

1940

John A. Malia and Herbert Taylor v. J. Harold Giles and Josie Baird Giles ; A. C. Moulton and Dewey Moulton v. Vernor E. Baird and Mary A. Baird, J. Rulon Morgan, J. Rulon Morgan as Partner of Morgan & Morgan, Elizabeth J. Baird, Bank of Heber City, Rulon F. Starley and Spencer C. Taylor, Arthur Duke and Eulean Duke, Ray F. Smith and Josie Baird Giles Smith, and J. Harold Giles ; J.

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Rulon Morgan v. Rulon F. Stanley and Spencer C. Taylor: Abstract of Record

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In the Supreme Court, State of Utah

JOHN A. MALIA, State Bank Commissioner
of the State of Utah, and HERBERT TAY-
LOR, as Examiner in Charge of the Liquidation
of the Bank of Heber City,

1266
Civil

vs.

Plaintiffs and Respondents,

J. HAROLD GILES and JOSIE BAIRD
GILES, Defendants and Appellants.

A. C. MOULTON and E. DEWEY MOULTON,

vs.

Plaintiffs and Respondents,

VERNOR E. BAIRD and MARY A. BAIRD,
His Wife, J. RULON MORGAN, J. RULON
MORGAN, as the Surviving Partner of the
Firm of Morgan & Morgan, a Co-Partnership,
ELIZABETH J. BAIRD, BANK OF HEBER
CITY, RULON F. STARLEY, State Bank
Commissioner of the State of Utah, and
SPENCER C. TAYLOR, as Examiner in
Charge of the Liquidation of the Bank of Heber
City, ARTHUR DUKE and EULEAN DUKE,
His Wife, RAY F. SMITH and JOSIE BAIRD
GILES SMITH, His Wife, and J. HAROLD
GILES, Defendants and Appellants.

1410
Civil

J. RULON MORGAN,

vs.

Cross-Complainant,

RULON F. STARLEY, as Bank Commissioner
of the State of Utah, and SPENCER C.
TAYLOR, as Examiner in Charge of the
Liquidation of the Bank of Heber City,

Cross-Defendants.

ABSTRACT OF RECORD

ELIAS HANSEN, J. RULON MORGAN,

Attorneys for Defendants and Appellants.

DRAPER, BOYDEN & DRAPER,

L. C. MONTGOMERY,

PAUL B. CANNON, GEORGE B. STANLEY,

Attorneys for Plaintiffs and Respondents.

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In the Supreme Court of the State of Utah

JOHN A. MALIA, State Bank Commissioner
of the State of Utah, and HERBERT TAY-
LOR, as Examiner in Charge of the Liquida-
tion of the Bank of Heber City,

vs.

Plaintiffs and Respondents,

J. HAROLD GILES and JOSIE BAIRD
GILES, Defendants and Appellants,

**1266
Civil**

A. C. MOULTON and E. DEWEY MOULTON,
vs. Plaintiffs and Respondents,

VERNOR E. BAIRD and MARY A. BAIRD,
His Wife, J. RULON MORGAN, J. RULON
MORGAN, as the Surviving Partner of the
Firm of Morgan & Morgan, a Co-Partnership,
ELIZABETH J. BAIRD, BANK OF HEBER
CITY, RULON F. STARLEY, State Bank
Commissioner of the State of Utah, and
SPENCER C. TAYLOR, as Examiner in
Charge of the Liquidation of the Bank of Heber
City, ARTHUR DUKE and EULEAN DUKE,
His Wife, RAY F. SMITH and JOSIE BAIRD
GILES SMITH, His Wife, and J. HAROLD
GILES, Defendants and Appellants.
J. RULON MORGAN,

vs.

Cross-Complainant,

RULON F. STARLEY, as Bank Commissioner
of the State of Utah, and SPENCER C.
TAYLOR, as Examiner in Charge of the
Liquidation of the Bank of Heber City,

Cross-Defendants.

**1410
Civil**

Appeal From Fourth District, Wasatch County.
Honorable Dallas H. Young, Judge

ABSTRACT OF RECORD

PLEADINGS IN CASE NO. 1266, CIVIL COMPLAINT

Plaintiffs complain of defendants and for cause of action allege:

1. That John A. Malia is the duly appointed, qualified and acting Bank Commissioner of the State of Utah and has been such in all times herein mentioned, and that Herbert Taylor is the duly appointed, qualified and acting Bank Examiner in charge of the liquidation of said bank.
2. That the Bank of Heber City is a banking corporation organized and existing under the laws of the State of Utah, and that on or about the 29th day of August, 1933 by resolution of its board of directors, requested said Bank Commissioner of the State of Utah, in accordance with the laws of the State of Utah applicable thereto, to take over the business and property of said bank for liquidation, for the reason that said bank was insolvent, and on said day said Bank Commissioner of the State of Utah, by reason of the fact that the capital stock of said bank had become impaired and it was no longer able to pay its depositors under the conditions and terms under which said deposits were made, did take possession of said banking corporation for the purpose of liquidation, and since said time said John A. Malia, as said Bank Commissioner of the State of Utah, has and still is continuing to hold for the purpose of liquidation of said bank all of the property of said bank, whatsoever.
3. That at the time of the execution of the hereinafter described promissory note, defendants J. Harold Giles and Josie Baird Giles were husband and wife and that they continued to be husband and wife to and until the..... day of July, 1934 on which day they were

granted an interlocutory decree of divorce by this court.

4.

That on the 28th day of April, 1933 at Heber City, County of Wasatch, State of Utah, defendant J. Harold Giles made his said promissory note in writing, bearing date on that day which said promissory note is in words and figures as follows, towit:

\$2,550.00 Heber, Utah, Apr. 28, 1933

Six months after date, for value received, we and each of us promise to pay to the order of Bank of Heber City, at its banking house in Heber, Utah, Twenty-Five Hundred Fifty and 00/100 Dollars, in U. S. Gold Coin, with interest thereon at the rate of eight percent per annum from date until maturity and at the rate of twelve percent per annum from maturity until paid, both before and after judgment, payable maturity.

If default be made in the payment of any interest when due, the principal hereof shall become due and payable at the option of the holder of this note. We have deposited as collateral security for the payment of this note and for the payment of any other notes, claims, demands, or other indebtedness now due or to become due, now or hereafter contracted or incurred, that the said Bank of Heber City may have or hold against us or either of us, whether as maker, surety, partner or other-

wise and whether contracted directly with or purchased by the holder hereof value \$90.00 per share.

49 shares Lake Creek Irrigation Company represented by certificates 64-68;

with authority to sell the same, or other securities that may be deposited in lieu thereof or in addition thereto, or so much thereof as may be necessary, at public or private sale, and with or without notice at the maturity of this instrument or at any time thereafter, if this note shall remain due and unpaid, applying the proceeds to the payment of this note, with interest and expenses of sale, and the surplus, if any, to the payment of any one or more or all of said notes, claims, or demands, whether then due or not as the holder hereof may deem proper, with the right of the holder to become a purchaser at the sale, or sales, also with authority upon the sale or transfer of this note to transfer and deliver to the purchaser, as security, any or all of the said collateral securities. If suit shall be brought after maturity of this note, for its collection, we and each of us agree to pay a reasonable attorney's fee.

No. 13303. Due October 28, 1933.

P. O. Heber, Utah. J. HAROLD GILES

and then and there delivered said promissory note to the Bank of Heber City, and that said note and said water stock were among the assets of said Bank of Heber City taken over by plaintiffs in the process of the liquidation of said bank.

That said note and pledge is a renewal of

an obligation and pledge made by defendants to said bank on the 21st day of May, 1929.

5.

That the plaintiff, as State Bank Commissioner of the State of Utah in the matter of the liquidation of the Bank of Heber City, is the owner and holder of said promissory note, and that no part of said note has been paid either as to interest or principal.

6.

That at the time of the execution of said promissory note, as aforesaid, and in order to secure the payment of the same, said defendant, J. Harold Giles, delivered to the Bank of Heber City the following described shares of the capital stock of the Lake Creek Irrigation Company, towit:

Certificate No. 64 for $24\frac{1}{2}$ shares of the capital stock of said company, and Certificate No. 68 for $24\frac{1}{2}$ shares of the capital stock of said Lake Creek Irrigation Company.

7.

That said certificates of stock are in the name of defendant, Josie Baird Giles, and that said certificates of stock are endorsed in blank on the back of said certificates by said defendant, Josie Baird Giles, and that said defendant, Josie Baird Giles, knew that said certificates of water stock were being delivered and pledged by said J. Harold Giles as security for the payment of said promissory note.

8.

That said promissory note provides that in case suit was brought after maturity of said

note for the collection of the same, that the maker thereof would pay a reasonable attorney's fee, and that suit has been brought upon said note after the maturity of the same, and that \$250.00 is a reasonable attorney's fee.

9.

That said note is now long past due and unpaid, both as to principal and interest, and there is now due and owing and unpaid to the plaintiff on said promissory note the sum of \$2,550.00 principal and \$342.00 interest.

WHEREFORE, plaintiffs pray judgment against defendant, J. Harold Giles, for the sum of \$2,550.00, principal of said note, and interest thereon at the rate of 8 percent per annum from the 28th day of April, 1933, said interest amounting to \$342.00, and that in order to satisfy said judgment plaintiff prays that they be ordered to sell said 49 shares of the capital stock of the Lake Creek Irrigation Company water stock and apply the proceeds of said sale in payment of said judgment, and that if there is a surplus over and above the satisfaction of said judgment that the same be turned over to defendant, Josie Baird Giles. That said sale be made by the Sheriff of Wasatch County, as in the case of the sale of mortgaged personal property, and that the plaintiff may be a purchaser of said property at said sale.

Plaintiffs pray that they be given judgment against said defendant, J. Harold Giles, for attorney's fee in the sum of \$250.00, and for such other and further relief as the court

may feel is just and proper to grant in the premises, including plaintiffs' costs of court.

L. C. MONTGOMERY,
Attorney for Plaintiffs.

Duly verified.

Filed Aug. 14, 1934.

ANSWER OF JOSIE BAIRD GILES
(TITLE OF COURT AND CAUSE).

9 Comes now, Josie Baird Giles, one of the defendants in the above entitled cause, and makes this, her separate answer to plaintiffs' complaint, and admits, denies and alleges as follows, towit:

1

Answering the allegations contained in Paragraph 1 of plaintiffs' complaint, said defendant, Josie Baird Giles, says that she has no knowledge or information sufficient to enable her to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of plaintiffs' complaint, and hence said defendant denies each and every allegation contained in said Paragraph 1 of plaintiffs' complaint.

2.

Answering the allegations contained in Paragraph 2 of plaintiffs' complaint, said defendant says that she has no knowledge or information sufficient to enable her to form a belief as to the truth or falsity of the allegations contained in said Paragraph 2 of plaintiffs' complaint, and hence, said defendant

denies each and every allegation contained in said Paragraph 2 of plaintiffs' complaint.

3.

Answering the allegations contained in Paragraph 3 of plaintiffs' said complaint, said defendant admits that she and J. Harold Giles were husband and wife from the 18th day of December, 1924 to the 16th day of July, 1934.

Said defendant denies each and every allegation contained in said Paragraph 3 of plaintiffs' complaint, except such as are herein specifically admitted.

4.

Answering the allegations contained in Paragraph 4 of plaintiffs' complaint, said defendant, Josie Baird Giles, says that she has no knowledge or information sufficient to enable her to form a belief as to the truth or falsity of the allegations contained in said paragraph, and therefore, said defendant denies each and every allegation contained in Paragraph 4 of plaintiffs' said complaint.

5.

Answering the allegations contained in Paragraph 5 of plaintiffs' complaint, said defendant says that she has no knowledge or information sufficient to enable her to form a belief as to the truth or falsity of the allegations contained in said paragraph, and hence, said defendant denies each and every allegation contained in said paragraph 5 of plaintiffs' complaint.

6.

Answering the allegations contained in Paragraph 6 of plaintiffs' complaint, said de-

fendant, Josie Baird Giles, says that she has no knowledge or information sufficient to enable her to form a belief as to the truth or falsity of the allegations contained in said Paragraph 6 of plaintiffs' complaint, and therefore, said defendant denies each and every allegation contained in said Paragraph 6 of plaintiffs' complaint.

7.

Said defendant denies each and every allegation contained in Paragraph 7 of plaintiffs' complaint, and said defendant alleges that on the 10th day of October, 1929, she sold said certificates of water stock and the water represented thereby, to Vernor E. Baird, and ever since that time, said Vernor E. Baird has been and now is, the legal owner of the same, but since October, 1933, Elizabeth J. Baird has been and now is the equitable owner of said certificates, and said defendant further alleges that if said Bank of Heber City does hold said certificates of water stock, that said defendant, Josie Baird Giles, never, at any time, received any consideration whatsoever for the transfer of the same.

8.

Said defendant admits that the document pleaded in plaintiffs' complaint provides that in case suit is brought, after maturity of said note, for the collection of the same, that the maker thereof would pay a reasonable attorney's fee.

Said defendant denies each and every al-

legation contained in said Paragraph 8, except such as are herein specifically admitted.

9.

Answering the allegations contained in Paragraph 9 of plaintiffs' complaint, said defendant, Josie Baird Giles, says that she has no knowledge or information sufficient to enable her to form a belief as to the truth or falsity of the allegations contained in said Paragraph 9, and hence, said defendant denies each and every allegation contained in said Paragraph 9 of plaintiffs' complaint.

10.

Said defendant denies each and every allegation contained in plaintiffs' complaint, not herein specifically admitted or otherwise denied.

WHEREFORE, said defendant, Josie Baird Giles, prays that plaintiffs take nothing by any allegation contained in plaintiffs' complaint; that said complaint be dismissed, and that said defendant, Josie Baird Giles, recover her costs herein expended against said plaintiffs.

Said defendant prays for such other and further relief as to the court may seem meet and equitable in the premises.

MORGAN & MORGAN,

Attorneys for Defendant,
Josie Baird Giles.

Duly verified.

Filed October 13, 1934.

ANSWER OF J. HAROLD GILES

(TITLE OF COURT AND CAUSE).

17 Comes now the defendant, J. Harold Giles, one of the defendants named in the above entitled cause, and hereby makes this his separate answer to plaintiffs' complaint on file herein, and admits, denies and alleges as follows, towit:

1.

Answering the allegations contained in Paragraph 1 of plaintiffs' complaint, said defendant J. Harold Giles, says that he has no knowledge or information sufficient to enable him to form a belief as to the truth or falsity of the allegations contained in said Paragraph 1 of plaintiffs' said complaint and upon said ground, said defendant denies each and every allegation contained in said Paragraph 1.

2.

Answering the allegations contained in Paragraph 2 of plaintiffs' complaint, said defendant says that he has no knowledge or information sufficient to enable him to form a belief as to the truth or falsity of the allegations contained in said Paragraph 2, and upon said grounds, said defendant denies each and every allegation contained in Paragraph 2.

3.

Answering the allegations contained in Paragraph 3 of plaintiffs' said complaint, said defendant admits that he and said defendant, Josie Baird Giles were husband and wife from the 18th day of December, 1924 to the 16th day of July, 1934.

Said defendant denies each and every allegation contained in said Paragraph 3 of

said complaint except such as are herein specifically admitted or otherwise denied.

4.

Answering the allegations contained in Paragraph 4 of said complaint, said defendant admits that he signed a note similar to the one described in Paragraph 4 of said complaint.

Said defendant denies each and every allegation contained in Paragraph 4 of plaintiffs' complaint, except such as are herein specifically admitted.

5.

Answering the allegations contained in Paragraph 5 of plaintiffs' complaint, said defendant says that he has no knowledge or information sufficient to enable him to form a belief as to the truth or falsity of the allegations contained in said Paragraph 5, and hence said defendant denies each and every allegation contained in said Paragraph 5.

6.

Answering the allegations contained in Paragraph 6 of said complaint, said defendant admits that he delivered to the Bank of Heber City, certain shares of water stock in the Lake Creek Irrigation Company.

Said defendant denies each and every allegation contained in said Paragraph 6, except such as are herein specifically admitted.

7.

Answering the allegations contained in Paragraph 7 of plaintiffs' complaint, said defendant admits that said certificates of stock

were in the name of the defendant, Josie Baird Giles, and that said certificates of stock were endorsed in blank on the back of said certificates by said defendant, Josie Baird Giles, a long time prior to this transaction.

Said defendant, J. Harold Giles, denies each and every allegation contained in said Paragraph 7 except such as are herein specifically admitted.

Defendant denies that said defendant Josie Baird Giles knew that said certificates of water stock were being delivered and pledged by said defendant, J. Harold Giles, as security for the payment of said promissory note.

Said defendant, J. Harold Giles alleges that the said defendants, prior to the time of the transaction mentioned in plaintiffs' complaint, had had a prior transaction with the Bank of Heber City, wherein, the stock mentioned in plaintiffs' complaint was pledged to said bank, and through said prior transaction, the cashier of the said Bank of Heber City obtained certain information concerning the water stock certificates mentioned in plaintiffs' complaint, and knew that the said stock certificates were endorsed in blank by Josie Baird Giles, on the former occasion, after the completion of which transaction, the said stock certificates were returned to said Josie Baird Giles.

Said defendant is informed and believes and upon such information and belief alleges that the cashier of the said Bank of Heber City knew that the water stock certificates mentioned in plaintiffs' complaint had been pre-

viously sold by the said defendant, Josie Baird Giles, to her brother, Vernor Baird.

Said defendant alleges that at the time the promissory note described in plaintiffs' complaint was signed by this defendant, that this defendant delivered to the Bank of Heber City, certain stock certificates for shares of water stock in the Lake Creek Irrigation Company; that said certificates of stock were delivered by this defendant to the said Bank of Heber City, without the knowledge of the defendant Josie Baird Giles; that said Josie Baird Giles knew nothing concerning the delivery by this defendant of said water stock certificates in the said Lake Creek Irrigation Company, to the said Bank of Heber City, and the said defendant, Josie Baird Giles was in the State of California at the time that this defendant delivered said water stock certificates to the said Bank of Heber City, and knew nothing concerning the delivery of the same, as aforesaid; that the cashier of the said Bank of Heber City at said time told this defendant, J. Harold Giles, that if he would get said water stock certificates and leave them at the bank, that he would deliver back to this defendant, the said water stock certificates, within a short time after they were given to said Bank of Heber City and before the return of said Josie Baird Giles from California, and that all the said Bank of Heber City wanted the said water stock certificates for was to hold as security pending the completion of a sheep deal with the Wasatch Live Stock Loan Company, after the completion of which said deal, the water stock certificates would be released and sheep substi-

tuted as security in place of the water stock; that at said time the said cashier of the Bank of Heber City knew that said Josie Baird Giles was in California, and knew that the said defendant Josie Baird Giles did not know that the said certificates of water stock were being delivered and pledged by said J. Harold Giles, this defendant, as security for the payment of said promissory note. But, notwithstanding these facts, and with full knowledge of the foregoing facts, the said cashier of the said Bank of Heber City induced and persuaded this defendant, J. Harold Giles, to obtain said water stock certificates and deliver them into the possession of the said Bank of Heber City, with full knowledge that the said Josie Baird Giles knew nothing of the pledging of said security, and upon the assurance that the said Bank of Heber City would release the said water stock certificates within a short time and accept sheep as security in place of said water stock certificates. That the pledging of said water stock certificates by this defendant, was without consideration.

8.

Answering the allegations contained in Paragraph 8 of plaintiffs' complaint on file herein, said defendant admits that the document pleaded in plaintiffs' complaint provides that in case suit was brought after maturity of said note for the collection of the same, that the maker thereof would pay a reasonable attorney's fee.

Said defendant denies each and every allegation contained in said Paragraph 8 of plain-

tiffs' complaint, except such as are herein specifically admitted.

9.

Answering the allegations contained in Paragraph 9 of plaintiffs' complaint, said defendant admits that said note is now past due, but says that he has no knowledge or information sufficient to enable him to form a belief as to the truth or falsity of the remaining allegations contained in said Paragraph 9, and upon said ground, said defendant denies each and every allegation contained in said Paragraph 9 except as herein specifically admitted or otherwise denied.

Said defendant denies each and every allegation contained in plaintiffs' complaint, not herein specifically admitted or otherwise denied.

As an affirmative defense to the allegations contained in plaintiffs' complaint, said defendant, J. Harold Giles, alleges:

1.

That at about the time the note mentioned in plaintiffs' complaint was signed by this defendant, that the defendant Josie Baird Giles was in the State of California; that the Bank of Heber City had, prior thereto, loaned to this defendant, certain money which was evidenced by a promissory note and secured by a certain mortgage on sheep; that at about the time the note described in plaintiffs' complaint was signed, this defendant had an opportunity to borrow money from the Wasatch Live Stock Loan Company with which to pay off the Bank

of Heber City; that at said time, the cashier of the said Bank of Heber City stated to the defendant that he would release the said sheep described in said mortgage and permit this defendant to obtain a loan from the said Wasatch Live Stock Loan Company with which to pay said Bank of Heber City; that said cashier informed this defendant that it would be necessary, however, for this defendant to provide other security for the said obligation to the said Bank of Heber City, pending the completion of the loan with the Wasatch Live Stock Loan Company; that at said time, this defendant informed the cashier of the Bank of Heber City that he had no security to give; that the cashier of the said Bank of Heber City suggested that this defendant get the water stock certificates in the Lake Creek Irrigation Company which had formerly been used with said Bank of Heber City as security for said defendants' loans, and to bring said stock certificates to said bank and pledge them as security, pending this application with the Wasatch Live Stock Loan Company; that this defendant advised the cashier of the said Bank of Heber City that he did not own said stock certificates, and that Josie Baird Giles, in whose name the stock certificates were issued, was in California; and that he was sure that said stock certificates were owned by Vernor Baird; that said cashier nevertheless induced and persuaded this defendant to obtain the possession of said stock certificates and to bring them to said Bank of Heber City, upon the assurance that the said stock certificates would be returned to the said defendant, J. Harold Giles,

upon the completion of the refinancing loan with the said Wasatch Live Stock Loan Company; that said cashier of said Bank of Heber City knew that this defendant did not own said water stock certificates, and knew that the said Josie Baird Giles, in whose name said stock certificates were, was in California, and knew nothing of the pledging of said stock certificates with the said Bank of Heber City. That the said cashier of said Bank of Heber City did not release the sheep as security as he promised, and the defendant consequently failed to obtain a loan from the Wasatch Live Stock Loan Company, and the said Bank of Heber City, through its agents, then took said sheep from this defendant and held said water stock in addition.

That the pledging of said stock certificates with the said Bank of Heber City was therefore without the knowledge of the said Josie Baird Giles, and was without consideration.

Wherefore, said defendant prays that plaintiffs take nothing by any allegation contained in plaintiffs' said complaint; that said complaint be dismissed, and that said defendant recover his costs herein expended.

Said defendant prays for such other and further relief as to the Court may seem just and equitable in the premises.

MORGAN & MORGAN,
Attorneys for Defendant,
J. Harold Giles.

Duly verified.

Filed October 31, 1934.

REPLY TO J. HAROLD GILES
(TITLE OF COURT AND CAUSE).

25 Now come the plaintiffs in the above entitled action and by way of reply to the answer, filed herein by J. Harold Giles, one of the defendants, denies, replies, and alleges as follows;

 Replying to the affirmative allegations of Paragraph 7 of said defendants' answer, plaintiff alleges that it has no knowledge or information sufficient to enable it to form a belief as to the truth or falsity as to the allegations contained in said paragraph and hence said plaintiff denies each and every allegation contained in said Paragraph 7.

 Replying to Paragraph 1 of said defendants' affirmative defense as contained in said answer, plaintiff alleges that it has no knowledge or information sufficient to enable it to form a belief as to the truth or falsity as to the allegations contained in Paragraph 1 and hence said plaintiff denies each and every allegation contained in said Paragraph 1.

 Further replying to said Paragraph 1, said plaintiff denies that said Josie Baird Giles had no knowledge of the pledging of said certificates of stock with the Bank of Heber City as security for said loan and denies that the pledging of the same was without consideration and alleges that the said Josie Baird Giles did know that said certificates of stock were pledged with the Bank of Heber City, as security for said loan and said defendant Josie Baird Giles did consent that said certificates of stock be and remain pledged with the Bank of Heber City as security for said loan. And said defendant did receive a consideration for the

pledging of said certificates with said Bank of Heber City.

Further replying to said answer, plaintiff expressly, specifically and generally denies each and every allegation of an affirmative nature in said defendants' answer to plaintiffs' complaint.

Wherefore, plaintiffs demand judgment according to the prayer of their complaint.

L. C. MONTGOMERY,
Attorney for Plaintiff.

Duly verified.

Filed January 25, 1935.

REPLY TO JOSIE BAIRD GILES
(TITLE OF COURT AND CAUSE)

26 Come now plaintiffs named in the above entitled action and by way of reply to the answer of Josie Baird Giles, one of the said defendants, denies, replies and alleges as follows:

Replying to the affirmative allegations of Paragraph 7 of said answer, plaintiff alleges that they have no knowledge or information sufficient to enable them to form a belief as to the truth or falsity of the allegations contained in said paragraph and hence plaintiff denies that said defendant, on the 10th day of October, 1929, sold said certificates of water stock and the water represented thereby to Vernor E. Baird, and that ever since said time, said Vernor E. Baird has been and now is the legal owner of the same and said plaintiff denies that said Bank of Heber City does not

now hold said certificates of water stock but alleges that said bank does in fact hold said certificates of water stock and plaintiff denies that said defendant never at any time received any consideration whatsoever for the transfer of said certificates of stock to plaintiff.

Plaintiff expressly denies each and every affirmative allegation of defendants' answer to plaintiffs' complaint.

Wherefore, plaintiff demands judgment according to the demand in said complaint.

L. C. MONTGOMERY,
Attorney for Plaintiff.

Duly verified.

Filed January 25, 1935.

ORDER SUBSTITUTING PARTIES (TITLE OF COURT AND CAUSE).

27 Order made September 11, 1939 substituting Rulon F. Starley for John A. Malia and Spencer C. Taylor for Herbert Taylor as plaintiffs.

DALLAS H. YOUNG, Judge.
Filed December 5, 1939.

NOTICE (TITLE OF COURT AND CAUSE).

To A. C. Moulton and E. Dewey Moulton, Plaintiffs above named, and to George B. Stanley and Paul B. Cannon of the firm of Cheney, Jensen, Marr and Wilkins:

You, and Each of You, Will Please Take Notice that on Friday, December 22, 1939, at

10:00 o'clock, A. M., or as soon thereafter as counsel can be heard, at the court room at Heber City, Wasatch County, Utah, the Defendants Vernor E. Baird, Mary A. Baird, his wife, J. Rulon Morgan, J. Rulon Morgan, as the surviving partner of the firm of Morgan & Morgan, a co-partnership, J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird, Deceased, and Josie Baird Giles Smith, will move the above entitled court to grant the petition, a copy of which is hereto attached.

J. RULON MORGAN,
ELIAS HANSEN,
Attorneys for Defendants
Above Named.

Filed December 13, 1939.

PETITION

(TITLE OF COURT AND CAUSE).

30 Come now Josie Baird Giles Smith and J. Rulon Morgan and Petition this court to permit the reopening of the above entitled cause and the filing of the additional answer to the complaint filed in the above entitled cause, to wit:

1.

That at the time the certificate of stock mentioned in plaintiffs' complaint is alleged to have been delivered to the Bank of Heber City the water stock represented by the said certificate of stock was used upon real estate which was the home of your Petitioner Josie Baird Giles and J. Harold Giles, who at that

time were husband and wife, and actual and bona fide residents of Wasatch County, Utah.

2.

That the said J. Harold Giles, the then husband of your Petitioner Josie Baird Giles, owned no real estate of his own, but on the contrary, the said Josie Baird Giles and her husband J. Harold Giles used the water right belonging to your Petitioner Josie Baird Giles, on which plaintiffs claim a lien, with which to irrigate their homestead, and, as such, the water represented by the certificate of stock was exempt from execution and the said J. Harold Giles was without authority to sell or hypothecate the same without the consent, approval and execution of a lien by your Petitioner Josie Baird Giles.

3

That at all times after said certificates for water stock were delivered to the Bank of Heber City, up until the same were conveyed to Vernor E. Baird on October 10, 1929, and up to the time of the commencement of the action in the above entitled cause, and up to the time that said stock was transferred to Elizabeth J. Baird on or about January 28, 1935, the Petitioner, Josie Baird Giles Smith herein was an actual and bona fide resident of Wasatch County, State of Utah, and as such had a right to the certificates of water stock mentioned in plaintiffs' complaint, as a part of her homestead.

4.

That your Petitioner, J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird, Deceased, is entitled to all

of the rights and interest of the Petitioner Josie Baird Giles Smith by reason of the conveyance made to Elizabeth J. Baird during her lifetime as nominee of Josie Baird Giles Smith. Your Petitioner J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird, Deceased, is the owner of all the right, title and interest theretofore held and owned by Josie Baird Giles Smith, including her right to claim the property as a homestead.

ELIAS HANSEN,
Attorney for Petitioners.

J. RULON MORGAN,
JOSIE BAIRD GILES SMITH.
Petitioners.

Duly verified.

Filed December 13, 1939.

ANSWER TO PETITION
(TITLE OF COURT AND CAUSE).

33 Come now Rulon F. Starley, State Bank Commissioner of the State of Utah and Spencer C. Taylor, as examiner in charge of the liquidation of the Bank of Heber City, plaintiffs herein, and for answer to the Petition of Josie Baird Giles Smith and J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird on file herein, admit, deny and allege as follows:

1.

Answering Paragraph 1 of said Petition plaintiffs allege that they have no informa-

tion sufficient to form a belief and upon this ground and for this reason deny the same.

2.

Answering Paragraph 2 of said Petition plaintiffs deny that the certificates of water stock were exempt from execution or that J. Harold Giles was without authority to sell or hypothecate the same, but on the contrary plaintiffs allege that J. Harold Giles had the authority to pledge said water stock and that the same was pledged with the consent and approval of Josie Baird Giles Smith, all of which has been determined in favor of plaintiffs upon the trial of Case No. 1266 Civil, and upon the trial of the issues framed by the cross-complaint and answer in Case No. 1410 Civil. As to the remaining allegations of paragraph 2 plaintiffs allege that they have no information sufficient to form a belief and upon this ground and for this reason deny the same.

3.

Answering Paragraph 3 of said Petition plaintiffs allege that they have no information sufficient to form a belief and upon this ground and for this reason deny the same.

4.

Answering Paragraph 4 of said Petition plaintiffs deny the same.

Further answering said Petition plaintiffs refer to their complaint on file herein, Case No. 1266 Civil, and further refer to their answer to the cross-complaint in Case No. 1410, Civil, and adopt the same as if set forth in length herein. Plaintiffs further allege that Josie Baird Giles Smith was on the 16th day of July, 1934 divorced from J. Harold Giles and that the said Josie Baird Giles Smith thereafter in the year 1934 or in the year 1935 removed to the State of California and established her residence in that State. That she is not now and for at least one year prior to the filing of her Petition herein, has not been a resident of the State of Utah.

Wherefore, plaintiffs pray that the Petition of Josie Baird Giles Smith and J. Rulon Morgan, as Executors of the Last Will and Testament of Elizabeth J. Baird be dismissed. That no claim of homestead be allowed to said defendants and that judgment and decree be entered in accordance with former order of this Court. Plaintiffs pray for such other and further relief as to this Court may seem proper.

L. C. MONTGOMERY,
DRAPER, BOYDEN & DRAPER,
Attorneys for Plaintiffs
and Respondents.

Duly verified.

Filed December 22, 1939.

PLEADINGS IN CASE NO. 1410 CIVIL
COMPLAINT

(TITLE OF COURT AND CAUSE).

37 Come now the plaintiffs, and for cause of
action against the defendants, complain and
allege:

1.

That Vernor E. Baird and Mary A. Baird were, at the time of the execution of the promissory note and mortgage herein sued upon, and now are, husband and wife; that Arthur Duke and Eulean Duke are husband and wife; that on and between the 10th day of October, 1929, and the 7th day of July, 1934, J. Harold Giles and Josie Baird Giles were husband and wife; that subsequently said J. Harold Giles and Josie Baird Giles were divorced and Josie Baird Giles is now the wife of Ray F. Smith, and is known as Josie Baird Giles Smith.

2.

That Rulon F. Starley is the duly appointed, qualified and acting Bank Commissioner of the State of Utah, and that Spencer C. Taylor is the duly appointed, qualified and acting bank examiner in charge of the liquidation of the Bank of Heber City.

3.

That the Bank of Heber City is a banking corporation organized and existing under the laws of the State of Utah, and that on or about the 29th day of August, 1933, by resolution of its board of directors, requested said Bank Commissioner of the State of Utah, in accordance with the laws of the State of Utah appli-

cable thereto, to take over the business and property of said bank for liquidation, for the reason that said bank was insolvent, and on said day said Bank Commissioner of the State of Utah, by reason of the fact that the capital stock of said bank had become impaired and it was no longer able to pay its depositors under the conditions and terms under which said deposits were made, did take possession of said banking corporation for the purpose of liquidation, and since said time the Bank Commissioner of the State of Utah has and still is continuing to hold, for the purpose of liquidation of said bank, all of the property of said bank whatsoever.

4.

That Morgan & Morgan was, on or about the 26th day of January, 1935, a partnership, the members of said partnership being A. B. Morgan and J. Rulon Morgan; that subsequent to the 26th day of January, 1935, A. B. Morgan died; that by the death of the said A. B. Morgan the partnership of Morgan & Morgan was dissolved and the defendant, J. Rulon Morgan, is the surviving partner.

5.

38 That on or about the 10th day of October, 1929, the defendants, Vernor E. Baird and Mary A. Baird, his wife, for a valuable consideration, made, executed and delivered to Josie Baird Giles, now known as Josie Baird Giles Smith, their promissory note in words and figures as follows, towit:

\$15,000.00 Gold

Heber, Utah, October 10th, 1929.

On or before ten years after date, for

value received, I, we, or either of us, promise to pay to the order of Josie Baird Giles, at Bank of Heber City, in Heber, Wasatch County, State of Utah, Fifteen Thousand and no/100 Dollars in U. S. Gold Coin with interest from date at the rate of seven percent per annum until maturity, and at the rate of twelve percent per annum thereafter until paid, both before and after judgment. Interest payable semi-annually. If the interest is not paid when due, then both principal and interest shall become due at the option of the holder of this note. In case this note is placed in the hands of an attorney for collection, the undersigned agrees to pay a reasonable attorney's fee with all costs and expenses incurred. Demand, notice of protest waived, and time of payment may be extended without my consent. It is understood that amounts of \$100.00 or more may be paid on the principal of this note at any time.

Vernor E. Baird,
Mary A. Baird.

No..... Due October 10th, 1939.

at O. Heber, Utah.

6.

That as a part of the same transaction and to secure the payment of said promissory note and the interest thereon, and at the time of the execution and delivery of the said note, the said defendants, Vernor E. Baird and Mary A. Baird, his wife, made, executed and delivered to Josie Baird Giles their certain real estate mortgage whereby and under the terms where-

of they mortgaged to Josie Baird Giles certain real property with water rights and water stock, situate in Wasatch County, State of Utah, and particularly described as follows, towit:

The Southeast quarter of the Northwest quarter; the East half of the Southwest quarter; and all that portion of the North half of the Northwest quarter lying South of the County road; all in Section 2, in Township 4 South of Range 5 East, Salt Lake Meridian. Together with all improvements thereon and appurtenances thereunto belonging, including 49 shares of Primary water right, 34 shares of First Class High water right, 23 shares of Second Class High water right, and 8 shares of Third Class High water right of the Lake Creek Irrigation Company, representing the water right appurtenant thereto.

That the said mortgage was duly acknowledged so as to entitle it to be recorded and the same was thereafter, towit, on the 12th day of November, 1929, duly recorded in the office of the County Recorder of Wasatch County, State of Utah, in Book 13 of Mortgages at pages 185-186, a copy of said mortgage being hereto attached, marked Exhibit A, and made a part of this complaint as fully as if set forth at length herein.

7.

39 That thereafter, on the 7th day of July, 1934, an action was commenced by the above named plaintiffs against Josie Baird Giles and J. Harold Giles, two of the defendants above named, said action being founded upon two promissory notes executed by Josie Baird Giles

and J. Harold Giles; that at the date of commencing said action the above mentioned note and mortgage mentioned in paragraphs 5 and 6 above were owned by Josie Baird Giles; that on said 7th day of July, 1934, said note and mortgage were attached by the Sheriff of Wasatch County under and by virtue of a writ of attachment issued in said action; that judgment was subsequently rendered in favor of the plaintiffs and against the defendants, Josie Baird Giles and J. Harold Giles, in the total sum of \$5344.67, said judgment being dated October 1, 1934; that thereafter, on to wit, the 21st day of January, 1935, a writ of execution was issued upon said judgment and under and by virtue of the said writ of execution and the writ of attachment above mentioned, and after due and proper notice in accordance with law, said note and mortgage were, on January . ., 1935, sold to A. C. Moulton and E. Dewey Moulton, the plaintiffs above named, and certificate of sale was on said 1st day of February, 1935, issued by the Sheriff of Wasatch County to said plaintiffs; that the plaintiffs above named now are the legal owners and holders of said note and mortgage.

8.

That by the terms of the said promissory note executed and delivered by Vernor E. Baird and Mary A. Baird, his wife, to Josie Baird Giles, the defendants, Vernor E. Baird and Mary A. Baird, agreed to pay \$15,000.00 ten years from the date of the execution of said note, with interest thereon at the rate of seven percent per annum until maturity, interest being payable semi-annually. Said promissory note further provided that if the interest was

not paid when due, then both principal and interest should become due at the option of the holder of said note; that the plaintiffs are now the holders of said note, and there has been no interest paid on the same since the 10th day of October, 1934; that plaintiffs have declared the principal and interest due by reason of the failure to pay the interest as provided; that there is now due and owing from the defendants, Vernor E. Baird and Mary A. Baird, his wife, to the plaintiffs, the sum of \$15,000.00, together with interest thereon at the rate of seven percent per annum from the 10th day of October, 1934.

9.

40 That Certificates Numbers 64 and 68, representing 49 shares of the primary water right in Lake Creek Irrigation Company were, subsequent to the mortgage herein sued upon, delivered by J. Harold Giles to the Bank of Heber City; that the delivery of said certificates was wrongful and without the knowledge or consent of the rightful owners thereof, and the defendants, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in Charge of Liquidation of the Bank of Heber City, are wrongfully in possession of said water certificates, the rights of said defendants in and to said water stock being subject and subordinate to the rights of the plaintiffs.

10.

That it is agreed in said note and mortgage that in the event suit be brought to foreclose the said mortgage, the mortgagors agree to pay a reasonable attorneys' fee; that it has become

necessary for the plaintiffs to place the note and mortgage in the hands of attorneys for collection, and for said attorneys to bring suit to foreclose the same; that the plaintiffs have agreed to pay said attorneys a reasonable sum for the foreclosure of said mortgage; that the sum of \$750.00 is a reasonable sum to be allowed the plaintiffs as and for attorneys' fees.

11.

That the defendants, J. Rulon Morgan, J. Rulon Morgan as the surviving partner of the firm of Morgan & Morgan, a co-partnership, Elizabeth J. Baird, Arthur Duke and Eulean Duke, his wife, Ray F. Smith, Josie Baird Giles Smith, and Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor as Examiner in Charge of the Liquidation of the Bank of Heber City, claim some interest in the property in this action; that whatever interest the said defendants may have in the property herein described, is subject and subordinate to the lien of the plaintiffs' mortgage thereon.

WHEREFORE, plaintiffs pray judgment against the defendants, Vernor E. Baird and Mary A. Baird, his wife, for the principal sum of \$15,000.00, together with interest thereon at the rate of seven percent per annum from the 10th day of October, 1934, until paid; for the further sum of \$750.00 as and for attorneys' fees; that the aggregate sum of said principal and interest be declared to be a first lien upon said real property, water rights and water stock; that the defendants, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, Examiner in Charge

of the Liquidation of the Bank of Heber City, be ordered and required to deliver certificates Numbers 64 and 68, representing 49 shares of the primary water right in Lake Creek Irrigation Company to the plaintiffs for the purpose of sale under foreclosure; that the usual decree be made for the sale of said premises, water rights and water stock by the Sheriff of Wasatch County according to law and the practice of this court; that said premises, water rights and water stock be sold at sheriff's sale, and that after said sale the sheriff execute and deliver to the purchaser, or purchasers, a certificate or certificates of sale, and after the time for redemption has expired, issue to said purchaser or purchasers a sheriff's deed and a conveyance and transfer of said premises, water rights and water stock; that the proceeds of said sale be applied first on the amount due the plaintiffs, and that the defendants, Vernor E. Baird and Mary A. Baird, his wife, J. Rulon Morgan, J. Rulon Morgan as the surviving partner of the firm of Morgan & Morgan, a co-partnership, Elizabeth J. Baird, Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor as Examiner in Charge of the Liquidation of the Bank of Heber City; Arthur Duke and Eulean Duke, his wife, Ray F. Smith and Josie Baird Giles Smith, his wife, and J. Harold Giles, and all persons claiming by, through or under them, or any of them, subsequent to the execution and recordation of said mortgage, as encumbrancers, purchasers, or otherwise, be barred and foreclosed of all right, claim, or equity of redemption in and to the said premises, water rights or water stock, or any part thereof, and that plaintiffs

have judgment and execution against the defendants, Vernor E. Baird and Mary A. Baird, his wife, for any deficiency which may remain after applying all of the proceeds from the sale of said premises, water rights, and water stock properly applicable to the satisfaction of plaintiffs' judgment; that plaintiffs may become purchasers at said sale; that plaintiffs be given such other and further relief as may seem meet and equitable in the premises.

Duly signed and verified.

Filed November 15, 1937.

EXHIBIT A.

MORTGAGE

Vernor E. Baird and Mary A. Baird, his wife, of Heber, Wasatch County, State of Utah, hereby mortgage to Josie Baird Giles, mortgagee, of the same place for the sum of Fifteen Thousand Dollars (\$15,000.00), the following described tracts of land, situated in Wasatch County, State of Utah, to wit:

The Southeast quarter of the Northwest quarter; the East half of the Southwest quarter; and all that portion of the North half of the Northwest quarter lying South of the County road; all in Section 2, in Township 4 South of Range 5 East, Salt Lake Meridian. Together with all improvements thereon and appurtenances thereunto belonging, including 49 shares of

Primary water right, 34 shares of First Class High water right, 23 shares of Second Class High water right, and 8 shares of Third Class High water right of the Lake Creek Irrigation Company, representing the water right appurtenant thereto.

This mortgage is given collaterally with a chattel mortgage of even date herewith, made by the mortgagors in favor of the mortgagee, to secure the payment of one certain promissory note, in words and figures as follows, towit:

Heber, Utah, October 10th, 1929

\$15,000.00 Gold

On or before ten years after date, for value received, I, we, or either of us, promise to pay to the order of Josie Baird Giles, at Bank of Heber City, in Heber, Wasatch County, State of Utah, Fifteen Thousand and no/100 Dollars in U. S. Gold Coin with interest from date at the rate of seven percent per annum until maturity, and at the rate of twelve percent per annum thereafter until paid, both before and after judgment. Interest payable semi-annually. If the interest is not paid when due, then both principal and interest shall become due at the option of the holder of this note. In case this note is placed in the hands of an attorney for collection, the undersigned agrees to pay a reasonable attorney's fee with all costs and expenses incurred. Demand, notice of protest waived, and time of payment may be extended without my consent. It is understood that amounts of \$100.00 or more may

be paid on the principal of this note at any time.

Vernor E. Baird,
Mary A. Baird.

No..... Due October 10th, 1939.

P. O. Heber, Utah.

- 43 The mortgagors covenant that they will pay the taxes and assessments levied or assessed on the above described property commencing with the year 1930; that they will keep off mechanics' liens; and that in the event of foreclosure of this mortgage, they will pay a reasonable attorney's fee additional, together with all costs and expenses incurred.

WITNESS the hands of said mortgagors this 10th day of October, A. D. 1929.

Vernor E. Baird,
Mary A. Baird.

State of Utah,)
) ss.
County of Wasatch)

On this 10th day of October, A. D. 1929, personally appeared before me, Vernor E. Baird and Mary A. Baird, his wife, the signers of the above instrument, who duly acknowledged to me that they executed the same.

George B. Stanley,
Notary Public,
(Seal) Residing at Heber, Utah.

My commission expires October 8th, 1932.

Recorded November 12, 1929 in Book 13

of Mortgages, pages 185-186, Wasatch County, Utah.

- 49 Demurrer to Complaint, filed by Vernor and Mary Baird, Arthur Duke and Eulean Duke, his wife, and J. Harold Giles on December 13, 1937.
- 55 Demurrer to Complaint was also filed by J. Rulon Morgan and J. Rulon Morgan as the surviving partner of Morgan & Morgan on February 24, 1938.
- 57 Demurrer filed to Complaint by Josie Baird Giles on February 10, 1938.
- 67 Demurrer to Complaint filed by J. Rulon Morgan as executor of the last will and testament of Elizabeth J. Baird, deceased, on May 28, 1938.
-

AMENDMENT TO COMPLAINT (TITLE OF COURT AND CAUSE).

Come now the plaintiffs and make amendment to the complaint on file herein and allege as follows:

1.

That the defendant, Elizabeth J. Baird, named in the original complaint on file herein, died at Los Angeles, Los Angeles County, State of California, on the 5th day of February, A. D. 1938;

2.

- 86 That subsequent thereto, J. Rulon Morgan was duly appointed, and now is the duly appointed, qualified and acting Executor of the

Last Will and Testament of Elizabeth J. Baird, deceased;

WHEREFORE, plaintiffs amend their original complaint on file herein and wherever the name "Elizabeth J. Baird" appears in said complaint, whether in the caption or body thereof, said complaint is amended to read "J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird, Deceased."

Duly signed and verified.

Filed May 13, 1938.

69 Demurrer overruled and notice thereof given.

ANSWER OF DEFENDANTS VERNOR E. BAIRD AND MARY A. BAIRD.

(TITLE OF COURT AND CAUSE).

Come now Vernor E. Baird and Mary A. Baird, his wife, two of the defendants in the above entitled action, and answering the Complaint filed herein, they admit, deny and allege as follows:

1.

71 They admit the allegations contained in Paragraphs 1, 2, 3, 4, 5 and 6 of Plaintiffs Complaint.

2.

They admit that on the 7th day of July, 1934, an action was commenced by the plaintiffs in this action against Josie Baird Giles and J. Harold Giles, two of the defendants above named, said action being founded upon one promissory note executed by Josie Baird

Giles and J. Harold Giles. They deny that at the date of commencing said action the above mentioned note and mortgage, or either the note or mortgage mentioned in Paragraphs 5 and 6 of Plaintiff's Complaint, were owned by Josie Baird Giles.

These answering defendants admit that the Sheriff of Wasatch County attached the note and mortgage mentioned in Plaintiffs' Complaint in the manner and under the circumstances hereinafter alleged, and not otherwise.

These answering defendants admit that a judgment was rendered against Josie Baird Giles and J. Harold Giles, and that execution issued upon said judgment as in Paragraph 7 of Plaintiffs' Complaint alleged, but allege that notwithstanding an attachment had theretofore been made in the action mentioned in Plaintiffs' Complaint whereby the note mentioned in Plaintiffs' Complaint was taken into the custody of the Sheriff of Wasatch County the execution did not direct the Sheriff of Wasatch County to levy said execution on the property theretofore attached as by law required and therefore the execution so issued is null and void, and did not authorize the Sheriff of Wasatch County to levy upon or sell such note. These answering defendants deny that pursuant to such Writ of Execution and Writ of Attachment the note and mortgage mentioned in Plaintiffs' Complaint were levied upon, except in the manner and under the circumstances hereinafter alleged. These answering defendants deny, upon information and belief, that any due or proper notice was given of the time or place when said note and mortgage would be sold; they deny that said note and

mortgage, or either of them, were sold to A. C. Moulton and E. Dewey Moulton, or either of them, on the 1st day of February, 1935, or at all. They have no information as to whether or not the Sheriff of Wasatch County ever issued a certificate of sale on the note and mortgage mentioned in Plaintiffs' Complaint, and therefore they deny the same. They deny that plaintiffs, or either of them, is the legal owner and holder of said note and mortgage.

3.

Answering Paragraph 8 of Plaintiffs' Complaint, these answering defendants admit that the promissory note contained the provisions mentioned in Paragraph 8 of Plaintiffs' Complaint. They deny that the plaintiffs are owners of said note and mortgage. They admit that no interest has been paid on said note and mortgage and allege the fact to be that the whole of said note and mortgage, both principal and interest, have been cancelled and discharged as hereinafter alleged. They allege that plaintiffs are, and at all times mentioned in their Complaint have been without right or authority to declare the note and mortgage mentioned in their Complaint due by reason of the failure to pay the interest as provided, or at all. They deny that there is now due or
 72 owing by these answering defendants, or either of them, to the plaintiffs, the sum of \$15,000, together with interest thereon at the rate of seven percent per annum from the 1st day of October, 1934, or any other sum whatsoever.

4.

These answering defendants admit the allegations of Paragraph 9 of Plaintiffs' Com-

plaint, except that they deny that plaintiffs have any right, title or interest in the certificate of water stock mentioned and described in their Complaint.

5.

These answering defendants admit that the note and mortgage set out in Plaintiffs' Complaint contain the provision mentioned in Paragraph 10 of their Complaint. They have no information as to whether or not plaintiffs have agreed to pay their attorneys a reasonable attorney's fee and therefore they deny such allegation. They deny that \$750.00, or any sum, is a reasonable attorney's fee to be allowed plaintiffs as or for their attorney's fees.

6.

These answering defendants admit the allegations of Paragraph 11 of Plaintiffs' Complaint, excepting that they deny that plaintiffs have any right, title or interest in or to the note and mortgage mentioned in their complaint.

7.

Further answering Plaintiffs' Complaint these defendants allege that the note and mortgage mentioned and described in Plaintiffs' Complaint were made, executed and delivered to defendant Josie Baird Giles (Smith) the mortgagee therein named, as evidence of and security for the payment of the purchase price of the property described in said mortgage.

8.

That after said note and mortgage were so executed and delivered, and prior to July 7, 1934, defendant Josie Baird Giles (Smith) and

these answering defendants entered into an agreement whereby these answering defendants agreed to convey the property described in the mortgage set out in Plaintiffs' Complaint, to the defendant Elizabeth J. Baird, and defendant Josie Baird Giles (Smith) agreed to cancel and return the note and mortgage mentioned in Plaintiffs' Complaint and to release said mortgage of record. That at the time such agreement was so made and entered into, the said note and mortgage were in the possession of George B. Stanley, one of the attorneys for the plaintiffs in the present action. That the said George B. Stanley had possession of said note and mortgage as the attorney for these answering defendants and defendant Josie B. Giles Smith.

9.

73 That these answering defendants and defendant Josie B. Giles Smith, prior to the 7th day of July, 1934, demanded that the said George B. Stanley deliver to them the said note and mortgage, but he failed, neglected and refused to do so.

10.

That on or about the 7th day of July, 1934, the plaintiff herein brought an action against Josie Baird Giles (Smith) and J. Harold Giles, as alleged in Plaintiffs' Complaint; that in such action said George B. Stanley was the attorney for the plaintiffs; that at the time such action was so commenced, or soon thereafter, the said George B. Stanley, as attorney for the plaintiff in that action, caused to be issued an attachment out of the District Court of Wasatch County, and directed the Sheriff of Wasatch

County, Utah, to attach the note and mortgage which he, the said George B. Stanley, was then wrongfully retaining in his possession as the attorney for these answering defendants, and the defendant Josie Baird Giles Smith. That in compliance with such direction of George B. Stanley, while acting in the above mentioned capacities, as these answering defendants are informed and believe, and upon such information and belief, allege the fact to be, the said Sheriff of Wasatch County, Utah, pretended to levy upon the note and mortgage so held by said George B. Stanley, who thereupon delivered said note and mortgage to said Sheriff of Wasatch County, Utah.

11.

That after said sheriff pretended to levy upon the aforesaid note and mortgage in the manner above mentioned, the plaintiffs in their action against Josie Baird Giles and J. Harold Giles secured a judgment as in Plaintiffs' Complaint alleged.

12.

That after said judgment was so entered, to wit, on or about the date alleged in Plaintiffs' Complaint, the said Sheriff of Wasatch County, Utah, pretended to sell the note and mortgage mentioned and described in Plaintiffs' Complaint to these plaintiffs, who pretended to pay therefor the sum of \$100.00.

13.

74 These answering defendants are informed and believe and upon such information and belief allege the fact to be, that notice of the time and place of the pretended sale at which plain-

tiffs claim they purchased the note and mortgage mentioned in the complaint filed herein, was not given as by law provided, and no sale was had of said note and mortgage pursuant to any notice of sale.

14.

That pursuant to the agreement between these answering defendants and defendant Josie B. Giles Smith, as hereinbefore alleged, defendant Josie B. Giles Smith authorized and directed her attorney-in-fact, William H. Baird, to execute a release of the mortgage mentioned and described in Plaintiffs' Complaint, and such mortgage was, prior to the pretended purchase thereof by the plaintiffs herein, and on the 26th day of January, 1935, released by said William H. Baird, her attorney-in-fact, which said release was recorded on January 28, 1935 at 9:00 A. M. in Book 15 of Mortgages, Pages 36-37 of the records of the County Recorder of Wasatch County, Utah.

15.

That pursuant to said contract between these answering defendants and defendant Josie B. Giles Smith, they, these answering defendants, executed a deed to the defendant Elizabeth Baird and delivered the same to her, which deed was so executed on January 28, 1935 and recorded on the same date in the office of the County Recorder of Wasatch County, Utah, and that by reason of the execution and delivery of said deed to Elizabeth Baird, the note and mortgage mentioned in Plaintiffs' Complaint, and in compliance with the agreement set out hereinabove, the said note and mortgage has been fully paid and discharged.

Defendants deny each and every allegation of the complaint not herein admitted.

WHEREFORE, these answering defendants pray judgment that plaintiffs take nothing by their complaint; that the note and mortgage now held by the plaintiffs be surrendered to these answering defendants; and that they be awarded their costs herein expended.

Duly signed and verified.

Filed Nov. 16, 1938.

ANSWER AND CROSS-COMPLAINT

(TITLE OF COURT AND CAUSE).

Comes now J. Rulon Morgan and answering the Complaint filed herein, and as a cross-complaint against the defendants, Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as examiner in charge of the liquidation of the Bank of Heber City, he admits, denies and alleges as follows:

1.

70 That the defendant Elizabeth J. Baird is dead and this answering defendant and cross-complainant is the duly appointed, qualified and acting executor of the last will and testament of Elizabeth J. Baird, deceased. That by an order of this court heretofore made in this cause this answering defendant and cross-

complainant has been substituted as a party defendant in this cause.

2.

This answering defendant and cross-complainant adopts as a part of his answer herein the admissions, denials and allegations contained in the answer of the defendants Vernor E. Baird and Mary A. Baird and also the answer of defendant Josie Baird Giles Smith.

3.

This answering defendant and cross-complainant further alleges that during the year 1933 the Lake Creek Irrigation Company, a corporation, duly levied an assessment on the certificate of water stock mentioned in Plaintiffs' Complaint, duly advertised such certificate of stock for sale and sold the same to said Elizabeth J. Baird, who from the time of such purchase until her death was the owner of the water right represented by said certificate; that she paid the assessments levied against the water right represented by said certificate and that this answering defendant and cross-complainant has paid the assessments on the water right represented by said certificate since the death of Elizabeth J. Baird; that the water right represented by said certificate is now a part of the property of the estate of Elizabeth J. Baird, deceased.

Defendant denies each and every allegation of the said Complaint not herein admitted.

Duly signed and verified.

Filed November 16, 1938.

ANSWER

(TITLE OF COURT AND CAUSE).

80 Comes now J. Rulon Morgan for himself and as the surviving partner of the firm of Morgan & Morgan, a co-partnership, and answering Plaintiffs' Complaint he admits, denies and alleges as follows:

1.

He adopts, without repeating them, as a part of his answer herein, the denials, admissions and allegations of the answers of his co-defendants Vernor E. Baird and Mary A. Baird and Josie Baird Giles Smith.

2.

He admits that he is the surviving partner of the firm of Morgan & Morgan and that he claims an interest in the property mentioned and described in Plaintiffs' Complaint, and denies that such claim is subject and subordinate to the claimed lien of plaintiffs.

3

He further alleges that on January 26, 1935 the defendant Vernor E. Baird, for a valuable consideration, made, executed and delivered to A. B. Morgan and J. Rulon Morgan, doing business under the firm name and style of Morgan & Morgan, a promissory note in words and figures as follows, to wit:

\$5000.00 Provo, Utah, January 26, 1935

On or before one year after date, for value received, I, we or either of us promise to pay to A. B. Morgan and J. Rulon Morgan, doing business under the firm name and style of Morgan & Morgan or order, at Provo, Utah, the sum of Five

Thousand and no/100 Dollars, in United States lawful money, with interest thereon in like coin, payable quarter-yearly at the rate of seven percent per annum from date hereof until maturity, together with costs of collection, including a reasonable attorney's fee in case payment shall not be made at maturity. Any unpaid balance shall, after maturity, bear interest at the rate of 12 percent per annum until paid, both before and after judgment. If the interest is not paid when due, the legal holder hereof may declare the whole sum due and proceed by law to collect both principal and interest.

The makers and endorsers of this note each expressly waive demand, notice of non-payment and protest, and suit against the maker, and also agree that this note may be extended in whole or in part without their consent, at or after maturity, and hereby guarantee payment of this note at maturity or at any time thereafter.

It is agreed that any payment of principal or interest made hereon by any one of two or more makers shall serve to toll the statute of limitations as to all makers.

VERNOR E. BAIRD.

4.

That to secure the payment of said promissory note the said defendant Vernor E. Baird made, executed and delivered to A. B. Morgan and J. Rulon Morgan, a co-partnership doing business under the firm name and style of Morgan & Morgan, a mortgage upon the real

estate and shares of water stock mentioned in Plaintiffs' Complaint.

5.

81 That the mortgage so executed was duly acknowledged so as to entitle it to be recorded, and the same was recorded on January 29, 1935 at 9:00 A. M. in Book 15 of Mortgages, Pages 37-38 in the office of the County Recorder of Wasatch County, Utah.

6.

That nothing has been paid upon said note and mortgage.

Defendant denies each and every allegation of Plaintiffs' Complaint not herein admitted.

WHEREFORE, this answering defendant prays that the plaintiffs take nothing by their complaint and that he be awarded his costs herein expended.

Duly signed and verified.

Filed November 16, 1938.

ANSWER OF DEFENDANT JOSIE BAIRD
GILES SMITH.

(TITLE OF COURT AND CAUSE).

Comes now the defendant Josie Baird Giles Smith and answering Plaintiffs' Complaint, she admits, denies and alleges:

1

She adopts, without repeating them, as a part of her answer the admissions, denials and allegations contained in the answer of her co-

defendants Vernor E. Baird and Mary A. Baird.

2.

83 As a further answer to Plaintiffs' Complaint she alleges that she received the note and mortgage set out in Plaintiffs' Complaint from Vernor E. Baird and Mary A. Baird as evidence of and security for the payment of the purchase price of the land and water right represented by the certificates mentioned in Plaintiffs' Complaint.

3.

That soon after the execution of said note and mortgage the values of land, farm products and livestock so depreciated in value that it became impossible for the defendants Vernor E. Baird and Mary A. Baird to pay such note and mortgage. This answering defendant being unable to secure any payment on the note and mortgage so executed by Vernor E. Baird and Mary A. Baird was compelled to borrow money for the support of herself and minor child, and did borrow large sums of money from her mother, Elizabeth J. Baird, one of the defendants in this action; that at the time and times this answering defendant borrowed said monies from her mother, Elizabeth J. Baird, one of the defendants herein, she, this answering defendant, promised and agreed that she would repay said monies out of the money payable by Vernor E. Baird and Mary A. Baird on the note set out in Plaintiffs' Complaint. That said Vernor E. Baird and Mary A. Baird made no payments upon the note and mortgage, and this answering defendant, rather than bring an

87 action upon said note and foreclose her mortgage, entered into an agreement with her co-defendants Vernor E. Baird and Mary A. Baird whereby it was agreed that the said note should be cancelled and returned to said Vernor E. Baird and Mary A. Baird and the said Vernor E. Baird and Mary A. Baird, in consideration of the cancellation and return of said note and the release of said mortgage, agreed to convey the property mentioned in said mortgage to the defendant Elizabeth J. Baird, nominee of this answering defendant. This answering defendant was from 1926 to the fall of 1933 also indebted to said Elizabeth J. Baird in the additional sum of \$3500.00 together with the interest thereon on account of a promissory note which she, this answering defendant, for a valuable consideration made, executed and delivered to said Elizabeth J. Baird in about the year 1926, and which said note and the interest thereon has not been paid, except in the manner herein alleged. That this answering defendant, prior to July 7, 1934, entered into a contract with her mother, Elizabeth J. Baird, whereby this answering defendant agreed to cause the property described in said mortgage to be conveyed to said defendant Elizabeth J. Baird in full satisfaction of the indebtedness which this answering defendant owed to defendant Elizabeth J. Baird, who agreed to accept conveyance of such property in full payment of said indebtedness. That in pursuance of such agreement the deed and release mentioned in the Answer of Vernor E. Baird and Mary A. Baird were executed.

WHEREFORE, this answering defendant prays that plaintiffs take nothing by reason of

their Complaint, and that she be awarded her costs herein expended.

Duly signed and verified.

Filed Nov. 16, 1938.

ANSWER OF BANK COMMISSIONER,
(RULON F. STARLEY) AND SPENCER
C. TAYLOR, TO PLAINTIFFS' COM-
PLAINT.

1.

Admit Paragraphs 1, 2 and 3 of Plaintiffs' Complaint.

2.

Deny Paragraphs 4, 5, 6, 7, 8 and 10 for lack of information.

3.

86 Answering Paragraph 9, defendants admit that certificates 64 and 68, representing shares of stock in the Lake Creek Irrigation Co., were delivered by J. Harold Giles to the Bank of Heber City and that these defendants are now in possession of said certificates, but deny each and every other allegation in said paragraph contained.

4.

Answering Paragraph 11, defendants admit that they claim some interest in the certificates above described, and in that connection allege that any claim of plaintiffs herein to said certificates is subject and subordinate to the

claim of interest of these defendants. Deny remaining allegations.

5.

Deny each and every allegation of Complaint not admitted or qualified.

6.

FURTHER ANSWERING said Complaint and as a defense thereto, these defendants allege that prior to the recording of the alleged mortgage described in Paragraph 6 of Plaintiffs' Complaint, that the water certificates herein described were pledged to the Bank of Heber City by J. Harold Giles and Josie Baird Giles (Smith), his wife, to secure a debt owed by them to said bank, which indebtedness is past due and still owing, and that there is now pending in this Court an action praying judgment upon said indebtedness and for a foreclosure of the lien of said pledge.

WHEREFORE, defendants pray that Plaintiffs' Complaint be dismissed, etc.

DRAPER, BOYDEN & DRAPER,
AND L. C. MONTGOMERY,
Defendants' Attorneys.

Duly verified and served.
Filed November 26, 1938.

AMENDED CROSS-COMPLAINT (TITLE OF COURT AND CAUSE).

89 Comes now J. Rulon Morgan as executor of the estate of Elizabeth J. Baird, deceased, and as a Cross-Complaint against the defendants, Bank of Heber City, Rulon F. Starley, as Bank Commissioner of the State of Utah, and Spen-

cer C. Taylor, as examiner in charge of the liquidation of the Bank of Heber City, complains and alleges:

1.

That the defendant Elizabeth J. Baird is dead and this cross-complainant is the duly appointed, qualified and acting executor of her last will and testament.

2.

That heretofore this cross-complainant has been, by an order of this court, substituted as a party defendant in the above entitled cause, in lieu of the defendant Elizabeth J. Baird, deceased.

3.

That the Bank of Heber City is a banking corporation organized and existing under the laws of the State of Utah, and that on or about the 29th day of August, 1933, by resolution of its board of directors, requested said Bank Commissioner of the State of Utah, in accordance with the laws of the State of Utah applicable thereto, to take over the business and property of said bank for liquidation, for the reason that said bank was insolvent, and on said day said bank commissioner of the State of Utah, by reason of the fact that the capital stock of said bank had been impaired and was no longer able to pay its depositors under the conditions and terms under which said deposits were made, took possession of said banking corporation for the purpose of liquidation, and since said time the Bank Commissioner of the State of Utah has and still is continuing to

hold for the purpose of liquidation of said bank all of the property of said bank.

4.

That on October 10, 1929, Josie Baird Giles Smith, one the defendants herein, and Harold Giles, who was then the husband of Josie Baird Giles (Smith), made, executed and delivered to Vernor E. Baird, one of the defendants herein, a warranty deed whereby certain lands in Wasatch County, Utah, together with "49 shares of primary water right, 34 shares of first class high water right, 23 shares of second class high water right and 8 shares of third class high water right of the Lake Creek Irrigation Company, an irrigation company duly organized and existing under the laws of the State of Utah" were conveyed to said Vernor E. Baird.

5.

90 That the deed of conveyance whereby Josie Baird Giles (Smith), one the the defendants herein, and Harold Giles, conveyed the water right above described to Vernor E. Baird as hereinbefore alleged, was duly acknowledged so as to entitle it to be recorded and the same was on November 12, 1929, duly recorded in Book 17 of Deeds at Page 551 in the office of the County Recorder of Wasatch County, Utah.

6.

That immediately after said water right was so conveyed the said Vernor E. Baird began to use the water so conveyed to him to irrigate his lands and continued to so use such water for irrigation purposes until the irrigation season of 1935.

7.

That on January 28, 1935, Vernor E. Baird, one of the defendants herein, made, executed

and delivered to Elizabeth J. Baird, one of the defendants named herein, a warranty deed whereby certain lands in Wasatch County, Utah, together with "49 shares of primary water right, 34 shares of first class high water right, 23 shares of second class high water right, and 8 shares of third class high water right of the above mentioned Lake Creek Irrigation Company, a corporation" were conveyed to the above mentioned Elizabeth J. Baird.

8.

That the deed of conveyance whereby Vernon E. Baird conveyed to Elizabeth J. Baird the water right as hereinbefore alleged, was duly acknowledged so as to entitle it to be recorded, and the same was on January 29, 1935, duly recorded in Book 18 of Deeds at Page 513 of the records of the County Recorder of Wasatch County, Utah.

9.

That after the conveyance of the water right above mentioned was made to Elizabeth J. Baird, and for some years prior thereto and up to the time of her death, the said Elizabeth J. Baird used the water right so conveyed to her as hereinbefore alleged, for the irrigation of her lands, and since the death of the said Elizabeth J. Baird, this cross-complainant, J. Rulon Morgan, has caused the above mentioned water right to be used for the irrigation of lands of the estate of Elizabeth J. Baird, deceased.

10.

This cross-complainant is informed and believes, and upon such information and belief, alleges the fact to be that the primary water

right hereinbefore mentioned as having been conveyed by Josie Baird Giles (Smith), one of the defendants herein, and Harold Giles to Vernor E. Baird and by him conveyed to Elizabeth J. Baird, is, and at all times prior to 1933, was represented by certificates numbered 64 and 68, which are now in the possession of the cross-defendants herein.

11.

91 That during the year 1933 the Lake Creek Irrigation Company, a corporation, duly and legally levied an assessment against the water stock represented by certificates numbered 64 and 68, advertised said stock for sale and sold the same to Elizabeth J. Baird, who ever since the date of such sale and up until the time of her death, paid the assessments upon said water stock and used the same; and ever since her death this cross-complainant has paid the water assessment which has been annually levied against said water stock and has used the same to irrigate the lands of the estate of Elizabeth J. Baird, deceased.

12.

That the certificates numbered 64 and 68, purporting to represent 49 shares of primary water right in the Lake Creek Irrigation Company, were delivered by Harold Giles to the defendant Bank of Heber City. That the delivery of said certificates was wrongful and without the knowledge or consent of the rightful owner thereof, and defendant Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in charge of

the liquidation of the Bank of Heber City, are, and since they acquired the possession thereof, have been wrongfully in the possession of said certificates. That the right of said defendants in and to said water stock is without any right, title or interest, and is subordinate to the right of this Cross-Complainant as Executor of the last Will and Testament of Elizabeth J. Baird, deceased.

13.

That ever since October 10, 1929, this Cross-Complainant and Elizabeth J. Baird and her predecessor in interest, Vernor E. Baird, have, under claim of right, open and notoriously used the water right at one time represented by certificates numbered 64 and 68 in the Lake Creek Irrigation Company, a corporation, for the irrigation of lands belonging to the said Elizabeth J. Baird and her predecessor in interest, Vernor E. Baird, and that the use of said water has been beneficial and has been adverse to any and all claims of the defendants, Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah and Spencer C. Taylor, as examiner in charge of the liquidation of the Bank of Heber City.

14.

92 That the Cross-Defendants, Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor as examiner in charge of the liquidation of the Bank of Heber City, nor either of them, have no right, title or interest in or to the water represented by certificates numbered 64 and 68 of the Lake Creek Irrigation Com-

pany, a corporation, and their withholding the said certificates is unlawful.

WHEREFORE, this Cross-Complainant prays judgment:

1.

That this court make and enter a decree against the defendants, Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah and Spencer C. Taylor as examiner in charge of the liquidation of the Bank of Heber City, declaring that such defendants have no right, title or interest in the water stock heretofore represented by certificates numbered 64 and 68 in the Lake Creek Irrigation Company, a corporation, and that the water represented by said certificates is a part of the estate of Elizabeth J. Baird, deceased.

2.

That this Cross-Complainant be awarded his costs against the defendants, Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as examiner in charge of the liquidation of the Bank of Heber City.

3.

That such other and further order be made as is just and proper in the premises.

ELIAS HANSEN,
Attorney for Cross-Complainant J. Rulon Morgan.

Duly verified.

Filed January 21, 1'

REPLY TO ANSWER OF J. RULON MORGAN, AS ADMINISTRATOR OF THE ESTATE OF ELIZABETH J. BAIRD.

(TITLE OF COURT AND CAUSE).

- 94 Replying to the Answer of defendant, J. Rulon Morgan, as administrator of the Estate of Elizabeth J. Baird, plaintiffs admit, deny and allege:

1.

Replying to Paragraph 2 of said Answer, plaintiffs adopt Paragraphs 1 to 5 inclusive of their reply to the Answer of Vernor E. Baird and Mary A. Baird.

GEORGE B. STANLEY,
CHENEY, JENSEN, MARR &
WILKINS,

Attorneys for Plaintiffs

Duly verified.

Filed February 7, 1939.

REPLY TO ANSWER OF VERNOR E. BAIRD AND MARY A. BAIRD.

(TITLE OF COURT AND CAUSE).

- 96 Come now the plaintiffs above named and for reply to the Answer of defendants, Vernor E. Baird and Mary A. Baird, admit, deny and allege as follows:

1.

Replying to that portion of Paragraph 3 of said Answer which alleges that "the whole of said note and mortgage, both principal and

interest, have been cancelled and discharged as hereinafter alleged," plaintiffs admit that there appears of record a purported release of mortgage dated January 26, 1935 in which it is recited that William H. Baird, attorney in fact for Josie Baird Giles, declares the mortgage sued upon in plaintiffs' complaint, together with the debts thereby secured, fully paid, satisfied and discharged, but plaintiffs deny that said purported release of mortgage constitutes a release of said mortgage or that Josie Baird Giles had any right or power to release said mortgage. Plaintiffs further allege that said release of mortgage and the purported power of attorney are void by reason of the provisions of Section 33-5-1, Revised Statutes of Utah, 1933.

2.

Replying to Paragraph 8 of the defendants' Answer, plaintiffs deny that said defendants entered into an agreement whereby said defendants agreed to convey the property described in the mortgage set out in plaintiffs' complaint, to Elizabeth J. Baird, as set forth in said paragraph, or that defendant Josie Baird Giles Smith agreed to cancel and return the mortgage mentioned in plaintiffs' complaint and to release said mortgage of record. Plaintiffs further allege that if any such agreement or agreements were made that said agreement or agreements are void by reason of Section 33-5-1, Revised Statutes of Utah, 1933.

97 Further answering that portion of said Paragraph 8 wherein it is alleged that said note and mortgage were in the possession of

George B. Stanley, one of the attorneys for the plaintiffs in the present action, and that said George B. Stanley had possession of said note and mortgage as attorney for said defendants and Josie Baird Giles Smith, plaintiffs deny that said note and mortgage were held by said George B. Stanley, as attorney for Vernor E. Baird, Mary A. Baird and Josie Baird Giles Smith, or for any of said defendants. Plaintiffs admit that said George B. Stanley had possession of said promissory note and that he, prior to the commencement of any action against Josie Baird Giles Smith and prior to the attachment of said promissory note, tendered the delivery of said note to Josie Baird Giles Smith, requesting that she call and get said promissory note. That said Josie Baird Giles Smith failed and refused to call for said promissory note.

3.

Replying to Paragraph 13 of said Answer, plaintiffs deny that notice of said sale was not given as provided by law, but in this connection allege that notice of said sale was given in the manner and as provided by the laws of the State of Utah, notice being given that said sale would be held January 28, 1935 at 10 o'clock A. M. Plaintiffs further allege the Sheriff of Wasatch County postponed said sale from the 28th day of January to the 29th day of January, 1935 at 9:30 A. M. That said postponement was made at the request of J. Rulon Morgan, one of the attorneys of record for said defendants.

4.

Replying to Paragraph 14 of said Answer, plaintiffs deny that there was any agreement between Vernor E. Baird and Mary A. Baird

and Josie Baird Giles Smith for the release of the mortgage sued upon in plaintiffs' complaint, or that Josie Baird Giles Smith authorized and directed her attorney in fact, William H. Baird, to execute a release of the mortgage mentioned and described in plaintiffs' complaint, but plaintiffs allege that if any such agreement existed, that said agreement was void by reason of Section 33-5-1, Revised Statutes of Utah, 1933. Plaintiffs further deny that said mortgage sued upon in plaintiffs complaint was, prior to the purchase thereof by the plaintiffs, released by William H. Baird as attorney in fact for Josie Baird Giles Smith, or that said mortgage was released, or has been released by anyone having authority to release the same. Plaintiffs allege that said purported release dated January 26, 1935 and recorded on January 28, 1935 in Book 15 of Mortgages at Pages 36 and 37, if otherwise valid, which plaintiffs do not admit, is void by reason of the provisions of Section 33-5-1, Revised Statutes of Utah, 1933.

Further answering paragraphs 8 and 14 of said answer, plaintiffs allege that if there were any agreements to convey said property and release said mortgage, as therein alleged, or any cancellation or release of said mortgage, all of which plaintiffs deny, that said agreements and release and all instruments or documents executed pursuant thereto are void as against plaintiffs for the reason that prior to the time of the alleged agreements, Josie Baird Giles (Smith) was indebted to plaintiffs upon the promissory notes sued upon, as set forth in Paragraph 7 of Plaintiffs' Complaint. That said agreements and release, if any, were made

without any consideration either in whole or in part, and for the purpose of hindering, delaying and defrauding creditors, and particularly the plaintiffs herein. That Elizabeth J. Baird is the mother of Josie Baird Giles Smith, and Vernor E. Baird is the brother of Josie Baird Giles Smith. That Josie Baird Giles Smith and J. Harold Giles were prior to and at the time of said agreements and release, if any, and became by reason of said agreements and releases, if any, and still are, insolvent. That if in fact defendant, Josie Baird Giles Smith did release said note and mortgage, plaintiffs are without any adequate remedy at law.

5.

Answering Paragraph 15 of said Answer, plaintiffs admit that there appears of record a warranty deed from Vernor E. Baird, an unmarried man, to Elizabeth J. Baird, said deed being dated January 28, 1935 and recorded January 29, 1935 in Book 18, Page 313 of Deeds, but they deny that said deed was executed and delivered pursuant to any agreement made prior to July 7, 1934; plaintiffs allege that said deed is subsequent and subordinate to the mortgage in plaintiffs' suit sued upon and to the rights
 8 of plaintiff under and by virtue of said mortgage.

GEORGE B. STANLEY,
 CHENEY, JENSEN, MARR &
 WILKINS,

Attorneys for Plaintiffs.

Duly verified.

Filed February 7, 1939..

REPLY TO ANSWER OF DEFENDANT
JOSIE BAIRD GILES SMITH.

(TITLE OF COURT AND CAUSE).

100 Replying to the Answer of defendant, Josie Baird Giles Smith, plaintiffs admit, deny and allege:

1.

For reply to Paragraph 1 of said Answer, plaintiffs adopt Paragraphs 1 to 5, inclusive, of their reply to the Answer of Vernor E. Baird and Mary A. Baird.

2

Replying to Paragraph 3 of said Answer, plaintiffs deny that any agreement or agreements were entered into as in said paragraph set forth; plaintiffs allege that if any such agreements were made that same are void by reason of Section 33-5-1, Revised Statutes of Utah, 1933.

Further answering Paragraph 3 of said Answer, plaintiffs allege that if there were any agreements to convey said property and release said mortgage, as therein alleged, or any cancellation or release of said mortgage, all of which plaintiffs deny, that said agreements and release and all instruments or documents executed pursuant thereto are void as against plaintiffs for the reason that prior to the time of the alleged agreements, Josie Baird Giles (Smith) was indebted to plaintiffs upon the promissory notes sued upon, as set forth in Paragraph 7 of Plaintiffs' Complaint. That said agreements and release, if any, were made without consideration either in whole or in part, and for the purpose of hindering, delay-

ing and defrauding creditors, and particularly the plaintiffs herein. That Elizabeth J. Baird, is the mother of Josie Baird Giles (Smith) and Vernor E. Baird is the brother of Josie Baird Giles (Smith). That Josie Baird Giles (Smith) and J. Harold Giles were prior to and at the time of said agreements and release, if any, and became by reason of said agreements and releases, if any, and still are, insolvent. That if in fact defendant, Josie Baird Giles (Smith) did release said note and mortgage, plaintiffs are without any adequate remedy at law.

GEORGE B. STANLEY,
CHENEY, JENSEN, MARR &
WILKINS,

Attorneys for Plaintiffs.

Duly verified.

Filed February 7, 1939.

REPLY TO ANSWER OF J. RULON
MORGAN.

(TITLE OF COURT AND CAUSE)

102 For reply to Answer of J. Rulon Morgan for himself and as surviving partner of Morgan & Morgan, a co-partnership, plaintiffs admit, deny and allege as follows:

1.

For reply to Paragraph 1 of said Answer, plaintiffs adopt Paragraphs 1 to 5, inclusive, of their Reply to the Answer of Vernor E. Baird and Mary A. Baird.

GEORGE B. STANLEY,
CHENEY, JENSEN, MARR &
WILKINS,

Attorneys for Plaintiffs.

Duly verified.

Filed February 7, 1939.

- 104 A Demurrer was filed February 9, 1939 by the State Bank Commissioner to the Amended Cross-Complaint of J. Rulon Morgan, as executor of the Estate of Elizabeth J. Baird, deceased.
- 106 The Demurrer was overruled and notice thereof given and filed July 5, 1939.
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ANSWER TO CROSS-COMPLAINT OF J. RULON MORGAN.

Comes now Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, examiner in charge of the liquidation of the Bank of Heber City, and for answer to the Cross-Complaint of J. Rulon Morgan, on file herein, admit, deny, and allege as follows:

1.

- 107 Respecting the allegations contained in Paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11, these defendants deny that they have any knowledge or information thereof sufficient to form a belief.

2.

Respecting the allegations contained in Paragraph 3, these defendants admit the same.

3.

Respecting the allegations contained in Paragraph 12 of said Cross-Complaint, these defendants admit that certificates numbered

64 and 68 were issued by the Lake Creek Irrigation Company and that said certificates indicate that the owner thereof has 49 shares of stock in said company; that these defendants have possession of said certificates, but they deny each and every other allegation in said paragraph contained.

4.

Respecting the allegations contained in Paragraphs 13 and 14 of said Cross-Complaint, these defendants deny each and every allegation therein contained.

5.

These defendants specifically deny each and every allegation contained in said Cross-Complaint not herein admitted or otherwise qualified.

WHEREFORE, having fully answered said Cross-Complaint, these defendants pray that said cross-complainant take nothing by his Cross-Complaint and that the same be dismissed and that these defendants have their costs herein expended and for such other and further relief as to the court may seem fair and proper in the premises.

L. C. MONTGOMERY,
 DRAPER, BOYDEN & DRAPER,
 By D. M. DRAPER,
 Attorneys for Defendants
 Answering Herein.

Duly verified.

Filed July 14, 1930

PETITION OF JOSIE BAIRD GILES SMITH
AND J. RULON MORGAN.

(TITLE OF COURT AND CAUSE).

112 Come now Josie Baird Giles Smith and J. Rulon Morgan, as the Eexecutors of the Last Will and Testament of Elizabeth J. Baird, Deceased, and petition this court, and in the event the findings of fact, conclusions of law and judgment which the court has heretofore indicated it will make in the above entitled cause are entered, petition this court to limit the property which shall be sold to satisfy the judgment of the plaintiffs in the above entitled action to the property or money that shall remain after deducting homestead exemptions to which Josie Baird Giles was entitled at the time of the alleged levy and the sale of the promissory note made and executed by Vernor E. Baird and his wife, Mary A. Baird.

Your Petitioners as basis for the claim of a homestead exemption, represent and allege as follows:

1.

That from October 10, 1929, up to July 16, 1934, Josie Baird Giles and J. Harold Giles were husband and wife and that there was one minor child, the issue of said marriage, who at all times from the date of her birth to and including February 1, 1935 resided with said Josie Baird Giles and was dependent upon her for her support. That prior to the time that Josie Baird Giles made, executed and delivered the warranty deed to Vernor E. Baird on October 10, 1929, the Petitioner Josie Baird Giles and her husband resided upon the property men-

tioned and described in said warranty deed and used the same as her home and as a means of support of the Petitioner Josie Baird Giles and J. Harold Giles and the child, the issue of said marriage; and that the Petitioner Josie Baird Giles also used the water right represented by the certificate of capital stock and the water right appurtenant to said lands with which to irrigate said lands.

2.

That neither Josie Baird Giles or J. Harold Giles at any time prior to February 1, 1935, owned any real estate other than that mentioned.

3.

That Josie Baird Giles was at all times prior to February 1, 1935, an actual and bona fide resident of Wasatch County, Utah.

4.

That when on October 10, 1929, Josie Baird Giles made, executed and delivered to Vernor E. Baird a deed to the property mentioned and described in the complaint filed herein, the said Vernor E. Baird and his wife, Mary A. Baird made and delivered to George B. Stanley the note and mortgage mentioned and set out in the complaint filed herein.

5.

That George B. Stanley failed, refused and neglected to deliver said note or mortgage to the Petitioner Josie Baird Giles and that the said Petitioner Josie Baird Giles at no time received any consideration for the land and water stock which she conveyed to Vernor E. Baird, except-

ing that she did receive the sum of \$10.00 on such note.

6.

That at the time the plaintiffs pretended to levy an attachment on the note and mortgage mentioned in Plaintiffs' Complaint, the same was exempted under the provisions of Revised Statutes of Utah, 1933, 38-0-2 and Revised Statutes of Utah, 1933, 38-0-19.

7.

That at the time Vernor E. Baird conveyed the property described in the complaint herein to Elizabeth J. Baird, the said Josie Baird Giles was entitled to a homestead exemption of her interest in said property and that the said exemption to which Josie Baird Giles was entitled passed to Elizabeth J. Baird and, in her hands, is exempt from any and all claims of the plaintiffs herein.

WHEREFORE, your Petitioners pray that in the event Findings of Fact, Conclusions of Law and a Decree are entered as indicated by this court in its oral decision, that such findings and decree award to the Petitioners herein an amount of money equal to the exemption to which Josie Baird Giles was entitled at the time of the pretended attachment and sale of the note mentioned in Plaintiffs' Complaint, towit, the sum of \$3050.00.

ELIAS HANSEN,
Attorney for Petitioners.
J. RULON MORGAN,
JOSIE BAIRD GILES SMITH,
Petitioners.

Duly verified.

Filed December 13, 1939.

ANSWER TO PETITION
(TITLE OF COURT AND CAUSE).

115 Come now plaintiffs above named and for answer to the Petition of Josie Baird Giles Smith and J. Rulon Morgan, as the Executors of the Last Will and Testament of Elizabeth J. Baird, admit, deny and allege as follows:

1

Answering Paragraphs 1, 2 and 3 of said Petition plaintiffs allege that they have no information sufficient to form a belief, and upon this ground and for this reason deny the same.

2.

Answering Paragraph 4 of said Petition plaintiffs admit the same except that George B. Stanley tendered said note to Josie Baird Giles and requested that she call and receive the same and that at no time did George B. Stanley refuse to deliver said promissory note to Josie Baird Giles Smith. Plaintiffs further allege that George B. Stanley delivered said mortgage to said Vernor E. Baird, who recorded the same.

3.

Answering Paragraph 5 of said Petition plaintiffs deny the same except that they admit that \$10.00 was paid on said promissory note.

4.

Answering Paragraphs 6 and 7 of said Petition plaintiffs deny the same.

Further answering said Petition plaintiffs refer to their Complaint on file herein and

adopt said Complaint as if set forth at length herein. Plaintiffs further allege that Josie Baird Giles Smith, prior to the sale of said promissory note as set forth in said Complaint had knowledge of such sale and that no claim of exemption by reason of homestead or otherwise was, prior to said sale or at any time prior to the filing of the Petition herein referred to, made by said Josie Baird Giles Smith. That Josie Baird Giles Smith was on the 16th day of July, 1934, divorced from J. Harold Giles and the said Josie Baird Giles Smith thereafter in the year 1934, or the year 1935, removed to the State of California and established her residence in that State. That she is not now and for at least one year prior to the filing of her Petition has not been a resident of the State of Utah.

WHEREFORE, plaintiffs pray that the Petition of Josie Baird Giles Smith and J. Rulon Morgan, as Executors of the Last Will and Testament of Elizabeth J. Baird be dismissed. That no claim of homestead be allowed to said defendants and that judgment and decree be entered in accordance with former order of this court. Plaintiffs pray for such other and further relief as to this court may seem proper.

A. C. MOULTON,
CHENEY, JENSEN, MARR &
WILKINS,
GEORGE B. STANLEY,
Attorneys for Plaintiffs.

Duly verified.

Filed December 22, 1939.

STIPULATION

(TITLE OF COURT AND CAUSE).

117 It is Hereby Stipulated by and between the above entitled plaintiffs and defendants and cross-complainant and cross-defendants, through their respective attorneys thereunto duly authorized, that the above entitled cases being numbered 1410 Civil and 1266 Civil in the records of the County Clerk of Wasatch County, may be consolidated for all purposes and that all pleadings in said respective cases shall stand as the pleadings in said consolidated action and that the evidence taken at the trial of said cases may be considered as evidence in said cases and that the court shall make Findings of Fact upon all of the issues involved in said cases and that there shall be but one Decree.

Dated this 13th day of December, 1939.

Signed by All Attorneys on Behalf of Their Respective Clients.

ORDER

On the above and foregoing Stipulation, It is Hereby Ordered that Causes No. 1410 Civil and No. 1266 Civil, above entitled, be and they are hereby consolidated into one action in this court and that all pleadings in the respective cases shall stand as pleadings in the consolidated action and there shall be entered but one Findings of Fact, Conclusions of Law and Decree herein.

Dated this 22d day of December, 1939.

DALLAS H. YOUNG, Judge.

Filed December 22, 1939.

STIPULATION OF THE FACTS
(TITLE OF COURT AND CAUSE).

122A It is hereby stipulated by and between Bank of Heber City, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, Examiner in charge of the liquidation of the Bank of Heber City, by their attorneys, Delbert M. Draper, of the firm of Draper, Boyden & Draper; A. D. Moulton and E. Dewey Moulton, by their attorney, Paul B. Cannon of the firm of Cheney, Jensen, Marr & Wilkins, and George B. Stanley; and Josie Baird Giles Smith and J. Rulon Morgan, as Executors of the Last Will and Testament of Elizabeth J. Baird, deceased, by their attorneys, Elias Hansen and J. Rulon Morgan, all parties in the above entitled actions, as follows:

That the two petitions of Josie Baird Giles Smith and J. Rulon Morgan, as the Executors of the Last Will and Testament of Elizabeth J. Baird, deceased, seeking to impress with a homestead exemption the note, land and water stock involved in the above entitled actions, may be disposed of by the court upon the allegations of the petitions, the answers thereto and the evidence heretofore received in the above entitled action, together with the following facts which the parties hereto stipulate are facts:

1.

122B That from and prior to October 10, 1929, up to July 16, 1934, Josie Baird Giles and J. Harold Giles were husband and wife and that there was one minor child, the issue of said marriage, who at all times from the date of her

birth to and including September 1, 1935, resided with said Josie Baird Giles Smith and was dependent upon her mother for support and maintenance. That the water right represented by the certificates of capital stock referred to in the evidence in this case and mentioned in the warranty deed referred to, has at all times been used to irrigate the lands mentioned and described in the warranty deed which Josie Baird Giles and her former husband, J. Harold Giles, executed and delivered to Vernor E. Baird.

2.

That at the time of the execution of the said warranty deed by Josie Baird Giles and her husband, J. Harold Giles to, Vernor E. Baird, neither the said Josie Baird Giles nor her then husband, J. Harold Giles, were the owners of any real estate other than that so conveyed.

3

That at all times prior to January 1, 1936, Josie Baird Giles was an actual and bona fide resident of Wasatch County, Utah.

4.

That since on or about January 1, 1936, Josie Baird Giles has not been a resident of the State of Utah.

That any other fact or facts which the court may deem material to a proper disposal of the petitions filed herein may be by the court found from the evidence introduced at the trial of the above entitled causes.

Dated this day of January, 1940.

Signed by All the Attorneys for Their Respective Clients.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(TITLE OF COURT AND CAUSE).

123 The above entitled causes, having been consolidated for trial pursuant to stipulation of counsel for the parties in each cause, and the order of this court, based upon said stipulation, came on regularly for trial on the 11th day of September, 1939, before the court sitting without a jury and continued through the 18th day of September, 1939, at the courtroom of Wasatch County Courthouse, Heber City, Utah. L. C. Montgomery and D. M. Draper of the firm of Draper, Boyden & Draper appeared for Bank of Heber City, Rulon F. Starley as Bank Commissioner of the State of Utah and Spencer C. Taylor, as Examiner in charge of liquidation of the Bank of Heber City in all of the above causes, whether they appeared therein as plaintiffs, defendants, or cross-defendants, and Paul B. Cannon of the firm of Cheney, Jensen, Marr & Wilkins, and George B. Stanley appeared for the plaintiffs, A. C. Moulton and E. Dewey Moulton in the cause numbered 1410 Civil, and Elias Hansen and J. Rulon Morgan appeared for the defendants, Vernor E. Baird, Mary A. Baird, J. Rulon Morgan, Josie Baird Giles Smith, J. Rulon Morgan as a surviving partner of Morgan & Morgan, and J. Rulon Morgan as Executor of the Estate of Elizabeth J. Baird in the above entitled cause, numbered 1410 Civil, and for the defendants, J. Harold Giles and Josie Baird Giles, in the above named cause, numbered 1266 Civil. The defendants, Arthur Duke, Eulean Duke, Ray F. Smith, and J. Harold Giles in cause 1410 Civil were served with summons and appeared by filing a demurrer

to plaintiffs' complaint, in cause numbered 1410 Civil, which demurrer was overruled, but said defendants failed to file an answer to the complaint in said 1410 Civil, and their default has been entered herein. Counsel for the parties as listed above stipulated that a single set of Findings of Fact and Conclusions of Law might be made and entered by the court, covering all the issues raised in all the above-entitled causes, and the court heard the testimony of witnesses and the evidence submitted by the parties to said causes in support of their respective allegations, and the causes were fully argued by counsel and all of said causes were submitted to the court for its decision. Thereafter petitions were filed claiming homestead rights by Josie Baird Giles Smith and J. Rulon Morgan, as Executors of the Last Will and Testament of Elizabeth J. Baird, deceased, to which petitions answers were filed by Rulon F. Starley, State Bank Commissioner of the State of Utah and Spencer C. Taylor, as Examiner in charge of the liquidation of the Bank of Heber City and A. C. Moulton and E. Dewey Moulton, which matter came on before the court for hearing on December 22, 1939, it being stipulated that said homestead claims might be decided upon the evidence already before the court and additional facts stipulated in writing and filed by counsel. The court now being fully advised in the premises and pursuant to the stipulations of counsel, as aforesaid, makes and files its Findings of Fact on the issues involved in all of said causes as follows:

FINDINGS OF FACT

1.

That Rulon F. Starley and Spencer C. Taylor were substituted for John A. Malia and

Herbert Taylor, respectively, as plaintiffs in cause 1266 Civil on order of this court duly made and entered; and that J. Rulon Morgan, Executor of the Estate of Elizabeth J. Baird, was substituted for Elizabeth J. Baird, as defendant in cause 1410 Civil.

2.

That Vernor E. Baird and Mary A. Baird were husband and wife on the 10th day of October, 1929, but that thereafter they were divorced but subsequently were remarried, and now are husband and wife; that Arthur Duke and Eulean Duke are husband and wife; that J. Harold Giles and Josie Baird Giles were husband and wife from December 18, 1924 to July 16, 1934, on which latter date they were divorced and since said time have not been husband and wife; that after her divorce the said Josie Baird Giles married Ray F. Smith and is now known as Josie Baird Giles Smith.

3.

That Rulon F. Starley is the duly appointed, qualified and acting Bank Commissioner of the State of Utah and Spencer C. Taylor is the duly appointed, qualified and acting Bank Examiner in charge of liquidation of the Bank of Heber City.

4.

That the Bank of Heber City is a banking corporation organized and existing under the laws of the State of Utah and on or about the 29th day of August, 1933 by resolution of its board of directors requested said Bank Commissioner of the State of Utah, in accordance with the laws of the State of Utah applicable thereto, to take over the business and property

of said bank for liquidation for the reason that said bank was insolvent, and on said day said Bank Commissioner of the State of Utah by reason of the fact that the capital stock of said bank had been impaired and it was no longer able to pay its depositors under the conditions and terms under which said deposits were made, did take possession of said banking corporation for the purpose of liquidation and since said time the Bank Commissioner of the State of Utah has been and still is holding, for the purpose of liquidation for said bank, all of the property of said bank whatsoever.

5.

That Morgan & Morgan was, on the 26th day of January, 1935 a partnership, the members of said partnership being A. B. Morgan and J. Rulon Morgan. That subsequent to the 26th day of January, 1935 A. B. Morgan died. That by the death of said A. B. Morgan the partnership of Morgan & Morgan was dissolved and the defendant, J. Rulon Morgan, is the surviving partner.

6.

That on the 21st day of May, 1929, the defendant J. Harold Giles pledged 49 shares of the Lake Creek Irrigation Company, represented by certificates No. 64 and No. 68 to the Bank of Heber City to secure the payment of his debt to said bank.

7.

That on October 10, 1929, the defendants, Josie Baird Giles (Smith) and J. Harold Giles, as husband and wife, made, executed, and delivered to defendant Vernor E. Baird a war-

ranty deed whereby certain lands in Wasatch County, Utah, together with 49 shares of primary water right, 34 shares of first-class high water right, 23 shares of second-class high water right, and 8 shares of third-class high water right of the Lake Creek Irrigation Company, a corporation, were conveyed to said Vernor E. Baird, which deed was recorded in Book 17 of Deeds at Page 551 in the office of the County Recorder of Wasatch County, Utah, and on the same day the defendants, Vernor E. Baird and Mary A. Baird, his wife, for a valuable consideration, made, executed and delivered to Josie Baird Giles, now known as Josie Baird Giles Smith, their promissory note in words and figures as follows, towit:

Heber, Utah, October 10th, 1929.

\$15,000.00 Gold

On or before ten years after date, for value received, I, we, or either of us, promise to pay to the order of Josie Baird Giles, at Bank of Heber City, in Heber, Wasatch County, State of Utah, Fifteen Thousand and no/100 Dollars in U. S. Gold Coin with interest from date at the rate of seven percent per annum until maturity, and at the rate of twelve percent per annum thereafter until paid, both before and after judgment. Interest payable semi-annually. If the interest is not paid when due, then both principal and interest shall become due at the option of the holder of this note. In case this note is placed in the hands of an attorney for collection, the undersigned agrees to pay a reasonable attorney's fee with all costs and expenses

incurred. Demand, notice of protest waived, and time of payment may be extended without my consent. It is understood that amounts of \$100.00 or more may be paid on the principal of this note at any time.

Vernor E. Baird,
Mary A. Baird.

No..... Due October 10th, 1939.

P. O. Heber, Utah.

8.

That as a part of the same transaction and to secure the payment of said promissory note and interest thereon, and at the time of the execution and delivery of the said note, the said defendants, Vernor E. Baird and Mary A. Baird, his wife, made, executed and delivered to Josie Baird Giles their certain real estate mortgage whereby and under the terms whereof they mortgaged to Josie Baird Giles certain real property with water rights and water stock, situate in Wasatch County, State of Utah, and particularly described as follows, to wit:

The Southeast quarter of the Northwest quarter; the East half of the Southwest quarter; and all that portion of the North half of the Northwest quarter lying South of the County road; all in Section 2, in Township 4 South of Range 5 East, Salt Lake Meridian. Together with all improvements thereon and appurtenances thereunto belonging, including 49 shares of Primary water right, 34 shares of

First Class High water right, 23 shares of Second Class High water right, and 8 shares of Third Class High water right of the Lake Creek Irrigation Company, representing the water right appurtenant thereto.

That the said mortgage was duly acknowledged so as to entitle it to be recorded and the same was thereafter, to wit, on the 12th day of November, 1929, duly recorded in the office of the County Recorder of Wasatch County, State of Utah, in Book 13 of Mortgages at Pages 185-186.

9.

That the 49 shares of primary water right described in the above deed and mortgage were intended by the grantors to cover the same water represented by certificates No. 64 and No. 68 of the Lake Creek Irrigation Company.

10.

That on the 7th day of July, 1934 an action was commenced by A. C. Moulton and E. Dewey Moulton against Josie Baird Giles (Smith) and J. Harold Giles, said action being founded upon two promissory notes executed by Josie Baird Giles (Smith) and J. Harold Giles. That at the date of the commencing of said action the above mentioned note dated October 10, 1929 and the mortgage given to secure the same, were owned by Josie Baird Giles (Smith). That on said 7th day of July, 1934 said promissory note and mortgage were attached by the Sheriff of Wasatch County under and by virtue of a Writ of Attachment issued in said action. That the said Sheriff took possession of said promissory note at the time of said attachment and held

the same in his possession until the 29th day of January, 1935;

That on October 1, 1934 judgment was rendered in favor of A. C. Moulton and E. Dewey Moulton and against the defendants Josie Baird Giles (Smith) and J. Harold Giles, in the total sum of Forty-nine Hundred Seventy-four and 67/100 (\$4,974.67) Dollars together with interest thereon at the rate of eight (8%) percent per annum from October 1, 1934 until paid, together with attorney's fees in the sum of Three Hundred Seventy (\$370.00) Dollars and plaintiffs' costs amounting to Fourteen and 20/100 (\$14.20) Dollars. That on the 21st day of January, 1935 a Writ of Execution was issued upon said judgment and under and by virtue of said Writ of Execution and Writ of Attachment above mentioned, and pursuant thereto, the Sheriff of Wasatch County gave due and proper notice of the sale of said promissory note which he held under said attachment, said sale to be held on the 28th day of January, 1935 at ten o'clock A. M. That at the time fixed for said sale the Sheriff of Wasatch County appeared and postponed the said sale to the hour of nine-thirty A. M. on January 29, 1935. That the sale was postponed at the request of J. Rulon Morgan who was one of the attorneys for defendants in said action. That said note and mortgage were on January 29, 1935 at the hour of nine-thirty A. M. offered for sale in accordance with law and sold to A. C. Moulton and E. Dewey Moulton, and said promissory note was then and there delivered by the Sheriff of Wasatch County to said A. C. Moulton and E. Dewey Moulton, and said parties are the legal owners and holders of said note and the mortgage given to secure the same. That

the sale by the Sheriff of Wasatch County was in all respects regular and by virtue thereof A. C. Moulton and E. Dewey Moulton became the owners and holders of said promissory note and mortgage.

11.

That by the terms of said promissory note sold to A. C. Moulton and E. Dewey Moulton, plaintiffs herein, the defendants, Vernor E. Baird and Mary A. Baird agreed to pay Fifteen Thousand (\$15,000.00) Dollars ten (10) years from the date of the execution of said note, with interest at the rate of seven (7%) percent per annum until maturity, interest being payable semi-annually. Said promissory note further provided that if the interest were not paid when due, then both principal and interest should become due at the option of the holder of said note. That there has been no interest paid on the same prior to the 10th day of October, 1934. That A. C. Moulton and E. Dewey Moulton declared the principal and interest due by reason of the failure to pay the interest as provided. That there is now due and owing from the defendants, Vernor E. Baird and Mary A. Baird, his wife, on said promissory note the sum of Fifteen Thousand (\$15,000.00) Dollars, together with interest thereon at the rate of seven (7%) per annum from the 10th day of October, 1934 until paid.

12.

That certificates numbered 64 and 68 aggregating 49 shares, were issued by the Lake Creek Irrigation Company, a corporation, to and in the name of Josie Baird Giles, representing a primary water right for lands above

herein described, and that said certificates were in her name and owned by her on May 21, 1929. That on said day said certificates were lawfully pledged to the Bank of Heber City and have since said date, been held by said bank and the State Bank Commissioner of Utah as a pledge to secure obligations represented by promissory notes signed by J. Harold Giles, defendant herein. That said water stock represented by certificates numbered 64 and 68 was on or about October 10, 1929, sold by Josie Baird Giles to Vernor E. Baird, who on said date gave a real estate mortgage, which included said water stock, to secure the above mentioned Fifteen Thousand (\$15,000.00) Dollar promissory note. That A. C. Moulton and E. Dewey Moulton have a lien upon all of the right, title and interest of said Josie Baird Giles (Smith), J. Harold Giles, Vernor E. Baird and Mary A. Baird in said water stock in Lake Creek Irrigation Company, to secure said promissory note, but said lien is subsequent and subordinate to the lien of the Bank of Heber City and the State Bank Commissioner of Utah.

13.

That said note and mortgage dated October 10, 1929 were executed and delivered to Josie Baird Giles (Smith), the mortgagee named therein, as evidence of and security for the payment of the purchase price of the property described in said mortgage.

14.

That the defendant Josie Baird Giles (Smith) was not indebted to Elizabeth J. Baird from 1926 to the fall of 1933, or at any time in

the sum of Thirty-five Hundred (\$3500.00) Dollars, or in any amount. That there was no agreement between Josie Baird Giles (Smith) and Vernor E. Baird and Mary A. Baird whereby Vernor E. Baird and Mary A. Baird agreed to convey the property described in said mortgage to the defendant, Elizabeth J. Baird, and whereby Josie Baird Giles (Smith) agreed to cancel and return the note and mortgage mentioned in plaintiffs' complaint, in cause 1410 Civil, and to release said mortgage of record. The court finds that George B. Stanley had possession of said Fifteen Thousand (\$15,000) Dollar promissory note from October 10, 1929 until the 7th day of July, 1934, but said George B. Stanley did not have possession of said note as the attorney for Vernor E. Baird, Mary A. Baird or Josie Baird Giles (Smith), or for any of the said defendants. That George B. Stanley at no time has been or acted as attorney for Josie Baird Giles (Smith).

15.

That Josie Baird Giles (Smith), Vernor E. Baird and Mary A. Baird, or any of them at no time prior to the 7th day of July, 1934 demanded that said George B. Stanley deliver to them or to any of them, said promissory note, and at no time prior to July 7, 1934 did George B. Stanley refuse to deliver said promissory note to Josie Baird Giles (Smith). That George B. Stanley prior to July 7, 1934 informed the defendant, Josie Baird Giles (Smith) that he had possession of said promissory note and requested that she call at his office and receive the same. That at no time

was George B. Stanley wrongfully retaining possession of said promissory note.

16.

That on the 28th day of January 1935 there was placed of record a release of the mortgage dated January 26, 1935, purporting to release the mortgage from Vernor E. Baird and Mary A. Baird to Josie Baird Giles (Smith) dated October 10, 1929, said release being executed by William H. Baird, as attorney in fact for Josie Baird Giles (Smith). That there was on January 29, 1935 filed for record in the office of the County Recorder of Wasatch County a mortgage in the sum of Five Thousand (\$5,000.00) Dollars to Morgan & Morgan and a deed to Elizabeth J. Baird, both executed by Vernor E. Baird and Mary A. Baird, his wife, and covering property described in paragraph 8 above. That said release of mortgage and deed were not made pursuant to any prior agreement between any of the defendants and said release is subsequent to the attachment and execution levied by the Sheriff of Wasatch County and is invalid as against the title of plaintiffs, A. C. Moulton and E. Dewey Moulton to said promissory note and the lien of said mortgage. That said mortgage and deed were subsequent and subordinate to the mortgage owned by said plaintiffs. That said release of mortgage and said deed to Elizabeth J. Baird were without consideration and were not made pursuant to any prior agreement between the parties thereto. That the defendant Josie Baird Giles (Smith) did not borrow moneys from her mother, Elizabeth J. Baird, or promise and agree to pay Elizabeth J. Baird moneys

out of money payable to Vernor E. Baird and Mary A. Baird on said Fifteen Thousand (\$15,000.00) Dollar promissory note.

17.

That Elizabeth J. Baird is the mother of Josie Baird Giles (Smith) and Vernor E. Baird is the brother of Josie Baird Giles (Smith). That Josie Baird Giles (Smith) and J. Harold Giles, were in the years 1933, 1934 and prior to January 30, 1935, except for the indebtedness owing to Josie Baird Giles (Smith) by Vernor E. Baird and Mary A. Baird, his wife, insolvent. That there was no prior consideration of the conveyance by Vernor E. Baird to Elizabeth J. Baird of the property described in paragraph 8 above, and there was no other consideration or value given to Josie Baird Giles (Smith) for the release of mortgage dated January 26, 1935 and recorded January 28, 1935, than the deed to Elizabeth J. Baird. That said release of mortgage and said conveyance were for the purpose of hindering, delaying and defrauding creditors, and particularly the plaintiffs A. C. Moulton and E. Dewey Moulton.

18.

That the Lake Creek Irrigation Company at no time legally sold certificates No. 64 and 68 or the shares represented by said certificates, and the water represented by said certificates or shares was never used adversely to the Bank of Heber City or the State Bank Commissioner or the Examiner in charge of liquidation of the Bank of Heber City. That Elizabeth J. Baird did not purchase said certificates of water stock or the water represented thereby and she was not the owner of the same at the time of her death, or at any time, except as

she received a pretended title thereto by deed dated January 26, 1935, recorded January 29, 1935, which title is subordinate to the title of plaintiffs in both actions herein consolidated.

19.

That on the 26th day of January, 1935 Vernor E. Baird executed and delivered to A. B. Morgan and J. Rulon Morgan, doing business under the firm name and style of Morgan & Morgan, a promissory note in the principal sum of Five Thousand (\$5,000.00) Dollars. That to secure the payment of said promissory note the said Vernor E. Baird made, executed and delivered to A. B. Morgan and J. Rulon Morgan, a co-partnership doing business under the firm name and style of Morgan & Morgan, a mortgage upon the real estate and shares of water stock mentioned in paragraph 8 above. That the mortgage so executed is subsequent and subordinate to the rights of all the plaintiffs herein. That the interest of Vernor E. Baird, Mary A. Baird, J. Rulon Morgan, J. Rulon Morgan as the surviving partner of the firm of Morgan & Morgan, a co-partnership, J. Rulon Morgan as Executor of the Estate of Elizabeth J. Baird, Arthur Duke, Eulean Duke, Ray F. Smith Josie Baird Giles (Smith) and J. Harold Giles, in and to the property described in paragraph 8 above is subsequent and subordinate to the interest of A. C. Moulton and E. Dewey Moulton, plaintiffs herein.

20.

That it was agreed upon the trial of this case by the plaintiffs, A. C. Moulton and E. Dewey Moulton that the judgment upon the Fifteen Thousand (\$15,000.00) Dollar promissory note dated October 10, 1929 should not

exceed the amount of the judgment in the action filed July 7, 1934 against Josie Baird Giles Smith and J. Harold Giles and that no deficiency judgment should be taken against the makers of said note. That the total amount recovered in said action was Forty-nine Hundred Seventy-four and 67/100 Dollars (\$4,974.67), together with interest thereon at the rate of eight (8%) percent per annum from October 1, 1934 until paid, together with Three Hundred Seventy (\$370.00) Dollars attorneys' fees and Fourteen and 20/100 (\$14.20) Dollars costs.

21.

That on the 28th day of April, 1935, at Heber City, County of Wasatch, State of Utah, defendant J. Harold Giles made his said promissory note in writing, bearing date on that day which said promissory note is in words and figures as follows, towit:

“2,550.00 Heber, Utah, Apr. 28, 1933.

Six months after date, for value received, we and each of us promise to pay to the order of Bank of Heber City, at its banking house in Heber, Utah, Twenty-five Hundred Fifty and 00/100 Dollars, in U. S. Gold Coin, with interest thereon at the rate of eight percent per annum from date until maturity and at the rate of twelve percent per annum from maturity until paid, both before and after judgment, payable maturity.

If default be made in the payment of any interest when due, the principal hereof shall become due and payable at the option of the holder of this note. We have deposited as collateral security for the pay-

ment of this note and for the payment of any other notes, claims, demands or other indebtedness now due or to become due, now or hereafter contracted or incurred, that the said Bank of Heber City may have or hold against us or either of us, whether as maker, surety, partner or otherwise and whether contracted directly with or purchased by the holder hereof,

49 shares Lake Creek Irrigation Company represented by certificates 64-68; value \$90.00 per share

with authority to sell the same, or other securities that may be deposited in lieu thereof or in addition thereto, or so much thereof as may be necessary, at public or private sale, and with or without notice at the maturity of this instrument or at any time thereafter, if this note shall remain due and unpaid, applying the proceeds to the payment of this note, with interest and expenses of sale, and the surplus, if any, to the payment of any one or more or all of said notes, claims, or demands, whether then due or not as the holder hereof may deem proper, with the right of the holder to become a purchaser at the sale, or sales, also with authority upon the sale or transfer of this note to transfer and deliver to the purchaser, as securities, any or all of the said collateral securities. If suit shall be brought after maturity of this note, for its collection, we and each of us agree to pay a reasonable attorney's fee.

No. 13303. Due October 28, 1933.

J. HAROLD GILES."

P. O. Heber, Utah.

and then and there delivered said promissory note to the Bank of Heber City, and that said note was among the assets of said Bank of Heber City taken over by defendants, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as examiner in charge of the liquidation of the Bank of Heber City, in the process of the liquidation of said bank. That said note and pledge is a renewal of an obligation and pledge made by defendants J. Harold Giles and Josie Baird Giles to said bank on the 21st day of May, 1929.

22.

That the defendant, Rulon F. Starley, as State Bank Commissioner of the State of Utah in the matter of the liquidation of the Bank of Heber City, is the owner and holder of said promissory note, and that no part of said note has been paid either as to interest or principal.

23.

That at the time of the execution of said promissory note, as aforesaid, and in order to secure the payment of the same, said defendant, J. Harold Giles, delivered to the Bank of Heber City the following described shares of the capital stock of the Lake Creek Irrigation Company, towit:

Certificate No. 64 for $24\frac{1}{2}$ shares of the capital stock of said company; and

Certificate No. 68 for $24\frac{1}{2}$ shares of the capital stock of said company.

24.

That said certificates were issued to Josie Baird Giles by the Lake Creek Irrigation Company and have stood in her name at all times

since and were in her name at the time of pledging to the bank as aforesaid; that when they were pledged to the bank they were endorsed in blank on the back thereof; that the endorsement on Certificate No. is the endorsement of defendant Josie Baird Giles; that the endorsement on Certificate No. is the name of Josie Baird Giles, but she did not write said endorsement; that said bank accepted said certificates as a pledge in good faith and for a consideration; that in 1926 the said Josie Baird Giles came into possession and ownership of considerable property, both real and personal, by inheritance, and that immediately thereafter she gave her said husband full control and management of said property; that in 1927 she acquired what is known as the Lake Creek Ranch, together with the water rights represented by said stock certificates, and that immediately thereafter she put her said husband in complete control and management of the same and required no accounting from him; that at all times from 1926 to and including 1933, the said J. Harold Giles had a checking deposit account in the Bank of Heber City, and the said Josie Baird Giles had free access to said account and drew money therefrom at will whenever there was money in the account; that during all of said period the said J. Harold Giles was a borrower from said bank, and the said Josie Baird Giles from time to time, paid the bank money on said loan account, and at all times up to and including 1933 they operated and managed their business affairs without distinction as to ownership thereof; that ever since 1933 said Josie Baird Giles has known that the Bank of Heber City and Rulon F. Starley, State Bank Commissioner of the

State of Utah, and Spencer C. Taylor, as Examiner in charge of the liquidation of the Bank of Heber City, have held said water certificates as a pledge but at no time has she ever demanded possession of said certificates from said bank or said defendants, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in charge of the liquidation of the Bank of Heber City.

25.

That said promissory note provides that in case suit was brought after maturity of said note for the collection of the same, that the maker thereof would pay a reasonable attorney's fee, and that suit has been brought upon said note after the maturity of the same, and that Two Hundred Fifty (\$250.00) Dollars is a reasonable attorney's fee.

26.

That there is now due, owing and unpaid to defendants, Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor as Examiner in charge of the liquidation of the Bank of Heber City, the sum of Twenty-five Hundred Fifty (\$2550.00) Dollars, the principal sum of said note, together with interest thereon at the rate of eight (8%) percent per annum from April 28, 1933.

27.

That from and prior to October 10, 1929, up to July 16, 1934, Josie Baird Giles and J. Harold Giles were husband and wife and that there was one minor child, the issue of said marriage, who at all times from the date of her birth to and including September 1, 1935, resided with said Josie Baird Giles (Smith) and

was dependent upon her mother for support and maintenance. That the water right represented by the certificates of capital stock referred to in the evidence in this case and mentioned in the warranty deed referred to, has at all times been used to irrigate the lands mentioned and described in the warranty deed which Josie Baird Giles and her former husband, J. Harold Giles executed and delivered to Vernor E. Baird.

28.

That at the time of the execution of the said warranty deed by Josie Baird Giles and her husband, J. Harold Giles to Vernor E. Baird, neither the said Josie Baird Giles nor her then husband, J. Harold Giles, were the owners of any real estate other than that so conveyed.

29.

That at all times prior to January 1, 1936, Josie Baird Giles was an actual and bona fide resident of Wasatch County, Utah.

30.

That since on or about January 1, 1936, Josie Baird Giles has not been a resident of the State of Utah.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the court makes the following Conclusions of Law:

1.

The claims of Josie Baird Giles Smith and J. Rulon Morgan, as Executor of the Last Will

and Testament of Elizabeth J. Baird, deceased, based upon homestead rights should be denied.

2.

That the pledge of 49 shares of the Lake Creek Irrigation Company, a corporation, represented by certificates No. 64 and No. 68 to the Bank of Heber City by J. Harold Giles was and is in all respects lawful and binding upon Josie Baird Giles (Smith).

3.

That J. Harold Giles is indebted to the Bank of Heber City and Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, Examiner in charge of the liquidation of the Bank of Heber City, its successors, in the sum of \$2,550.00 with interest at the rate of eight (8%) percent per annum from April 28, 1933, as alleged in cause numbered 1266 Civil.

4.

That the sum of \$7,346.74, together with interest thereon at the rate of eight (8%) percent per annum from date hereof until paid, together with plaintiffs' costs and disbursements in cause 1410 Civil is a debt owing to the plaintiffs, A. C. Moulton and E. Dewey Moulton and said amount constitutes a valid and subsisting first lien upon the property and premises described in the Findings of Fact herein, except as to 49 shares of primary water right in the Lake Creek Irrigation Company, represented by certificates No. 64 and No. 68.

5.

That Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C.

Taylor as Examiner in charge of liquidation of the Bank of Heber City, have a valid and subsisting first lien upon certificates No. 64 and No. 68, representing 49 shares of primary water right in Lake Creek Irrigation Company, said lien being in the sum of \$2550.00, with interest thereon at the rate of eight (8%) percent per annum from April 28, 1933, together with its costs and disbursements in the sum of \$. and an attorney's fee in the sum of \$250.00. That A. C. Moulton and E. Dewey Moulton, plaintiffs in cause 1410 Civil, have a valid and subsisting second lien upon certificates No. 64 and No. 68 representing 49 shares of primary water right in Lake Creek Irrigation Company, said lien being subsequent and subordinate only to the lien of Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in charge of liquidation of the Bank of Heber City above mentioned.

6.

That a decree should be entered herein providing for the sale of said 49 shares of primary water right in Lake Creek Irrigation Company, represented by certificates No. 64 and 68, and to apply the proceeds therefrom first to the satisfaction of the lien of Rulon F. Starley, State Bank Commissioner of the State of Utah and Spencer C. Taylor as Examiner in Charge of the liquidation of the Bank of Heber City, and any proceeds over and above the amount of said lien to be paid to the plaintiffs, A. C. Moulton and E. Dewey Moulton to apply upon the lien of said plaintiffs as herein set forth, but if said proceeds shall be insufficient to satisfy the lien of Rulon F. Starley, State

Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in charge of liquidation of the Bank of Heber City, then judgment shall be entered against the said J. Harold Giles for such deficiency. That said water stock shall be sold, and notice of sale given, as personal property without the right of redemption, in accordance with the statutes of Utah and the practice of this court relating to the sale of personal property on foreclosure; That said sheriff shall offer for sale, in accordance with the statutes of Utah and the practice of this court relating to the sale of real property on foreclosure, the real property together with the water rights described in said mortgage, excluding said 49 shares of primary water right represented by Certificates No. 64 and 68 and the proceeds of such sale, after deducting the costs and expenses shall be paid to A. C. Moulton and E. Dewey Moulton. That if the net proceeds of said sales after deducting the costs and expenses of sales be more than sufficient to pay the amount owing to the plaintiffs A. C. Moulton and E. Dewey Moulton, including interest to date of sale, after deduction of any amount of said judgment paid from the sale of said water stock, then any surplus shall be paid by said sheriff to J. Rulon Morgan as Executor of the Estate of Elizabeth J. Baird. That in the event the net proceeds of said sales shall be insufficient to pay all of the claims of the said plaintiffs, no deficiency judgment shall be entered against Vernor E. Baird and Mary A. Baird, the signers of the promissory note herein sued upon, or against any of the defendants named in cause 1410 Civil. That Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C.

Taylor as Examiner in charge of the liquidation of the Bank of Heber City, shall be entitled to bid at the sale of said water stock and shall be entitled to apply on such bid the amount of their claim above set forth, and the plaintiffs, A. C. Moulton and E. Dewey Moulton shall be entitled to bid at said sale of water stock and shall be entitled to apply on the amount of said bid, over and above the claim of said State Bank Commissioner, their claim as above set forth; that plaintiffs A. C. Moulton and E. Dewey Moulton shall be entitled to bid at the sale of said real property and the remaining water rights and shall be entitled to apply on such bid the amount of their claim which has not been satisfied through the sale of said water stock.

7.

Upon the sale of real property said sheriff shall execute and deliver to the purchaser a certificate of sale and upon the expiration of the said period of redemption, if no redemption be made, said sheriff shall upon surrender of the said certificate of sale, execute and deliver to the owner and holder of said certificate his Sheriff's Deed to said premises.

8.

That the defendants Vernor E. Baird, Mary A. Baird, J. Rulon Morgan, J. Rulon Morgan as the surviving partner of the firm of Morgan & Morgan, a co-partnership, J. Rulon Morgan as the Executor of the Estate of Elizabeth J. Baird, deceased, Arthur Duke, Eulean Duke, Ray F. Smith, Josie Baird Giles Smith and J. Harold Giles, and all persons claiming under them, or either of them, be foreclosed of all right, title,

interest or lien upon said property, save only the equity of redemption as above provided for.

Dated this 2nd day of March, 1940.

By The Court:

DALLAS H. YOUNG, Judge.

Filed March 18, 1940.

DECREE

(TITLE OF COURT AND CAUSE).

- 138 The above entitled causes, having been consolidated for trial pursuant to stipulation of counsel for the parties in each cause and the order of this court based upon said stipulation, came on regularly for trial on the 11th day of September, 1939, before the court sitting without a jury, and continued through the 18th day of September, 1939, at the courtroom of Wasatch County courthouse, Heber City, Utah. L. C. Montgomery, and D. M. Draper of the firm of Draper, Boyden & Draper, appeared for Bank of Heber City, Rulon F. Starley as Bank Commissioner of the State of Utah, and Spencer C. Taylor as Examiner in Charge of Liquidation of the Bank of Heber City, in all of the causes, whether they appeared therein as plaintiffs, defendants, or cross-defendants, and Paul B. Cannon of the firm of Cheney, Jensen, Marr & Wilkins, and George B. Stanley appeared for the plaintiffs A. C. Moulton and E. Dewey Moulton in the cause numbered 1410 Civil, and Elias Hansen and J. Rulon Morgan appeared for the defendants Vernor E. Baird, Mary A. Baird. J. Rulon Morgan, Josie Baird Giles Smith, J.

Rulon Morgan as a surviving partner of Morgan & Morgan, and J. Rulon Morgan as Executor of the Estate of Elizabeth J. Baird, in the above entitled cause numbered 1410 Civil, and for the defendants J. Harold Giles and Josie Baird Giles in the above named cause numbered 1266 Civil;

The defendants Arthur Duke, Eulean Duke, Ray F. Smith, and J. Harold Giles, in cause 1410, Civil, were served with summons and appeared by filing a demurrer to plaintiffs' complaint, in cause numbered 1410 Civil, which demurrer was overruled, but said defendants failed to file an answer to the complaint in said 1410 Civil, and their default has been entered herein;

Counsel for the parties as listed above, stipulated that a single set of Findings of Fact and Conclusions of Law might be made and entered by the court, covering all the issues raised in all the above entitled causes, and the court heard the testimony of witnesses and the evidence submitted by the parties to said causes in support of their respective allegations, and the causes were fully argued by counsel, and all of said causes were submitted to the court for its decision;

Thereafter petitions were filed claiming homestead rights by Josie Baird Giles Smith and J. Rulon Morgan as Executor of the Last Will and Testament of Elizabeth J. Baird, deceased, to which petitions answers were filed by Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor as Examiner in Charge of Liquidation of the Bank of Heber City, and by A. C. Moulton and E. Dewey Moulton, which matter came on before the court for hearing on December 22, 1939, it be-

ing stipulated that said homestead claims might be decided upon the evidence already before the court and additional facts stipulated in writing and filed by counsel. The court now being fully advised in the premises and pursuant to the stipulations of counsel as aforesaid, and having made and entered herein its Findings of Fact and Conclusions of Law, It is

ORDERED, ADJUDGED AND DECREED:

1.

That the sum of \$7348.74 together with interest thereon at the rate of eight percent per annum from date hereof until paid, together with plaintiffs' costs and disbursements in the sum of \$32.20, in Cause No. 1410 Civil, is due and owing from the defendants Vernor E. Baird and Mary A. Baird to A. C. Moulton and E. Dewey Moulton, which amount is hereby adjudged to be a valid and subsisting first lien in favor of said A. C. Moulton and E. Dewey Moulton upon the following described real property situated in Wasatch County, State of Utah, to wit:

Southeast quarter of the Northwest quarter; the East half of the Southwest quarter; and all that portion of the North half of the Northwest quarter lying South of the County road in Section 2, in Township 4 South of Range 5 East, Salt Lake Meridian. Together with all improvements thereon and appurtenances thereunto belonging, including 34 shares of First Class High water right, 23 shares of Second Class High water right, and 8 shares of Third Class High water right of the Lake Creek Irrigation Company, representing the water right appurtenant thereto.

That the first lien herein mentioned shall be reduced to the extent the same may be satisfied out of the sale of the water stock upon which there is a second lien in favor of A. C. Moulton and E. Dewey Moulton, as in the next succeeding paragraph set forth.

2.

That the sum of \$2550.00 with interest thereon at the rate of eight (8) percent per annum from April 28, 1933, together with costs and disbursements in the sum of \$32.20, plus an attorney's fee in the sum of \$250.00 is due and owing from the defendant J. Harold Giles to Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, Examiner in Charge of Liquidation of the Bank of Heber City, and said indebtedness is a first and prior lien upon certificates numbered 64 and 68 representing 49 shares of primary water right in Lake Creek Irrigation Company;

That A. C. Moulton and E. Dewey Moulton have a valid and subsisting second lien upon said certificates numbered 64 and 68 representing 49 shares of primary water right in Lake Creek Irrigation Company, said second lien being security for the indebtedness set forth in paragraph 1, above.

3.

That all and singular the pledged water stock consisting of 49 shares of primary water right in Lake Creek Irrigation Company represented by certificates numbered 64 and 68, or so much thereof as may be sufficient to raise the amounts owing as above set forth, together with expenses of sale, be sold at public auction by the

Sheriff of Wasatch County, State of Utah, in the manner prescribed by law and in accordance with the practice of this court for the sale of personal property. That said property be sold without right of redemption and that said certificates representing said water stock, together with Sheriff's Certificate of Sale, shall be delivered to the purchaser of said personal property.

4.

That the plaintiff and any claimant or parties to this action shall be entitled to bid at the sale of said personal property, and Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, Examiner in Charge of Liquidation of the Bank of Heber City, or their successors in interest, shall be entitled to apply on such bid the amount of their claim, as hereinabove determined, and that A. C. Moulton and E. Dewey Moulton shall be entitled to apply, in the event they shall bid upon the sale of said property, and after the payment of sufficient to satisfy the claim of said Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in Charge of Liquidation of said Bank of Heber City, the amount of their claim, or so much thereof as may be necessary to satisfy the full purchase price thereof.

5.

In the event the proceeds of said sale, after deducting costs and expenses of said sale, shall be insufficient to pay in full the claim of said Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, Examiner in Charge of the Liquidation of the said Bank of Heber City, with interest and costs and expenses of sale, the Sheriff shall specify the amount of such deficiency and balance owing to

said Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in Charge of the Liquidation of said Bank of Heber City, on his return of said sale, and that on the coming in and filing of said return the clerk of this court shall docket the judgment for such balance against the defendant J. Harold Giles, and that the said J. Harold Giles pay to the said plaintiff the amount of said deficiency and judgment, together with interest thereon at the rate of eight (8) percent per annum, and that Rulon F. Starley, State Bank Commissioner of the State of Utah, and Spencer C. Taylor, as Examiner in Charge of the Liquidation of the Bank of Heber City, or their successors, have execution therefor.

6.

That except for the lien hereinbefore adjudicated to be valid and prior, all of the parties and persons named as parties to the actions numbered 1410 Civil, and 1266 Civil, in the office of the County Clerk, Wasatch County, and all persons claiming or to claim from or under them, and all persons having liens subsequent thereto and their heirs, personal representatives, successors and assigns be, and they are forever barred and foreclosed of any right, title or interest or claim in or to said water stock, and the real property above described, including the claims by Josie Baird Giles Smith and J. Rulon Morgan as Executors of the Last Will and Testament of Elizabeth J. Baird, deceased, to all homestead rights in said water stock, real property, or promissory note and mortgage herein foreclosed.

7.

That the mortgaged real estate and water rights described in paragraph 1 above, or so

much thereof as may be sufficient to raise the amount owing to A. C. Moulton and E. Dewey Moulton as above set forth in paragraph 1, less any amount realized upon the sale of water stock, together with expenses of sale, be sold at public auction by the Sheriff of Wasatch County, Utah, in the manner prescribed by law and in accordance with the practice of this court for the sale of real property, and that the Sheriff execute to the purchaser a Certificate of Sale terminating all of the right, title and interest of the defendants in cause 1410 Civil, except for the right of redemption as provided by law;

That the Sheriff, out of the proceeds of said sale retain his fee, disbursements and commissions, and pay to the plaintiffs A. C. Moulton and E. Dewey Moulton the amount herein found to be due said plaintiffs, or so much thereof as the said proceeds of said sale will pay of said amount. That the plaintiffs A. C. Moulton and E. Dewey Moulton and any claimant or party to this action, shall be entitled to bid at the sale of said real property, and the said A. C. Moulton and E. Dewey Moulton shall be entitled to apply on such bid the amount of their claim. That if the amount bid for said property is insufficient to satisfy the claim of A. C. Moulton and E. Dewey Moulton, no deficiency judgment shall be entered upon said claim.

8.

That the said Sheriff, after the time allowed by law for redemption has expired, shall execute a deed to the purchaser or purchasers of said premises. That all of the defendants above named in cause 1410 Civil, and all persons claiming or to claim from or under them, and all persons having liens subsequent to said mortgage by judgment or decree upon the land and water

rights described in said mortgage and set forth in paragraph 1 above, and their personal representatives and all persons having any lien or claim subsequent to said mortgage, their heirs, personal representatives, successors and assigns, be forever barred of any right, title or interest in or to said real property and water rights.

9.

It is Further Ordered, Adjudged and Decreed that the purchaser or purchasers of said real property at said sale, or their assigns shall be let into possession thereof and that any of the parties named in the action No. 1410 Civil who may be in possession of said premises or any part thereof, and any person who, since the commencement of this action, has come into possession under them, or any of them, or who has come into possession of said property by any claim whatsoever, subsequent to the commencement of said action, deliver possession thereof to such purchaser or purchasers or their assigns on production of Sheriff's Deed for such premises or any part thereof, and that in event possession be refused a Writ of Assistance issue without further notice directing said Sheriff to maintain such purchaser or purchasers in quiet and peaceable possession of said premises.

Dated this 2nd day of March, 1940.

DALLAS H. YOUNG, Judge.

Filed March 18, 1940.

ORDER — NO. 1410 CIVIL. (TITLE OF COURT AND CAUSE).

The Foregoing cases having, upon stipulation for the respective parties, been consol-

idated and the cause having heretofore been heard and at the conclusion of the evidence the court having orally announced its decision and upon motion of the attorney for the defendants, J. Harold Giles, Josie Baird Giles, Vernor E. Baird, Mary Baird, J. Rulon Morgan, J. Rulon Morgan as the surviving partner of the firm of Morgan & Morgan, a co-partnership, and J. Rulon Morgan as Executor of the Estate of Elizabeth J. Baird, Deceased, the court indicated that it would fix as the amount of bond required for a stay of execution as to the decree and judgment in favor of John A. Malia, etal, in the sum of \$200.00, and for a stay of execution as to the decree and judgment in favor of A. C. Moulton and E. Dewey Moulton in the sum of \$300.00 pending an appeal to the Supreme Court of Utah.

145 Now, therefore, it is hereby ordered that the bond required for a stay of execution as to the decree and judgment in favor of John A. Malia, pending an appeal to the Supreme Court of Utah, is fixed at the sum of \$200.00 and the bond for a stay of execution as to the judgment in favor of A. C. Moulton and E. Dewey Moulton, pending an appeal to the Supreme Court of Utah is fixed at \$300.00.

It is further ordered that upon the execution and delivery to the clerk of a bond or bonds in the above mentioned amounts, the defendants shall be entitled to and shall have a stay of execution pending the disposition of the above entitled actions by the Supreme Court of the State of Utah.

Dated this 9th day of April, 1940.

DALLAS H. YOUNG, Judge.

Filed April 10, 1940.

NOTICE OF APPEAL
(TITLE OF COURT AND CAUSE).

147 To John A. Malia, State Bank Commissioner of the State of Utah, Herbert Taylor as Examiner in Charge of the Liquidation of the Bank of Heber City, Bank of Heber City, and their successors in office, Rulon F. Starley, State Bank Commissioner of the State of Utah, Spencer C. Taylor, as Examiner in Charge of the Liquidation of the Bank of Heber City; and to their attorneys, D. M. Draper of the firm of Draper, Boyden & Draper, and to A. C. Moulton and E. Dewey Moulton, and their attorneys, Paul B. Cannon of the firm of Cheney, Jensen, Marr & Wilkins, and George B. Stanley; and to J. Harold Giles, and his attorney, J. Rulon Morgan, and to Arthur Duke and Eulean Duke, his wife;

You, and Each of You, Will Take Notice that Vernor E. Baird, Mary A. Baird, his wife, J. Rulon Morgan, J. Rulon Morgan, as the surviving partner of the firm of Morgan & Morgan, a co-partnership, J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird, Deceased, Ray F. Smith and Josie Baird Giles Smith, his wife, whether parties defendants, or cross-plaintiffs in each and both of the above entitled actions, all and each jointly, severally and separately appeal to the Supreme Court of the State of Utah from that certain decree and judgment signed by the judge of the above entitled court on March 2, 1940, and filed with the clerk of the above entitled court on March 18, 1940, which judg-

ment so made and entered was in favor of the plaintiffs in each of the above entitled actions and against these appealing parties to said action.

This appeal is taken from the whole of said judgment and is so taken upon both questions of law and of fact.

ELIAS HANSEN,
J. RULON MORGAN,

Attorneys for Appellants Vernor E. Baird, Mary A. Baird, his wife, J. Rulon Morgan, J. Rulon Morgan as the surviving partner of the firm of Morgan & Morgan, a co-partnership, J. Rulon Morgan, as Executor of the Last Will and Testament of Elizabeth J. Baird, deceased, Ray F. Smith and Josie Baird Giles Smith, his wife.

Acceptance of Notice of Appeal in due form by counsel for respondents.

Filed April 12, 1940.

151 Similar Notices of Appeal served upon
152 J. Harold Giles, Arthur Duke and Eulean
161 Duke on April 11, 1940.

Undertaking for costs on appeal and for stay of execution filed April 15, 1940.

AFFIDAVIT OF SERVICE, NOTICE OF
APPEAL. (In Cases 1266 and 1410 Civil).
County of Wasatch)

) ss.
State of Utah,)

I hereby certify that I received the within and hereto annexed notice of appeal on the

11th day of April, 1940, and that I served the same upon the following named defendants in the following manner, towit:

Upon J. Harold Giles, by delivering to and leaving with Marie McMillan, his stepdaughter and a suitable person over the age of fourteen years, at the residence and usual place of abode of the said J. Harold Giles, at Heber City, State of Utah, a full, true and correct copy of said Notice of Appeal, on the 11th day of April, 1940.

Upon Arthur Duke, personally, by delivering to and leaving with the said defendant at R. F. D., Heber, Utah, a full, true and correct copy of said Notice of Appeal, on the 11th day of April, 1940;

Upon Eulean Duke, personally, by delivering and leaving with the said defendant at R. F. D., Heber, Utah, a full, true and correct copy of said Notice of Appeal, on the 11th day of April, 1940.

I further certify that on the copies of the Notice of Appeal so served, I endorsed the date and place of service, signed my name thereto and added my official title.

Dated at Heber City, Wasatch County, State of Utah, this 12th day of April, 1940.

CHARLES McPHIE,
Sheriff of Wasatch County.

Sheriff's fees:

Service of 3 notices ..	\$1.50
Mileage, 4 miles80
	<hr/>
	\$2.30

Filed April 15, 1940.

BILL OF EXCEPTIONS
(TITLE OF COURT AND CAUSE)

ABSTRACT OF TESTIMONY

2 Before any evidence was offered, it was
 stipulated that causes numbered 1266 and 1410
 5 be consolidated. The files in cause No. 1261
 Civil were received in evidence as Plaintiffs'
 Exhibit No. 1. An abstract of the property,
 6 upon which plaintiffs Moulton sought to fore-
 close their mortgage, was received in evidence
 as Plaintiffs' Exhibit 2. A promissory note
 7 secured by a mortgage on the premises de-
 scribed in Plaintiffs' Complaint, was received
 in evidence as Plaintiffs' Exhibit 3, which note
 was signed by Vernor E. Baird and Mary A.
 Baird, and dated October 10, 1929.

VIRGIL FRAUGHTON was called as a wit-
 ness, and upon being duly sworn, testified:

DIRECT EXAMINATION:

My name is Virgil Fraughton. I reside at
 Heber City, Utah, and was the Sheriff of Wa-
 satch County, Utah, in 1934 and 1935.

8 Mr. Fraughton was shown a document pur-
 porting to recite certain facts and asked as to
 whether or not the facts recited in the docu-
 ment are in accordance with what was actually
 done. The question was objected to by de-
 fendants upon the ground that the return on
 the writ of attachment having been filed, it be-
 came and was a part of the record in the cause
 and that the recitals thereof could not be varied
 by oral evidence. The objection was overruled
 and the witness testified that at the time of
 the attachment he took into his possession the

9 promissory note, Exhibit 3; that he received
a writ of execution in the case of A. C. and E.
Dewey Moulton v. Josie and J. Harold Giles;
that he prepared a notice of sale of the prom-
issory note; that he posted three copies of the
10 notice in three places in the precinct where the
property was sold; that the notices were posted
on the date of the notice, viz: January 21, 1935.
A copy of the notice was marked Exhibit 4 and
received in evidence. The witness was per-
mitted to testify (over objection that any testi-
mony at variance with the return was incom-
petent); that he appeared and postponed the
11 sale until the next day at 9:30 A. M.; that the
12 sale was postponed at the request of J. Rulon
Morgan.

13 I don't recall what Mr. Morgan said on the
morning of January 29, 1935. I took the ex-
ecution out there and read it, showed the note
and read it and asked for bids on the note,
stating that I had advertised the note for sale
and this is the time for the sale; that I asked
for bids; that Mr. Stanley bid \$100.00 on behalf
14 of the plaintiffs for the note, and I delivered
the note to Mr. Stanley.

CROSS - EXAMINATION:

15 I got the note from George Stanley. I went
over to Mr. Stanley's office and he dug it out
and gave it to me. I don't remember whether
or not Mr. Stanley told me to come to his office
to get the note. Mr. Stanley or someone else
16 may have told me to go over to Mr. Stanley's
office to get the note. I wouldn't say that Mr.
Stanley did or did not tell me to come over
and attach the note at his office. As I recall
Mr. Morgan called me on the 'phone and asked
me to postpone the sale. I could be mistaken

about that. I don't believe my recollection about Mr. Morgan calling me on the 'phone about postponing the sale is any clearer than it is about who requested me to go to Mr. Stanley's office and attach the note. I am not clear about either.

- 17 I am not certain where I was when Mr. Morgan called, but I was probably in the sheriff's office. As I recall, it was on the morning set for the sale, the 28th, that Mr. Morgan called me on the 'phone. I don't recall seeing Mr. Morgan and William Baird on the morning of the 28th. They may have been there from ten to eleven o'clock on that morning. They were there on the 29th, the date of the sale. It was probably one or two minutes to ten o'clock on the morning of the 28th that I went out in front of the court house to postpone the sale. George Stanley came there on the morning of the 28th and I told him that the sale had been postponed. He made no objection to postponing the sale. He said O. K. I talked to Mr. Stanley after the sale had been postponed. When I went out I don't recall whether anyone was there, but I went out and said the particular case of Moulton-Giles would be postponed until the next morning at nine-thirty A. M. When I said that I may have been talking to nobody at all, but I said it loud like I am talking to you, believe it or not. I am sure of that. I remember some things but not good at remembering others.
- 18

- 19 A year or so ago Mr. Morgan came into the office and started to inquire about this note and the sale and one thing and another and after he had been there I sort of thought about it then. I couldn't remember at the time whether it had been postponed or not. At that

time I did not tell Mr. Morgan that he had called me on the 'phone and asked me to postpone the sale. I couldn't recall the details then as I do now. I believe that at the time Mr. Morgan called at the office I told him I had no recollection of the sale being postponed. Since that time I have thought about it some and I kept a little diary there of notes where I put down a lot of things that happened each day. I remember marking it down that the sale had
 20 been postponed. I have that writing with me. It was written down that day — the 28th day — 1935. I have talked to Mr. Stanley and this attorney here (Mr. Cannon) about postponing the sale. They did not refresh my recollection. After I talked to Mr. Morgan I thought about it and found that I had made this note about postponing the sale. I do not understand it is important to make the sale on the day set. The sale may be postponed from day to day, so long as you don't go over twenty-four hours; if the sheriff thinks it is to the best interest of any of the parties he can postpone the sale.

21 On the 29th when the sale was made my best recollection is that Addie Moulton and Stanley and Rulon Morgan were at the sale. It also seems that one of the Baird boys was at the sale, but I wouldn't say whether it was William or Vernor. I don't remember who was there on the 28th, but I am quite certain that
 22 Moulton, Morgan and Baird were there on the 29th at the time of the sale. No bid was made except for the Moultons, who bid \$100.00. I thought it my duty to sell the \$15,000.00 note for \$100.00 because that was the only bid made. I wouldn't swear that William Baird was at the sale but my best recollection is that one of the Baird boys was there and that Rulon

23 Morgan was there at the time of the sale; that I do not believe that when Mr. Morgan was in the office talking to me anything was said about his being at the sale. Mr. Morgan asked for a copy of the notice of sale and I found and made a copy of the notice of sale. It is customary to a copy; that I did not send Morgan & Morgan a copy of the notice of sale. It is customary to send a copy of the notice of sale and I must have sent a copy to Morgan & Morgan; that I guess Morgan knew that the sale was postponed.

24 My best recollection is that Mr. Morgan asked to have the sale postponed to the next day. It might be different, but that is my best recollection. I think Mr. Morgan called from Provo. I might be able to find where the call was made from. I will try to find out. I think the call was made on the morning of the sale, but I don't know how long before the time fixed for the sale. I do not recall any talk with Mr. Morgan when he was in the office about there
 25 might have been another notice of sale setting the sale for the 29th. Mr. Morgan did not complain because the sale was postponed. He
 26 was just looking around to see what he could find. Nothing was said in the talk in my office about Mr. Morgan being present at the sale. I have no record of where notices of sale are
 27 posted, but we have a regular place to post notices. The notice is the only record we keep of sales of personal property.

RE-DIRECT EXAMINATION:

28 I have the memorandum stating that the sale was postponed.

The memorandum was produced marked plaintiffs' Exhibit 5. The witness testified that the

memorandum just contains things that I happen to write down and things I sort of wanted to remember some times. In the memorandum under date of January 28, 1935 "Sale, Moulton v. Giles, postponed until nine-thirty A. M. January 29th." It was made on that date. The exhibit was received in evidence over defendants' objection that it was incompetent.

RE-CROSS EXAMINATION:

- 29 I don't know what time of day I wrote the memorandum. The entry about postponing the sale is the last entry on that date. I wrote down about stealing giant powder on that date. I don't know when I heard about the giant
30 powder being stolen or when I wrote that down. There is nothing in the book about the sale. There is nothing in the book about posting
31 notices of sale. I am reasonably friendly with Mr. Stanley. He has been my legal adviser on a lot of things. I prepared the notices but not
32 the return. The date on the return of the sale looks like the 29th has been changed. The return also looks like the ten has been changed
33 to nine-thirty. I do not recall making that change, but I recall making lots of mistakes on the typewriter. I do not recall making these changes, but do recall making others.

RE-DIRECT EXAMINATION:

Mr. Stanley was County Attorney part of the time I was sheriff. The only things that Mr. Stanley has done for me other than advise me while he was county attorney was to make an abstract for me.

- 34 In answer to a question by the court Mr. Fraughton testified that he would try to find

35 out about the telephone call which he testified
 36 that he thought was from Mr. Morgan. Mr.
 Cannon indicated he would ask leave to amend
 the sheriff's return of sale, but the suggested
 amendment was not offered.

36 J. RULON MORGAN, called as a witness by
 37 defendant, after being duly sworn, testi-
 fied.

DIRECT EXAMINATION

38-39 My name is J. Rulon Morgan. I am an at-
 torney at law and was the attorney for defend-
 ants Josie and Harold Giles in the action
 brought against them by the Moultons, who
 were plaintiffs in that case and are the plain-
 tiffs in this case. I had notice of an attach-
 ment and execution having been issued in the
 former case and received a notice of the sher-
 iff's sale. I came to Heber City on the 28th,
 the date stated in the notice the sale would take
 place. I arrived here about nine o'clock in the
 morning. When I arrived here I filed for rec-
 ord a release of mortgage signed by William
 40 H. Baird as attorney-in-fact for Josie Baird
 Giles. I remained until 11:30; that while in
 the Recorder's Office George Stanley came in
 and asked what are you fellows doing and I said
 recording the release of that mortgage you are
 going to sell this morning. William Baird was
 with me. We went out and Stanley went into
 the Recorder's Office. We went out and stood
 by the gate and watched to see if a sale was
 made, but none was made and I went home about
 noon. We were watching to see if the sheriff

came out on the porch. He did not come out at all.

42 I do not recall having any conversation over the telephone that morning and did not talk to him while at Heber. I did not ask the sheriff to postpone the sale. I was not present at what occurred at 9:30 on the 29th. I had a conversation with Sheriff Fraughton on January 20, 1938. That at that time I asked for the records of the sale and Mr. Fraughton produced the notice of sale and said that was the only record he had; that he had made a return which was filed in court. The sheriff stated he did not remember of the sale being postponed; that there might have been another notice of the sale for the 29th. The sheriff told me of three different places in the precinct where notices of the sale were posted.

WILLIAM H. BAIRD, a witness called by defendants, was sworn and testified:

DIRECT EXAMINATION:

43 My name is William H. Baird. I am a brother of Josie Baird Giles Smith. I was in front of the court house on January 28, 1935; I met J. Rulon Morgan at the gate on that date. We went into the court house together. I gave the recorder a release of mortgage to record. After the release was left with the recorder we went out and sat in the car until
44 between eleven and twelve o'clock. The sheriff did not go out to the front door of the court house during that time.

CROSS - EXAMINATION:

- 45 I am a son of Elizabeth Baird, who is deceased. My mother left a will in which I was left the large end of her property. J. Rulon Morgan is the executor of the will. The property covered by the mortgage is to go to me
- 46 under the will. The release of mortgage that was recorded was signed by me as attorney-in-fact. I received the power of attorney some time in December, 1934. My sister was leaving for California and I had been handling
- 47 her business. I received the power of attorney for Mr. Morgan, who had been my sister's attorney. I am not certain whether I signed the power of attorney, but I had it in my possession. Josie was in the office when I had
- 48 the power of attorney in the latter part of 1934. Josie went to California in the latter part of 1934. I did not file the power of attorney at the time I filed the release because it was left
- 49 at Provo, or misplaced, or laid out to one side or something. I don't know what.
- 50 Rulon Morgan was representing me and I turned the power of attorney over to him. I had the power of attorney when I released the mortgage but it had been given to Rulon Morgan as my attorney. The power of attorney gives me authority to transact business in place of Josie. The power has not been revoked.
- 51 I was present when Josie signed the power of attorney. The power of attorney was signed in the presence of myself and Marie M. Vincent who lives at Vinyard. The other witness was either Judge Morgan or Rulon. I do not
- 52 recall using the same pen as the witnesses. I don't remember how I went to Provo or how I went down. Josie went to California a day

or two after she signed the power of attorney. It might have been the next day or a week
 53 later. I don't remember. I don't remember whether she was at Heber at that time, but I think she was. Josie came to me before that time just after the deal was made and asked me to talk to Vernor, but I can't place the first
 54 time. Shortly after the deal was made with Vernor Josie came to me about a check that had been turned back. A check was shown the witness and he fixed the date as August 27, 1930, when Josie first came to him about her business. Josie said she didn't like to go to
 55 Vernor and asked me to talk to him. She told me to release the mortgage in 1933 when we consummated the deal. I did not release it then because George Stanley held a note and we were trying to get the note. Upon request of counsel the redirect examination was reserved until evidence was offered touching *other phases* of the case.

J. RULON MORGAN, recalled by defendants and testified:

56-57 Either I or Judge Morgan prepared document marked defendants' Exhibit A. It was prepared in our office while I was partner with Judge Morgan. I acted as notary. It was executed on December 12, 1934 at our office by Josie Baird. It was recorded in Wasatch County on January 30, 1935. I do not now recall why the power of attorney was not recorded before the release, but apparently it was either in our office or inadvertently left home the day I came and recorded the release. I mailed the power of attorney to the Recorder

of Wasatch County. It was mailed on the 29th of January, 1935. Besides Josie Baird Giles there were in the office when she signed the power of attorney, Judge Morgan, Marie Vincent and myself. I do not recall whether William Baird was there or not. The signatures
 58 of the witnesses are that of Judge Morgan and Marie Vincent. She is the daughter of Judge Morgan and was working in the office. Josie told me to keep the power of attorney so that the transaction with Vernor could be completed, as she was leaving for California. It was for the use of herself and Bill Baird, as her attorney, to consummate the transaction. Defendants' Exhibit A was offered and over
 59 objection of the plaintiffs Moulton, received in evidence. Josie in substance said that she left the document so that Bill could consummate the transaction between Vernor Baird and her mother. That, in substance, is what she said.

CROSS - EXAMINATION:

60 I think Josie left the power of attorney with us with instructions that Wm. Baird release the mortgage under the power of attorney. I do not remember whether I handed the power of attorney to Bill. I think it remained in our office. I don't know whether the power of attorney was ever turned over to William, although we might have done. I don't think
 61 the power of attorney was handed to me, but left in the office by either Josie or William. It was executed on the 12th. My name appears as notary on that document. It was acknowledged before me, after which it was left in the office. I can't say positively whether the power of attorney was or was not handed to William Baird by Josie. I am not certain

whether William was or was not in the office the day the power of attorney was executed. The power of attorney was in our files just before it was recorded. The power of attorney may have been handed to William, but I don't recall it. I have no personal interest in the property which plaintiffs are attempting to foreclose, but I do have in my possession a note for five thousand dollars in favor of Morgan & Morgan, which note is secured by a mortgage on the property involved in this action. We claim an interest by reason of that mortgage. When you asked the question I thought you were referring to me as executor. I do claim an interest by reason of the mortgage to Morgan & Morgan. I don't remember whether I delivered the mortgage to the recorder in person. I send papers to be recorded by mail in the event I do not deliver it personally for the party.

JOSIE BAIRD SMITH, being first sworn,
testified:

DIRECT EXAMINATION

My name is Josie Baird Smith. I am the person who has been referred to as Josie Giles. At one time I was married to Harold Giles, but have been divorced and remarried. I now reside at 3312 West 64th Street, Los Angeles, California. I have resided there about two years. I have seen Plaintiffs' Exhibit 3 before. I did not receive that note from Vernor E. Baird and Mary A. Baird on October 10, 1929. That note is the signature of Vernor E. Baird and Mary A. Baird. I was present when

they signed it. The note was left with George Stanley, our attorney, after it was signed. I
 65 never received possession of the note from Mr. Stanley. I asked Mr. Stanley for the note several times. I don't know exactly when I first asked for the note. At one time I asked for the note in October, 1933. Mr. Stanley said that the note was outlawed; that it was no good and he had thrown it in the waste basket. Shortly after that I again asked Mr. Stanley for the note and he said he didn't have it. I don't remember when I again asked him about the note, but I did ask him for the note at other times. Vernor and his wife gave a mortgage to secure the note.

66 My brother wanted to buy my ranch. I inherited some land up in Lake Creek. My father left a substantial estate and the property was divided up. Certain property was decreed to me and some to the other children. I
 67 can't remember exactly what the amount of the estate was. At the time I received this note and mortgage I conveyed to Vernor the land covered by the mortgage and the stock which was on the ranch. The stock consisted of
 68 cattle, pigs, chickens and horses. I took a mortgage on the land and water stock. I did not take any mortgage on the cattle or farming implements. That Vernor paid only a small amount on the note. He only paid \$10.00. I have defendants' Exhibit B, a check and a deposit slip attached thereto. That check was delivered to me at about the date it bears. I presented it to the bank. The check was paid
 69 as interest on the note and has written thereon "insufficient funds," and the check was returned to me.

70 Objection was raised to the check as immaterial. The check was received in evidence.

71 The witness proceeding stated that she did not receive any payment other than the \$10.00 on the note and mortgage. Later I discussed with my brother Vernor the matter of paying this mortgage. In 1933 Vernor told me he could not pay the note and mortgage. This conversation was had the latter part of 1933. I talked it over with Vernor and he said he would either like me to take back the property and release him from it, or cut the price and he and his brother-in-law would consider it. I did not cut the price right then. We went to Salt Lake City at the Walker Bank in about the latter part of October, 1933. We went to the Wasatch and talked with them and when we came out he told me he wouldn't be able to pay the note and mortgage. He told me the

72 Wasatch wouldn't allow him to pay anything on the ranch. I think the Wasatch was carrying Vernor at that time. At the time my father's estate was settled I got more than my share of the estate.

73-74 At this point the question was asked "and how did you equal the excess that you got with your mother, if you did." To this question an objection was raised that it was immaterial and called for a conclusion of the witness. An argument was had as to whether the question was admissible. The objection was sustained on the ground that the matter sought to elicit by the question had not been pleaded. Thereupon defendants asked and were granted leave to amend their answer, but the court indicated that plaintiff could have a continuance if they so desired. Plaintiffs objected to the amend-

75 ment. Counsel for the defendants stated the

substance of the amendment, which was later made to the pleadings.

76 At the time I had the conversation with Vernor I was owing money to my mother. I owed her a note for \$3500.00 and owed her for dentist bills and doctor bills, and for spending money, together with my board while living
77 with her. I was owing my mother around six thousand dollars at that time. I gave her a note when the estate was settled for \$3500.00. I gave the note because I received more property in the distribution than I was entitled to. The property I received consisted of land up on Lake Creek, which was some of the most valuable land, consisting of lambing and range ground. That at the time I talked with Vernor he had not paid and could not pay mother any of the money he owed her. I expected to pay my mother with money Vernor was to pay me on the farm which he bought. My mother was present when I had the conversation with Vernor in 1933.

78 Objection was raised to any conversation had between the witness and Vernor and the mother, on the ground that the same was within the statute of frauds. The objection was overruled.

That at the time of the conversation I told mother I would release the mortgage and that Vernor could turn the property to my mother. In 1933 Vernor and his brother-in-law were in charge of the farm. Vernor's brother-in-law was Joe Walker.

79 In answer to a question by the court the witness testified that the six thousand dollars or thereabouts was to be cancelled by the mother

and that Vernor was to turn the ranch over to the mother. That the ranch which she agreed to sell to Vernor for fifteen thousand dollars was a part of the witness's share of the estate, but that she received some of the property. It was agreed that I should receive some more property, but it was agreed that the ranch should not leave the family. I was to receive
80 some livestock which was worth something over \$1,000.00, together with some farming implements and horses. I don't recall just how much the property other than the ranch amounted to. I made the deal with Vernor in 1929. Just after the deal was made the value of property
81 dropped. During the year 1933 to 1934 Mr. Walker continued living on the farm, but I don't know whether he ran it or not during that year. I did not receive any income from the farm in 1933 or 1934. In 1935 my mother leased the farm to my husband (Mr. Smith). We did not live on the farm in 1935 and so we quit the farm.

82 I never received possession of either the mortgage or the note from Mr. Stanley. I have never had the note in my possession. I told Mr. Stanley that I wanted the note; that the property was being turned over to my mother and that the note was being cancelled against
83 my brother Vernor. Mr. Stanley said that he didn't have the note or mortgage; that they were thrown in the waste basket and were outlawed. That Defendants' Exhibit A, the power of attorney, was signed by me just before I left for California in 1934. on the 12th day of December of that year. I left for California on the 21st of December of that year and remained in California until the last of February,

1935. In 1935 my husband, Mr. Smith, ran
 84 the farm and we went back to California in
 1936 and have lived there ever since. That
 when I executed the power of attorney I asked
 my brother to take care of my business while I
 was away, because I could not come back again,
 and this power of attorney was executed so
 that he might do so. I do not know whether I
 left the power of attorney with the law firm of
 Morgan & Morgan or gave it to my brother.
 The day I executed the instrument is the last
 time I saw it until today.

CROSS - EXAMINATION:

85 I do not have the thirty-five hundred dollar
 note which I gave to my mother and so far as
 I recall it was never delivered back to me, and
 I don't know where it is unless it is at my
 mother's home. I don't know just when the
 note was dated but think it was in 1926. That
 the note was given because some of the heirs
 received more property than others, and mother
 had some life insurance which she put into the
 estate, and to fix up the estate, I gave her my
 note and some of the other heirs gave her their
 86 note. I don't know exactly what the estate was
 worth. I do not now know just what the prop-
 erty I received was valued at. That at the
 time the estate was settled I chose what I
 thought was the best of the estate, as my brother
 Bill told me he would give me the preference
 in selecting my share of the estate, and I took
 the lambing and ranch ground. The lambing
 ground was on the northeast side of Lake Creek
 and the ranch was up in Lake Creek. I can-
 87 not say what value was placed on the land, but
 I think it was around sixteen thousand dollars

for the ranch and lambing ground. The other heirs took different property and sheep. That the ground which I received couldn't be divided and I was to pay thirty-five hundred dollars because the property I received was worth that much more than my share. I do not know the value of the ground mother received.

- 88 My mother put some of the insurance money into the estate to help make a settlement. I do not know what she did with the rest of the money she received from insurance. I do not know just how mother used the money, but I do know some of the other heirs gave notes to mother, but I don't know what mother did with the money, but I did not get any of it directly, and it was not paid on any of my obligations. I know the lot described in the decree of distribution shown me is the family residence, which was given to mother. The witness read the decree of distribution and
- 89 stated that the lot described therein is the home where her mother lived. There are two lots in the description. One is a building lot. I do not know the value of that property. The property which I received was higher priced than the money which mother received. She took the ranch and some summer ground, but I don't remember exactly what it was valued at. But I did at the time. The residence is an eight or ten-room house. In 1926 that property was worth about three thousand dollars. It was not built by my father. My father bought it before I started to school. I am not exactly familiar with the property in Township 8, Range 6 East, Salt Lake Meridian. That property is not a
- 91 city lot. The property is all of Section 36 and

all of Section 25, in Township 4 South, Range 6 East, but I am not familiar with whether it is or is not building lots. I don't now know
 92 the value of that property. There were seven children in the family. I do not know what the property was appraised at, but I think mother's share was around sixty-three thousand (\$63,000) dollars.

93 I do not know exactly how much money mother put into the property. I think mother put the money in the estate when Judge Hatch was helping divide the estate. Judge Hatch was the executor or lawyer and Mr. Montgomery was administrator of my sister's estate. My brother, Thomas J. Baird, was the administrator of the James R. Baird estate. The meeting we had in 1933 to which I testified was in the latter part of October or the first part of November of that year. That we agreed that mother would cancel the six thousand dollar indebtedness which I owed to her; that I would release the mortgage to Vernor Baird and he would convey the property to mother; that I was to give the land to mother free from
 94 any indebtedness. The livestock that was on the property which I sold to Vernor was probably sold by the ones who lived on that property. I do not know whether Joe Walker paid anything for that property. That my mother paid over one hundred dollars on my dentist bill. That she paid a hospital bill of around two hundred fifty dollars, and she gave me money for spending and paid my bus fare coming home several times and kept me and my child in clothes and board. My mother gave me money several times in 1930 when I was at Provo. I had to ask mother for money to pay

on my radio, but did not give her a note for that money.)

- 95 I kept an account of most of the money I received from mother, and I think I know where it is, but I do not have it with me. She advanced me twenty-five hundred dollars in September, 1933, and before that she advanced one hundred and paid all my expenses. That while I was in Los Angeles that summer she paid my board and gave me spending money. She gave me the money I needed, but I cannot give you the dates. I placed most of the debts
- 96 in an account book. I do not know whether mother kept an account. That when the arrangement was made in 1933, mother was to receive the water stock. I sold a piece of property here in Heber City, but I don't know when it was. The lot which I sold was in the west part of town and I think I received around twenty-five hundred dollars or twenty-six hundred dollars for the property, but I do not know whether it was 1929 or not. But it was probably the first part of the year 1929. We
- 97 used the money to pay bills at the Heber City Bank, but I don't know exactly the amount we paid to the bank. We owed the bank at least twenty-five hundred dollars in 1929 and the bank received all of the money. Mother had a steady income from water stock and had some insurance, but I don't know how much. Mother paid the rental on an apartment house for a month or two which I had here in Heber City. She gave me around twenty-five dollars for
- 98 payment on it the day I went to Los Angeles. When I moved out they took my stove and washer as payment. My mother gave me money to pay Mrs. Turner when I came back. It was around seventy-five dollars that mother paid

Mrs. Turner here at Heber City. Mother kept me all the time I was in California, from the time I first went there in 1931, but I could not now say just what amount.

- 99 Mother advanced to me in the neighborhood of three thousand dollars. That mother advanced twenty-five dollars in July or August for the apartment here; seventy-five dollars in 1932 when I moved to California; two hundred fifty dollars for a doctor bill and one hundred dollars for a dentist bill. That is all of the items I can now recall, but when we came home we had a wreck and mother paid the hospital bill. That was about February, 1935. That was after I had agreed to give her the place. That after I received the note and mortgage from Vernor, mother advanced the money and I agreed to pay her out of Vernor's note. I was supposed to get about ninety dollars a month from Vernor, but it was only to be paid
- 100 twice a year. I do not remember having any definite agreement with mother as to the amount I was to pay her. That in 1929 mother was to allow me about fifty dollars a month. That was the time I lived at Provo with her. At times mother gave me more than fifty dollars a month, and at times less. We had an understanding that I would try to pay her when Vernor paid me in the fall and spring. That in 1935 mother advanced me money to pay my bill, which was after I had agreed to turn her
- 101 the farm. I owed mother around six thousand dollars in 1933 when I agreed to give her the farm. Mother advanced me money as late as 1935. I had no definite agreement with mother after the one I have testified to. That when mother first advanced money to me I agreed to pay her back when Vernor paid me, but she

102 didn't agree to advance me any definite amount, but only such money as I needed. I do not know whether mother was indebted to anyone else at that time and do not know whether she was able to pay taxes on her home. I don't know whether mother signed a promissory note in the Lake Creek Irrigation Company for water assessments. I do not recall signing a note for the payment of assessments on the Lake Creek Irrigation Company water. I am quite sure that I did not sign a note in the spring of 1935 for the assessment on the Lake Creek water for the year 1934.

103 The court permitted the answer to be amended and the amendment was made over the objection of counsel for the plaintiffs Moulton. The plaintiffs Moulton were per-
104 mitted to amend their reply over the objection of the defendants.

CROSS - EXAMINATION:

105 That at the time of the conversation between me, my mother and Vernor, in 1933, Vernor Baird's wife was not present and I never talked the matter over with her. Vernor's wife was not living with him at that time, but I do not know whether they had been divorced
106 at that time, but I think they were. I think they were divorced in 1933, but I don't know the date of their divorce. She signed the paper when we sold the ranch. My mother died from pneumonia. She was not sick very long and
107 did not have T. B. She was not an invalid for some time before death. She lived with me most of the time. She did not charge me board for living with her. I did not collect anything for board. I have received no letters from Mr. Stanley asking me to call at his

office and get the papers, and do not ever remember having¹written any to him in response to the letters received from him. Mr. Stanley did not, in 1931, write and ask me to get some papers. He did not write and tell me that he
 108 had the Moulton notes to collect. I received some copies of notes I was supposed to have written,¹but I did not answer them and did not receive any letter from Mr. Stanley.

109 I recall some property had been sold to the Conrads by my father, and that some money was owing on the contract, but do not know whether mother received the payments, but I think the property was conveyed to Conrad. I don't know whether Mr. Conrad paid for¹the property, but I imagine he did. I don't remember how much was owing on that contract, and do not know the original price of the property. I do not know how much was owing on the Berg note, but I collected the money on the Berg note. I took that note but do not know
 110 whether anything had been paid on it or not. I don't know what the note was valued at, but it was distributed to me and I collected the money myself on the note; but don't know how much it was. It is my signature on the petition which you show me in the James R. Baird estate. I am not sure about the signature of Thomas J. Baird being his signature, but the signature of Elizabeth J. Baird is her signature. The signature of Florence B. Greener looks like hers, as does also the signature of Vernor E. Baird and Evelyn Baird.

The following part of the petition was received in evidence:

111 "We, the undersigned, widow and children of James R. Baird, together with L. C.

Montgomery, the guardian ad litem of Evelyn Baird, a minor child, respectfully represent as follows, towit: That we have met together and partitioned the property of said estate, as nearly as can be done by us and to our satisfaction — one-third to the widow and one-ninth to each of six children having interest in said estate; the seventh child, John M. Baird, with his wife, Alice I. Baird, having assigned all their right, title and interest, claim and demands of said John M. Baird of, in and to the property of said estate, to the petitioners herein, to be distributed to them the same as though the said John M. Baird had no interest. That the property partitioned to each of the undersigned by the action of and subect to the approval of this court, to be distributed to them is all of the remaining property of said estate. That after paying costs and expenses of administration not already paid and the closing of the estate — ”

Statement of counsel that the remainder of the petition sets out what each should receive, and the court made a decree of distribution in accordance therewith. Thereupon before the court ruled, counsel for the Moultons offered the entire files, which includes the entire petition.

Over objection of counsel for the defendants, the files were admitted in evidence. Counsel for defendants then said:

113 “I assume it is just the petition.” Counsel for plaintiffs Moulton said “Yes, that is all I wish to offer.”

The court thereupon admitted the petition of the heirs in probate No. 112.

- 114 I instructed Bill to ask Vernor to give the mortgage to Morgan & Morgan. My brother was supposed to take care of the mortgage after I left. I don't remember of ever telling my brother to put the mortgage of record.
- 115 When I gave my brother power of attorney I asked him to convey the property to my mother as we had agreed. I left the business to my brother and don't recall of having told him to convey the property subject to a mortgage in favor of Morgan & Morgan. I think my brother did the best he could when he received the power of attorney. The property was to
- 116 have been fixed before I left, but I didn't have time to finish it because I couldn't get the note, which I had promised to release. No one told
- 117 me that the mortgage could not be released without the note, but it was to have been completed before I left. That I tried to get the papers before I left for California, but I couldn't get them and asked Bill to finish the deal for me. I remained here until about the
- 118 21st, which was nine days after I signed the power of attorney. I am familiar with the signature of my former husband, J. Harold Giles.
- 119 The signature you show me is his signature. The signature which you show me is my signature.

Over objection of counsel for the defendants, plaintiffs' Exhibit 6 was received in evidence.

- 120 I remember getting the notes and I intended to come right home and remember I started to get ready to come home but don't remember writing any letter. I remember the

notes and that I was surprised because I didn't
 121 know they had any notes of mine. I don't remember the original letter referred to in the letter marked plaintiffs' Exhibit 6. I remember of having sent to me a copy of two notes and that I was much surprised because I did not know there were any notes. I don't recall any letter dated February 22, 1934 being sent to me and couldn't say whether I received any such letter. I don't recall having received any letter dated August 26, 1931, addressed to me at Heber City, and I do not have the original note.

RE-DIRECT EXAMINATION:

122 I stated that I received a lot which I later sold for twenty-five hundred or twenty-six hundred dollars. That money was given to the Heber Bank to pay the obligations of my husband. That under the decree of distribution I received one hundred ninety-five ewes and three bucks, which were later sold to Jep
 123 Thomas. All of that money went for expenses. Most of it to the Bank of Heber City on notes, and I think some of it went to make payments on a car or something. That it was about 1928 that the money was received. That I did not receive one penny of money when I signed the note with the Moultons.

124 After the answer had been given, counsel for the Moultons objected that it was immaterial, but the objection was overruled.

I was granted a divorce in 1934.

125 To the question upon what ground was the divorce secured counsel for plaintiffs Moulton objected on the ground that it was immaterial.

The witness testified that she secured the divorce on the grounds of non-support. That her husband had not supported her for several years before the divorce was granted. After the answer was given, counsel for the plaintiffs Moulton objected that it was not the best evidence, which objection was by the court sustained, but the court thereafter changed its ruling.

126 I received the money for my support from mother. My mother advanced money for the estate, but I don't know how much. Some of the other heirs gave mother notes. This last answer was stricken.

127 The files in 1256 were received in evidence as defendants' Exhibit C, over objection of plaintiffs.

128 My mother and I lived together at Los Angeles, for two winters. I lived at her home while here at Heber City. While we were in Los Angeles mother gave me money for my clothing, for spending and for board. I had no home of my own. We lived in Los Angeles for about six months every winter from 1931 until 1935. I did not have any income during that time. I didn't have any property during that time except the note and mortgage executed by Vernor.

RE-CROSS EXAMINATION:

129 Mr. Giles did not contest the divorce action. I kept house for Vernor some of the time between 1932 and 1935, at his home in Heber City. I ate at his home and he allowed me ten dollars per month. I lived with him about a year. He paid me ten dollars per

month, but I had other money to spend. I lived
 130 with Vernor from October, 1933 until January
 1, 1934. I moved there in October, 1933 and
 lived there a little over a year. I think the
 check for the sheep was for four thousand
 dollars. The money went to the bank and for
 payments on the car. The money was for
 131 notes signed for running the business. That
 was about 1928. Most of the money, but not all
 of it, went to the bank. The car was twelve
 hundred dollars. I am not sure whether we
 bought the car outright or on installment pay-
 ments, but I think we paid two payments and
 there was still four hundred dollars owing. It
 132 was something like thirty-two hundred dol-
 lars we paid to the bank in 1928, and the re-
 mainder was paid on the car. There might
 have been some of the money paid on mer-
 chandise. The most of the money was paid to
 the bank. My husband gave me a note for the
 home which I sold in 1929.

RE-DIRECT EXAMINATION:

133 My husband had no money and he has
 never paid the note which he gave me.

RE-CROSS EXAMINATION:

The note he gave me was turned over to
 my lawyer. The note was in the possession of
 Mr. Morgan and was shown to counsel for
 plaintiffs Moulton.

134 I don't recall when the note was given, but
 the money was used by my husband and used
 for paying debts and running the sheep. That
 was the money I received for my home, and
 not the money I received from the sheep, but

I am not sure. I am not sure when I sold the home, but the record will show.

CROSS - EXAMINATION:

135 I was married to Harold Giles in 1924 and divorced in 1934. I had one child with him. He borrowed money from the bank to run his business, but I do not know when he began to borrow money.

RE-DIRECT EXAMINATION:

136 I was allowed only ten dollars per month to run the house of Vernor. That was all he would allow and I had to furnish the rest of the money. That is all that was allowed for me, my child and Vernor, and when he was
137 home he boarded with me. I kept house.

WILLIAM H. BAIRD was recalled by defendants and testified:

138 I have heretofore been sworn and testified. I was not at the sale on the 29th day of January, 1935. At the time my father's estate
139 was being probated my mother advanced some money to the estate. It was three thousand dollars or more. We needed that amount to pay the debts of the estate; at the time the
140 estate was being settled the heirs had a conversation about mother advancing money to the estate. My mother and all of the heirs were
141 present. We met several times. We tried to divide the property so each one could get what he wanted. It was necessary that each had to give and take so that each could get what was wanted. We could not get the property to
142 come out even, and an adjustment had to be

made. There was talk about Josie giving mother a note. Mother agreed to take notes from the children.

- 143 Josie got around three thousand dollars more than her share. She got some sheep. Josie got some sheep because they were building up a business. Josie and her husband were trying to get a start in the sheep business, and so they received some sheep instead of mother.
- 144 They had the range lands and wanted to go into the sheep business. They went into the sheep business for a short time, and then the business blew up. I was present at a conversation prior to July 7, 1934 at a conversation about the fifteen thousand dollar note that Josie had received from Vernor. That was, I believe, in 1933. I was attending to my mother's business at that time. My mother was at Heber at that time, but part of the time in California. The conversation between
- 145 mother, Josie and Vernor was at Vernor's home. I am unable to give the date except it was in 1932. I was not in Salt Lake with Mrs. Baird, Vernor and Mrs. Smith on the occasion
- 146 testified to by Mrs. Smith. In the conversation at Vernor's place Vernor said he couldn't make the payments and he insisted that something be done. The matter was discussed and
- 147 it was decided that mother should get the place for obligations owing to her. I don't recall what Josie said, but she agreed what should be done. That matter was talked over a number of times. We talked over making the transfers and getting the papers together.
- 148 Joe Walker was running the farm in 1929. Vernor was in the possession of the farm in 1930, but Joe Walker was running it. Joe

Walker also ran the farm in 1931, 1932 and 1933. In 1934 or 1935 Ray Smith had been in California and couldn't get work and mother
 149 leased the farm to him. I am not sure whether that was in 1934 or 1935. I went to George Stanley's office in 1933 the first time and asked George Stanley for Josie's papers. She asked me to go. I asked Stanley for Josie's papers
 150 and he said he had given them back to Josie. Shortly after the first time I again went to Stanley's office. I went there a number of times and Mr. Stanley was not in. On the sec-
 151 ond occasion I said "I want Josie's papers; the papers belonging to Josie that you have," and I said "Josie told me you still hold the papers — that you never returned them to her." Stanley got mad and said he didn't have them and that was all there was to it. I never got the papers.

CROSS - EXAMINATION:

152 I stated I was present at a conversation about the distribution of the property belonging to my father's estate. The value of the property that each was to receive was discussed. I received a part of that estate. I
 152 was interested as to what each was to receive. The property that was distributed to Elizabeth Baird in Section 36, Township 4, Range 6 East I think was worth twenty dollars an acre. The property in Section 25 was about the same. The property in Section 35 was about the same. I do not know the value placed on the home but I think it was around three thousand dollars. I do not know whether the same value was placed on the three parcels in Section 35.
 154 The property in Section 35 is on Provo River. All of the ground in that section was not a part of the ranch. I don't know the value placed

- on that land because there were water rights with that land. A portion of Section 35 had a value of twenty-five dollars per acre and there was a water right with part of that section.
- 155 The price of that land varied. I believe the property in Section 34 was placed at nine dollars per acre. The land in Section 3 was valued
- 156 at around eight dollars per acre. The land in Sections 10 and 12 was about the same. I recall the land that was sold to Edwin S. Conrad.
- 157 That contract was practically paid up. There was only twenty-five or thirty dollars owing on that contract. The sheep were valued too high. They were valued at twelve or fifteen dollars per head. I don't recall the value that was placed on the bucks, but they probably had a value different from the ewes. Now you can buy a buck at from twenty-five to fifty dollars per head.
- 158 The capital stock of Mutual Coal Company was practically valueless. The Heber City Exchange Company was not much better. The one-hundred fifty shares might be worth eight hundred or one thousand dollars. The property in Township 4, Range 6 South is east of Heber City. It is range property. It is worth around twelve dollars per acre. The property in Section 35, Township 4 South, Range 6 East has a value of about ten dollars and fifty cents per acre. Some of it was ten dollars and some at ten dollars fifty cents and some at twelve
- 159 dollars per acre. The land value in Township 3 South, Range 3 East in Section 11 is lambing ground. It was given a value of eight dollars. The value of the land in Section 10 about the same. Josie was given some sheep and a note or two. The sheep she received were about

160 the same as those distributed to Elizabeth. The one hundred ninety-five sheep distributed to Josie were ewe sheep. I don't know how much remained unpaid on the Berg note that was distributed to Josie, but it was very little. Elizabeth advanced to the estate around three thousand dollars.

161 We were short of money to close the estate and we gave notes to mother when she advanced the money. My note was one hundred and some dollars. I have the notes. Some stock was used to make up the difference. I do not recall the amount of the various notes. Josie got quite a large sum — around three thousand five
 162 hundred dollars. I did not receive any stock. Josie did not have any sheep before the decree of distribution. I did not administer my father's estate. Thomas J. Baird and Judge Hatch attended to that. All of the estate was not in Utah. Some was in Montana. About
 163 three thousand dollars were loaned to the James R. Baird estate by Elizabeth J. Baird. I do not know of any other moneys that were loaned to the estate by mother. At one time eleven thousand dollars was borrowed by the
 164 estate. The account which you show me containing an item of three thousand one hundred sixty-five dollars received from Elizabeth J. Baird is probably the money that was borrowed from mother. I gave a note to Elizabeth J. Baird for something over one hundred dollars. That is the only note I gave her. Mother put
 165 in three thousand but that isn't the entire sum that was advanced. We couldn't make a proper division so we gave notes, not only for the money that mother advanced, but to make up

the difference in the value of lands that was received by the various heirs.

The probate proceedings in the James R. Baird estate, probate files, No. 412 were offered in evidence.

166 The other notes were given when the property was divided among the heirs. The signature on the probate files shown me is my signature. The property was not divided as indicated in the probate files. We made the division among ourselves, apart from what was done in the probate proceedings. My mother
167 was the banker and we divided up the property among ourselves and gave mother notes for the balance owing to her. The court knew nothing about these personal notes. I gave one note dated November 24, 1926. The note you show me is the one I gave. This note was given before the property was distributed. We
168 adjusted the matter and made the division at
169 mother's home. The note testified to was marked as plaintiffs' Exhibit 7 and received in evidence.

The final account in the estate of James R. Baird was marked as plaintiffs' Exhibit 8, and, over objection of counsel for defendants, was received in evidence, and plaintiffs Moulton were permitted to substitute certified copies for the original account.

170 I recall having a conversation in the office of the county commissioners' office of Wasatch County when, as I understood it, Mr. Stanley and Addie Moulton wanted to buy the property covered by the mortgage, and a friend of mine called me on the phone and I came down to the county commissioners' office. They looked surprised when I walked in. The taxes

had not been paid and were to be left until this litigation was disposed of. L. C. Montgomery
 171 also came to the office of the county commissioners, and the county commissioners said we'd better forget redeeming the property until the litigation was disposed of. I did not make a statement to either Mr. Stanley or Mr. Montgomery that the property was transferred to Elizabeth Baird without consideration. We were talking about taxes. The property had been sold for taxes at the May sale and the county held the title. Mr. Montgomery wanted to buy the property and so did Stanley and Addie, and they offered to pay the taxes, and the commission said "We don't know who has the right as the property is in litigation and we will let the matter stand until the case is fought out. I do not recall saying anything to Mr. Duke about the lease in 1935 having been given by authority from Josie Baird.

172 Thereupon counsel for defendants stated they had one additional witness who was out in the mountains with the sheep and could not be reached and reserved the right to call him when he arrived. Such arrangement was satisfactory to other counsel and his evidence could be considered as having been introduced before the defendants rested.

173 Defenadnts' Exhibits D and F were offered and received in evidence.

SPENCER C. TAYLOR, having been first duly sworn, was called by the plaintiff State Bank Commissioner, and testified:

DIRECT EXAMINATION

174 My name is Spencer C. Taylor. I reside at Salt Lake City, Utah. I am examiner in

charge of the liquidation of failed banks. Rulon F. Starley is the State Bank Commissioner and I am employed by him. Herbert Taylor was the examiner in charge under John A. Malia, who resigned as State Bank Commissioner.

Upon request of Mr. Draper, counsel for the State Bank Commissioner, Rulon F. Starley was substituted for John A. Malia as State Bank Commissioner and Spencer C. Taylor was substituted for Herbert Taylor as examiner in charge.

EMER W. MURDOCK, called as a witness on behalf of the State Bank Commissioner, and being first duly sworn, testified:

DIRECT EXAMINATION:

- 175 My name is Emer W. Murdock. I reside at Salt Lake City. I was formerly connected with the Heber City Bank at Heber City. I was so employed from 1911 to September 1, 1933. I was connected with the Bank of Heber City on May 21, 1929, as the cashier. On April 28, 1933, I was in charge of the books and records of the bank. I was acquainted with J. Harold Giles. He did business with the bank as one of our customers and borrowers. The bank closed in 1933 and was transferred to the State Bank Commissioner of Utah for liquidation. The note marked Exhibit B-1 in Case
- 177 1266 Civil is signed by J. Harold Giles. Plaintiffs' Exhibit B-1 was received in evidence. The note is dated April 28, 1933, for the principal sum of twenty-five hundred fifty dollars,

and interest from date at eight percent per annum until maturity, and twelve percent after maturity. The note became due on October 28, 1933.

The witness testified that so far as he knew the note had not been paid.

178 J. Harold Giles had borrowed money from the bank on or about May 21, 1929.

179 A note marked plaintiffs' Exhibit B was referred to and the witness testified that J. Harold Giles pledged some water stock as security for the note. That the pledge was in writing and such writing was marked plaintiffs' Exhibit B-2, 1266. The pledge was signed by Harold Giles, who is the same person as J. Harold Giles. The signature on Exhibits B-1 and B-2 are the same. That on May 21, 1929 when the pledge was made, a note was executed by Harold Giles. I do not recall the amount of the note, but it was around seventeen hundred dollars. The records of the bank will show the amount.

Exhibit B-2 was offered and received in evidence.

CROSS - EXAMINATION:

180 I testified that certificates for shares of water were turned over to the bank at the time the first loan was made and the pledge agreement was executed.

RE-DIRECT EXAMINATION:

181 I have refreshed my memory from the book of the bank and the note dated May 21,

1929 was for seventeen hundred dollars. The note was not paid to my knowledge. The account of Harold Giles was not settled in full from the date of the note of May 21, 1929 down to April 28, 1933.

RE-CROSS EXAMINATION:

The signature on the certificate for 241½ shares of Lake Creek Irrigation Company stock, the same being certificate No. 68, contains what purports to be the signature of Josie Baird Giles. The other signature on the side of Josie Baird Giles is my signature. I
182 signed as a witness to her signature. I am not familiar with Josie's signature and I am not a writing expert.

Thereupon the witness was shown the signature of Josie Baird Giles in the divorce proceeding and counsel for plaintiffs stated that he thought the signature of Josie Baird Giles on the divorce proceedings was her signature. Mr. Murdock then testified that the signature on the stock certificate in his opinion was not the same signature as the one on the complaint in the divorce proceedings. That the two signatures were not the same.

183 I signed as a witness on the water certificate to a certain extent as a witness. When you have done business with people for fifteen or twenty years you sometimes sign as a witness even though the signature is not in your presence, in order that the security can be turned over to the Federal Reserve Bank as security. I would say that the signature appearing on the water certificate is not the same signature as that on the complaint in the

184 divorce proceedings. The certificate was given
as a pledge. The signature on certificate No.
185 64 for 24½ shares of stock in the Lake Creek
Irrigation Company, which is in ink, is my sig-
nature. I can see a feint lead pencil signature
on that certificate. The signature on certifi-
186 cate No. 64 is not the same as the signature
on certificate No. 68. These certificates were
delivered to the bank when the first note was
signed, or we may have had them before that
time. The records of the bank indicate that
there was a note held by the bank prior to 1929.

187 There is no record that the stock certifi-
cate was given as security for any note signed
before 1929. The note of 1929 for seventeen
hundred dollars was never paid in that the note
here sued upon is a renewal of notes formerly
188 given. I would say that the note of April,
1933, is in part a renewal of the note of 1929,
189 because Harold Giles had not been out of debt
since 1929. I would say that part of the note
of April, 1933 represents some of the note of
May 21, 1929 in the sum of seventeen hundred
dollars. The note of 1929 may have been re-
turned to Mr. Giles at or before the time he
executed the note in 1933. There were other
renewal notes between the seventeen hundred
dollar note executed May 21, 1929, and the note
executed in April, 1933. I think we can trace
the various transactions. We do not make loans
190 for more than six months. We did not keep a
record of all of the notes of Harold Giles on
the same page of the ledger. They are scat-
tered through the book.

191 The witness further testified that he had
no independent recollection as to when the bank

first acquired the two certificates numbered 64 and 68, or whether or not Josie Baird Giles appeared in the bank and signed either of said certificates. That at times I signed as witness to a signature when I did not see the person sign the same, although I have not frequently
 192 done so. That Josie could have signed these certificates in my presence, but I have no recollection of her having done so.

Certificates numbered 64 and 68 were received in evidence as defendants' Exhibits F and G.

193-196 Mr. Murdock further testified that he did not say to William H. Baird "You needn't worry about these certificates. The bank has no claim on them," or that "in due time you will get the certificates back without trouble."

RE-DIRECT EXAMINATION:

Mrs. Josie Baird Giles may have had a personal account in the bank at one time, but she usually drew on the account of J. Harold Giles.

RE-CROSS EXAMINATION:

197 I honored checks drawn by Josie Baird Giles. The bank would let her draw any amount within reason if the amount was there to her credit.

CROSS . EXAMINATION:

198 I don't recall whether Josie or Harold owed the bank anything in 1928. I haven't examined the books. I don't know how much Josie withdrew. She drew checks about the same as other wives in Heber City. The wives husbands.

RILEY C. DRAPER, a witness called by plaintiff State Bank Commissioner, being duly sworn, testified:

DIRECT EXAMINATION:

199 My name is Riley C. Draper and I reside at Heber City. I am deputy examiner in charge of the bank of Heber City and have been such since August 28, 1933. I have had charge of the books since that time. The bank failed on or about August 29, 1933. I am familiar with the documents here marked plaintiffs' Exhibit B-1. That was the note which was in the bank when it closed. Exhibit B-2 is the pledge agreement of collateral security. It was in the bank when it closed. The book which you show me is the daily teller's blotter. It contains the transaction of each day's business. The book goes back to June 2, 1926 and continues to August 28, 1933, the date the bank closed. I have examined the book to show the transactions of J. Harold Giles from May 21. 1929 to April 28, 1933. I have made a mem-
200 orandum of what the blotter shows. May 27, 1929, a loan of seventeen hundred dollars made to Mr. Giles. On October 7th of the same year fifteen hundred was paid on that note. Apparently that amount was paid in cash. On the
201 same date two hundred was advanced to Mr. Giles and two hundred dollars on the old note was placed in the new note for four hundred dollars. The first note was reduced to two hundred dollars and then two days later it was increased to four hundred dollars. The sum of fifteen hundred dollars was paid on the seventeen hundred dollar note, leaving two hundred dollars, and then a new note was given for four hundred dollars, which indicates that of the four hundred dollar note, two hundred dollars

202 was in the nature of a renewal. That transaction was in 1930. On May 5, 1930 a note was made out for one thousand dollars, which would be a renewal of the four hundred dollar note and an additional advance of six hundred dollars. This note was also made out by Harold Giles. On October 2, 1930 Mr. Giles signed a note for fourteen hundred thirty-three dollars. On October 23, 1930 the note for fourteen hundred thirty-three dollars was paid off and a new note for thirteen hundred fifty dollars was taken. The one thousand dollar note and the thirteen hundred fifty dollar note make a total of twenty-three hundred fifty dollars Mr. Giles owed at the time. On December 20, 1930
 203 the one thousand dollar note was paid by a renewal note in the same amount. On October
 204 28, 1931, a renewal note for twenty-five hundred fifty dollars was given in renewal of the one thousand dollar note and the thirteen hundred fifty dollar note, the renewal note containing two hundred dollars additional loan. On
 205 May 13, 1933 a note for twenty-five hundred fifty dollars was given in renewal of the note
 206 theretofore given. The note for twenty-five hundred fifty dollars is the note sued upon in this action and marked plaintiffs' Exhibit B-1.

J. A. THOMAS CROOK, called by plaintiffs
 Moulton, and being sworn testified:

DIRECT EXAMINATION:

208 I am the president of the Lake Creek Irrigation Company and have been such for ten years. The secretary is out on a round-up. His name is Lawrence B. Mahoney. I received the

ledger from his home. It contains the shares of stock owned by each stockholder, whether it be primary, first or second class right. The
 209 other book marked in ink "Lake Creek Irrigation Company" is also a book of that company which I received at the home of the secretary. The other book marked "Lake Creek Irrigation Minute Book, 1934" is also a book of the company which I secured from the secretary. I know these books to be books of the company. I recall a note having been taken in 1934 by the company signed by Josie Baird Giles Smith and her husband. I am mistaken about the date of the note. It was on October 9, 1935. Josie
 210 Baird Smith signed the note. The book showed that Josie Baird Giles owned some stock.

CROSS - EXAMINATION:

211 I have gone through the books and know they are accurate. I believe the note I spoke about was signed in 1936 and was required to be signed before they could receive any water. It was in 1934 that the note was given and we carried the loan until the following October, as I remember it. The note was given the year that Smith was running the farm. The note
 212 I spoke about was signed in October, 1934, in order that they could have the water for 1935. I do not know where the note is, but it was paid. Elizabeth J. Baird did not pay all of the assessments. It was paid by different parties, but I couldn't say what party. I don't know
 213 what part Mrs. Baird paid. Our company owed Mrs. Baird some money. At times we charged Mrs. Baird with assessments and took credit for the assessment on the note we owed her. At one time the stock standing in the

name of Josie Baird was sold to her mother, Elizabeth J. Baird, who bought the stock in for assessments levied and not paid.

214-215 I recall Judge Morgan at one time visiting the board of directors about this stock. I don't recall the reason that Judge Morgan came up, but I do recall his coming. I have seen books other than those which I have brought in, but do not know where they are. I think they could be produced but I do not know exactly where the other books are. I haven't got the old minute book. The old minute book is either in the hands of our present secretary or ex-secretary. The record does not show when the note I talked about was made out, but it was entered in the books in 1935 in the fall of that year. I saw the note. It was not signed by Josie Baird Giles, but was signed by Ray Smith, and he was the only one who signed it. Josie Baird Giles did not sign that note.

Thereupon all of the testimony of Mr. Crook was stricken upon motion made by counsel for defendants. Mr. Crook stated that if he was needed he would be called later.

CROSS - EXAMINATION:

219 We have a stock book which I think can be produced.

RE-DIRECT EXAMINATION.

According to the first minute book on page two, Vernor Baird redeemed some stock under date of February 7, 1934.

The witness further testified that the person who owned the stock usually redeems it.

220 If there is an assessment on stock and payment is made the credit is given to the one who

owns the stock. You can't tell from the record who made the payment of the Vernor Baird stock. The books show that at a meeting held on April 8, 1933 it was resolved: "The stock sold for assessment and bought in by the Lake Creek Irrigation Company at that meeting." The resolution further continues "has been redeemed by the following stockholders of primary, all obligations on said stock: Therefore, 221 be it resolved that the old certificate be surrendered and the president and secretary of the company be authorized to issue new certificates, to release the stock from the treasury of the company." The following shares were bought by the company April 8, 1933. That among the stock mentioned was Vernor Baird, but the number of shares is not recorded. I can't tell from the record how many shares there were. The resolution then proceeds: "The secretary is authorized to pay the amounts to Mrs. Baird as soon as the money is collected from delinquent assessments. The records of the reservoir." These relate to minutes of February, 1933.

222-223 The assessment has been paid on the Vernor Baird stock. I wouldn't say that Vernor Baird came in and paid the assessment. The water stock here in controversy has probably been delivered to the land of Josie Baird, but water may be transferred from one piece of land to another. I think we took credit on the note we owed Mrs. Baird for the water assessment. From time to time we made payments to Mrs. Baird on the note we owed her. At one 224 time we took credit on her note for water assessments. I will produce the note of Ray Smith if I can find it. In the minute book on

page twelve occurs this resolution: "It was learned from the financial report that it was possible and motioned, seconded and carried, that three hundred four dollars and twenty-five cents be paid to Mrs. Elizabeth J. Baird." However, the secretary was to get permission from Mrs. Baird to withhold all delinquent assessments plus eight per cent interest when this money was paid to her. I remember about that transaction. As I remember, that money was the payment on a note we held.

RE-DIRECT EXAMINATION:

225 I was present at the meeting when the stock of Vernor Baird was redeemed. The meeting was held on February 7, 1934. The water owned by Vernor Baird was primary, first class and the second class high water. The water was used on the farm occupied by Vernor Baird. I do not know how many shares there were, but as I recall there were forty-seven of primary water, but I do not recall the amount of high water.

RE-CROSS EXAMINATION:

226 I do not recall of any stock being transferred from Josie Baird Giles to anybody else. Vernor Baird had some stock in his own name. Josie Baird had some certificates of stock. I think I could run down the history of this stock.

Questioned by attorney for Bank Commissioner:

227 According to this record book that we have the stock is in different parties. I think I can show you the book where we made levies of
228 assessments. I think I can find the book, but

the secretary moved to Vernal and he took the books with him. We have sent for the books, so I am informed. We advertised this particular water for sale in 1933. We published
 229 the notice in Wasatch County in the Wasatch Wave. I know a notice of assessment was published and I will try to find it.

J. RULON MORGAN, as executor of the last will and testament of Elizabeth J. Baird, Deceased;

230 Testified in response to a question by counsel for plaintiffs Moulton that the receipt in that estate on February 1, 1939, was for money borrowed from the Farmers' and Merchants' Bank for funeral expenses, expenses of the last illness, burial expenses and taxes. That on April 26, 1939 Frank Conrad paid two checks for the lease of the lambing ground for 1939 in the sum of five hundred dollars.

ARTHUR DUKE, being first duly sworn, testified:

DIRECT EXAMINATION

231 My name is Arthur Vance Duke. I reside three miles east of Heber. I am leasing the ranch which is in litigation here. The first lease I secured was signed by Elizabeth J. Baird. The next lease was signed by William H. Baird. I have had a lease for 1938 and 1939. I paid most of the rent to William H. Baird, and paid one check to the Lake Creek Irrigation Company. I have the checks which I gave

for the payments. The Lake Creek Irrigation
 232 was paid \$96.25 December 3, 1936. I paid to
 Elizabeth J. Baird and the Farmers' and Mer-
 chants' Bank one hundred ten dollars on De-
 cember 11, 1936. On November 14, 1938 I paid
 William H. Baird eighty dollars and thirty-
 three cents. In addition to that I have had
 horses and sheep on the place and have been
 given credit on my rent for feed to the animals.
 I have a credit here of one hundred nine dol-
 lars and seventy-three cents on Vernor Baird
 Vernor paid part at times and then left part.
 We settled in the spring of 1939 when William
 233 came in and Vernor's account was credited in
 favor of William. I have also had some bucks
 and horses for William H. Baird and was given
 credit for rent for feeding those animals. Some
 credit was given in 1937 and 1938, until the
 summer of 1939, until this spring. I moved on
 the property in the fall of 1935. I got my first
 lease in March, 1935.

234 A motion was made to strike the testimony
 of Mr. Duke because immaterial, but the mo-
 tion was denied. Plaintiffs' Exhibit 9 was
 offered in evidence and over objection of coun-
 sel for defendants as being immaterial, the ob-
 jection was overruled and the exhibit received
 in evidence.

RILEY C. DRAPER was recalled on behalf
 of the State Bank Commissioner and tes-
 tified:

DIRECT EXAMINATION:

235 That no payments have been made on
 plaintiffs' Exhibit B-1, the note signed by J.

Harold Giles in the sum of Twenty-five Hundred Fifty Dollars, and no interest has been paid thereon since he was in possession thereof. The two stock certificates have been held by the bank ever since it closed, the certificates being numbered 64 and 68.

236 The Bank of Heber City secured an R. F. C. loan when it closed, in the amount of thirty-six thousand some odd dollars, and this note for twenty-five hundred fifty dollars and the water certificates were turned over to the R. F. C. as security. That was in 1931. I do not know when the certificates were turned over to the R. F. C., but the R. F. C. was paid and the note and certificates were turned to the Bank Commissioner.

237 It was stipulated that two hundred fifty dollars was a reasonable attorney's fee to be allowed attorney for the Bank Commissioner for services rendered in this action.

CROSS - EXAMINATION:

238 We claim that the certificates of water stock secure both notes which have been held by the Bank of Heber City. We claim that the certificates secured the original note and also are security for the other note, which was a renewal and contains interest earned on the
 239 earlier note. That neither the Federal Reserve Bank nor the R. F. C. claim any interest in the note or certificates because they have been turned back to the Bank Commissioner and are now in his possession. I have been in charge of the liquidation of the bank ever since it closed. No one has demanded the certificates.
 240 Not one of the Bairds have made request from me for the certificates so far as I remember.

I don't believe Josie ever asked for the certificates, but it may be that Rulon asked for them. I am also acting as cashier of the Commercial Bank at Heber City. The records do
 241 not show that there was a mortgage on some sheep given to secure the note for twenty-three hundred fifty dollars. I know something from hearsay about the transaction about the mortgage on some sheep, but that took place before the bank closed, and so far as the books show, a mortgage on some sheep was not turned over to the Bank Commissioner. The records do
 242 not show that any security was taken for the notes other than the two certificates. There is nothing to indicate that the certificates were given as security for the notes other than the certificates themselves.

RE-DIRECT EXAMINATION:

243 I have no knowledge of Josie Baird ever asking for these certificates, and I don't recall Harold Giles ever asking for the certificates.
 244 I have asked Harold Giles to pay his notes, but no payments have been made. I never asked Josie Baird to pay the notes.

RE-CROSS EXAMINATION:

245 So far as the records of the bank are concerned they do not show whether J. Harold Giles or his wife owed the bank any money in 1928. I have not examined the records but we can do so.
 246 Plaintiffs offered an amendment to the reply to the answer of Josie Baird Giles and the answer of Vernor Baird, to which counsel for the defendants objected on the ground that it presents an entirely new issue and is prejudicial to the defendants to permit them to be filed

at this time. The objection was overruled and the amendments permitted to be filed. Thereupon leave was granted to amend the answer of Josie Baird Giles by interlineation on page two by adding these words, "but since October, 1933, Elizabeth J. Baird has been and now is the equitable owner of said certificates."

RE-CROSS EXAMINATION:

247 I have examined the records of the bank from the years 1926 to 1929, inclusive, and they show that there were borrowed, beginning September 17, 1926: The records show that on September 17, 1926 there was a loan of twenty-five hundred dollars. Again on December 14, 1926 there was another loan of eight hundred dollars; on December 30, 1926, another loan for fifty dollars, and on January 18, 1927, another loan for two hundred dollars. On February 19, 1927, the eight hundred dollar note made on December 14, 1926, was paid; on March 25, 1927, another loan of five hundred dollars was made. On June 27, 1927 another loan of twelve hundred dollars, and on the same date the note in the amount of five hundred dollars was paid off apparently by renewal. Then the record shows that fifty dollars and two hundred fifty dollars were also credited at that time, but there were no numbers on the notes, so I am not sure where they came from. On June 21, 1927, the record indicates that a note in the amount of five hundred dollars was paid. There is also a credit of five hundred dollars and two hundred fifty dollars, with no indication as to what note that was applied on. On July 6, 1927, the two hundred dollar note was paid and on August 9, 1927,

there was a new note made for twenty-five hundred dollars.

248 On September 2, 1927 another note for one hundred dollars was made. On September 14, 1927 there was a payment on three different notes. Nine hundred dollars was applied on the original twenty-five hundred dollar note that we referred to. The three hundred dollar note referred to was paid off and the one hundred dollar note made on September 2nd was paid. On December 24, 1927, the twelve hundred dollar note was paid. On April 14, 1928 there was another note in the amount of one hundred fifty dollars made. On October 27, 1928 another loan for one hundred fifty dollars was made. On that same date the fifty dollar note and the one hundred dollar note referred to was paid. Apparently those two notes were put into one and it was just considered a renewal. On November 5, 1928 another note for six hundred dollars was made. On November 3, 1928, the fifty dollar note made on October 27th was paid. On November 16, 1928 a new loan for three hundred dollars was made. On June 5, 1928 there were three notes paid; one for an amount of one hundred fifty dollars, another for one hundred dollars and one for three hundred dollars. On June 28, the balance on the original note of sixteen hundred dollars was paid and another note in the amount of eleven hundred fifty dollars was paid. On June 30, 1928 a new note for fifty dollars was taken out. On September 13, 1928 another note for one hundred dollars was made, and on January 3, 1929 another note for two hundred dollars was made. Then on January 3rd, the same day, the note for an amount of one hundred

249

dollars was paid off, and on May 1, 1929 there were four notes paid and the new note for seventeen hundred dollars referred to in our testimony yesterday was made. The notes paid off were for two hundred dollars, six hundred dollars, three hundred dollars and two hundred dollars. Thereupon it was agreed that the record of the various notes be typewritten and received in evidence. That during all of this time the various notes were bearing interest. The notes were in the name of Harold Giles, and in one instance William H. Baird paid a note. It would be an endless job to check the record as to deposits.

JOSIE BAIRD GILES SMITH was recalled
251 as a witness and further testified:

DIRECT EXAMINATION

252 Certificate No. 68 in the Lake Creek Irrigation Company, which is marked defendants' Exhibit G in Case No. 1266 was not signed by me and the signature thereon is not my signature. I never appeared before Mr. Murdock, cashier of the Bank of Heber City and signed that document in his presence, and I did not authorize anyone else to sign my name to that
253 document. That I never told anybody or authorized anybody or said to anybody that they might place that certificate in the Bank of Heber City as security for any note. That I do not know how the bank received that certificate. The first I knew that the bank held the certificate was when my mother wrote me a letter and asked me if I knew the bank was holding my stock. I received the word while

254 in California. That I called at the bank when I returned and asked whether the certificates were held by the bank. I talked to Mr. Draper. I think it was after the bank closed. My brother and I went and asked them about the certificate as I did not believe they held it. I thought I had the certificate with me. Mr. Draper stated that the certificates had been presented to the bank and I asked him if we could see them and he said they were in the
 255 Federal Reserve Bank at Salt Lake City. Later my brother and I went to Salt Lake City. They said they were in the vault and that we were unable to see them. I told them I had never signed the certificate. They described the signature to me and said it looked like there was a cross, that the certificate might have been sent to me and I said that it had not been sent to me. There is no cross on the signature on certificate No. 68. It was in the fall of 1933 that I went to Salt Lake to see the certificate. My brother Vernor was with me.

256 I never authorized Mr. Giles to sign my name to plaintiffs' Exhibit B-2 or to hypothecate or place that stock in the bank as security for any loan, and I have never told anyone else that these shares of stock were given as security for a loan. I did not think the stock was mine, as I had sold them, but I understood
 257 the stock was covered by the mortgage which Vernor gave me. I observe the signature Josie Baird Giles on certificate No. 64 marked defendants' Exhibit F in Case No. 1266 Civil. The signature on that certificate looks more
 258 like my writing, but it isn't. I don't think that is the way I make a "J" and the "B" doesn't look like my writing. Other than that it looks something like it. I do not recall ever having

signed that certificate. I notice the cross in front of my name. I don't recall ever having received that certificate in the mails with a cross or anything of that kind to indicate where I should sign. My best judgment is that that is not my signature. I did not authorize anyone to sign that instrument for me. I didn't tell anyone else to sign it for me. I didn't at any time tell Harold Giles or anyone else that they might take that certificate to the Bank of
 259 Heber City and there hypothecate it as security for a loan. I first learned about this certificate when my mother wrote me. When I went to Salt Lake to inquire about the certificates I made inquiry about both certificates. My testimony with respect to the certificates applies to both certificates. I never authorized Mr. Giles, my husband, to use this certificate as security for a loan. The first I learned about the certificate was in the fall of 1933. That was about the time my mother wrote me. I was in Los Angeles when I received that letter. On April 28, 1933 I was in
 260 Los Angeles. I came back in the summer. I went down on December 18, 1932 and I came back sometime in October, 1933.

CROSS - EXAMINATION:

261 I do not know whose signature is on the defendants' Exhibit G in certificate No. 68. I think I know Harold Giles' signature. I wouldn't say whether that is Harold Giles' signature, but I do say it is not my signature. The signature on Exhibit F is not the way I sign the "B" and it does not look like the way I sign Baird. The "B" is not the way I sign it.

262 The witness was shown her signature in the verification on the complaint in the case

she brought for divorce against Harold Giles, and testified that the "J" is different, in that writing comes up to the "O," and in this one it breaks off below. The two "O's" are not the same. The one breaks off more than the other. The two "B's" are not quite the same. The one is more round than the other. The loop of one is down lower, but the loops are similar, but not the same. Whereupon the
 263 witness signed her name on a piece of paper, which paper was marked Exhibit B-3, which was offered in evidence.

264 When I was on the witness stand the other day I testified that I was married to Harold Giles in 1924 and that I was his wife until 1934. During that time I did not know very much about my husband's business. He had two different businesses. He had the sheep first and then the ranch. He had the sheep when I inherited them from my father. That was in 1926 when the estate was divided. He managed the sheep. I do not know what he was doing with the sheep or know anything about the money he was getting. At that time he was
 265 providing for me. I think he had a checking account which I was permitted to draw against. That condition did not exist during all the time I was married to Mr. Giles. We traded the ranch in 1929 and sold the sheep. I think it was in October of that year. From October, 1929, Mr. Giles was farming the Lake Creek
 266 farm. That farm belonged to me. He didn't earn much money on the farm. I knew he borrowed money from the bank but did not know how much. I do not know that the borrowed money was used for our living, but we lived on — I drew on the money for one year. That is, until 1930. I put the money in the bank that I

267 got from mother. The last was in 1930. I got money from mother after 1930, but did not put it in the bank after that year. In 1930 I put some money in the bank I received from mother, and drew it out again. I drew the money out to pay the family debts. Mr. Giles operated the Lake Creek farm until the fall of 1929. We sold the sheep somewhat later, but I do
 268 not recall just when we sold the sheep. In 1926 I inherited some sheep from my father's estate and Harold operated the sheep until we sold them. I think we sold the sheep after 1929, because we kept them on a farm for a while.

269 After we traded the farm we kept the sheep for a while, then they were sold. I think probably we sold the sheep before the farm. The sheep were on the farm for a while, but I am not certain when they were sold. The farm I am talking about is the one that is here in litigation. I inherited that farm. Traded some summer ground and lambing ground for that farm. I did not get the farm in the decree of distribution but traded for the farm later. I think it was in 1927. I had the sheep before I got the farm. Harold had charge of the sheep
 270 until I got the farm. Mr. Giles took care of the sheep while they were on the farm. The sheep were in somebody else's yard during the winter. I think now we sold the sheep before we sold the farm. The farm was sold in October, 1929. The sheep were sold a little while
 271 before that. I sold the farm to my brother, Vernor Baird. Mr. Giles did not remain on the farm after I sold it to Vernor. Vernor went into possession of the farm when he bought it. After the farm was sold I think Mr. Giles went

out with his father's sheep. When he went out with the sheep I lived with my mother. He was
 272 out with his father's sheep in the winter of 1929 and the spring of 1930. I think he stayed with his father's sheep during the summer. I did not live in Los Angeles from the time we were married down to the spring of 1930. I
 273 first went to Los Angeles in 1931. I think Harold also stayed with the sheep from the spring of 1930 to the winter of 1931. I wrote and told Mr. Giles I was going to California. At that time he was some place on the desert with the sheep. He never sent me any money while he was with the sheep. He did not give me any
 274 money between the first of 1929 down to 1933.
 275 He did not give me any money at all or any food, nor did he furnish me a house to live in, not after 1930. We took an apartment in Heber City and he started to pay the rent but after he went with the sheep he didn't receive any money. I think he would have given me some money at the time if he had had any. I did not have any more money from him. At first it was because he didn't have any money. That lasted down to 1933 at least. I stated that I received about four thousand dollars from the sheep. That was the sheep that Harold Giles was running in 1926 to the fall of 1929. I am
 276 not sure but that we sold the sheep before the farm. It could have been in 1928 when we sold them. We paid that money to the Bank of Heber City. That is the best recollection I have now. I know we paid the money we got from the sheep to the Bank of Heber City. The
 277 money was paid on the debts we had acquired. That is, my husband and I. I was not willing to join in paying the debts, but I did pay them

because they had to be paid. My husband did not make me pay the debts but the bank wanted the money. I guess I paid the bank willingly. I received twenty-five hundred dollars for the home. I am not sure, but I think that was in 1926. I also think the bank got that money. We also owed the Heber Mercantile for furniture and part of it went to pay them. I think part of the money went to the bank but I do not know what part. We also paid some on the car. I can't tell how much went to the bank because I didn't borrow any money from the bank.

- 279 I didn't know how much money Harold had borrowed from the bank. The debt had to be settled and I was willing to use the money for that purpose. I do not know what part of the twenty-six hundred went to the bank. I didn't turn the money over to the bank. My husband took care of that. I gave him the money. I have had certificates No. 64 and 68 in my possession. They were in my possession when the ranch was given to me. I don't know when I parted with the possession of them and don't
- 280 know that I ever did. I didn't part with possession knowingly. I got possession of the certificates about the same time I got the ranch. I think it was 1929 when I got the ranch. I got the certificates at that time. I thought I had possession of them since that time, but I see that I didn't have possession. I don't know
- 281 when I parted with possession. I had no occasion to look for them. I kept them in an envelope in my trunk. I thought they were there until 1933 when mother wrote to me. I sold the ranch to Vernor in October, 1929. It didn't

occur to me to look for them at that time. I had seen the certificates once and asked my husband about them, "shouldn't those have been given to Vernor?" "It is alright to hold them for security" he said. Nothing was said to Vernor about holding them for security. I
 282 didn't read the mortgage. We left the matter to be finished in Mr. Stanley's office and I thought he was going to complete the transaction and send the papers to me, but he never did. Vernor was present when the ranch was sold to him. The house was not sold in 1929.
 283 I don't remember exactly, but it was before that. I remember distinctly that the party who come to buy the farm came up to the ranch and asked them to sell it to him. He came several times so we met in Mr. Montgomery's office and I think they wrote out a check for cash. I don't remember when it was, but I think it was when we were on the ranch. I know we were living on the farm when we sold the home. I got a check for twenty-six hundred dollars. I don't remember whether the check was turned
 284 over right then or not to Harold. I think he took care of it. I agreed to pay the bills, including the bank bills. Harold never told me he was using the certificates as a pledge. I
 285 am sure about that. It was within my knowledge that the answer of Harold alleged that he delivered the stock certificates to the bank of
 286 Heber City. I did not know of the stock being at the bank until 1933. I never discussed the certificates of stock with Mr. Murdock while he was cashier. I know him. He has cashed
 287 checks for me. I have not had any conversation with him about the stock. I have never used the certificates for any purpose since I

received them. I thought they were sold to Vernor, but understood that I was keeping them for security. I never used them that I know of. I thought they went with the ranch and were sold. I did not get them when we made the deal. They were in my trunk when we made the deal.

RE-DIRECT EXAMINATION:

288 I do not know how my husband used the money. He could have used it in a checking account. I don't know. I don't recall ever asking him how he used the money. I really
289 don't know whether he used any of it in a checking account. I went to the bank and had him cash some checks for me and wrote other checks. Even though I am mistaken as to the signature on the bottom of certificate No. 64, defendants' Exhibit F, I am certain that I never signed that certificate in the presence of Mr. Murdock.

RE-CROSS EXAMINATION:

290 There was no money in the bank that he could have drawn against after 1930. If there had been money after 1930 I would have felt free to draw against that account. I testified
291 that my husband gave me a note for the twenty-five hundred or twenty-six hundred dollars I gave to him.

RE-CROSS EXAMINATION:

The note my husband gave me is dated October 7, 1929 for the principal sum of twenty-five hundred dollars and signed by Harold Giles. The notations on the back of the note are for debts. The notation on the back of the note "\$1505.75 -- Bank" I don't remember

about. The second item "\$153.00 to mother,"
292 I think went to mother, but I don't know.

293 The promissory note was marked plain-
tiffs Exhibit 10 and received in evidence.

RE-DIRECT EXAMINATION.

293 I don't remember about the item of one
hundred fifty-three dollars, which appears on
the back of the note.

J. HAROLD GILES, a witness called by the de-
fendants, testified:

DIRECT EXAMINATION:

294 My name is Harold Giles I reside at
Heber City and am a sheep herder now. I am
a defendant in this action. I have filed an
answer through my attorney, J. Rulon Morgan.
I am not resisting the action against me. I
don't care what they do to me. I have a rec-
ollection that I delivered the note to the bank.

Certificate No. 68, marked defendants'
Exhibit G, and certificate No. 65, defendants'
Exhibit F' were shown to the witness, having
testified that he doesn't know exactly when the
certificates were delivered to the bank, but it
was probably some time in 1929. That he has
no recollection about his wife authorizing him
to deliver notes to the bank.

CROSS - EXAMINATION:

295 I delivered the certificates to the bank in
1929. I remember that. I received possession
of the certificates at the home. I just took them
to the bank. I was in the habit of dealing with
my wife's property. I never had any conver-
sation with my wife about dealing with her

property. I handled the property that she in-
 296 herited. I talked to her some about the prop-
 erty. I heard her testify about drawing on the
 account and she did draw on the account. I
 managed the farm. There was water on the
 297 farm and the water was represented by the cer-
 tificates. I have seen the certificates at the
 298 home. I am not certain when the certificates
 came into my wife's possession, but I think it
 was some time in 1927. I had the certificates
 several times I guess. I do not know that she
 ever had knowledge that they were in my pos-
 session. They were just around the home. I
 don't know that I ever had them in my posses-
 sion to her knowledge. I had no discussion with
 her at the time I took the certificates to the
 299 bank. I don't remember whether she was home
 at that time or not. I took the certificates to
 the bank because I thought we were in business
 partnership — was married, and I was doing
 her business. I thought we were partners. The
 signature on Exhibit F looks like her signature
 and I would say it is her signature. The sig-
 nature on Exhibit G does not look like her sig-
 nature. It was there when I took it to the bank.
 I do not know who wrote that signature. I
 don't think it is my writing, but it could be.
 300 It isn't my wife's handwriting anyway.

J. THOMAS CROOK, recalled and testified:

RE-DIRECT EXAMINATION:

301 The six books you show me are records of
 the Lake Creek Irrigation Company. One stock
 ledger, two minnte books, one account book and
 two stock certificate books, all of which I know
 to be stocks of the company.

RE-CROSS EXAMINATION:

302 I am not too familiar with these books. Turning to minutes on page five, 1937, at page 234. One of these minute books is a record that an assessment was levied on that day. The assessment was three dollars per share. The record on page 234 has at the top page 7, 1933 and reads "Stockholders discussed best method of collecting delinquent taxes. They decided to advertise the delinquent taxes and add the cost of advertising to the delinquent amounts. The president reported that a note of Mr. James R. Baird held by John Hylton was due April 1, amounting to \$1563.55 and must be paid at that time. Motion was made by R. A. Murdock, seconded by William L. Turner and carried that special assessment of three dollars per share be levied on all primary stock of the company.

303 The secretary was authorized to have cards printed and sent out immediately notifying the stockholders of the special assessment. The assessment will bring \$1695.15; \$1563.55 to be paid to Joe Hylton and balance of \$132.20 to Mrs. James R. Baird." At the top of that same page the following minute appears: "Minutes of annual meeting of stockholders of Lake Creek Irrigation Company held February 7, 1933 at 2:00 P. M., County Court House. President J. Thomas Crook read the call for the meeting. Minutes of annual meeting of 1932 read and approved." Attached to the book at page 235 is an advertisement entitled "delinquent notice." That was done at the direction of the board of directors. The printed delinquent notice reads: "Delinquent Notice, Lake Creek Irrigation Company, location of principal place of business, Heber City, Wasatch

County, Utah. Notice is hereby given that there are delinquent upon the following described stock on account of special assessment of three dollars per share levied on the capital stock of the corporation on page 7, 1933, the several amounts set opposite the names of the respective shareholders as follows: and "Delinquent," "Name." "Shares." "Special Assessments." "Charles Erickson, nineteen."

- 304 There are seventeen names among which appears Vernor Baird, 49 shares, \$147.00, delinquent 1932 taxes \$79.00. That proceeding after the list of delinquent taxes the minute reads as follows: "and in accordance with law the order of the board of directors made on this day of said levy, so many shares of each parcel of such stock as may be necessary will be sold on Saturday, April 1, 1933, at 2:00 P. M. at the City Council room in Heber City, Utah, to pay the delinquent assessments thereon, together with the costs of advertising and expenses of sale. Louella Clegg, Secretary, location of office Heber City, Wasatch County, Utah." The delinquent notice was published in the Wasatch Wave for thirty days. On page 235 of the same book near the top, the following was offered and received in evidence. "April 8, 1933, 2:00 P. M., City Council room, Bank Building, Heber City, Utah. The stockholders of the Lake Creek Irrigation Company met as per notice to sell all delinquent stock of the company. All directors were present, also attorney Montgomery. Decided that the Lake Creek Irrigation Company buy the stock into the company. Motion made by William L. Turner, seconded by Joseph W. Thomas and carried that the delinquent stock be bought into
- 305 the company with the provision that the delin-

quent stockholders be given the chance on or before October 1, 1933 to redeem the stock bought in by the company by paying delinquent assessments and interest on amount due at eight percent. The secretary was authorized to write the delinquent stockholders to that effect. Attorney Montgomery took charge of the sale of the delinquent stock. The following shares were offered for sale." Then appears a list of ten, among them Vernor Baird with blanks opposite his name. There are ten names of parties in the first column. In the next column are a number of figures over which it says "shares." At the top of the next column is the word "special," and then a number of figures. After special in the next column "other delinquencies" and after these words a number of figures, but opposite Vernor Baird under the word special is a blank. Under delinquent are the figures "79." The minute books continue: "Minute. The share and costs for each of the above were offered separately for sale, the whole, less than the whole, or any fraction of the stock. There being no other bidders present, the Lake Creek Irrigation Company bought the stock into the company and the stock is now treasury stock. The secretary was authorized to notify the delinquent stockholders that the company had bought the stock and that they are to bring in the certificate for the stock and make arrangements to lease the water from the company for the season by signing a lease to the effect that they pay any and all assessments levied against said water stock for the season 1933. The secretary was authorized
306 to pay account owing from the amount collected for regular delinquent assessments." Signed by Louella Clegg, secretary.

306 Beginning on page one of the next minute book under date of February 7, 1934, at the top, the following occurs: "The secretary reported \$132.20 due Mrs. James R. Baird as her balance on the special assessment of 1933. Motion was made by Elmer Mahoney, seconded by William L. Turner and carried, that the report of the secretary be accepted. Motion was made by Thomas, seconded by P. A. Murdock and carried that the secretary be authorized to see if the Bank of Heber City will redeem the Josie Baird Giles stock bought in by the Lake Creek Irrigation Company." Near the bottom of the minute appears the following: "Resolved that the stock sold for assessment and bought in by the Lake Creek Irrigation Company at their meeting of April 1, 1933, has been redeemed by the following stockholders by paying all obligations on said stock, therefore,

307 BE IT RESOLVED, that the old certificate be surrendered and the president and secretary of the company be authorized to issue new certificates to release the stock from the treasury of the company. The following shares were bought in by the company April 3, 1933." There are ten names written on the page and opposite the names are figures under the word "shares." Among those names is Vernor Baird without the number of shares and a mere ditto mark. Then it continues: "The secretary was authorized to pay the amount due Mrs. Baird as soon as the money is collected from the delinquent assessments." The minute is signed by the secretary. On page 57 of the book of accounts, the following appears: "Account of February 7, 1934; Mrs. James Baird, balance special assessment, \$132.20 — paid March 13, 1934, amount of check turned back to company

to apply on assessment owed by Josie Baird Giles and Vernor Baird as shown above. Vernor paid \$25.00, total \$157.20, delinquent assessment and interest as shown on page 57, line 6." On the top of that page is February 17, 1934 to February 13, 1935, then it follows: "Annual financial statement of the Lake Creek Irrigation Company." Then on the left hand side the word "Receipts" then another word opposite the word "fees" by Mr. Draper. There are four columns: "Receipts," "Fees," "Labor," "Cash." On the third line appears
 308 March 14, Josie Baird Giles in parenthesis the word "delinquent," and in parenthesis "\$132.20, check by mother." Then the word "Vernor" under that, \$25.00.

309 Mr. Crook further testified in answer to questions asked by counsel for defendants that he was familiar with the affairs of the Lake Creek Irrigation Company and that the assessments on certificates No. 68 and No. 64 have been kept up until this time. That they are all paid up to date. That the water represented by the certificates of stock above mentioned was customarily used on the Lake Creek Baird farm. On page 188 of the ledger of the Lake Creek Irrigation Company the following was offered and received in evidence. "April 8, 1937, Mrs. Elizabeth J. Baird, credit on note, \$139.90." Mr. Crook testified that this \$139.90 was the assessment paid by Mrs. Elizabeth Baird by
 309 allowing her credit on the money we owed her. On the five thousand dollar note. That the note has been cut down to something less than that the last few years. That the payment was made on the two certificates. The books show there were forty-nine shares of primary stock and twenty-three shares of second class stock,

and that the stock stood in the name of Josie Baird Giles. "No, Josie Baird Smith." The books show the 1938 payment on the same amount and on page 203 of the account book the following appears: "William H. Baird, primary at ninety cents." That is the amount at ninety cents a share of the primary water. Ninety cents was to take care of the regular running expenses, and this other was to take care of cleaning of the ditches and so forth; these payments having to do with this water.

- 310 During the year 1938 one hundred ninety dollars and forty-seven cents was paid, but part of that was a carry over of part of 1937. It appears that William H. Baird made that payment. The books do not show a payment of one hundred five dollars forty-nine cents, by J. Rulon Morgan on February 22, 1939. I have never seen the record of any payment on that date. It is not entered in the books. I testified yesterday about Judge Morgan meeting with the board one time. I think a special meeting was called by Miss Clegg and it was right at the time of the year that we put on our assessments and after Mr. Morgan met with us we took care
- 311 of that business after he had been with us. I don't recall the year it was, but according to the paper you show me it was on November 8, 1934, and I am positive it was about that time. The matter of issuing new certificates on the stock involved in this litigation was discussed at that time. It has been discussed a number of times, and was discussed that night.
- 312 New certificates were not issued because they could not give us the old certificates. I am talking about certificates No. 64 and No. 68 which are involved in this litigation. The stock

was advertised as delinquent. That the only reason new certificates were not issued in lieu of these certificates, 64 and 68, as I understand it, was because under the rules of the company they did not issue new certificates without the surrender of the old. I have testified at some length about assessments levied against certain certificates, sometimes referred to as Vernor Baird's, sometimes referred to as Mrs. Smith's and somewhere referred to as assessments at least having been paid by Mrs. Baird. I know from my own knowledge of the books and assessments that these assessments have to do with these two certificates, No. 68 and No. 64, which have been received in evidence in this case. The number of the certificates correspond with the numbers in the certificate book and I would say that the assessments concerning which I have testified were payments on the same water as that reported by the certificates.

CROSS - EXAMINATION:

314 The items I have read from the books do not refer by numbers to certificates No. 64 and 68. According to the ledger here received, some of them refer to Josie B. Smith. The entry here in 1935 refers to Josie B. Giles. On page 180 of the account book there appears an entry in the center of the page which is headed "Josie B. Giles" and then in parenthesis "Lake Creek Stock" and then under that 49 primary, \$61.25 first class, \$11.90, and 23 second class, \$4.60" with double lines under the column of figures, and under the double line "\$77.75," and to the left of that, "note for 1934," and over that "\$77.75" is written, then "\$62.15;" double lines under that and under the double lines "\$139.90." There is nothing in that entry

that refers to certificates 64 and 68, except the number of shares. While it doesn't say shares, we understand it as shares, and understand that 49 primary means 49 shares primary. I can find the stub for certificate No. 64. It was issued to Josie Baird Giles. As far as the records are concerned the stock still stands in the name of Josie Baird Giles.

- 315 That certificate No. 68 was issued to Josie Baird Giles for $24\frac{1}{2}$ shares of primary stock. That certificate still stands in the name of Josie Baird Giles. She signed, showing that she received the same. That on the ledger book it is shown that the certificate was received by
- 316 Vernor Baird and transferred to Josie Baird Giles. The book shows the account of Florence B. Greener and also the account of Josie Baird Giles. The account on page 53 of the ledger does not show the account of Josie, but the account of Vernor Baird. All I can tell you about the name of Josie Baird Giles is that it is on the book. I assume that Florence B. Greener's name means the stock that she owned and the other is the stock that Josie Baird Giles owned. The stock was received from Vernor Baird, as shown by certificate No. 64. Josie received certificate No. 68 from Florence Baird Greener. So far as our record shows, Josie Baird Giles still owns that stock. That is the
- 317 way the record shows. I suppose that Josie Baird Giles has been given notice of the assessment. The stock has been delinquent at different times, but has been advertised for sale only one time. The record does not show that Josie Baird Giles was given notice that her stock would be sold for delinquency. In 1934 the bank was told about the stock being sold because the corporation or its officers knew that

the bank was holding these certificates. I recall that in 1933 the bank was notified about the
 318 stock being delinquent, because I notified them myself in person, orally. That was in 1933. I believe I notified Mr. Draper.

RE-CROSS EXAMINATION:

319 According to our practice we printed cards notifying the stockholders of assessments. On these cards we notify the stockholders when the assessment is levied and print the amount of the assessment, the amount per share and the amount they are to pay. That is printed on a post card and addressed to the individual stockholders and sent through the mail. When the assessment becomes delinquent we send out another notice by the same means on a printed card and mail it to the delinquent stockholder and also advertise it in our county paper. We advertise the first assessment notice in the
 320 newspaper. The irrigation company concerning which I have testified is a mutual irrigation company, incorporated and operated for the purpose of delivering water to these stockholders.

321 Whereupon objection was raised that the articles of incorporation were the best evidence and article three of articles of incorporation of the company was offered in evidence, which provides: "The purposes for which it is formed are as follows, to wit: to manage, control and regulate and equitably divide and distribute among the stockholders of said corporation, according to their respective accrued rights, the water of Lake Creek and its tributaries, County of Wasatch, Territory of Utah, for irrigation and domestic purposes; to clean and repair the channel of said Lake Creek, build reservoirs in Lake Creek Canyon, clean out

certain springs, the water of which flows into said Lake Creek, and increase the flow of water in said Lake Creek in any manner the directors of said corporation may see fit, and for the best interests of said corporation." The articles further provide: "The general place of business of said corporation shall be in Heber, in the County of Wasatch, Territory of Utah." The articles do not show how notices of assessments were to be given.

322 Upon inquiry from counsel for plaintiff State Bank Commissioner, the clerk stated that the articles showed all amendments since its organization, so far as he could ascertain. The clerk further stated that he had the articles of incorporation as county clerk as well as county recorder. That the articles were recorded in the corporation record. That the articles contain all the papers connected with the Lake Creek Irrigation Company. That the articles were filed with the clerk as clerk and not as recorder.

323 Counsel for the plaintiff Bank Commissioner offered the whole of the articles in evidence, to which counsel for the defendants had no objection, except that it would make an enormous transcript. Whereupon counsel for the plaintiff Bank Commissioner read the following into the record: "This indenture made this 6th day of August, A. D. 1888, between the undersigned, the parties of the first part, and the Lake Creek Irrigation Company, the party of the second part, Witnesseth: That whereas the said irrigation company has taken the necessary steps to become incorporated under the laws of the Territory of Utah, and the articles of agreement have been duly signed, and it is intended by this instrument to transfer to

the said party of the second part all the right, title and interest of the said parties of the first part which they and each of them have and claim in and to the property and the rights herein described, and, Whereas, said corporation has been formed for the purpose of managing, controlling and regulating the use of said described property and rights to property, for the benefit of each stockholder in accordance with the articles of agreement and the by-laws that have been or may hereafter be adopted, now, therefore,

324 Know All Men By These Presents: That the said parties of the first part, and each of them, whose names are hereunto subscribed, in consideration of certificates of stock in said corporation hereafter to be issued to them, and each of their heirs and assigns in conformity with the by-laws theretofore adopted, do bargain, sell, grant, transfer, remise, release and quit-claim unto the said party of the second part, its successors and assigns, all and each of their right, title, interest, claims and demands whatsoever in law or equity, of, in or to all the use of Lake Creek and its tributaries, being in the County of Wasatch and Territory of Utah, together with all and singular the rights, claims, hereditaments and appurtenances thereunto belonging or in anywise appertaining. To Have and To Hold the said premises, together with and appurtenant to the said party of the second part, its successors and assigns, forever, in trust for the use and benefit of the said undersigned stockholders in said corporation.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year in this certificate first

above written.” Then follows a lot of names and opposite each name is the word “seal,” and then there is a verification or acknowledgment before William Buys, notary public for Wasatch County, Utah Territory. That part of the record was offered in evidence on behalf of plaintiff in 1266, to which no objection was offered and the same was received in evidence.

RE-DIRECT EXAMINATION:

325 The company paid the note amounting to fifteen hundred sixty-three dollars, fifty-five cents held by Joe Hylton. The note was receipted when it was paid. It was paid on November 24, 1933. As I understand it the company owed Mrs. Baird a note for about five thousand dollars and the note was assigned to Joe Hylton. The note was given to the Bank of Heber City, which endorsed it to Joe Hylton. Whereupon counsel for plaintiffs Moulton stated that he wished the note received in evidence as plaintiffs' Exhibit 11, and that he would substitute a copy therefor.

RE-CROSS EXAMINATION:

328 There isn't any stockholder of the company by the name of Josie Baird Smith and Josie Baird Giles, unless they are one and the same person. According to our records Josie Baird Smith and Josie Baird Giles own the same number of shares of stock and are the same person, so that if Josie Baird Giles Smith is her true name, then according to the records she is the owner of the stock.

329 Whereupon counsel for plaintiff Bank Commissioner offered the following additional part of the articles of the Lake Creek Irriga-

tion Company: "The property forming the capital stock as shown in article six of this agreement, has this day been conveyed to said corporation by valid deeds subscribed and acknowledged by the parties thereto, and are hereby accepted in full payment of the stock subscribed by each of the parties to this agreement." The same was received in evidence.

J. RULON MORGAN recalled and testified:

- 330 I have seen the instrument marked defendants' Exhibit H before. The signature thereon is Vernor E. Baird's, one of the co-defendants in cause No. 1410. That instrument was delivered to me on about January 26, 1935. Defendants' Exhibit "I" was marked for identification by the clerk, the same being a mortgage. That instrument was signed by
- 331 Vernor Baird on about January 26, 1935. The mortgage was given as security for the note, defendants' Exhibit H. The note and mortgage were given under these conditions: Mrs. Baird come to our office in the summer, as I remember it in 1934, and stated that she was making arrangements to go to California. Judge Morgan had done considerable work for her and her daughter Josie was involved in litigation in two different cases pending in this court. She didn't have any funds to pay the bank its lien.
- 332 In the event the case was lost to the Bank of Heber City, we took the mortgage with the idea of securing us in our legal fees and also in the event the bank succeeded in recovering on their note, which was secured by the water

stock. Either Judge Morgan, or both of us were to negotiate the paper and get money with which to protect the stock, because the 'real estate was of little value without the water. Our legal fees at that time did not exceed one thousand dollars. It was thought the water stock was probably worth thirty-five hundred or four thousand dollars and we took it to protect her in the event the bank succeeded in its action. Vernor Baird did not owe us any money at that time, but he signed the note and mortgage because Mrs. Baird was in California. The arrangements were made for Vernor to sign the note and mortgage with Mrs. Baird before she went to California. It was in the summer of 1934 that Mrs. Baird came to our office. Judge Morgan and I were present, together with Mrs. Baird and probably some of the other Bairds. I couldn't say whether Vernor was there at that time or not.

- 333 Mrs. Baird agreed that we should place in the mortgage the amount that was owing us by Josie Baird and the amount that she, Mrs. Baird, was owing, and also wished us to protect the stock which was held by the bank. I did not have money myself to take care of the obligation of the bank, but Judge Morgan could have advanced the money or arranged with someone else to take over the paper. I knew
- 334 the property stood in the name of Vernor and probably Mrs. Baird also knew that to be the fact. Mrs. Baird was not there when the deal was consummated, but the arrangements were made with her prior to the time Vernor signed the note and mortgage. Vernor did not owe us any money. After the arrangement was made the matter was called to the attention of

Mrs. Baird and she approved the arrangements made. Mrs. Baird was very anxious that the water stock should not be sold, as it was needed to irrigate the farm. I was not present at the sale of the note and mortgage on January 29, 1935. I did not know that the note was to be sold on January 29, 1935.

CROSS - EXAMINATION:

336 I haven't any independent recollection that the envelope attached to the notice was delivered to our office. The envelope contains the notice and the envelope shows that it was received about January 27th or 26th. It is postmarked January 25, 1935 at Heber. I think the notice was in the envelope. The notice and envelope came from our files. The notice was attached to the envelope. It is a reasonable inference that the notice was in the envelope. The notice and envelope were received in evidence and marked Exhibit 12.

337 I stated there was a conversation in our office where Judge Morgan and Elizabeth Baird were present, with respect to some litigation. As I remember it, Mrs. Baird came down some time during the year 1934. I think it was during the summer. She explained she was going to California for the winter. Josie was involved in two suits. One was by the bank and the other was by the Moultons. The suits were against Josie Baird and others. The note was for some attorney's fees. The note was also made so that the water stock in the bank could be taken care of in the event the bank established a claim against the stock. The same action was pending that is here involved, whereby the bank was seeking to recover on a note

which it claimed was secured by the two certificates in evidence in this case.

338 In the event the bank should prevail in that suit we were to use the water stock and the real estate to secure a loan to take care of any money judgment that the bank might secure. Under the arrangements we could either advance Mrs. Baird money or use the note and mortgage to secure a loan for Mrs. Baird. We agreed to assist her in securing money, and part of the note and mortgage was to secure us in our fees. Judge Morgan had been representing Mrs. Baird for some time and had not received any payment for his services, and the note and mortgage was given in part to protect us for the fees that we had earned up to that time. We didn't discuss in detail the amount of fees that were coming to us, but were
339 to have merely a reasonable fee for the work we had done. I don't think the fees that were coming to us at that time would exceed one thousand dollars. The bank was suing Josie for twenty-five hundred fifty dollars and attorney's fees, and the cost of foreclosing the pledged security. I do not know the total amount it came to. When we talked to Mrs. Baird we told her we might loan her the money or refinance a loan with some financial institution.

340 The conversation concerning which I speak was in the summer of 1934. The arrangement was made after the suit in Case No. 1266 was filed on August 14, 1934. I do not know how long Mrs. Baird intended to remain in California. I do not know whether the water could have been taken from Josie during the season
341 of 1934. We were much concerned about Josie

losing the stock. Mrs. Baird wanted to protect the water stock so that the ranch would have water. The conversation I referred to was some time after August 14, 1934. Mrs. Baird didn't have much money at that time and it was up to us to help the woman protect this stock. We were willing to assist her. I think some of the Bairds were present when the arrangement was made, but I do not recall whether Vernor was there or not. We discussed the amount of money that Mrs. Baird might be required to raise. As I recall, the stock was valued around thirty-five hundred or four
 342 thousand dollars. It was considered very valuable water stock. We would not have to pay more than the bank claimed. We had an arrangement to make the note for sufficient to cover our fees and to take care of the claim of the bank, if found necessary, and the amount was fixed upon that basis. Mrs. Baird did not sign anything at that time, but we were to take the stock as security if we made the loan or got it through a bank, because the water stock would be better security than just the real estate. We did not advance any money to Mrs. Baird, except as I recall a small amount of costs. We did not want to advance Mrs. Baird any money on an unsecured note.

343 We did not try at that time to secure any money. The plan was to get the money only in the event it became necessary. We did not secure any note until January 26, 1935. We did not try to get a note from Vernor before that time, but arrangements were made before then. It was first talked about in 1933 when the property was to be transferred from Vernor Baird to Josie or her nominee. That was

the transaction that we were advised to consummate. I think Vernor was in the office some time during that summer. He may have
 344 been with his mother when she was in the office, but I don't remember exactly, but it was arranged that he should take care of the transaction, as heretofore stated. Arrangements were made with Vernor during the summer of 1934. That was when we were approached to carry out these various transfers. I can't give the date when we talked to Vernor Baird. The matter of fixing up the papers extended over a period of some days. Bill Baird took the mortgage and note and deed for Vernor to sign. I do not know whether he signed the note and mortgage and the deed at the same time. I was not present when Vernor signed the note, deed and mortgage. I saw Vernor before the papers were sent to him. I saw him after they were signed and before they were recorded.

345 I think the mortgage and deed were recorded on the 28th, 29th or 30th. I am not certain whether I saw Vernor Baird before the instruments were signed. I know Bill took them for Vernor to sign and brought them back to me, saying they had been signed. I was the notary public who acknowledged the instruments. They were not signed before me, but he sent me a note stating that he had executed these instruments. I do not have the note
 346 which was signed on a piece of paper. I don't recall exactly the date I prepared the papers or the date I gave them to William Baird. They were brought to me with the note on the date they were acknowledged. They were given to William Baird a day or two before that. I have not looked for the note Vernor sent me to

see if it is in the files. I am familiar with
 347 Vernor Baird's signature. When a party does
 not sign in your presence it is a matter of pre-
 caution to have him sign a note saying that he
 had executed the instruments. I know Vernor
 Baird's signature. The instrument was signed
 in the presence of William H. Baird; by Vernor
 signing the papers saying that he had executed
 the mortgage, it makes one feel more certain
 that he signed it. I admit the way I took the
 acknowledgment is not the best way to do it,
 but sometimes we do that when we are unable
 to see the person or talk to him over the tele-
 phone.

348 The release of mortgage was brought to
 the county recorder on the 28th. I personally
 gave it to the recorder. I think the other in-
 struments were recorded, one on the 29th and
 one on the 30th. I was here on either the 29th
 or 30th. I brought the one on the 28th to be
 recorded. The release of mortgage was re-
 corded on January 28, 1935, at 9:00 A. M. I
 don't recall whether I prepared the release or
 not. I know that William Baird made a trip
 out to get the signature of Vernor Baird on
 some of these instruments, but don't know just
 the ones he did take. It took a number of days
 before the matter was entirely fixed up. The
 349 instruments were given to William Baird a day
 or so before the instruments were executed.
 I don't recall whether I gave them all to Wil-
 liam at one time. I gave them to him at the
 office. I do not know whether William made
 more than one trip to get the documents signed.
 I cannot tell you whether William made one or
 more trips to get the documents signed. I acted
 as notary. I am not certain, but I think I

acknowledged the instruments when they were all returned. They may have been returned all at one time, but I do not recall.

- 350 The reason I did not record the power of attorney before the deed was because it was overlooked, or maybe Judge Morgan had it. I don't recall and I can't tell you. I do not recall whether Vernor signed the instruments the same day they were acknowledged. I have not filed any claim against the estate of Elizabeth Baird. Notice to creditors has been given and the time for filing claims has expired. I said that Mrs. Baird still owes about one thousand dollars. The personal services to Mrs. Baird were rendered by Judge Morgan. I did some little work, but Judge Morgan did most of it.
- 351 Both of us represented Josie. I have hurriedly checked over the records to see about how much work was done by Judge Morgan. I do not anticipate any trouble about our claim.

MR. MURDOCK was recalled and testified:

- 352 That he severed his connection with the Bank of Heber City in August, 1933, and that no one ever notified him that certificates numbered 64 and 68 were to be sold by the irrigation company.

R. C. DRAPER was recalled and further testified:

DIRECT EXAMINATION:

- 353 That he has been connected with the Bank of Heber City since August 20, 1933. That no

one notified him with respect to the sale of certificates numbered 64 and 68, but he was at that time a mere deputy in charge and had no authority to receive any notice on behalf of the examiner.

CROSS - EXAMINATION:

He would not have been fined if he had paid the assessment. What I said was that I was only a deputy examiner in charge and any decision I may have made would have to be approved by the examiner in charge of the depositors' committee. All I could do was to report the matter to them.

- 354 Plaintiffs' Exhibit 13 was marked and received in evidence, showing the transactions had by J. Harold Giles with the Bank of Heber City.

WILLIAM BAIRD was recalled and testified:

DIRECT EXAMINATION:

- 355-356 The water stock involved in this litigation was worth about seventy-five dollars a share in 1933. The land was worth between twenty-five and thirty dollars an acre. The value of the land and water was probably between six thousand and seven thousand dollars.

CROSS - EXAMINATION:

The ranch has with it some first class high water. I think about twenty-five dollars a share would be placing the value of that water high. The second class high water would prob-

ably be worth about five dollars per share and the third class water, almost worthless.

RE-DIRECT EXAMINATION.

357 I do not believe any second or third class water has any value during a drouth. It is a mere flood water. There is around one hundred to one hundred sixty acres of land under cultivation, but to be honest about it, I do not know just how large an acre of land is. I know more about the size of a section of land than I do about an acre.

Upon request of counsel for the Bairds, an amendment was permitted of their pleadings.

358 A copy of a note of Elizabeth J. Baird was substituted for the original, as was also copies of the files in the estate of James R. Baird, deceased.

VERNOR E. BAIRD was called as a witness by the defendant and testified:

DIRECT EXAMINATION

359 My name is Vernor E. Baird. I reside at Heber City. My business is mostly livestock. I am a brother of Josie Baird Smith and a son of Elizabeth Baird. I recall that in 1929 I had a transaction with Josie when I bought a farm and water stock and livestock. They called the farm the Lake Creek Ranch. I gave her a note in the sum of fifteen thousand dollars as evidence of the purchase price. I went into the possession of the farm when I made the deal.

360 I think I was in possession of the farm about five, three or four, — about four years.

Over objection by counsel for the plaintiffs Moulton, Vernor Baird testified that he finally gave up possession of the property. That he couldn't make payments on the ranch and decided that the best thing to do was to turn it back.

361 I talked with Josie about the matter several times, about returning the ranch, and finally we decided to do that. I think we had one or two conversations about this matter in 1932. The last conversation was in 1933. It was in
 362 Salt Lake. My mother and my sister were in Salt Lake. We decided that I was to turn back the ranch. That is what I said to Josie and Josie said it was alright. Josie said she would take the ranch back and I should turn it over to mother. She said she owed mother quite a bit of money and that she was willing to turn it over to mother. She wanted it turned to mother. I did not get any rents or profits from
 363 the ranch after that. I did not direct the operations of the ranch after 1933. I spent my time with the sheep out on the range. We had a family meeting about dividing up the property of the Baird estate. We finally agreed how it should be divided. At that time a number of notes were made out. We couldn't settle fully in sheep, land and different things, so we gave notes to make up the difference. There were several notes given to mother, and
 364 I don't know whether some of the brothers and sisters got a note or two. I think Josie gave a note. I gave a note. I think my note was nine hundred dollars. I don't recall the amount of Josie's note.

CROSS - EXAMINATION:

365 I had someone run the farm for me. It was Joe Walker. I don't recall just how long he ran it, but I think it was three years. I think Joe Walker was on the farm in 1934. The notes I testified about were given when the estate was being settled. It was at the time we received our property. I don't recall all the consideration that was given to mother for the notes. I don't remember the amount of money that the estate received from mother. We gave notes to mother to balance the estate. My note was nine hundred dollars. I paid that note. I do not have the note with me. I do not

366 recall the date of the note. I don't remember whether the note of nine hundred twenty-one dollars and thirty-two cents is the note I gave to mother. I gave her only one note. It was about nine hundred dollars. I don't recall whether the note was made up of items to which you refer. I gave her one note. It was

367 in 1933 that I turned the property back to Josie. It could have been in the summer or spring. I did not list that property in my financial statement after that time. I do not recall making the statement in 1933 that I owned two hundred seventy-five acres of land in Lake Creek on which there was a mortgage of fifteen thousand dollars to Josie Baird. I don't recall making a statement in 1934. The instrument you show me "Wasatch Livestock Loan Com-

368 pany, Salt Lake City, Utah, application for loan on livestock" contains my signature, which is dated November 3, 1933. It is also my signature on the instrument dated October 24, 1934.

Whereupon the instrument shown Mr. Baird was admitted in evidence as plaintiffs'

Exhibit 14, over the objection of counsel for the defendants. Plaintiffs' Exhibit 15 was
369 also received in evidence over the objection of counsel for the defendants.

VERNOR BAIRD testified:

That the cultivated farm referred to in the exhibits containing applications probably referred to the ranch involved in this controversy.

370 The farm was to go back to mother. It was to be conveyed free and clear of incumbrances. The mortgage on the property was made out to Morgan & Morgan at Josie's request. The request was made in 1933. I think it was in the fall of 1933. I didn't give the note and mortgage at that time because I had not received my note and mortgage back. I did not
371 owe any money to Morgan & Morgan. I gave the note and mortgage to Morgan and Moran because Josie and mother wanted it to be done. Josie wanted me to return the ranch. I was out on the desert when I signed the note and mortgage. William Baird brought the note and mortgage to me. I signed the note, mort-
372 gage and a deed. I signed a note at that time stating that I had signed the deed, note and
373 mortgage. I wrote a note stating that I had signed the mortgage and deed. I don't recall going to George Stanley's office on about February 3, 1938. I went to California in an airplane when mother died. I had some papers that were prepared by Mr. Stanley for mother to sign. It had nothing to do with this law suit.
374 I did not tell Mr. Stanley that I merely signed

the papers because I was asked to sign them. I was asked to sign a note saying that I signed the deed and mortgage by William. I had been on the desert three or four months before I signed the papers.

RE-DIRECT EXAMINATION:

- 375 Referring to the plaintiffs' Exhibit 14, I signed that paper before it was made out. None of the body of the instrument was made out by me. I do not run a typewriter. The type-writing on the paper was not there when I signed it, as far as I recall. I do not recall
376 where I signed plaintiffs' Exhibit 15. I was owing the Wasatch some money. As a rule I went to their office when I signed applications. I am not sure where I was when I signed those exhibits, but was probably in Salt Lake. I think some of those applications were sent to me at Heber City to sign, but do not recall
377 whether either of those were sent to me. I signed the deed to mother out on the desert. I do not remember whether I had been in from the desert within three or four months after I signed the deed to mother. I was in the office of Judge Morgan and J. Rulon Morgan in 1934 several times, but I can't fix the date.

RE-CROSS EXAMINATION:

- 378 The information on that application of the Wasatch Livestock Loan Company was probably taken from applications made before, although when I first secured a loan from them I made out the applications. When I signed the statements in 1933 and 1934 I told them about some changes that should be made. I
379 may have seen the 1933 statement when I signed the 1934 statement. Some years they made a

few changes. At times they made changes at my request. I went to the office and talked it over with Mr. Mitchell as a rule. I told him
 380 of the changes to be made. I presume when I made the 1934 statement I went over the 1933 statement and told them of what changes should be made, but I don't recall. I may have done the same thing when the 1935 statement was made. I made the 1935 statement and part of it was made up from the 1934 statement. I told Mr. Mitchell what new matters should be put in.

J. CLAYTON MITCHELL called as a witness
 by plaintiffs Moultons testified:

DIRECT EXAMINATION

381 My name is J. Clayton Mitchell. I reside at Salt Lake City, Utah, and am employed by the Wasatch Livestock Loan Company as secretary, and have been such since April, 1933. As secretary I have supervision of making up financial statements of borrowers. Plaintiffs' Exhibit 14 is an application for a renewal of a
 382 loan. Mr. Baird signed plaintiffs' Exhibit 14 in blank. At least that is the usual way, and we revise the statements from year to year. The signature on plaintiffs' Exhibit 14 is Mr. Baird's signature. I don't recall any of the details of the conversation with Mr. Baird when he signed plaintiffs' Exhibit 14. When we have the statements made out we usually have the borrower in the office, but I can't say definitely whether Mr. Baird was in our office when he signed that statement, but we like to have the borrower present. Some of the pencil nota-

383 tions on the statement are mine. I do not know whether he was present when the pencil notations were made. The statements are made from information secured from the borrower and from previous financial statements. That is also true of Exhibit 15.

CROSS - EXAMINATION:

384 Mr. Baird first made a loan in 1927. From that time the other loans were renewals. Since he made the original loan he was never completely out of debt to the company. At times the statements are made out in the office, and at other times they are sent out to the borrower. Most of the sheep men who borrow money were placed on a budget and we usually have them in the office when renewal applications are made out. We revise their financial statement and prepare a budget which they sign. They usually sign a blank financial statement which is made up from notations from the previous year. When the matter is handled that way the borrower signs the application in blank and the company fills out the blanks.

385 The application marked October 24, 1934, contains notations changing it in pencil, and the 1934 statement with the notation is used for the renewal of 1935. I have the application for 1935. In the application for 1935 the fifteen thousand dollar note was carried on that
386 application. The fifteen thousand dollar obligation does not appear on the 1936 application, which was made up from the 1935 application. I do not know why it was left off the 1936 application, but we had for some time considered that there was no equity in the property covered by the fifteen thousand dollar

mortgage. The property in the mortgage was carried for some time, but I didn't know definitely whether it still belonged to the borrower or not. We perhaps asked the question whether or not the statements would be the same as
 387 during the prior years. I think these applications were prepared in the office. We do try to get an honest statement from the borrower. We are primarily interested in the livestock upon which we take the lien, but we are interested in knowing the amount of other property owned by the borrower as a part of his financial standing.

RE-DIRECT EXAMINATION:

388 We go over these financial statements and decide what is to go in them before they are signed in blank. On the 1935 statement appears this language "two hundred seventy-five acre farm valued at twenty to twenty-five, turned to mortgagee for indebtedness of fifteen thousand dollars." That is my notation. We knew for some time that Vernor Baird wasn't going to have this farm. The borrower told me that when I made the notation. That would be on October 26, 1936.

RE-CROSS EXAMINATION:

389 We knew that he did not claim title to the farm prior to the time the notation was made, because we made no provision for any payment on the farm and understood in a general way that he could not pay for the farm. At no time was there an item in the budget to take care of this obligation. Under the budget arrangements we make definite advances to the borrower and when sheep or lambs are sold the

money comes to us and we remit money back to the borrowers to take off their obligations. We followed that practice from the fall of 1932 to the present time. There is nothing listed on
 390 these financial statements to take care of the expenses of the farm.

RE-DIRECT EXAMINATION:

We received no income from the farm and were only interested in that the farm might be used to take care of the livestock. We had nothing to do with the proceeds from the farm, but only listed the farm as an asset and the mortgage as a liability. The statement shows that the farm was of the value of twenty thousand, six hundred twenty-five dollars — twenty-five dollars for two hundred seventy-five acres.

ADDISON C. MOULTON, one of the plaintiffs,
 being first duly sworn, testified:

DIRECT EXAMINATION:

391 My name is Addison C. Moulton. I reside at Heber City, Utah. I was in Heber City on January 29, 1935, and was present at the court house door on the morning of that day at about nine-thirty. George B. Stanley was also there and Judge Morgan. I couldn't say for sure, but I think William Baird and L. C. Montgomery were there. The sheriff was also there.
 392 By Judge Morgan I mean J. Rulon Morgan, the man here in the court room. I recall a conversation between Mr. Morgan and Mr. Stanley, but I couldn't give the exact words. Stanley turned to Mr. Morgan and asked what kind

of a deal they were trying to pull off. They entered into a discussion for a few minutes. I don't recall what Mr. Morgan said. I recall that when the sheriff offered the note for sale Morgan said it was valueless because it had been cancelled. I recall being present in the county commissioners' office. William Baird and Mr. Stanley and the county commissioners
 393 were there. The county commissioners had advertised the property for sale because of delinquent taxes. That was the Lake Creek
 394 Ranch. That at that time William Baird stated that the property was conveyed by Vernor Baird to Elizebeth J. Baird without consideration.

CROSS - EXAMINATION:

395 I am sure that Rulon Morgan was present at the time of the sale. I was at the sale and thought that Mr. Morgan was very foolish that he did not make a bid on the note. Morgan represented the Bairds as their attorney. I was not particularly pleased because I bought the fifteen thousand dollar note for one hundred dollars. I told Stanley to start out the bid at one hundred dollars. I didn't raise the bid because it was not necessary. No one bid against us. Mr. Stanley had authority to go up to the amount of the note, but he only bid one hundred dollars. I didn't make any bid
 396 except for one hundred dollars, and would have been a damn fool to bid against myself. That is my explanation. I did say that William Baird was there, but I am not sure, but I recall Mr. Morgan being there, because of this conversation. I was there when the conversation and sale transpired. I am sure about that.

GEORGE B. STANLEY testified as a witness
for plaintiffs Moultons:

DIRECT EXAMINATION

397 My name is George B .Stanley. I reside
at Heber City, Utah, and have resided here for
nearly twenty years. I prepared the note and
mortgage involved in this suit at the request of
Vernor E. Baird. The note was left with me
by Mr. Baird to be delivered to Josie when she
called and signed the chattel mortgage that
398 gage was delivered to Mr. Baird. I had a con-
versation with Josie Baird about the note at
the front door of Elizabeth J. Baird in Heber
City when she returned from California in
1932. I don't remember just what time of the
year it was. I wrote a letter to her asking her
to call and get the note. I mailed the letter to
Josie Baird Giles. She called at the office
399 once. That was in November, 1934, but she did
not call in respect to the letter I wrote her. I
wrote a letter to Josie in California on Feb-
ruary 27, 1932 and mailed it to Mrs. Giles.
Harold Giles and Josie and myself were pres-
ent at the conversation in 1932. At that time
I called to see if I could get a settlement of the
note given to the Moultons. Josie Baird did
400 not call for the note except in 1934. I told her
on three occasions that if she did not pay the
note I would be forced to attach it. I first
told her that in 1932. The second time I told
her that was in 1933 up in front of her mother's
house, and the third time I told her was just
before we filed this action, at the home of Ver-
nor E. Baird. She did not, at any of these
times, demand the note from me. I have not

done any legal work for Josie Baird since I was admitted to practice law in May, 1931.

401 At the time Josie came to my office it was during the month of November, 1934. I was present at the court house on the morning of January 29, 1935. I attended the sheriff's sale. J. Rulon Morgan, William H. Baird, Addison C. Moulton and myself were there. I had a conversation with Rulon Morgan on that
402 morning. After the sheriff offered the note for sale Mr. Morgan said the mortgage had been released and the note cancelled, and that there was nothing to sell. I had a conversation with Vernor Baird on or about February 3, 1938. It was at the request of the Wasatch Livestock Loan Company that I had the conversation. He came to get some deeds I had made out. I do not know whether I was his attorney because the work was not done at his request, but for
403 his benefit. He came to get the deeds. We had a conversation at that time with respect to the deed that Vernor Baird had given to his mother, Elizabeth Baird. I recall at one time
404 that we met with the commissioners. Mr. Moulton and I talked about the purchase of the Lake Creek farm from the tax sale. There was a whole room full of people. I can't remember them all. Mr. Sharp, Mr. Montgomery, Mr. Moulton, Mr. William H. Baird and the commissioners were there. I was there and a number of other people. At that time William Baird stated that Vernor Baird conveyed the property to Elizabeth Baird without a consideration.

CROSS - EXAMINATION:

405 This conversation was had in answer to questions asked by me and Mr. Montgomery.

I was not particularly trying to get William in a hole. Vernor Baird wasn't there. I don't know why Montgomery was there. I don't know why Montgomery asked William the question. The reason we were there was to see that no one else paid the taxes, and so that we would not lose title by a tax sale. We were not particularly anxious to get the tax title attached
406 to our claim. The county commissioners finally decided that they would let the title remain with the county. I was there to get all the information I could for the Moultons. I think what was meant by consideration was explained to William. We asked what was paid by Vernor's mother to Vernor for the property and he said "nothing." He said there was no con-
407 sideration paid in the deal. William talked to me at that time. He didn't tell us about the deal, but merely answered our questions. He didn't tell me the reason that no consideration passed from the mother to Vernor. I have written several times asking Josie to come and get the note and also to come and sign a chattel mortgage that was in my office.

408 The deal between Vernor and Josie was not completed as to the chattel mortgage. The chattel mortgage was prepared at the time the mortgage was signed by Vernor and his wife. I think I have the chattel mortgage with me. Josie never came to sign the oath of good faith on the chattel mortgage. The instrument which is marked defendants' Exhibit J is the chattel mortgage prepared by me. I expected Josie to come and finish the mortgage, but neither Vernor nor his wife verified the chattel mort-
409 gage. That is, the verification is not signed. There is nothing to show on the chattel mort-

gage by whom it was signed. The chattel mortgage was offered in evidence and upon an objection being made to its admission the objection was sustained.

- 410 I wrote Josie a number of letters. I know of no reason why I could not have sent her the note. I had no reason. Vernor told me to give it to Josie when she came and finished the chattel mortgage. I presume I was holding the note for Josie. For part of the time I was holding the note I was not an attorney. I was not holding the note as her attorney, as I never was her attorney. I made the note out at the request of Vernor Baird. Josie came in to sign the deed that was made from her and Harold to Vernor. Josie was not in the office
- 411 when the note and mortgage and chattel mortgage were made out. I made the deed out to Vernor. She came in the office and signed the deed to Vernor. The deed to Vernor was delivered to him and I also delivered the mortgage to Vernor. I do not think it strange that the mortgage was delivered to Vernor. Vernor had me make out the mortgage and I delivered
- 412 it back to him. Vernor took the deed and mortgage from my office to have it recorded. I stated that I told Josie I was going to levy on the note for the Moultons at least on three occasions.
- 413 Josie did not make an attempt to get the note back. I mean to say that notwithstanding I was holding this note and was pressing Josie to pay these Moulton judgments, she did not ask for the note. I was the attorney for the Moultons in that suit. These conversations about the note were had before a suit was brought by the Moultons. Josie could have had the note if she had asked for it. I could have

mailed it to her. I was holding this note of Josie for fifteen thousand dollars, which is involved in this law suit and had it all the time until the sheriff got it. I presume I told the sheriff to come and get the note from me, but don't remember whether I did or not, but I presume I did — as I remember it I did. I told the sheriff that I was holding Josie's note and to come over and make a levy on it and turned it over to the sheriff. That notwithstanding I told Josie that I was holding the note and told her upon three occasions that I was going to levy upon the note to satisfy the Moultons, she did not ask to have it returned to her.

RE-DIRECT EXAMINATION:

415 On January 28 1935 William H. Baird demanded Josie's note, but at no time was the demand made, except the one made by William Baird in 1935 and the one made by Josie in November, 1934. The note was delivered to the sheriff in July, 1934.

RE-CROSS EXAMINATION:

416 At the time Josie made the demand for the note I was an attorney. I did not tell Josie to come and get the note. I told her that unless she came and got the note I would have to levy on it. Even after I told her that she did not come to get the note. At the time of these conversations I was an attorney-at-law.

J. RULON MORGAN, being recalled, testified:
DIRECT EXAMINATION

417 I stated when I was on the witness stand before I did not actually attend the sale at 9:30 A. M. on the 29th day of January, 1935.

I saw Mr. Stanley on that day. At about 9:00 on that day I went in to record an instrument in the recorder's office. When we came out on the porch there were two or three people standing around. George Stanley was one and when I came out of the recorder's office George Stanley said something about "What are you doing" and I said "we are checking the records," and Stanley said "We have sold this note and mortgage" and I said "how much did you pay for it?" He said "One Hundred Dollars," and I said "Well, you didn't get anything." That was, I assume, just after the sale.

CROSS . EXAMINATION:

418 I was here to record some papers on the 29th. I think I was also here on the 30th. When I came here on the 29th I went back into the vault. I met Mr. Stanley after I came back. I checked the title to this property. I was in the vault. I don't know how many minutes I was in the office. As I recall I was here in Heber City on the 28th or 29th, and possibly on the 30th. I saw George Stanley when I
419 came out of the recorder's office. I don't recall whether the sheriff was out in front of the court house when I went out.

PLAINTIFFS' EXHIBITS

EXHIBIT NO. 1 is court file No. 1261, which contains a complaint of the Moultons to recover a judgment on two promissory notes, each dated January 1, 1931; one note being for the principal sum of \$1800.00 and the other note be-

ing for the principal sum of \$1900.00, together with \$190.00 attorney's fees. The file contains an affidavit for writ of attachment wherein it, among other things, is recited "That the writ of attachment is not sought to hinder, delay or defraud any creditor of the defendants, or either of them. That the defendants own or hold an interest in real and personal property. that they are endeavoring to conceal. That the plaintiffs may not realize upon any judgment which may be obtained in the above entitled action, and that plaintiffs are apprehensive that unless a writ of attachment is issued the defendants will dispose of or conceal their property. That execution on any judgment obtained in this action will be returned without satisfaction." The affidavit was sworn to on the 21st day of June, A. D. 1934. The file also shows that an undertaking for attachment was signed and acknowledged on the 21st day of June, 1934. The complaint, affidavit and undertaking were filed on July 7, 1934. The said file also shows that a writ of attachment was issued in said cause and the sheriff made the following return thereon:

SHERIFF'S RETURN ON ATTACHMENT

County of Wasatch,) ss.
State of Utah.)

Sheriff's Office

I hereby certify that I received the within and hereto attached Writ of Attachment on the 7th day of July, 1934, and that by virtue of the same I have attached all of the right, title, claim and interest of the

within named defendants of, in and to all of the property described in the within and hereto attached Notice of Attachment; and that I attached the same by serving upon Josie Baird Giles, J. Harold Giles and George B. Stanley, personally, a full, true and correct copy of said Writ of Attachment with a copy of said Notice of Attachment attached thereto, and by serving said Writ of Attachment and said Notice of Attachment on Vernor E. Baird by delivering to and leaving with Josie B. Giles, a suitable person over the age of fourteen years, at the residence and usual place of abode of said Vernor E. Baird, a full, true and correct copy of said writ, and by serving said Writ of Attachment and Notice of Attachment on Lake Creek Irrigation Company by delivering to and leaving with Lula Clegg, the secretary of said irrigation company, a full, true and correct copy of said writ, and by serving said Writ of Attachment and Notice of Attachment on Joseph Walker, the occupant of the land described in said Notice of Attachment, by delivering to and leaving with him, personally, a full, true and correct copy of said writs, and by filing with Alfred Sharp, the Wasatch County Clerk and Recorder, a full, true and correct copy of said Writ of Attachment, together with a description of the property attached and a notice that it was attached.

I further certify that all of the above said services were made in Wasatch County, Utah, and at the time of making the said services I endorsed upon the copies of said Writ of Attachment so served, the date and

place of service, signed my name thereto and added my official title.

I further certify that at the time of making the said service upon George B. Stanley, he delivered over to me one certain promissory note, dated October 10, 1929, made by Vernor E. Baird and Mary A. Baird, in favor of Josie Baird Giles, for the principal sum of \$15,000.00, said note being hereto attached and made a part of this return.

I further certify that the said Lula Clegg, as secretary of Lake Creek Irrigation Company, delivered to me a memorandum stating that the records of said Irrigation Company show the following water stock is owned by Josie B. Giles, towit: 49 shares of Primary water, 34 shares First Class High Water and 23 shares Second Class High water, said memorandum being hereto attached and made a part of this return.

I further certify that the said R. C. Draper, as Assistant Examiner in Charge of the Bank of Heber City, delivered to me a memorandum stating that said Bank of Heber City holds under pledge agreement Certificates Nos. 64 and 68 in the Lake Creek Irrigation Company for 24½ shares each, which is collateral security for one promissory note in the amount of \$2,550.00, signed by J. Harold Giles, said memorandum being hereto attached and made a part of this return.

Dated this 10th day of July, 1934.

VIRGIL FRAUGHTON, Sheriff."

Attached to the Writ of Attachment, and made a part thereof, is a notice after the title of the court and cause which reads as follows:

Under and by virtue of the within and hereto attached Writ of Attachment issued out of the above entitled court of which the annexed Writ is a true copy, I have this day attached and levied upon all the right, title, claim and interest of the above named defendants, of, in and to the following described property:

One certain promissory note, dated October 10th, 1929, made by Vernor E. Baird and Mary A. Baird, in favor of Josie Baird Giles, for the principal sum of \$15,000.00, due on or before ten years after its date, together with interest as herein specified; together with mortgage given to secure said note, dated October 10th, 1929, made by Vernor E. Baird, and Mary A. Baird, his wife, in favor of Josie Baird Giles, and recorded November 12th, 1929, in Book "13" of Mortgages, pages 185-6, as Entry No. 46359 of the records of Wasatch County, State of Utah.

All the right, title and interest of the defendants in and to certain water stocks held by Bank of Heber City in connection with notes which are secured by water stocks pledged by said defendants to Bank of Heber City.

All the right, title and interest of the defendants in and to the following described tract of land, situate in Wasatch County, Utah, towit:

The Southeast quarter of the Northwest Quarter; the East half of the South-

west Quarter; and all that portion of the North half of the Northwest Quarter lying South of the County road; all in Section 2, in Township 4 South of Range 5 East of the Salt Lake Meridian.

TOGETHER with all improvements thereon and appurtenances thereunto belonging, including 49 shares of Primary water right, 34 shares of First Class High water right, 23 shares of Second Class High water right, and 8 shares of Third Class High Water right of the Lake Creek Irrigation Company, representing the water right appurtenant thereto.

Dated this 7th day of July, 1934.

VIRGIL FRAUGHTON,
Sheriff, Wasatch County."

The files further show that the sheriff made return on Execution in words as follows:

"Sheriff's Office

County of Wasatch,)

) ss.

State of Utah)

I hereby certify that under and by virtue of the within and hereto annexed Writ of Execution, by me received on the 19th day of December, 1934, I did on the 21st day of January, 1935, levy on the property hereinafter described, and noticed the same for sale as the law directs, and on the 29th day of January, 1935, at 9:30 o'clock A. M., of said day, at the front door of the county court house in Heber City, Wasatch County, Utah, the time and place

fixed for said sale, I did attend and offer for sale at public auction, for lawful money of the United States, the property described as follows:

All of the right, title and interest of the said defendants in and to one certain promissory note, dated October 10th, 1929, made by Vernor E. Baird and Mary A. Baird, in favor of Josie Baird Giles, for the principal sum of \$15,000.00, due on or before ten years after its date, together with interest as therein specified; together with mortgage given to secure said note, dated October 10th, 1929, made by Vernor E. Baird and Mary A. Baird, his wife, in favor of Josie Baird Giles, and recorded November 12th, 1929, in Book "13" of Mortgages, pages 185-6, as Entry No. 46359 of the records of Wasatch County, State of Utah.

All of the right, title and interest of the defendant in and to certain water stocks held by Bank of Heber City in connection with notes which are secured by water stocks pledged by said defendants to said Bank of Heber City.

All the right, title and interest of the defendants of, in and to the following water stocks, towit: 49 shares of Primary water right, 34 shares of First Class High Water right; 23 shares of Second Class High Water right, and 8 shares of Third Class High Water right of the Lake Creek Irrigation Company, representing the water right appurtenant to the lands described in the mortgage hereinabove referred to,

and sold the whole of the same to A. C. Moulton and E. Dewey Moulton, the within named plaintiffs, for the sum of \$100.00, said purchasers being the highest and only bidders, and said sum being the highest and only bid made; and I have given said purchasers a certificate of sale, and I herewith return said Writ partly satisfied, towit: in the sum of \$100.00.

Dated this 1st day of February, 1935.

VIRGIL FRAUGHTON, Sheriff."

EXHIBIT NO. 2 is an abstract of title to the real estate involved in this controversy.

EXHIBIT NO. 3 is a promissory note in the usual form for the sum of \$15,000.00, signed by Vernor E. Baird and his wife, Mary A. Baird, in favor of Josie Baird Giles.

EXHIBIT NO. 4

Exhibit No. 4 is a notice of sale, which reads as follows:

"To be sold at Sheriff's Sale on the 28th day of January, 1935, at the front door of the County Court House, in Heber City, Wasatch County, Utah, at 10 o'clock A. M.

All of the right, title and interest in the said defendants in and to, one certain promissory note, dated October 10th, 1929, made by Vernor E. Baird and Mary A. Baird, in favor of Josie Baird Giles, for

the principal sum of \$15,000.00, due on or before ten years after its date, together with interest as therein specified; together with mortgage given to secure said note, dated October 10, 1929, made by Vernor E. Baird and Mary A. Baird, his wife, in favor of Josie Baird Giles, and recorded November 12th, 1929, in Book "13" of Mortgages, pages 185-6, as Entry No. 46359 of the records of Wasatch County, State of Utah.

All of the right, title and interest of the defendants in and to certain water stocks held by Bank of Heber City in connection with notes which are secured by water stocks pledged by said defendants to said Bank of Heber City.

All of the right, title and interest of the defendants in and to the following water stock, towit:

49 shares of Primary water right, 34 shares of First Class High water right, 23 shares of Second Class High water right, and 8 shares of Third Class High water right of the Lake Creek Irrigation Company, representing the water right appurtenant to the lands described in the mortgage hereinabove referred to.

Purchase price payable in lawful money of the United States.

Dated this 21st day of January, 1935.

VIRGIL FRAUGHTON, Sheriff."

EXHIBIT NO. 5 is a small book.

EXHIBIT NO. 6 is a letter from Josie B. Giles to George B. Stanley.

EXHIBIT NO. 7 is a note from William H. Baird to Elizabeth J. Baird.

EXHIBIT NO. 8 is a copy of the files in the matter of the estate of James R. Baird, and shows the amount of property distributed to each of the heirs including certain notes that were given by the heirs to Elizabeth J. Baird to repay her for money loaned the estate.

EXHIBIT NO. 9 is a check signed by Arthur V. Duke, made payable to Elizabeth J. Baird, and the Farmers' & Merchants' Bank in the sum of \$110.00, which was paid for rent of the property involved in this controversy.

EXHIBIT NO. 10 is a note signed by Harold Giles in favor of Josie Baird Giles for the sum of \$2500.00, and dated October 7, 1929.

EXHIBIT NO. 11 is a note signed by Elizabeth J. Baird in favor of the Bank of Heber City, and endorsed by the Bank of Heber City to Joseph Hylton.

EXHIBIT NO. 12 is an envelope and a Notice of Sheriff's Sale.

EXHIBIT NO. 13 is a statement of transactions had by J. Harold Giles with the Bank of Heber City.

EXHIBITS NO. 14 AND 15 are financial statements signed by Vernor E. Baird for

applications for loans with the Wasatch Livestock Loan Company.

DEFENDANTS' EXHIBITS

EXHIBIT A is a general power of attorney signed by Josie Baird Giles, whereby she constitutes William H. Baird her general attorney.

EXHIBIT B is a check signed by Vernor E. Baird in favor of Josie Baird Giles, dated August 27, 1930 for the sum of \$135.60, which is marked "Returned for Insufficient Funds."

EXHIBIT C is the files in cause No. 1256, the same being an action for divorce, whereby Josie B. Giles recovered a divorce from J. Harold Giles on the ground of failure of the defendant to support the plaintiff with the necessities of life.

EXHIBIT D is a release of the mortgage which plaintiffs seek to foreclose in action No. 1410, signed by William H. Baird as attorney-in-fact for Josie Baird Giles.

EXHIBIT E is a warranty deed signed by Vernor E. Baird, whereby the property here sought to be foreclosed is conveyed to Elizabeth J. Baird.

EXHIBIT F is a water certificate Numbered 64 for 24½ shares of primary water in the Lake

Creek Irrigation Company, the same being one of the certificates which is involved in this action.

EXHIBIT G is a similar certificate, Numbered 68 for 24½ shares of stock, the same being one of the certificates involved in this controversy.

EXHIBIT H is a note signed by Vernor E. Baird, made payable to A. B. Morgan and J. Rulon Morgan, for the sum of \$5,000.00.

EXHIBIT I is a mortgage given to secure a note, Exhibit H, and covers the property involved in this controversy.

EXHIBIT B-1, in case No. 1266, is a note signed by J. Harold Giles for the sum of \$2550.00, dated April 26, 1933, and is the note sued upon by the plaintiff Bank Commissioner.

EXHIBIT B-2 is a pledge agreement dated in 1929, the month not appearing, whereby Harold Giles deposits with the Bank of Heber City 49 shares of Lake Creek Irrigation Company stock, certificates Numbered 64 and 68 as security for the payment of any money owing to said bank.

EXHIBIT B-3 contains the signature of Josie Baird Giles in pencil and in ink.

ASSIGNMENTS OF ERROR

(TITLE OF COURT AND CAUSE).

Come now J. Rulon Morgan, as executor of the Last Will and Testament of Elizabeth J. Baird, Deceased, J. Rulon Morgan, as the surviving partner of the firm of Morgan & Morgan, a co-partnership, Vernor E. Baird, Mary A. Baird, Josie Baird Giles Smith and Ray F. Smith, parties to the above entitled action, whether appearing as defendants or cross-plaintiffs, and each of them, jointly, severally and separately assign the following errors upon which they, and each of them, jointly, severally and separately rely for a reversal of the judgment rendered in the above entitled cause by the District Court of the Fourth Judicial District in and for Wasatch County, State of Utah:

I.

The trial court erred in permitting plaintiffs Moultons to file the further reply to paragraph three of the answer of Josie Baird Giles Smith. (J. R. 100; Tr. 245-256; Ab. 163-167).

II.

The trial court erred in permitting plaintiffs Moultons to file the further reply to paragraphs eight and fourteen of the answer of Vernor E. Baird and Mary A. Baird. (J. R. 98; Tr. 104, 245-246; Ab. 135, 163).

III.

The trial court erred in permitting, over objection of appellants, the witness Virgil

Fraughton to answer the question "I show you, Mr. Fraughton, the document purportedly signed by you, dated the 10th day of July, 1934, which is sheriff's return of attachment, which recites certain facts with regard to your action as Sheriff of Wasatch County. All of the statements in there are in accordance with actually what you did?" the objection being on the ground that the evidence sought to be elicited by the above question tended to vary or change the return of the sheriff, which is an official record of this court. (Tr. 8; Ab. 114).

IV.

The trial court erred in permitting the witness Virgil Fraughton to answer the question, "Did you state what you did at that time pertaining to the sale of the promissory note," to which question appellants objected that the evidence sought to be elicited tended to vary the return made and filed to the Writ of Execution in that cause. (Tr. 11; Ab. 115).

V.

The trial court erred in admitting in evidence plaintiffs' Exhibit 5 over the objection of appellants that the same is incompetent.

VI.

The trial court erred in admitting in evidence, over the objection of appellants, that the same was immaterial, part of the files in the James R. Baird Estate. (Tr. 113; Ab. 137).

VII.

The trial court erred in admitting in evidence plaintiffs' Exhibit 6 over the objection of appellants that the same was a privileged communication between attorney and client and

that it was immaterial and an attempt to impeach the witness on immaterial or collateral matter. (Tr. 119-120; Ab. 138).

VIII.

The trial court erred in admitting in evidence, over the objection of appellants, plaintiffs Exhibit 8. (Tr. 169; Ab. 147).

IX.

The trial court erred in overruling appellants' objection to the cross-examination of J. Harold Giles touching his management of the farm of Josie Baird Giles Smith, upon the ground that the same was not cross-examination. (Tr. 297; Ab. 176).

X.

The trial court erred in admitting in evidence, over appellants' objection that the same was incompetent, plaintiffs' Exhibit 14. (Tr. 369; Ab. 201).

XI.

The trial court erred in admitting in evidence, over objection of appellants upon the ground the same was incompetent, plaintiffs' Exhibit 15. (Tr. 369; Ab. 201).

XII.

The trial court erred in making that part of Finding of Fact No. 7, wherein it is found "That Vernor E. Baird and Mary E. Baird delivered the note set out in said paragraph to Josie Baird Giles, now known as Josie Baird Giles Smith " for the reason that the evidence offered by the plaintiffs, as well as the evidence offered by these appellants conclusively shows that the note was delivered to George

B. Stanley, who retained the possession of the same until he delivered it to the Sheriff of Wasatch County. (J. R. 126; Tr. 414; Ab. 212; Tr. 64; Ab. 82).

XIII.

The trial court erred in that part of Finding No. 8, wherein it is found "That Vernor E. Baird and Mary A. Baird, his wife, delivered the mortgage described in paragraph eight of the Findings of Fact in this cause" (J. R. 126; Ab. 83-84) for the reason that all of the evidence offered by plaintiffs and by appellants conclusively shows that such mortgage was delivered to Vernor E. Baird and that Josie Baird Giles never received said mortgage. (Tr. 411; Ab. 211; Tr. 65; Ab. 83-84).

XIV.

The trial court erred in that part of Finding No. 10, wherein it is found "That on the said 7th day of July, 1934, said promissory note and mortgage given to secure the same were owned by Josie Baird Giles" (J. R. 126; Ab. 84) for the reason that the evidence, and the clear preponderance thereof, shows that the said note and mortgage had been cancelled long prior to that date. Josie Baird Giles Smith so testified. (Tr. 68, 70, 71, 76, 77, 79, 82, 85, 89, 94, 95 to 102, 103 to 107, and 128; Ab. 125-142). Testimony of William H. Baird, (Tr. 141, 144, 146 and 147; Ab. 121, 142-148, 197). Testimony of Vernor E. Baird, (Tr. 360 to 364; Ab. 199). Testimony of George B. Stanley, (Tr. 400-401; Ab. 208-209).

XV.

The trial court erred in finding "that on the 7th day of July, 1934 said promissory note

and mortgage were attached by the Sheriff of Wasatch County under and by virtue of Writ of Attachment issued in said action" for the reason that all the evidence shows that Mr. Stanley, the attorney for the Moultons, and also the attorney for Josie Baird Giles and Vernon E. Baird, willingly delivered the note in question to the sheriff. Testimony of George B. Stanley, (Tr. 413-414; Ab. 208-212). Testimony of Virgil Fraughton, (Tr. 14-15; Ab. 114-119).

XVI.

The trial court erred in making that part of its Finding No. 10, (J. R. 127; Ab. 84-85), wherein it is found "That under and by virtue of said Writ of Execution and a Writ of Attachment, and pursuant thereto, the Sheriff of Wasatch County gave due and proper notice of the sale of said promissory note which he held under attachment," for the reason that nowhere in the evidence is it made to appear that a notice was posted as by law required. The only evidence touching the matter of posting notices is the testimony of the witness Fraughton, (Tr. 9-10; Ab. 114-119), and in the writ contained in Exhibit 1, Case No. 1261, it is merely recited that "noticed the same for sale as the law directs," — a mere conclusion. Neither in the testimony of witness Fraughton, nor in the return, is it specified where the notices were posted.

XVII.

The trial court erred in that part of its Finding No. 10, wherein it found that said notice shows "That said sale was to be held on the 28th day of January, 1935, at 10:00 o'clock

A. M.” (Tr. 127; Ab. 84-85), Sheriff’s Return, plaintiffs’ Exhibit 1. That the only competent evidence as to the notice under which the sheriff acted was a notice fixing the time of sale for the 29th day of January, 1935, at 9:30 o’clock, A. M., and there is no evidence that any notice whatsoever was given of the sale to be held on the latter date. (Return of Sheriff, plaintiffs’ Exhibit 1, Ab. 214-216).

XVIII.

The trial court erred in making that part of Finding No. 10 (J. R. 127; Ab. 84-85), wherein it is found “That at the time fixed for said sale the Sheriff of Wasatch County appeared and postponed the said sale to the hour of 9:30 o’clock A. M. on January 29, 1935.” That there is no competent evidence to support such finding and such finding varies the return by the sheriff made in Cause No. 1261, which return is a part of the official record in said cause and is binding upon the court and the parties to this litigation. (Plaintiffs’ Exhibit 1). Moreover, the clear preponderance of the oral testimony shows that the time of the sale was not postponed. Such is the testimony of J. Rulon Morgan, (Tr. 41; Ab. 120-160), and of William H. Baird, (Tr. 43-44; Ab. 121-148). The sheriff did not recall anything to the contrary when the matter was first called to his attention. (Tr. 19; Ab. 121-148). The only evidence to the contrary was when the sheriff changed his mind. (Tr. 19; Ab. 216-217, 222). Plaintiffs’ Exhibit 5.

XIX

The trial court erred in making that part of Finding No. 10, wherein it is found “That

the sale was postponed at the request of J. Rulon Morgan," for the reason that such finding is not supported by and is contrary to the evidence and the clear preponderance thereof. J. Rulon Morgan testified that he did not make such request. (Tr. 41; Ab. 84-85). There is no evidence to the contrary, excepting that the sheriff testified that J. Rulon Morgan might have made such request. (Tr. 12 to 16; Ab. 114-119).

XX.

The trial court erred in making that part of its Findings of Fact, No. 10 (J. R. 128; Ab. 84-85), wherein it is found "that said note and mortgage were, on January 29, 1935 at the hour of 9:30 o'clock A. M., offered for sale in accordance with law," for the reason that such so-called finding is a pure conclusion of law, and if regarded as a finding of fact, it is without support by any competent evidence and is against the clear preponderance of the oral evidence. That there is no testimony that any notice was ever given for the sale of the property involved in this controversy to be held on January 29, 1935. That the return of the sheriff shows that there was no postponement of the sale. (Return of sheriff found in plaintiffs' Exhibit 1). That the clear preponderance of the oral evidence shows that there was no postponement of the sale. (Tr. 41; Ab. 121; Tr. 43-44; Ab. 120-140; Tr. 19; Ab. 120).

XXI.

The trial court erred in making that part of Finding No. 10 (J. R. 128; Ab. 84-85), wherein it is found "that A. C. Moulton and E. Dewey Moulton are the legal owners and holders of said note and mortgage given to secure the

same,' (J. R. 128; Ab. 84-85), for the reason that such so-called finding is a mere conclusion of law; and for the further reason that the evidence and the clear preponderance thereof shows that the sheriff received the note surreptitiously from George B. Stanley, the attorney for Josie Baird Giles and Vernor E. Baird. That the same was not attached, but willingly delivered by said George B. Stanley to his newly acquired clients, the Moultons. (Tr. 113-114; Ab. 137-139; Tr. 14-15; Ab. 206-212). That the affidavit for the Writ of Attachment was not in substance in compliance with the law, in that it is not alleged in said affidavit that the action in which the attachment was issued was not prosecuted to hinder, delay or defraud any creditors of the defendants, and that it is not alleged in such affidavit for attachment any of the grounds required by R. S. U. 1933, 104-18-1 and 104-18-3, and in that no sufficient bond is given in the amount required by R. S. U. 1933, 104-18-4 (Plaintiffs' Exhibit 1), and therefore the attachment was and is a nullity. That as a further ground for this assignment, appellants adopt and make a part hereof the grounds alleged in Assignments Numbered 17, 18 19 and 20.

XXII.

The trial court erred in making that part of Finding No. 10, wherein it is found "That the sale by the Sheriff of Wasatch County was in all respects regular, and by virtue thereof A. C. Moulton and E. Dewey Moulton became the owners and holders of said promissory note and mortgage," (J. R. 128; Ab. 84-85) for the reason that said so-called finding is a mere

conclusion of law and the further reasons set out in Assignments 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, which assignments appellants adopt and make a part of this assignment.

XXIII.

The trial court erred in making that part of Finding No. 11, (J. R. 128; Ab. 86), wherein it is found "that there is now due and owing from the defendants Vernor E. Baird and Mary A. Baird, his wife, on said promissory note, the sum of \$15,000.00, together with interest thereon at the rate of seven per cent per annum from the 10th day of October, 1934, until paid," for the reason and upon the ground that the evidence and the clear preponderance thereof shows that the said note was, by mutual consent, cancelled before the same was attached. (For testimony touching the cancellation see references at the end of Assignment No. 14). The trial court further erred in making such finding for the additional reason that if, as the trial court found in finding No. 12 (J. R. 128; Ab. 86) Josie Baird Giles, on May 21, 1929, hypothecated the water stock represented by certificates No. 64 and 68, then, and in such case, Vernor E. Baird had at all times since said note was executed, and now has, and at all times since said note was executed, has had a legal right to rescind the contract for the purchase of the land and water stock mentioned and described in the deed of conveyance and the mortgage involved in this controversy.

XXIV.

The trial court erred in making that part of its Finding No. 12, wherein it found "That

on May 21, 1929, Certificates No. 64 and 68 were lawfully pledged to the Bank of Heber City," (J. R. 128; Ab. 86) for the reason and upon the ground that such finding is not supported by, but is contrary to, all of the evidence. Testimony of Josie Baird Giles Smith, (Tr. 252 to 260; Ab. 166-168). Testimony of J. Harold Giles, (Tr. 293-294; Ab. 175). Defendants' Exhibits F. G, and B-3.

XXV.

The trial court erred in making that part of Finding No. 12, (J. R. 128; Ab. 86), wherein it is found that "Ever since May 21, 1929, Certificates No. 64 and 68 have been held by said bank and the State Bank Commissioner as a pledge to secure obligations represented by a promissory note signed by J. Harold Giles, defendant herein," for the reason that such finding is not supported by, but is contrary to the evidence and the great preponderance thereof. Testimony of Josie Baird Giles Smith, (Tr. 252 to 260; Ab. 160-175). Testimony of J. Harold Gles, (Tr. 293-294; Ab. 175). Defendants' Exhibits F. G and B-3; testimony of Emer W. Murdock, (Tr. 181 to 186; Ab. 150, Tr. 189-190; Ab. 153); and testimony of Riley C. Draper, (Tr. 136; Ab. 142; Tr. 241, 247 to 249; Ab. 164-165).

XXVI.

The trial court erred by in effect holding that a valid execution was issued in Cause No. 1261. for the reason that the execution appearing in said files, which are marked as plaintiffs' Exhibit 1, shows on its face that the same was not in compliance with R. S. U. 1933, 104-37-2, and particularly Subsection 3 there-

of. (Writ of Execution in Plaintiffs' Exhibit 1).

XXVII.

The trial court erred in making that part of Finding No. 12 (J. R. 129; Ab. 86), wherein it is found "That A. C. Moulton and E. Dewey Moulton have a lien upon all the right, title and interest of Josie Baird Giles Smith, Vernon E. Baird and Mary A. Baird, in and to the water stock in Lake Creek Irrigation Company," for the reason that the evidence and the clear preponderance thereof shows that neither A. C. Moulton nor E. Dewey Moulton have any lien whatsoever upon said water stock. That the evidence and the clear preponderance thereof shows that long before the note and mortgage came into the possession of Sheriff of Wasatch County the note secured by such mortgage was cancelled. (See reference to testimony at the end of Assignment No. 14). That no valid attachment was ever levied upon the certificates as set forth in Assignment No. 15 hereof. That no notice of sale of the note involved in this controversy was given, as is set forth in Assignments Numbered 16, 17, 18, 19 and 20, which assignments are made a part of this assignment and in which assignments reference is made in support of this assignment.

XXVIII.

The trial court erred in making that part of its Finding No. 14 (J. R. 129; Ab. 87), wherein it is found "That the defendant Josie Baird Giles Smith was not indebted to Elizabeth J. Baird from 1926 to the fall of 1933, or at any time in the sum of \$3500.00, or in any amount," for the reason that such finding is not sup-

ported by the evidence and is contrary to the evidence and the clear preponderance thereof. Testimony of Josie Baird Giles Smith, (Tr. 68, 70, 71, 76, 77, 79, 82, 85, 89, 95 to 102, 105, 107 and 128; Ab. 125-142, 166-175); testimony of William H. Baird, (Tr. 141, 144, 146 and 147; Ab. 121-148, 197-198); testimony of Vernor E. Baird, (Tr. 360 to 364; Ab. 199-200). Plaintiffs' Exhibit 8.

XXIX.

The trial court erred in making that part of Finding No. 14 (J. R. 129; Ab. 87), wherein it is found "That there was no agreement between Josie Baird Giles Smith and Vernor E. Baird whereby Vernor E. Baird agreed to convey the property described in said mortgage to Elizabeth J. Baird, and whereby Josie Baird Giles Smith agreed to cancel and return the note and mortgage mentioned in plaintiffs' complaint in cause No. 1410 Civil, and release the mortgage of record," for the reason that such finding is without support in evidence and is contrary to the evidence and the clear preponderance thereof. (See reference as to evidence touching that question at the end of Assignment No. 28).

XXX.

The trial court erred in making that part of Finding No. 14 (J. R. 129; Ab. 87), wherein it is found "That George B. Stanley did not have possession of said note as the attorney for Vernor E. Baird, Mary A. Baird or Josie Baird Giles, or for any of said defendants," for the reason that such finding is without support in the evidence, but is contrary to all the evidence, including that of plaintiffs' attorney

and witness, George B. Stanley. Testimony of Josie Baird Giles, (Tr. 64; Ab. 125). Testimony of George B. Stanley, (Tr. 397, 408, 410, 411; Ab. 208-212).

XXXI.

The trial court erred in making that part of Finding No. 14 (J. R. 129; Ab. 87), wherein it is found "That George B. Stanley at no time has been or acted as an attorney for Josie Baird Giles Smith," for the reason that such finding is without support in the evidence, but is contrary to all the evidence, including that of plaintiffs' attorney and witness, George B. Stanley. (See reference at the end of Assignment No. 30).

XXXII.

The trial court erred in making that part of Finding No. 14, (J. R. 129; Ab. 87), wherein it is found "That Josie Baird Giles at no time prior to the 7th day of July, 1934, demanded that said George B. Stanley deliver to Josie Baird Giles said promissory note," for the reason that such finding is against the clear preponderance of the evidence. (Testimony of Josie Baird Giles Smith, (Tr. 65-66; Ab. 126); testimony of William H. Baird, (Tr. 149-150; Ab. 144). The only testimony to the contrary is that of George B. Stanley, which testimony, unless the note had in fact been cancelled, is so contrary to human nature and experience as to be of little, if any, probative value. (Tr. 400; Ab. 208).

XXXIII.

The trial court erred in making that part of Finding No. 15 (J. R. 129; Ab. 88), wherein

it is found "that prior to July 7, 1934, George B. Stanley requested Josie Baird Giles Smith to call and receive the promissory note involved in this action and that she failed to do so," for the reason that such a finding is contrary to the clear preponderance of the evidence. Testimony of Josie Baird Giles Smith, (Tr. 55-56; Ab. 125); also testimony of William H. Baird, (Tr. 149-150; Ab. 144). The only evidence to the contrary is that of George B. Stanley, which, unless said note had been cancelled, is so contrary to human nature and experience as to be of little or no value. (Tr. 400; Ab. 208).

XXXIV.

The trial court erred in making that part of Finding No. 15 (J. R. 129; Ab. 88), wherein it is found "That at no time was George B. Stanley wrongfully retaining possession of said promissory note," for the reason that such finding is not supported by, but is contrary to the evidence and the clear preponderance thereof. (See reference to testimony in Assignments No. 32 and 33 hereof).

XXXV.

The trial court erred in making that part of Finding No. 16 (J.R. 130; Ab. 89) wherein it is found "That said release of mortgage and deed were not made pursuant to any prior agreement, between any of the defendants," and also "That said release of mortgage and said deed to Elizabeth J. Baird were without consideration and were not made pursuant to any prior agreement between the parties thereto. That the defendant Josie Baird Giles Smith did not borrow money from her mother Elizabeth J. Baird, or promise and agree to pay to Elizabeth J. Baird

money out of the money payable by Vernor E. Baird and Mary A. Baird on said \$15,000.00 promissory note" (J. R. 130; Ab. 89), for the reason that such finding is not supported by, but is contrary to, the evidence and the clear preponderance thereof. Testimony of Josie Baird Giles Smith, (Tr. 68, 70, 71, 76, 77, 79, 82, 85, 89, 94, 95 to 105, 107, 128; Ab. 125-142); testimony of Vernor E. Baird, (Tr. 360, 364; Ab. 199-200); testimony of George B. Stanley, (Tr. 400-401; Ab. 208-212); testimony of J. Thomas Crook, (Tr. 307-309, 311-312; Ab. 180-182).

XXXVI.

The trial court erred in that part of Finding No. 16, (J. R. 130; Ab. 89) wherein it is found "That the release of mortgage and deed are invalid against the lien of said mortgage," and "That said mortgage and deed were subsequent and subordinate to the mortgage owned by the said plaintiffs," for the reason that such finding is against the evidence and the clear preponderance thereof, in that the evidence and the clear preponderance shows that the plaintiffs are without right, title, or interest in said mortgage, for the reasons set out in Assignments No. 14 to 29, both inclusive.

XXXVII.

The trial court erred in making that part of Finding No. 17, (J. R. 130; Ab. 90), wherein it is found "That said release of said mortgage and said conveyances were for the purpose of hindering, delaying and defrauding the creditors, and particularly the plaintiffs, A. C. Moulton and E. Dewey Moulton," for the reason that such finding is without support in the

evidence and is contrary to the clear preponderance thereof. (See reference at the end of Assignment 35 hereof).

XXXVIII.

The trial court erred in that part of Finding No. 18, (J. R. 130; Ab. 90), wherein it found "that the Lake Creek Irrigation Company at no time legally sold Certificates 64 and 68, or the shares represented by said certificates," for the reason such finding is without support in the evidence and is contrary to the evidence and the clear preponderance thereof, in that the evidence shows that such stock was duly and legally assessed, advertised for sale and sold to Elizabeth J. Baird. Testimony of J. Thomas Crook (Tr. 301 to 319, 327-328; Ab. 176-189).

XXXIX.

The trial court erred in that part of Finding No. 18, (J. R. 131; Ab. 90), wherein it is found "that the water represented by said certificates or shares was never used adversely to the Bank of Heber City or the State Bank Commissioner or the Examiner in Charge of the Liquidation of the Bank of Heber City," for the reason that such finding is not supported by, but is contrary to, the evidence and the clear preponderance thereof. Testimony of J. Thomas Crook, referred to in Assignment No. 38 hereof.

XXXX.

The trial court erred in that part of Finding No. 18, (J. R. 131; Ab. 90), wherein it found "That Elizabeth J. Baird did not purchase said certificates of water stock or the

water represented thereby, and she was not the owner of the same at the time of her death, or at any time," for the reason that such finding is not supported by, but is contrary to, the evidence and the clear preponderance thereof. Testimony of J. Thomas Crook, (Tr. 301, 319, 327-328; Ab. 176-189).

XXXXI.

The trial court erred by in effect holding in paragraph 19, (J. R. 131; Ab. 91), that "The plaintiffs in each cause of action herein had a valid right and interest in the land and water stock involved in this action," for the reason that such finding is without support in the evidence and is contrary to the clear preponderance thereof. (See reference in Assignments numbered 14 to 40, both inclusive).

XXXXII.

The trial court erred in that part of Finding No. 20, (J. R. 131; Ab. 91), wherein it is found "That an agreement was had touching the amount and kind of judgment that Plaintiffs A. C. Moulton and E. Dewey Moulton should receive," for the reason that there is no evidence that anyone entered into any agreement with the Moultons as to the judgment referred to in said finding, and particularly is there no evidence in this record that any of the appellants entered into any such agreement with the Moultons, or either of them.

XXXXIII.

The trial court erred in making that part of Finding No. 21, (J. R. 132; Ab. 92), wherein it found "That said note and pledge is a renewal of an obligation and pledge made by defendant Josie Baird Giles to said Bank on the

21st day of May, 1929," for the reason that such finding is without support in the evidence and is contrary thereto as to the defendant Josie Baird Giles.

XXXXIV.

That the trial court erred in making that part of Finding No. 24 (J. R. 133; Ab. 92), wherein it is found "That the endorsement on Certificate No. 64 is the endorsement of Josie Baird Giles," for the reason that such finding is contrary to the preponderance of the evidence. (Tr. 257-258; Ab. 167).

XXXXV.

The trial court erred in making all of Finding numbered 24 after the first fourteen lines thereof, for the reason that such finding is without any issue in this case and is immaterial.

XXXXVI.

The trial court erred in holding "that Josie Baird Giles did not ever demand said certificates of stock after she learned that the same were being held by the Bank of Heber City," for the reason that such finding is without support in the evidence and is contrary to the clear preponderance thereof. (J. R. 134; Tr. 255; Ab. 78-102).

XXXXVII.

The trial court erred in its Conclusion of Law numbered 1, for the reason that the same is contrary to the evidence and the findings of fact herein; and particularly findings 27 to 29, both inclusive. (J. R. 135; Ab. 96-97).

XXXXVIII.

The trial court erred in making its Conclusion of Law No. 2, for the reason that such

conclusion is without support and is contrary to the evidence. (J. R. 135; Ab. 98).

XXXXIX.

The trial court erred in making that part of its Conclusion No. 4 wherein the court concludes that A. C. Moulton and H. Dewey Moulton have a valid subsisting lien upon the premises described in the findings of fact and the water right therein described, for the reason that such conclusion is without support in the evidence and is contrary thereto. (J. R. 135; Ab. 98).

L.

The trial court erred in making its Conclusion No. 5 with respect to the lien of Rulon F. Starley, State Bank Commissioner, and Spencer C. Taylor, Examiner in Charge of Liquidation of the Bank of Heber City, upon certificates numbered 64 and 68, for the reason that such conclusion is without support in the evidence. (J. R. 135; Ab. 98).

LI.

The trial court erred in its Conclusion of Law No. 6 wherein it directed that the water stock and land be sold to satisfy any claim of the plaintiffs herein, for the reason that the evidence shows that the plaintiffs, nor either of them, have any right, title or interest in said land or water stock. (J. R. 136; Ab. 99).

LII.

The trial court erred in its Conclusion of Law No. 7, for the reason that the evidence fails to show that plaintiffs, or either of them, have any right, title or interest in the property

involved in this controversy. (J. R. 136; Ab. 101).

LIII.

The trial court erred in making its Conclusion of Law No. 8, for the reason that such conclusion is without support in the evidence. (J. R. 137; Ab. 101).

LIV.

The trial court erred in entering its decree directing the property involved in this controversy be sold to satisfy the claimed lien of the plaintiffs, for the reason that such decree is without support but is contrary to the findings of fact, conclusions of law and evidence, and that such judgment and decree is contrary to law.

LV.

The trial court erred in failing to find that Elizabeth J. Baird, as the nominee or grantee of Josie Baird Giles is entitled to a homestead exemption in the property involved in this litigation.

WHEREFORE, appellants pray that the judgment heretofore entered be reversed and that this Court direct that a judgment be rendered in favor of the appellants herein and that the trial court be directed to make findings of fact, conclusions of law and judgment in favor of these appellants, and that these appellants be awarded their costs herein and in the court below.

Respectfully submitted,

ELIAS HANSEN,
J. RULON MORGAN.

Attorneys for Appellants.