. H. H. Henderson and Wade M. Johnson the sum of THREE THOUSAND, ONE HUNDRED THIRTY-THREE DOLLARS (\$3,133) together with interest thereon at the rate of eight (8) per cent per annum from January 22nd, 1921.

4. After the payment to H. H. Henderson and Wade M. Johnson, if there are still proceeds in the Sheriff's hands, he shall pay out the balance of the same in the order and in the amounts that said proceeds will pay, as follows:

GUARDIAN FIRE INSURANCE	
COMPANY	\$ 285.15
Together with interest thereon at the rate of eight per cent (8%) per annum from October 31st, 1921.	
CONTINENTAL CASUALTY COMPANY	
	2,125.65
Together with interest thereon at the rate of eight per cent (8%) per annum from October 31st, 1921.	
IDAHO STATE BANK OF TWIN FALLS, IDAHO	
	34,456.90
Together with interest thereon at the rate of eight per cent (8%) per annum from February 18th, 1921.	

5. IT IS FURTHER ORDERED, ADJUDGED and DECREED, that after paying the above amounts, as hereinbefore set out, if there shall remain in the hands of the said Sheriff any further proceeds from said sale then said Sheriff shall pay the same into Court, to be hereafter disposed of as ordered by this Court.

6. IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that the defendants in garnishment proceedings, ERNEST R. WOOLLEY, FIRST NATIONAL BANK OF KEMMERER, WYOMING, and HEBER C. CARVER, Trustee in Bankruptcy of the

Hooper Sugar Company, take nothing.

Dated at Ogden City, Weber County, State of Utah, this the Fifth (5th) day of April, A. D. Nineteen Hundred Twenty-four (1924).

JAMES N. KIMBALL,
Judge of the District Court of
Weber County, State of Utah.

Filed April 5, 1924.

Findings of Fact and Conclusions of Law.

(Henderson and Johnson vs. Pingree Sugar Company)

THIS CAUSE came regularly on for trial on the Fourth (4th) day of March, A. D. Nineteen Hundred Twenty-four (1924) before the HON. JAMES N.

54 KIMBALL, Judge of Department Number Two (2) of the District Court of the Second Judicial District of the State of Utah, within and for Weber County, sitting without a jury, the default of the defendant in garnishment proceedings, ERNEST R. WOOLLEY, having been duly entered for not appearing or pleading herein, and the default of the defendant in garnishment proceedings, HARRY S. YOUNG, Trustee in Bankruptcy of the Pingree Sugar Company, having been duly entered for not filing any pleading herein, and the default of the defendant in garnishment proceedings, WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, a corporation, having been duly entered for not filing any pleading herein, the plaintiffs appearing as attorneys for themselves and the defendant in garnishment proceedings, JOB PINGREE, the garnishee, BANKERS TRUST COMPANY of Salt Lake City, Utah, appearing by its counsel, Messrs. Dickson, Ellis, Parsons and Adamson and Mr. Joseph T. Pence
55 appearing as attorneys for the defendant in garnishment proceedings, REPUBLIC CASUALTY

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vs. P.S.

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vs. P.S.

COMPANY, a corporation. Witnesses were sworn and oral and documentary evidence was introduced, and, after arguments by counsel for the respective parties hereto, said cause was taken under advisement by the Court, and

NOW, COMES THE COURT, and being fully advised in the premises, makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

FINDINGS OF FACT

Finding of Fact No. 1

That on or about the twenty-second (22nd) day of June, 1920, one Ernest R. Woolley delivered to the Bankers Trust Company of Salt Lake City, Utah, an agreement in writing, without date, between Pingree Sugar Company, Hooper Sugar Company, Pingree-Idaho Sugar Company and certain stockholders and creditors of said corporations, respectively, of the first part, and said Ernest R. Woolley, of the second part, whereby said first parties undertook and agreed to sell to second party a certain sugar factory known as the Coreoran Sugar Factory located in the State of California; that a copy of said agreement is attached to the amended answer of the Bankers Trust Company and is marked "Exhibit A."

That at the same time that the said Woolley deposited said contract with the Bankers Trust Company said Ernest R. Woolley also delivered to the Bankers Trust Company one certificate for twenty-seven hundred (2700) shares of the preferred, and one certificate for thirty thousand (30,000) shares of the common stock of the Interstate Sugar Company issued in the name of the Pingree Sugar Company; that the par value of the preferred stock was One Hundred (\$100.00) Dollars a share, and the par value of the common stock was Ten (\$10.00) Dollars a share. That said stock was to be delivered to

The Pingree Sugar Company in accordance with the terms of said "Exhibit A." That on the 12th day of 56 July, 1922, the said Ernest R. Woolley notified the Bankers Trust Company that said agreement, marked "Exhibit A," had not been performed and that the title to said stock still remained in the said Ernest R. Woolley and that said Bankers Trust Company should not, under any circumstances, release said stock, or any part of it, without the consent of the said Ernest R. Woolley.

(H. an
vs. P.S.)

Finding of Fact No. 2

That on January 20th, 1921, the plaintiffs herein, H. H. Henderson and Wade M. Johnson, filed an action against the Pingree Sugar Company, a corporation, as defendant, in the above entitled Court, and on said 20th day of January, 1921, the said H. H. Henderson and Wade M. Johnson had a writ of garnishment issued out of the Clerk's office of said Court directed to the Sheriff of Salt Lake County to serve upon the Bankers Trust Company of Salt Lake City, Utah, and that said writ of garnishment was served upon the Bankers Trust Company at Salt Lake City, Utah, on the 21st day of January, 1921, and that on February 18th, 1921, judgment was entered in said action in favor of the said H. H. Henderson and Wade M. Johnson and against the defendant, Pingree Sugar Company, in the sum of TEN THOUSAND, ONE HUNDRED NINETEEN DOLLARS, FIFTY CENTS (\$10,119.50).

Finding of Fact No. 3

That on January 20th, 1921, Job Pingree, as plaintiff, filed an action against the Pingree Sugar Company, a corporation, in the above entitled Court, and on said 20th day of January, 1921, the said Job Pingree had a writ of garnishment issued out of the Clerk's office of said

Court directed to the Sheriff of Salt Lake County to serve upon the Bankers Trust Company of Salt Lake City, Utah, and that said writ of garnishment was served upon the Bankers Trust Company at Salt Lake City, Utah, on January 29th, 1921, but that said writ of garnishment was served upon the Bankers Trust Company after the writ of garnishment in the case of H. H. Henderson and Wade M. Johnson versus the Pingree Sugar Company was served upon the Bankers Trust Company, and that the service of the writ of garnishment in the case of Job Pingree versus the Pingree Sugar Company is subsequent and subject to the writ of garnishment served in the case of H. H. Henderson and Wade M. Johnson versus the Pingree Sugar Company.

nd J.
Co.)

That on February 18th, 1921, judgment was entered in said action wherein Job Pingree was plaintiff and the Pingree Sugar Company defendant, in favor of the plaintiff, Job Pingree and against the defendant, Pingree Sugar Company, in the sum of EIGHTY-SEVEN THOUSAND, EIGHT HUNDRED FORTY-NINE DOLLARS, FIFTY CENTS (\$87,849.50).

That on the 3rd day of March, 1921, in said case of Job Pingree, plaintiff versus the Pingree Sugar Company, defendant, a writ of execution was served upon the Bankers Trust Company of Salt Lake City, Utah.

Finding of Fact No. 4

That on or about the 21st day of February, 1921, the Republic Casualty Company, a corporation as plaintiff, commenced a suit against the Pingree Sugar Company in the District Court of the Third Judicial District of the State of Utah, within and for Salt Lake County, and that on said 21st day of February, 1921, said plaintiff caused a writ of garnishment to be issued out of the Clerk's office of said Court directed to the Sheriff of Salt Lake County

to serve upon the Bankers Trust Company of Salt Lake City, Utah, and that said writ of garnishment was served upon the Bankers Trust Company at Salt Lake City, Utah on February 21st, 1921.

That on the 21st day of June, 1921 judgment was entered in said action in favor of the plaintiff, Republic Casualty Company, and against the defendant, Pingree Sugar Company, in the sum of TWO THOUSAND, THIRTY-FIVE DOLLARS, SIXTY CENTS (\$2,035.60).

That on the 29th day of July, 1921, in the said case of Republic Casualty Company, plaintiff, against the Pingree Sugar Company, a writ of execution was served upon the Bankers Trust Company of Salt Lake City, Utah.

Finding of Fact No. 5

That the writs of garnishment served upon the Bankers Trust Company of Salt Lake City, Utah, in the case of H. H. Henderson and Wade M. Johnson versus the Pingree Sugar Company, and in the case of Job Pingree versus the Pingree Sugar Company, and in the case of

Republic Casualty Company versus the Pingree

58 Sugar Company, have never been dissolved and

the same are still in full force and effect and are binding upon the property garnished in the hands of the Bankers Trust Company of Salt Lake City, Utah, to-wit, one certificate for twenty-seven hundred (2700) shares of the preferred, and one certificate for thirty thousand (30,000) shares of the common stock of the Interstate Sugar Company issued and standing in the name of the Pingree Sugar Company.

Finding of Fact No. 6

That on the 8th day of August, 1921, a voluntary petition in bankruptcy was filed by the Pingree Sugar Company in the District Court of the United States for

the Northern District of California, Southern Division, and that on the 19th day of September, 1921, said Court adjudged said Pingree Sugar Company a bankrupt and that said Pingree Sugar Company has not yet been therein discharged.

That said Court also appointed HARRY S. YOUNG as Trustee in Bankruptcy of the Pingree Sugar Company and that the said Harry S. Young is now the duly appointed, qualified and acting Trustee in Bankruptcy of the said Pingree Sugar Company.

Finding of Fact No. 7

That a reasonable compensation to be allowed to the Bankers Trust Company of Salt Lake City, Utah, for the care and custody of said stock so deposited with it for the benefit of the Pingree Sugar Company, is TWO HUNDRED FIFTY (\$250.00) DOLLARS.

Finding of Fact No. 8

THE COURT FURTHER FINDS that the Bankers Trust Company of Salt Lake City is not the owner, or entitled to possession of said stock, to-wit, one certificate for twenty-seven hundred (2700) shares of the preferred, and one certificate for thirty thousand (30,000) shares of the common stock of the Interstate Sugar Company, issued and standing in the name of the Pingree Sugar Company, except that said Bankers Trust Company has a preferred lien against said stock in the sum of Two Hundred Fifty (\$250.00) Dollars.

Finding of Fact No. 9

THE COURT FURTHER FINDS that the Bankers Trust Company, as garnishee, could have relieved itself from all responsibility, or liability, for the care and custody of the Interstate Sugar Company stock deposited with it for the benefit of the Pingree Sugar Company by delivering it to the Sheriff in the

first action that was brought wherein H. H. Henderson and Wade M. Johnson, co-partners doing business under the firm name and style of Henderson & Johnson, were plaintiffs, and the Pingree Sugar Company, a corporation, was defendant.

THE COURT FURTHER FINDS that the Bankers Trust Company, as bailee of said stock, could have relieved itself from all responsibility, or liability, for the care and custody of the Interstate Sugar Company stock deposited with it for the benefit of the Pingree Sugar Company by filing an action in the district court, making all parties who claimed an interest in said stock parties defendant, and asking the Court for an order that said parties interplead and assert their interest.

AS CONCLUSIONS OF LAW

from the foregoing Findings:

I

That the BANKERS TRUST COMPANY of Salt Lake City, Utah, shall immediately deliver to the Sheriff of Weber County, State of Utah, said certificates
60 of shares of stock of the Interstate Sugar Company, issued to and standing in the name of the Pingree Sugar Company, one certificate for twenty-seven hundred (2700) shares of preferred, and one certificate for thirty thousand (30,000) shares of common stock, to be sold at public sale by said Sheriff in the manner provided by statute for the sale of personal property under execution, and that out of the proceeds of said sale the said Sheriff shall retain his own costs and expenses of making said sale, and, out of the balance of the proceeds, if any, shall pay to the Bankers Trust Company of Salt Lake City, Utah, the sum of Two Hundred Fifty (\$250.00) Dollars, together with interest thereon at the rate of eight per cent (8%) per annum from the date of

(H. and
vs. P.S.)

filing of the decree in this cause, or so much thereof as the same will pay.

II

If there are other moneys remaining in the hands of said Sheriff, after first paying the amounts hereinbefore set out, the balance of such proceeds shall be paid to the following named persons in the order and amounts hereinafter enumerated, or so much thereof as the same will pay, to-wit:

To H. H. HENDERSON and WADE M. JOHNSON	\$ 10,119.50
Together with interest thereon from February 18th, 1921, at the rate of eight per cent (8%) per annum.	
To JOB PINGREE, the sum of.....	87,849.50
Together with interest thereon from February 18th, 1921, at the rate of eight per cent (8%) per annum.	
To REPUBLIC CASUALTY COMPANY, the sum of.....	2,035.60
Together with interest thereon from June 21st, 1921, at the rate of eight per cent (8%) per annum.	

III

That if, after paying the above amounts, as hereinabove set out, there shall still remain in the hands of said Sheriff any further money, then the said Sheriff shall pay said money to the Clerk of this Court, to be hereafter disposed of as ordered by the Court.

IV

That the defendants in garnishment proceedings, ERNEST R. WOOLLEY, WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, and HARRY S. YOUNG, Trustee in Bankruptcy of the Pingree Sugar Company take nothing by reason of their failure to plead in this action and their defaults having been

duly and regularly entered herein.

V

THAT JUDGMENT SHOULD BE ENTERED
ACCORDINGLY

Dated, at Ogden City, Weber County, State of Utah,
this the Fifth (5) day of April, A. D. Nineteen Hundred
Twenty-four (1924).

JAMES N. KIMBALL,
Judge of the District Court of
Weber County, State of Utah.

Filed April 5, 1924.

Judgment.

(Henderson and Johnson vs. Pingree Sugar Company)

THIS CAUSE came regularly on for trial on the
Fourth (4th) day of March, A. D. Nineteen Hundred
Twenty-four (1924), before HON. JAMES N.

62 KIMBALL, Judge of Department Number Two
(2) of the District Court of the Second Judicial
District of the State of Utah, within and for Weber Coun-
ty, sitting without a jury, Messrs. Henderson and John-
son appearing as attorneys for themselves and also as
attorneys for the defendant in garnishment proceedings
herein, JOB PINGREE, and Messrs. Dickson, Ellis, Par-
sons and Adamson appearing as attorneys for the gar-
nishee herein, BANKERS TRUST COMPANY, the de-
fault of the defendants in garnishment proceedings, Har-
ry S. Young, Trustee in Bankruptcy of the Pingree Sugar
Company, ERNEST R. WOOLLEY and WELLS FAR-
GO NEVADA NATIONAL BANK OF SAN FRAN-
CISCO, having been duly and regularly entered

63 herein, and Mr. Joseph T. Pence appearing as at-
torney for the defendant in garnishment proceed-
ings, REPUBLIC CASUALTY COMPANY, oral and
documentary evidence being introduced, arguments of

(H. ar
vs. P.S

(H. ar
vs. P.S

counsel were heard and said cause was taken under advisement by the Court; and

NOW, COMES THE COURT, and having filed its Findings of Fact and Conclusions of Law in writing herein, and being fully advised in the premises,

IT IS ORDERED, ADJUDGED and DECREED as follows:

1. That the Bankers Trust Company of Salt Lake City, Utah, garnishee herein, shall immediately deliver to the Sheriff of Weber County, State of Utah, said certificates of shares of stock of the Interstate Sugar Company, issued to and standing in the name of the Pingree Sugar Company, one certificate for twenty-seven hundred (2700) shares of preferred and one certificate for thirty thousand (30,000) shares of common stock, to be sold at public sale by said sheriff in the manner provided by statute for the sale of personal property under execution, and that out of the proceeds of said sale the said Sheriff shall retain his own costs and expenses of making said sale, and, out of the balance of the proceeds, if any, shall pay to the Bankers Trust Company of Salt Lake City, Utah, the sum of Two Hundred Fifty (\$250.00) Dollars, together with interest thereon at the rate of eight per cent (8%) per annum from the date of the filing of the decree in this cause, or so much thereof as the same will pay.

2. If there are other moneys remaining in the hands of said Sheriff, after first paying the amounts hereinbefore set out, the balance of such proceeds shall be paid to the following named persons in the order and amounts hereinafter enumerated, or so much thereof as the same will pay, to-wit:

To H. H. HENDERSON and WADE M.

JOHNSON\$ 10,119.50

Together with interest thereon from

February 18th, 1921, at the rate of eight per cent (8%) per annum.

To JOB PINGREE, the sum of..... 87,849.50

Together with interest thereon from February 18th, 1921, at the rate of eight per cent (8%) per annum.

To REPUBLIC CASUALTY COMPANY, the sum of..... 2,035.60

Together with interest thereon from June 21st, 1921, at the rate of eight per cent (8%) per annum.

3. That if, after paying the above amounts,
64 as hereinabove set out, there shall still remain in the hands of said Sheriff any further money, then the said Sheriff shall pay said money to the Clerk of this Court, to be hereafter disposed of as ordered by the Court.

(H. and
vs. P.S.)

4. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendants in garnishment proceedings, ERNEST R. WOOLLEY, WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, and HARRY S. YOUNG, Trustee in Bankruptcy of the Pingree Sugar Company take nothing by reason of their failure to plead in this action.

Dated, at Ogden City, Weber County, State of Utah, this the Fifth day of April, A. D. Nineteen Hundred Twenty-four (1924).

JAMES N. KIMBALL,
Judge of the District Court of
Weber County, State of Utah.

Filed April 5, 1924.

That thereafter, to-wit, on the 17th day of April, 1924, Bankers Trust Company, garnishee herein, did duly serve and file in each of said causes a Notice of Motion and Motion to vacate the judgment or decree made and entered therein on the 5th day of April, 1924, and to bring in and make parties to said garnishment proceedings those

mentioned in said motions, respectively. The motions were in substantially the same form and that in the case of Henderson and Johnson, Plaintiffs vs. Hooper Sugar Company, Defendant, was as follows, to-wit:

MOTION

(Title of Court and Cause)

Comes now Bankers Trust Company, garnishee above named, and moves this Honorable Court to vacate the decree made and entered herein on the 5th day of April, 1924, directing said garnishee immediately to deliver to the Sheriff of Weber County, State of Utah, the certificates of preferred and common stock of Interstate Sugar Company in the possession of said garnishee, as trustee, and standing in the name of Hooper Sugar Company.

And said garnishee further moves this court to bring in and make parties to said garnishment proceedings, the following: George E. Sanders; National Bank of Commerce; Frank Pingree; P. T. Wright; State Bank of Provo; J. N. Ireland & Company; McCornick & Co., Bankers; National City Bank or the receiver thereof; First National Bank of Layton; First National Bank of Preston; Commercial National Bank of Smithfield; Knight Trust & Savings Bank; Stockgrowers Bank of Pocatello, Idaho, and Charles D. Boettcher, and to require said parties, and each thereof, to set up whatever title or interest they may have in or to said shares of stock or in or pursuant to the agreement defining the terms of the trust under which the same were held by said garnishee, and to try and adjudicate the respective claims thereto and in this action, of said individuals and corporations.

This motion will be made upon the affidavit of John K. Hardy, appended hereto, identified as Exhibit "A," and made a part hereof, and upon the testimony hereto-

fore introduced in this proceeding and the records and files herein.

Dated, this 17th day of April, 1924.

DICKSON, ELLIS, PARSONS & ADAMSON,
Attorneys for Garnishee.

(Title of Court and Cause)

(B. of E.)

AFFIDAVIT UPON GARNISHEE'S MOTION FOR
VACATION OF DECREE NO. 7300

State of Utah }
County of Salt Lake } ss.

JOHN K. HARDY, being first duly sworn on oath, deposes and says:

1. That he is a resident of Salt Lake City, Utah, and is an officer of Bankers Trust Company, the above named garnishee, to-wit, the Vice-President thereof.

2. That on Wednesday, the 16th day of April, 1924, one GEORGE E. SANDERS began a suit in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, wherein said George E. Sanders was and is plaintiff and said Bankers Trust Company was and is defendant, and upon said day at the hour of 4:35 o'clock, p. m., said George E. Sanders caused to be served upon said Bankers Trust Company the summons and complaint therein of which a copy is hereto appended, identified respectively as Exhibits "A" and "B" and made a part hereof.

3. That by said suit instituted as aforesaid said George E. Sanders seeks a judgment against said garnishee for either the sum of Five Hundred Thousand Dollars (\$500,000.00) or the delivery to said George E. Sanders of the certificates for the preferred and common stock of Interstate Sugar Company in the possession of said garnishee as Trustee under and pursuant to the provisions of an agreement, defining said trust introduced

in evidence in the above entitled garnishment proceedings, and with which the above court is familiar.

4. That neither said George E. Sanders nor National Bank of Commerce, Frank Pingree, P. T. Wright, State Bank of Provo, J. N. Ireland and Company, McCornick & Co., Bankers, National City Bank or the receiver thereof, First National Bank of Layton, First National Bank of Preston, Commercial National Bank of Smithfield, Knight Trust & Savings Bank, Stockgrowers Bank of Pocatello, Idaho and Charles D. Boetteher nor any thereof has been made parties to said garnishment proceedings although claiming adversely to all others in and to said certificates of stock, and although that fact was duly brought to the attention of the above entitled court before the trial of the issues in said garnishment proceedings, and although application was made to this court to make said individuals and corporations parties in said proceedings.

227) Dated at Salt Lake City, Utah, this 17th day of April, 1924.

JOHN K. HARDY.

Subscribed and sworn to before me this 17th day of April, 1924.

My commission expires January 11, 1927.

J. A. MALIA,

Notary Public

Residing at Salt Lake City, Utah

(Title of Court and Cause)

SUMMONS

The State of Utah to the Said Defendant:

You are hereby summoned to appear within twenty days after the service of this summons upon you, if served within the county in which this action is brought; otherwise, within thirty days after service, and defend

the above entitled action; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint which has been filed with the Clerk of said Court.

(Signed) MARIONEUX, KING & SCHULDER,
Attorneys for Plaintiff.

P. O. Address: 630 Judge Building,
Salt Lake City, Utah.

Served this summons on the within named defendant Bankers Trust Company, by J. K. Hardy, Vice-President, on the 16th day of April, 1924, at Salt Lake City, Salt Lake County, Utah.

(Signed) THOMAS OSBORNE,
Constable, Salt Lake City Precinct,
Tel. Was. 1119, Salt Lake County, State of Utah.

(B. of E.)

COMPLAINT

(Title of Court and Cause)

Plaintiff complains of the defendant and alleges:

I.

That the plaintiff now is, and at all times herein mentioned was, a resident of Salt Lake City, Salt Lake County, State of Utah.

II.

That the defendant now is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Utah.

III.

That plaintiff is the owner of and entitled to the possession of 50,000 shares of the common stock of the Interstate Sugar Company, a corporation duly organized and existing under and by virtue of the laws of the State of Utah, of the par value of \$500,000 and 5700 shares of the preferred stock of the par value of \$570,000, which said stock is evidenced by four certificates as fol-

229) Iews; 1, certificate for 2700 shares preferred, issued in the name of Pingree Sugar Company; 2, certificate for 30,000 shares common issued in the name of Pingree Sugar Company; 3, certificate for 3000 shares preferred issued in the name of Hooper Sugar Company; 4, a certificate for 20,000 shares common issued in the name of Hooper Sugar Company, which said stock is now in the possession of, and under the control of the defendant; that the reasonable value of said stock is the sum of \$500,000; that the plaintiff has made demand upon the defendant herein that it deliver or cause to be delivered to the plaintiff the said stock, and the certificates thereof hereinbefore mentioned and described, but that the said defendant has refused and still refuses to deliver the same to this plaintiff.

WHEREFORE, plaintiff prays judgment may be entered against the said defendant for the return to him of said stock, and the certificates representing the same, and in the event that the said defendant is unable to make delivery thereof, that this plaintiff have and recover judgment herein against the said defendant for the sum of \$500,000, together with his costs of this action herein.

(Signed) MARIONEUX, KING & SCHULDER,

Attorneys for Plaintiff.

State of Utah }
County of Salt Lake } ss.

GEORGE E. SANDERS, being first duly sworn on his oath, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing Complaint, knows the contents thereof and that the same is true of his own knowledge.

(Signed) GEORGE E. SANDERS.

(Seal)

Subscribed and sworn to before me this 16th day of
Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

Machine-generated OCR, may contain errors.

April, 1924.

(Signed) CREIGHTON G. KING,
Notary Public.
Residing at Salt Lake City, Utah.

That thereafter, to-wit, on the 18th day of April, 1924, hearing was had upon said motion and thereupon the court denied the same, and to the said ruling of the court the garnishee then and there excepted. Upon said hearing the following proceedings were had and statements made by the respective attorneys for the parties appearing therein and by the Hon. James N. Kimball, Judge of said court.

(B. of E. 2)

MR. PARSONS: On the 10th of this month, I think it was, your Honor, we applied to you to fix the appeal bond in each of the cases of Henderson & Johnson against Pingree Sugar Company and the same plaintiffs against Hooper Sugar Company. Your Honor fixed the amount of that bond at \$10,000.00 in each case and granted us a five days stay in which we might perfect our appeal in each of those cases. We immediately called upon George E. Sanders; that is, the trustee called upon Mr. Sanders to furnish that bond and to indemnify the trustee in the event it perfected such an appeal. We felt the trustee had a right to call upon Mr. Sanders for such indemnity bond. We were assured by Mr. Sanders' counsel that he would furnish that bond and indemnity and that assurance was repeated upon various occasions subsequently until the afternoon of the 16th at about 4:30 when Mr. King called me to say that Mr. Sanders had not been able to procure the necessary bond and that unless we heard from him to the contrary in a half hour we would know he would not be able to furnish it. I told Mr. King that if he didn't furnish it we would deliver this stock to the Sheriff upon the Sheriff's application. In less than

ten minutes Mr. Hardy for the Bankers Trust Company had been served personally with a demand for this stock. Mr. Hardy refused to deliver the stock and then was served by the constable with a complaint and summons in a suit brought by George E. Sanders against the Bankers Trust Company for either the delivery of this stock or a money judgment in the amount of \$500,000.00, so this trustee is in the unenviable position of either being sent to jail by your Honor or fined for contempt if it declines to obey the order of this court or of having to defend a suit looking for a \$500,000.00 judgment in the courts in Salt Lake County. This situation, it seems to us justifies us in making the application we are making at this time, that Mr. Sanders be made a party, and that the order of this court in each of these actions made the 5th day of April be either vacated or modified to accomplish that purpose. In the case against the Hooper Sugar Company we have added in our motion which has been filed, that in addition to Mr. Sanders, the names of various individuals appearing in a resolution of the Board of Directors of the Hooper Sugar Company, of which your Honor is familiar, directing this trustee to distribute this stock and they be also made parties. Now, in our motion in each of these cases we have attached as an exhibit and upon which the motion is founded, an affidavit by Mr. Hardy setting up the institution of this suit and to that affidavit in each case has been attached a copy of the complaint and summons as served. Now, other than that statement I don't think

231) any argument is necessary and not desired.

(Argument)

THE COURT: I look at it, so far as all except Sanders are concerned, that you ask to be made parties defendant here as being bound by the judgment here the

other day, the trustee in bankruptcy of the Hooper Sugar Company was made a party defendant. He represented all of the creditors at that time as trustees in bankruptcy of the Hooper Sugar Company, and I think they are bound by the order made in that case. Now as far as George E. Sanders is concerned, I am satisfied in my own mind and satisfied that the law is that George E. Sanders is bound by the order and decree that was made here the other day. He knew of the pendency of this action; he knew that Ernest R. Woolley, when he bought Ernest R. Woolley's stock, was a party defendant in the action. He personally came up here and came into this court with an attorney and asked a continuance of the hearing in that matter until he could make some showing on his own part on the service of Woolley, so that I am satisfied that Mr. Sanders himself is bound by the judgment in that case as assignee of Mr. Woolley, and I am not disposed to prolong this case by making any further orders than the parties defendant that have been made here so the court declines to make any order making any other parties defendants in the case; and inasmuch as I think counsel for the Bankers Trust Company and the Bankers Trust Company are acting in good faith in making this motion, I will grant at this time a stay of proceedings until the 25th day of this month without them filing a bond, and if the bond isn't filed at that time, an order will be issued on the Bankers Trust Company to show cause why they haven't delivered the stock. The record may show you have a further stay of proceedings until the 25th of April.

That is my view of it. I am sorry the thing has gotten in the shape it has, but I think this: the Bankers Trust Company could have long ago by depositing that stock in court or delivering it when the garnishment was

served to the Sheriff of this county or of Salt Lake County, whoever served the garnishments, would have saved all this trouble.

MR. PARSONS: I would ask that the record show our exception to the overruling of our motion.

THE COURT: Certainly. Mr. Henderson, you may prepare the order so that the clerk may get it correctly on his minutes. That is all at this time.

On the 10th day of April, 1924, good cause appearing therefor, the court made its order in each of said causes and the same was duly entered extending the time
88 allowed the garnishee within which to prepare and serve Garnishee's Bill of Exceptions, and fixing the amount of supersedeas bond on appeal, which order was in words and figures as follows, to-wit:

(Title of Court and Cause)

"On motion of C. C. Parsons, Esq., counsel for garnishee, it is ordered, that said garnishee be, and it is hereby granted sixty days' additional time in which to prepare and serve Bill of Exceptions herein; and that the garnishee be granted five days from this date in which to perfect the appeal.

"IT IS FURTHER ORDERED, that bond on appeal herein be, and it is hereby fixed in the sum of \$10,000.00 pursuant to Section 7006, Compiled Laws of Utah, 1917."

Thereafter and on the 2nd day of July, 1924, good cause appearing therefor, the court made its order in each of said causes which was duly entered, extending the time allowed garnishee within which
89 to prepare, serve, have settled, allowed and filed Garnishee's Bill of Exceptions in each of said causes, which order was in words and figures as follows, to-wit:

(Title of Court and Cause)

"Upon application of Messrs. Dickson, Ellis,

Parsons and Adamson, attorneys for the appel-

lant above named, appellant is hereby allowed to and including the 17th day of August, 1924, within which to prepare, serve, have settled, allowed and filed its Bill of Exceptions in the above entitled matter.

“Dated this 2nd day of July, 1924.

James N. Kimball,
District Judge.”

Filed July 2, 1924.

That thereafter and on the 6th day of August, 1924, good cause appearing therefor the court made and entered its order in each of said causes extending
90 the time allowed garnishee within which to prepare, serve, have settled, allowed and filed Garnishee's Bill of Exceptions in each of said causes, which order was in words and figures as follows, to-wit:

(Title of Court and Cause)

“Upon the application of Messrs. Dickson, Ellis, Parsons and Adamson, attorneys for the appellant above named, appellant is hereby allowed to and including the 7th day of September, 1924, within which to prepare, serve, have settled, allowed and filed its Bill of Exceptions in the above entitled matter.

“Dated this 6th day of August, 1924.

George Barker,
District Judge.

In absence of Judge Kimball,
Trial Judge.”

Filed August 7, 1924.

Thereafter, to-wit, on the 2nd day of September, 1924, the court made and entered its order in the case of Henderson and Johnson vs. Pingree Sugar Company further extending the time allowed garnishee
77 within which to serve, have settled, allowed and filed its Bill of Exceptions in said cause, which order was in words and figures as follows, to-wit:

(Title of Court and Cause)

“Upon the application of Messrs. Dickson, El-

lis, Parsons and Adamson, attorneys for appellant above named, appellant is hereby allowed to and including the first day of October, 1924, within which to serve, have settled, allowed and filed its Bill of Exceptions in the above entitled matter.

“Dated this 2nd day of September, 1924.

James N. Kimball,
District Judge.”

Filed September 2, 1924.

On the 19th day of April, 1924, the garnishee, Bankers Trust Company, filed its Notice of Appeal from the judgment against it as garnishee in the case of Henderson and Johnson vs. Hooper Sugar Company. Said Notice of Appeal was served upon the plaintiffs and the defendants in garnishment proceedings, Ernest R. Wolley, Guardian Fire Insurance Company, Continental Casualty Company, Idaho State Bank of Twin Falls, Idaho and First National Bank of Kennerly, Wyoming,

April 19, 1924, and on April 25, 1924, said notice
91 was served upon the defendant in garnishment proceedings, Heber C. Carver, Trustee in Bankruptcy of Hooper Sugar Company. On August 25, 1924, said Notice of Appeal was served upon the defendant, Hooper Sugar Company, omitting title and proof of service thereof on said parties. Said Notice of Appeal was in words and figures as follows:

(Title of Court and Cause)

“Take notice that the garnishee in the above entitled action hereby appeals to the Supreme Court of the State of Utah from the judgment rendered and entered in said cause in the District Court for Weber County, Utah, on the 5th day of April, 1924, in favor of the plaintiffs and against said garnishee, and from the whole of said judgment and upon questions of both law and fact.

Dickson, Ellis, Parsons and Adamson,
Attorneys for Garnishee, Bankers Trust Co.”

Certificate of Clerk showing inter alia that an Undertaking on Appeal in due form has been properly filed in said action.

On the 19th day of April, 1924, garnishee, Bankers Trust Company, filed its Notice of Appeal upon the judgment against it as garnishee in the case of Henderson and Johnson vs. Pingree Sugar Company. Said Notice of Appeal was served upon the plaintiffs and the defendants in garnishment proceedings, Ernest R. Woolley, Job Pingree and Republic Casualty Company, on the 19th day of April, 1924, and on the defendants in garnishment proceedings, Wells Fargo Nevada National Bank of San Francisco and Harry S. Young, Trustee in Bankruptcy, of the Pingree Sugar Company, April 14, 1924. Said Notice of Appeal was served upon the defendant, Pingree Sugar Company, August 16, 1924. Omitting title and proof of service thereof on said parties, said Notice was in words and figures as follows:

(Title of Court and Cause)

“Take notice that the garnishee in the above entitled action hereby appeals to the Supreme Court of the State of Utah from the judgment rendered and entered in said cause in the District Court for Weber County, Utah, on the 5th day of April, 1924, in favor of the plaintiffs and against said garnishee, and from the whole of said judgment and upon questions of both law and fact.

Dickson, Ellis, Parsons and Adamson,
Attorneys for Garnishee, Bankers Trust Co.”

Appended to the transcript upon appeal in the case of Henderson and Johnson vs. Pingree Sugar Company is the certificate of the Clerk showing inter alia that an undertaking in due form was properly filed by the garnishee in said cause.

ASSIGNMENT OF ERRORS

(Entitled in the Supreme Court of the State of Utah)

Henderson and Johnson, Plaintiffs and Respondents, vs. Hooper Sugar Company, Defendant and Respondent, and Bankers Trust Company, Garnishee and Appellant, et al.

Appellant assigns for error :

FIRST: The Findings of Fact are not sufficient to support either the Judgment or Conclusions of Law, in that there is no finding that the defendant, Hooper Sugar Company, was on August 16, 1920, or at any time theretofore or since has been, the owner of or had or has ever had any interest whatever in or to the said 3,000 shares of preferred and 20,000 shares of common capital stock of Interstate Sugar Company, or any part of said stock, but to the contrary, it is found by Finding of Fact No. 12 that Heber C. Carver as Trustee in Bankruptcy of the defendant, Hooper Sugar Company, had on March 8, 1923, made a demand upon Bankers Trust Company for the immediate delivery of said stock to him; and by Finding of Fact No. 1, that Ernest R. Woolley had notified appellant that that certain agreement identified as Exhibit "A" and appended to Garnishee's Amended Answer had not been performed, that the title to said stock still remained in said Woolley, and that Woolley forbade appellant's delivering the same to anyone without Woolley's consent; and by Finding of Fact No. 3 that the defendant, Hooper Sugar Company, had on the 5th day of November, 1920, directed appellant to distribute said stock otherwise than, and adversely, to the plaintiffs; and by Finding of Fact No. 11 that a petition for the adjudication of the defendant, Hooper Sugar Company, a bankrupt, was filed in the United States District Court for the District of Utah on the 17th day of June, 1921, and that said defendant was adjudged a bankrupt on the 8th day of July, 1921.

SECOND: The pleadings are insufficient to support either the Judgment or Conclusions of Law in that

it is alleged by paragraph "V" of plaintiffs' Reply and Answer to Garnishee's Amended Answer that Heber C. Carver as Trustee in Bankruptcy of the defendant, Hooper Sugar Company, had under the jurisdiction of the Bankruptcy Court, and for a valuable consideration, assigned to the Pioneer Sugar Company all of his right, title and interest as Trustee in and to said stock of Interstate Sugar Company standing in the name of Hooper Sugar Company.

THIRD: The evidence is insufficient to support the first paragraph of Finding of Fact No. 18, the Conclusions of Law and Judgment, or any thereof, for the reason that by the agreement defining said trust (said agreement being identified as Exhibit "A", appended in full to the Amended Answer of Garnishee and admitted by the plaintiff), it was stipulated as a condition to the consummation thereof, and to the delivery of said certificates of stock and execution of said trust that,

" * * * the outstanding bonds of said Pingree Sugar Company shall be surrendered and cancelled, and the trust, deed or mortgage heretofore given by said Pingree Sugar Company to secure payment of said bonds shall be released and discharged and cancelled of record,"

And that

" * * * all capital stock of said Hooper Sugar Company now pledged and held as collateral shall be delivered to the Bankers Trust Company with directions to deliver the same to said Woolley upon the deposit with said Bankers Trust Company of the securities hereinafter agreed by him to be deposited with said Bankers Trust Company,"

and Garnishee conditioned its acceptance of said trust and said certificates of stock upon the express stipulation that said stock be delivered by it or distributed only when the defendant, Hooper Sugar Company, its credi-

tors and stockholders, should deliver to Garnishee the necessary papers and documents setting forth and defining the respective rights of said Hooper Sugar Company, its creditors and stockholders, in and to said shares of stock; but it is conclusively established by the uncontradicted evidence that neither were the outstanding bonds of the Pingree Sugar Company surrendered or canceled, nor said trust deed released or discharged of record, nor the capital stock of the defendant, Hooper Sugar Company, delivered to Garnishee with said or any direction or at all, nor have there been delivered to Garnishee the necessary or any papers or documents setting forth or defining the respective rights of said defendant, Hooper Sugar Company, its creditors and stockholders, in or to said shares of stock in Interstate Sugar Company, and that said trust then was, and at all times has been since its creation, an uncompleted executory trust wherein no title to said certificates or shares of stock has passed to said Hooper Sugar Company or to Heber C. Carver, as its Trustee in Bankruptcy.

FOURTH: The evidence is insufficient to support the first paragraph of Finding of Fact No. 18, the Conclusions of Law and Judgment, or any part thereof, for the reason that, while it appears by paragraph "V" of each the several answers to Garnishee's Amended Answer, of the plaintiffs and each the defendants in garnishment proceedings, Continental Casualty Company, Idaho State Bank of Twin Falls, Idaho, and Guardian Fire Insurance Company, that Heber C. Carver, as Trustee in Bankruptcy of the defendant, Hooper Sugar Company, had under the jurisdiction of the Bankruptcy Court and for a valuable consideration, assigned all of his right, title and interest as such Trustee in and to said stock, to the Pioneer Sugar Company and that the latter was will-

ing and consented that appellant turn over the certificates or shares of stock to the Sheriff of Weber County, pursuant to said writ of garnishment, and while it appears from the evidence that Heber C. Carver, as Trustee in Bankruptcy for Hooper Sugar Company had executed and delivered in escrow a bill of sale purporting to transfer and deliver to Pioneer Sugar Company, not merely the Trustee's interest, but the absolute title to said stock here in question, there was no evidence whatever of any consent of any kind or character by the Pioneer Sugar Company to the delivery of said stock as alleged in said several answers hereinbefore stated, or at all, nor is there any evidence whatever negating said admitted adverse interest of said Pioneer Sugar Company or having any bearing whatever thereupon.

FIFTH: The court erred in denying to Garnishee leave to file its Second Amended Answer herein.

SIXTH: The court erred in denying appellant's application to have George E. Sanders made a party defendant herein, for the reason that said George E. Sanders claimed the property in Garnishee's possession as Trustee as aforesaid, adversely to the defendant, Hooper Sugar Company, asserted that he had acquired prior to the making of Ernest R. Woolley a party defendant to the garnishment proceedings herein, all the interest claimed therein of the defendant, Hooper Sugar Company or its Trustee in Bankruptcy, said Pioneer Sugar Company, said Interstate Sugar Company and said Ernest R. Woolley, denied that said defendant, Hooper Sugar Company, had any right, title or interest therein, and on the contrary asserted that he, the said George E. Sanders, was the absolute owner thereof, all of which was then and there duly and timely brought to the attention of said court.

SEVENTH: The court erred in rendering and entering judgment herein in favor of plaintiffs and against garnishee, and in not entering and rendering herein judgment in favor of garnishee and against plaintiffs.

EIGHTH: The court erred in rendering and entering judgment herein in favor of plaintiffs and against the garnishee, for the reason and in that by said judgment the court required garnishee immediately to deliver to the Sheriff of Weber County the said certificates of capital stock, and required the said Sheriff to immediately sell the same according to sales of personal property under execution, thereby reached out beyond its process, attempted to adjudicate the right or title of strangers to said proceeding in or to said stock; thereby denied to said George E. Sanders, National Bank of Commerce, Frank Pingree, P. T. Wright, State Bank of Provo, J. H. Ireland & Company, McCornick & Company Bankers, National City Bank or the Receiver thereof, First National Bank of Layton, First National Bank of Preston, Commercial National Bank of Smithfield, Knight Trust & Savings Bank, Stockgrowers Bank of Pocatello, Idaho, and Charles D. Boettcher, their day in court; thereby deprived said garnishee of the protection against the true owner or owners and all those interested in said capital stock, to which protection garnishee was by law entitled; thereby subjected the garnishee to a liability to whomsoever of said strangers might thereafter establish title to or an interest in said property superior to that of the defendant, Hooper Sugar Company; thereby imposed upon said garnishee the burden and expense of defending in said judgment creditors title to said stock; thereby deprived garnishee and said strangers of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the Unit-

ed States, and in violation also of each Sections 7 and 11 of the Constitution of the State of Utah, and thereby denied to said garnishee and said strangers the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

NINTH: The court erred in rendering or entering judgment herein in favor of plaintiffs and against said garnishee in that, as to said garnishee and said strangers to said proceeds said judgment was in excess of the jurisdiction of said court, and was and is wholly void.

TENTH: The court erred in denying garnishee's application to have George E. Sanders, National Bank of Commerce; Frank Pingree, P. T. Wright, State Bank of Provo, J. H. Ireland & Company, McCornick & Company Bankers, National City Bank or the Receiver thereof, First National Bank of Layton, First National Bank of Preston, Commercial National Bank of Smithfield, Knight Trust & Savings Bank, Stockgrowers Bank of Pocatello, Idaho, and Charles D. Boettcher made parties defendant to said garnishment proceedings, and to require said parties and each of them to set up whatever title or interest they might have or claim in or to said shares of stock, and to try and adjudicate their respective claims thereto in said action.

ELEVENTH: The court erred in denying garnishee's motion, dated, served and filed in said court on the 17th day of April, 1924, to vacate the judgment herein, and to bring in and make parties to said garnishment proceedings said George E. Sanders, National Bank of Commerce, Frank Pingree, P. T. Wright, State Bank of Provo, J. H. Ireland & Company, McCornick & Company Bankers, National City Bank or the Receiver there-

of, First National Bank of Layton, First National Bank of Preston, Commercial National Bank of Smithfield, Knight Trust & Savings Bank, Stockgrowers Bank of Pocatello, Idaho, and Charles D. Boettcher, for the reason and on the ground that said motion was made to said court during the March term thereof, being the same term wherein said judgment was rendered and entered, and thereby was again brought to the attention of the court the several claims of said strangers adverse to the plaintiffs and the defendant, Hooper Sugar Company, together with the fact that said George E. Sanders had instituted suit in the District Court of the Third Judicial District of Utah against said garnishee, therein again asserted his ownership of said capital stock and thereby sought from said garnishee either the recovery of said stock or a judgment against said garnishee in the sum of \$500,000.00, the alleged value thereof.

TWELFTH: Neither the pleadings nor the evidence are sufficient to support Finding of Fact No. 16, the Judgment or Conclusions of Law, or any thereof, in that it appears from each the pleadings and the evidence that the plaintiffs sought to subject to their judgment against the defendant, Hooper Sugar Company, said capital stock of Interstate Sugar Company by service of said writ of garnishment upon appellant only; that appellant was a mere bailee and only as such in possession of said certificates of stock; that Interstate Sugar Company had been at all said times a corporation of the State of Utah, but under the laws of the State of Utah capital stock cannot be attached or garnisheed by the service of a writ of garnishment merely upon a bailee in possession of mere certificates evidencing said stock, and said writ of garnishment so served by plaintiffs upon garnishee was vain, futile and wholly void, and thereby

plaintiffs acquired neither right, title nor interest in nor right to the possession of said stock or any part thereof or the certificates evidencing the same, and no right could be predicated in any manner thereupon.

THIRTEENTH: The evidence is insufficient to support the first paragraph of Finding of Fact No. 18 to the effect that appellant could have relieved itself from all responsibility or liability by having delivered said stock to the Sheriff in the first instance, because it is clearly established by the uncontradicted evidence that all parties claiming adversely to the plaintiffs and the defendant, Hooper Sugar Company, had not been made parties defendant to said garnishment proceedings, had been denied their day in court or an opportunity to present and have adjudicated their several claims to the certificates of stock in question, that garnishee owed an obligation to whomsoever might be the actual owner of said property to retain, preserve and protect the same pursuant to the agreement defining said trust or bailment with a resulting liability upon its breach of said duty; that garnishee could be discharged from said duty only by delivering said certificates of stock to the owners thereof, and judgment of the court requiring the delivery of said certificates could not, under the respective laws or Constitutions of the State of Utah and the United States, be binding upon one not a party to the proceedings from which such order emanated, nor could garnishee derive any protection from such order.

FOURTEENTH: The court erred in failing to find the amount of the expense necessarily incurred by appellant in the administration of said trust and in failing to allow the same to garnishee.

FIFTEENTH: The evidence is insufficient to support Finding of Fact No. 14, to the effect that a reason-

able compensation to be allowed appellant for the care and custody of said stock was \$250.00, for the reason that it is clearly established by the evidence that any allowance less than the sum of \$4,280.00 would be an unreasonable compensation, that the sum of \$250.00 allowed by the court was grossly inadequate and unreasonable, that appellant was entitled to and should be allowed in addition to said compensation the sum of \$174.54 for moneys expended by it in the care and custody of said stock, and the further sum of \$2,500.00 to cover compensation to its counsel for legal services theretofore rendered by them in the course of and necessary in the administration of said trust.

WHEREFORE, appellant prays that said judgment be reversed.

DICKSON, ELLIS, PARSONS & ADAMSON,
Attorneys for Appellant.

Filed September 22, 1924.

ASSIGNMENT OF ERRORS

(Entitled in the Supreme Court of the State of Utah)

Henderson and Johnson, Plaintiffs and Respondents, vs. Pingree Sugar Company, Defendant and Respondent, and Bankers Trust Company, Garnishee and Appellant, et al.

Appellant assigns for error:

FIRST: The Findings of Fact are not sufficient to support either the Judgment or Conclusions of Law, in that there is no finding that the defendant, Pingree Sugar Company, was on January 21, 1921, or at any time theretofore or since has been, the owner of or had or has ever had any interest whatever in or to the said 2700 shares of preferred and 30,000 shares of common capital stock of Interstate Sugar Company, or any part of said stock, but to the contrary, it is found by Finding of Fact No. 1, that Ernest R. Woolley on the 12th day

of July, 1922, had notified appellant that that certain agreement identified as Exhibit "A" and appended to Garnishee's Amended Answer had not been performed, that the title to said stock still remained in said Woolley, and that Woolley forbade appellant's delivering the same to anyone without Woolley's consent; and by Finding of Fact No. 6 that a petition for the adjudication of the defendant, Pingree Sugar Company, a bankrupt, was filed in the United States District Court for the Northern District of California, Southern Division, on the 8th day of August, 1921, and that said defendant was adjudged a bankrupt on the 19th day of September, 1921.

SECOND: The pleadings are insufficient to support either the Judgment or Conclusions of Law in that it is alleged by paragraph "IV" of each the plaintiffs' Reply and Answer to Garnishee's Amended Answer and that of the defendant in garnishment proceedings, Job Pingree, that Harry S. Young as Trustee in Bankruptcy of the defendant, Pingree Sugar Company, had under the jurisdiction of the Bankruptcy Court, and for a valuable consideration sold, assigned and delivered to the Interstate Sugar Company all of his right, title and interest as such trustee in and to said stock of Interstate Sugar Company standing in the name of Pingree Sugar Company.

THIRD: The evidence is insufficient to support the first paragraph of Finding of Fact No. 9, the Conclusions of Law and Judgment, or any thereof, for the reason that by the agreement defining said trust (said agreement being identified as Exhibit "A", appended in full to the Amended Answer of Garnishee and admitted by the plaintiffs), it was stipulated as a condition to the consummation thereof, and to the delivery of said certificates of stock and execution of said trust that,

“ * * * the outstanding bonds of said Pingree Sugar Company shall be surrendered and cancelled, and the trust deed or mortgage heretofore given by said Pingree Sugar Company to secure payment of said bonds shall be released and discharged and cancelled of record.”

and that,

“ * * * all capital stock of said Hooper Sugar Company now pledged and held as collateral shall be delivered to the Bankers Trust Company with directions to deliver the same to said Woolley upon the deposit with said Bankers Trust Company of the securities hereinafter agreed by him to be deposited with said Bankers Trust Company,”

and Garnishee conditioned its acceptance of said trust and said certificates of stock upon the express stipulation that said stock be delivered by it or distributed only when the defendant, Pingree Sugar Company, or said Hooper Sugar Company, or their respective creditors and stockholders, should deliver to Garnishee the necessary papers and documents setting forth and defining the respective rights of said Pingree Sugar Company and said Hooper Sugar Company, their respective creditors and stockholders, in and to said shares of stock; but it is conclusively established by the uncontradicted evidence that neither were the outstanding bonds of the Pingree Sugar Company surrendered or cancelled, nor said trust deed released or discharged of record, nor the capital stock of the Hooper Sugar Company delivered to Garnishee with said or any direction or at all, nor have there been delivered to Garnishee the necessary or any papers or documents setting forth or defining the respective rights of said defendant, Pingree Sugar Company, its creditors and stockholders, in or to said shares of stock in Interstate Sugar Company, and that said trust then was, and at all times has been since its creation, an un-

completed executory trust wherein no title to said certificates or shares of stock has passed to said Pingree Sugar Company or to Harry S. Young, its Trustee in Bankruptcy.

FOURTH: The evidence is insufficient to support the first paragraph of Finding of Fact No. 9, the Conclusions of Law and Judgment, or any part thereof, for the reason that, while it appears by paragraph "IV" of each the answers to Garnishee's Amended Answer, of the plaintiffs and the defendant in garnishment proceedings Job Pingree, that Harry S. Young as Trustee in Bankruptcy of the defendant, Pingree Sugar Company, had under the jurisdiction of the Bankruptcy Court and for a valuable consideration, assigned all of his right, title and interest as such Trustee in and to said stock, to the Interstate Sugar Company and that the latter was willing and consented that appellant turn over the certificates or shares of stock to the Sheriff of Weber County, pursuant to said writ of garnishment, and while it appears from the evidence that Harry S. Young as Trustee in Bankruptcy for Pingree Sugar Company had executed and delivered in escrow a bill of sale purporting to transfer and deliver to Pioneer Sugar Company, not merely the Trustee's interest, but the absolute title to said stock here in question, there was no evidence whatever of any consent of any kind or character by either the Pioneer Sugar Company or the Interstate Sugar Company to the delivery of said stock as alleged in said answer hereinbefore stated, or at all, nor is there any evidence whatever negating said admitted adverse interest of either said Interstate Sugar Company, or Pioneer Sugar Company, or having any bearing whatever thereupon.

FIFTH: The court erred in denying to Garnishee

leave to file its Second Amended Answer herein.

SIXTH: The court erred in denying appellant's application to have George E. Sanders made a party defendant herein, for the reason that said George E. Sanders claimed the property in Garnishee's possession as Trustee as aforesaid, adversely to the defendant, Pingree Sugar Company, asserted that he had acquired prior to the making of Ernest R. Woolley a party defendant to the garnishment proceedings herein, all the interest claimed therein of the defendant, Pingree Sugar Company or its Trustee in Bankruptcy, said Pioneer Sugar Company, said Interstate Sugar Company and said Ernest R. Wolley, denied that said defendant, Pingree Sugar Company, had any right, title or interest therein, and on the contrary asserted that he, the said George E. Sanders, was the absolute owner thereof, all of which was then and there duly and timely brought to the attention of said court.

SEVENTH: The court erred in refusing to make Union Trust Company of San Francisco a party defendant of said garnishment proceedings.

EIGHTH: The court erred in rendering and entering judgment herein in favor of plaintiffs and against garnishee, and in not entering and rendering herein judgment in favor of garnishee and against plaintiffs.

NINTH: The court erred in rendering and entering judgment herein in favor of plaintiffs and against the garnishee, for the reason and in that by said judgment the court required garnishee immediately to deliver to the Sheriff of Weber County the said certificates of capital stock, and required the said Sheriff to immediately sell the same according to sale of personal property under execution, thereby reached out beyond its process, attempted to adjudicate the right or title of stran-

gers to said proceeding in or to said stock; thereby denied to said George E. Sanders and said Union Trust Company of San Francisco, their day in court; thereby deprived said garnishee of the protection against the true owner or owners and all those interested in said capital stock, to which protection garnishee was by law entitled; thereby subjected the garnishee to a liability to whomsoever of said strangers might thereafter establish title to or an interest in said property superior to that of the defendant, Pingree Sugar Company; thereby imposed upon said garnishee the burden and expense of defending in said judgment creditors title to said stock; thereby deprived garnishee and said strangers of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation also of each Sections 7 and 11 of the Constitution of the State of Utah, and thereby denied to said garnishee and said strangers the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

TENTH: The court erred in rendering or entering judgment herein in favor of plaintiffs and against said garnishee in that, as to said garnishee and said strangers to said proceedings said judgment was in excess of the jurisdiction of said court, and was and is wholly void.

ELEVENTH: The court erred in denying garnishee's application to have George E. Sanders made a party defendant to said garnishment proceedings, and to require said George E. Sanders to set up whatever title or interest he might have or claim in or to said shares of stock, and to try and adjudicate his claim thereto in said action.

TWELFTH: The court erred in denying garnishee's motion, dated, served and filed in said court on the

17th day of April, 1924, to vacate the judgment herein, and to bring in and make a party to said garnishment proceedings said George E. Sanders, for the reason and on the ground that said motion was made to said court during the March term thereof, being the same term wherein said judgment was rendered and entered, and thereby was again brought to the attention of the court the claim of said George E. Sanders adverse to the plaintiffs and the defendant, Pingree Sugar Company, together with the fact that said George E. Sanders had instituted suit in the District Court of the Third Judicial District of Utah against said garnishee, therein again asserted his ownership of said capital stock and thereby sought from said garnishee either the recovery of said stock or a judgment against said garnishee in the sum of \$500,000.00, the alleged value thereof.

THIRTEENTH: Neither the pleadings nor the evidence are sufficient to support Finding of Fact No. 5, the Judgment or Conclusions of Law, or any thereof, in that it appears from each the pleadings and the evidence that the plaintiffs sought to subject to their judgment against the defendant, Pingree Sugar Company, said capital stock of Interstate Sugar Company by service of said writ of garnishment upon appellant only; that appellant was a mere bailee and only as such in possession of said certificates of stock; that Interstate Sugar Company had been at all said times a corporation of the State of Utah, but under the laws of the State of Utah capital stock cannot be attached or garnished by the service of a writ of garnishment merely upon a bailee in possession of mere certificates evidencing said stock, and said writ of garnishment so served by plaintiffs upon garnishee was vain, futile and wholly void, and thereby plaintiffs acquired neither right, title nor interest in nor right to the

possession of said stock or any part thereof or the certificates evidencing the same, and no right could be predicated in any manner thereupon.

FOURTEENTH: The evidence is insufficient to support the first paragraph of Finding of Fact No. 9 to the effect that appellant could have relieved itself from all responsibility or liability by having delivered said stock to the Sheriff in the first instance, because it is clearly established by the uncontradicted evidence that all parties claiming adversely to the plaintiffs and the defendant, Pingree Sugar Company, had not been made parties defendant to said garnishment proceedings, had been denied their day in court or an opportunity to present and have adjudicated their several claims to the certificates of stock in question, that garnishee owed an obligation to whomever might be the actual owner of said property to retain, preserve and protect the same pursuant to the agreement defining said trust or bailment with a resulting liability upon its breach of said duty; that garnishee could be discharged from said duty only by delivering said certificates of stock to the owners thereof, and judgment of the court requiring the delivery of said certificates could not, under the laws or Constitution of the State of Utah and the United States, be binding upon one not a party to the proceedings from which such order emanated, nor could garnishee derive any protection from such order.

FIFTEENTH: The court erred in failing to find the amount of the expense necessarily incurred by appellant in the administration of said trust and in failing to allow the same to garnishee.

SIXTEENTH: The evidence is insufficient to support Finding of Fact No. 8, to the effect that a reasonable compensation to be allowed appellant for the care

and custody of said stock was \$250.00, for the reason that it is clearly established by the evidence that any allowance less than the sum of \$4280.00 would be insufficient and unreasonable, that the sum of \$250.00 allowed by the court was grossly inadequate and unreasonable, that appellant was entitled to and should be allowed in addition to said compensation the sum of \$174.54 for moneys expended by it in the care and custody of said stock, and the further sum of \$2,500.00 to cover compensation to its counsel for legal services theretofore rendered by them in the course of and necessary in the administration of said trust.

WHEREFORE, appellant prays that said judgment be reversed.

DICKSON, ELLIS, PARSONS & ADAMSON,

By C. C. PARSONS,

Attorneys for Appellant.

Filed October 3, 1924.

Thereafter, to-wit, on the 22nd day of September, 1924, a Justice of the Supreme Court signed an order permitting appellant to file but one set of abstracts and briefs in said two causes, which was in words and figures as follows, to-wit:

(Title of Court and Cause)

“On motion of counsel for appellant and sufficient cause therefor appearing, it is ordered, that said appellant be permitted to file in this court but one set of abstracts and briefs for the two above entitled cases.

“Dated this 22nd day of September, 1924.

J. E. FRICK,
Justice.”