

1941

Roy Free v. Swen C. Jensen, Chris Jensen, Alma Jensen, and Regional Agricultural Credit Corporation of Salt Lake City, Utah : Appellants' Abstract of Record

Utah Supreme Court

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W. Q. Van Cott; D. Eugene Livingston; and E. Leroy Shields; Attorneys for Appellants;

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In the Supreme Court of the State of Utah

ROY FREE,
Plaintiff and Respondent,

vs.

SWEN C. JENSEN, CHRIS JENSEN, and ALMA JENSEN, his wife, and REGIONAL AGRICULTURAL CREDIT CORPORATION OF SALT LAKE CITY, UTAH, a corporation,
Defendants and Appellants.

Case No.
6326

Appellants' Abstract of Record

[TITLE OF COURT AND CAUSE]

Transcript

1

COMPLAINT

Comes now the plaintiff and complains of defendants and for cause of action alleges:

1. That the defendant Zions Realty Company is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, with

Transcript

its principal place of business in Salt Lake City, Utah.

2. That Regional Agricultural Credit Corporation of Salt Lake City, Utah, is a corporation of the United States of America, organized and existing under and by virtue of an act of Congress of the United States of America and that said corporation is a public corporation and all of its capital stock belongs to the United States and its property, including any claim of interest in or to the subject matter of this action is held by and administered in the name of Regional Agricultural Credit Corporation of Salt Lake City, Utah.

- 2 3. That the plaintiff is the owner and entitled to the immediate possession of the following described land and premises in Davis County, State of Utah, to wit:

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian; running thence $22 \frac{5}{7}$ rods; thence West to Jordan River; thence North along the East bank to the North line of Section 33, East to beginning, containing 80 acres.

Also beginning $22 \frac{5}{7}$ rods South from the Northeast corner of Section 33 aforesaid; running thence South $52 \frac{1}{3}$ rods; thence West to the Jordan River; thence North along the East bank of the river to a point $22 \frac{5}{7}$ rods South from the North line of Section 33; thence East to beginning, containing 183 acres.

4. That the defendants or some one or all of

Transcript

them claim some equity, right, title or claim in or to the said premises or some part or portion thereof but that any such claim of right, title or interest in or to said premises or any part or portion thereof is inferior and subject to the prior and superior title of this plaintiff to the said premises and the whole thereof.

5. That the defendants Chris Jensen and Alma Jensen are now in possession of the said premises and unlawfully withhold possession of the same from this plaintiff, notwithstanding the said Chris Jensen and Alma Jensen, his wife, have no right whatever to possession of said premises or any part thereof and any claim of equity in, title to or right of possession of the said defendants Chris Jensen and Alma Jensen, his wife, are wholly without any right or foundation in law or in equity and any alleged or pretended claim of said defendants or either of them is inferior and subject to the prior right of possession of this plaintiff.

3 WHEREFORE plaintiff prays judgment that his title to said premises in fee simple be quieted against any and all claims of the said defendants and each and all of them and that the court decree that the plaintiff is entitled to the immediate possession of said premises and that a writ of restitution issue herein giving and granting unto the said plaintiff the possession of said premises and the whole thereof free and clear of any and all claims of the said defendants and each and all of them.

Transcript

Plaintiff prays for his costs herein expended.

CHRIS MATHISON,
Attorney for Plaintiff.

(Verified June 16, 1939)

(Filed in clerk's office June 19, 1939)

[TITLE OF COURT AND CAUSE]

12

PETITION

The petition of Roy Free respectfully shows to the Court:

That he is the plaintiff above named; that Davis County Drainage District No. 1 is a corporation duly organized and existing as a municipal corporation under the laws of the State of Utah and has, during its existence from time to time, levied drainage taxes and assessments against the land described in plaintiff's complaint and appears of record to claim and have some interest in the said property. That any and all claims of the said Davis County Drainage District No. 1 is subsequent and inferior to the rights of the plaintiff herein. That the said Davis County Drainage District No. 1 is a necessary party to a complete determination of the issues presented herein.

WHEREFORE petitioner prays that the court make and enter an order making the Davis County Drainage District No. 1 a party to this action and require it to set up its claim, if any, herein and that

Transcript

13 the claim be adjudged to be subsequent and inferior
to the claim of the plaintiff and that plaintiff
have judgment in accordance with the prayer of his
complaint herein.

CHRIS MATHISON,
Attorney for Plaintiff.

(Verified June 29, 1939)

(Filed July 6, 1939 in clerk's office)

[TITLE OF COURT AND CAUSE]

14

ORDER

The court having read the verified petition of
the plaintiff, filed herein and good cause appearing
therefor

IT IS ORDERED that the Davis County Drain-
age District No. 1 be and it hereby is made a party
to this action as defendant herein and that summons
be served upon the said Davis County Drainage Dis-
trict No. 1 in accordance with the usual practice in
such cases.

Dated this 30th day of June, 1939.

LEWIS V. TRUEMAN,
By the Court

(Filed July 6, 1939)

Transcript

[TITLE OF COURT AND CAUSE]

19 DEMURRER OF SWEN C. JENSEN, CHRIS
JENSEN AND ALMA JENSEN, HIS WIFE.

Come now the defendants, Swen C. Jensen, Chris Jensen, and Alma Jensen, his wife and demur to the complaint of the plaintiff on file herein and for cause for demurrer allege:

1. That the complaint does not state facts sufficient to constitute a cause of action against these defendants.

2. That the complaint is ambiguous, uncertain and unintelligible in this, that it cannot be determined therefrom under what right plaintiff alleges to be the owner and entitled to the possession of certain property, inasmuch as it is alleged in paragraph 5 that these defendants are now in possession of said premises.

WHEREFORE, these defendants pray that plaintiff take nothing upon his said complaint but that the same be dismissed and that he recover his costs herein.

E. LE ROY SHIELDS,
Attorney for Defendants.

A copy of the above demurrer received this 26th day of July, 1939.

CHRIS MATHISON,
Attorney for Plaintiff.

(Filed in Clerk's office July 26, 1939)

Transcript

[TITLE OF COURT AND CAUSE]

20

DEMURRER

Comes now the Regional Agricultural Credit Corporation of Salt Lake City, Utah, and demurs to the complaint of the plaintiff on file herein and as ground for said demurrer alleges:

1. That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

WHEREFORE this defendant prays that said complaint be dismissed and that it be awarded its costs incurred herein.

W. Q. VAN COTT
D. EUGENE LIVINGSTON
*Attorneys for Defendant Regional
Agricultural Credit Corporation of
Salt Lake City, Utah*

Received copy of the foregoing demurrer this 28th day of July, 1939.

CHRIS MATHISON
Attorney for Plaintiff.

(Filed July 29, 1939)

[TITLE OF COURT AND CAUSE]

21

NOTICE

To the defendants above named, Swen C. Jensen, Chris Jensen and Alma Jensen, his wife, and to E. LeRoy Shields, their attorney:

Transcript

You are hereby notified that on Saturday, the 19th day of August, 1939, your demurrer to the plaintiff's complaint was overruled and you were given ten (10) days after notice to answer.

CHRIS MATHISON
Attorney for Plaintiff.

Received copy of the foregoing notice this 1st day of September, 1939.

E. LE ROY SHIELDS

(Filed September 2, 1939)

[TITLE OF COURT AND CAUSE]

NOTICE

22 To United States and Regional Agricultural Credit Corporation of Salt Lake City, Utah, a corporation, and to their attorney:

You are hereby notified that on Saturday, the 19th day of August, 1939, your demurrer to the plaintiff's complaint was overruled and you were given ten (10) days after notice to answer.

CHRIS MATHISON
Attorney for Plaintiff.

Received copy of the foregoing notice this 1st day of September, 1939.

D. EUGENE LIVINGSTON
Attorney for Regional Agricultural Credit Corporation.

(Filed September 2, 1939)

[TITLE OF COURT AND CAUSE]

23 STIPULATION

It is hereby stipulated and agreed by and between the plaintiff and the defendant, Regional Agricultural Credit Corporation of Salt Lake City, Utah, that said defendant, Regional Agricultural Credit Corporation of Salt Lake City, Utah, may have to and including September 22, 1939 within which to serve and file its answer herein.

Dated at Salt Lake City, Utah this 9th day of September, 1939.

CHRIS MATHISON
Attorney for Plaintiff

W. Q. VAN COTT
*Attorney for Defendant Regional
Agricultural Credit Corporation of
Salt Lake City, Utah.*

(Filed September 11, 1939)

[TITLE OF COURT AND CAUSE]

25 ANSWER

Comes now the defendant Regional Agricultural Credit Corporation of Salt Lake City, Utah, a corporation, and answering the complaint of the plaintiff on file herein admits, denies and alleges:

1. Admits the allegations set forth in Paragraph numbered 1 of said complaint.

Transcript

2. Admits that it is a corporation of the United States of America organized and existing under and by virtue of an Act of Congress of the United States of America, and that said corporation is a public corporation and its capital stock belongs to the United States.

3. Admits that it claims a right and title in and to the premises described in said complaint.

4. Defendant denies specifically and generally each and every allegation set forth in said complaint except as hereinabove expressly admitted.

5. Further answering said complaint this defendant alleges that on the 14th day of March, 1935 the District Court of the United States for the District of Utah, Central Division, duly made, entered and docketed its judgment and decree in that certain action therein pending wherein this defendant was with the United States a party plaintiff, and the defendant Alice Farnworth and James Farnworth, her husband, were parties defendant. That by the terms and provisions of said judgment and decree this defendant and the United States were granted judgment against the defendant Alice Farnworth and James Farnworth, her husband, in the sum of \$1,448.43, together with costs of suit in the amount of \$53.00 which said sums by said judgment and decree carried interest at the rate of six and one-half per cent per annum from the 28th day of February, 1935.

6. That thereafter and on the 15th day of

March, 1935 said judgment and decree were filed and docketed in the office of the clerk of the above entitled court at Farmington, Davis County, Utah; that no payments have been made on said judgment and the same now remains wholly unpaid and unsatisfied.

7. That at the time said judgment and decree were made and entered and docketed as aforesaid and at the time the same was filed and docketed with the clerk of the above entitled court as aforesaid the defendant Alice Farnworth was the owner in fee simple of the lands and property described in said complaint and is now the owner in fee simple of said property subject to the lien of this defendant's judgment and decree above set forth; that the lien of this defendant's judgment and decree above set forth is a first and prior lien upon said property above mentioned; that any title which may be vested in the plaintiff or claimed or asserted by him in or to said property above mentioned is held by him in trust for the defendant Alice Farnworth and said plaintiff has no estate, right, title, claim or interest in or to said property of any kind or character prior or superior to the lien of this defendant's judgment and decree as aforesaid.

WHEREFORE, this defendant prays that plaintiff take nothing by his complaint, that the same be dismissed with prejudice; that it be adjudged and decreed that this defendant has a valid and subsisting lien upon said property described in plaintiff's complaint in the amount of the judgment and decree

Transcript

hereinabove set forth; that said lien be adjudged and decreed to be prior and superior to the right, title, claim or interest of the plaintiff in or to said premises described in plaintiff's complaint; that this defendant's judgment lien aforesaid be foreclosed and the property described in plaintiff's complaint ordered sold by the Sheriff of Davis County, Utah in accordance with the law and practice of this court in such cases made and provided; that the proceeds of such sale be applied toward satisfaction and payment of the judgment and decree of this defendant hereinabove set forth. This defendant prays for such other and further relief as may be proper and for its costs incurred herein.

D. EUGENE LIVINGSTON

W. Q. VAN COTT

*Attorneys for Defendant Regional
Agricultural Credit Corporation of
Salt Lake City.*

(Verified September 22, 1939)

Received copy of foregoing answer this 22nd day
of September, 1939.

CHRIS MATHISON

Attorney for Plaintiff

(Filed in clerk's office September 23, 1939.)

[TITLE OF COURT AND CAUSE]

ANSWER

28 Comes now the defendants, Swen C. Jensen,
Chris Jensen and Alma Jensen, his wife, and in ans-

wer to the complaint of the plaintiff on file herein admit, deny and allege as follows:

1. For lack of information sufficient to base a knowledge upon as to the allegations of paragraph 1, these answering defendants deny the allegations thereof.

2. Answering paragraph 2 of said complaint these defendants admit the same.

3. Answering paragraph 3 of said complaint, these defendants deny the allegations of said paragraph and the whole thereof.

4. Answering paragraph 4 of said complaint these defendants admit that they claim some equity, right, title and interest in and to said premises by reason of a contract of sale and purchase with the defendants, Alice Farnworth and James S. Farnworth, her husband, but deny that such claim, right, title or interest in and to said premises is inferior to the title of the plaintiff herein and to said premises and the whole thereof.

5. Answering paragraph 5 of said complaint, these defendants deny the allegations of said paragraph and the whole thereof except that these defendants admit that they are in possession of said premises, and in further answer thereto allege that said possession is lawful and with full right and lawful authority both in law and in equity, and that the said right is superior and prior to any right which the

Transcript

plaintiff claims to have in said property, and further allege that said defendants are the equitable owners of said property and premises and the whole thereof.

- 29 6. Said defendants deny each and every allegation in said complaint contained, not herein otherwise admitted, denied or qualified.

Further answering said complaint and by way of further defenses to the plaintiff's complaint herein, these defendants allege as follows:

1. That said title to said premises as claimed by said plaintiff herein is based upon a quit claim deed issued by Davis County, Utah to the plaintiff herein and based upon an auditor's tax deed issued by the County Auditor of Davis County to said Davis County pursuant to a tax sale upon said property for the year 1933; that the source of said Davis County's title and the title of the plaintiff herein is wholly and solely based upon a tax title for a tax sale for said year 1933; that said tax sale was void and of no force and effect and no title passed to said Davis County and subsequently to said plaintiff herein by reason of said sale for the following reasons, to-wit: That under the provisions of section 80-10-28 of the Revised Statutes of Utah of 1933, it is provided that where taxes are delinquent and unpaid as provided in sections 80-10-25 and 80-10-26 of the Revised Statutes of Utah 1933, "the county treasurer must, under the direction of the county commissioners, publish the delinquent list, in one issue of a newspaper having general circulation

in the county, which list must contain the names of the owners, when known, and a description of the property delinquent or subject to lien of taxes;" that pursuant to said section, the Treasurer of Davis County published a purported description of said property, but that said description was so defective that the same did not comply with the statute and was therefore void; that said property is properly described in paragraph 3 of plaintiff's complaint which is hereby referred to and by reference made a part hereof; that the publication hereinbefore referred to purported to be made pursuant to section 80-10-28 hereinbefore referred to was as follows:

Beg at NE corner of Section 34 S 22 5/7 rds W to Jordan River N to N line of Sec 33 E; also Beg 22 5/7 rds S fr NE Cor Sec 34; S 52 1/2 rds; W to Jordan River; N to a pt 22 5/7 rds S fr N line of Sec 33 E

That said description was not a sufficient description to comply with the terms of said section of said statute, by reason of which said sale thereon was void and of no effect.

2. That the plaintiff herein paid to said Davis County in exchange for said quit claim deed the sum of \$643.40; that said sum was not due and owing to said Davis County for taxes upon said property and premises for the following reasons: to wit: On the 7th day of December, 1933, James Farnworth the then legal and equitable owner of all of the property referred to in plaintiff's complaint, executed and

Transcript

delivered to Alice Farnworth, his wife, a warranty deed to a portion of said property, which said portion is particularly described as follows, to wit:

Beginning at the northeast corner of Section 34, Township 2 South, Range 1 West, Salt Lake Meridian and running thence south $22 \frac{5}{7}$ rods; thence west to the Jordan River; thence north along the east bank to the north line of Section 33; thence east to the point of beginning, containing 80 acres; also commencing $22 \frac{5}{7}$ rods south of the northeast corner of Section 33, Township 2 North, Range 1 West, Salt Lake Meridian and running thence south $53 \frac{1}{3}$ rods; thence west to the Jordan River; thence north along the east bank of said Jordan River to a point $22 \frac{5}{7}$ rods south from the north line of said Section 33; thence east to the point of beginning.

That said James Farnworth retained all of the balance of said property, together with the improvements thereon and the same remained in his name as a matter of record; that notwithstanding said James Farnworth retained a portion of said described premises, together with improvements thereon and that the same remained recorded in his name, the County Assessor of Davis County failed for the years 1934, 1935, 1936 and 1937 to assess said property so remaining in the said James Farnworth to the said James Farnworth as provided by law, although said county assessor well knew, or in the exercise of reasonable care should have known, that said property stood as a matter of record in the

name of said James Farnworth; that as provided by law, the county treasurer of Davis County failed to mail tax notices of the assessment upon said property so retained to the said James Farnworth for said years 1934, 1935, 1936 and 1937, by reason of which no taxes were levied or assessed against said property so retained by the said James Farnworth for said years and that said purported assessment upon said property and the taxes levied in pursuance thereof was void and of no effect by reason of which the said Davis County was not entitled to collect as a matter of law taxes levied against said premises so retained by James Farnworth, and that said plaintiff herein is entitled to a refund from said Davis County of that portion of the said sum of \$643.40 paid by him for said tax title as the value of the property retained by the said James Farnworth bears to the total amount of money so assessed and levied as taxes and collected from the plaintiff herein; that for the purpose of making such determination and the adjustment of said sum, Davis County and Davis County Assessor and Davis County Treasurer should be, by order of this court, made parties defendant to this action so that all of the rights of the parties may be determined upon the trial thereof and these answering defendants herewith make demand that such order be made and that said parties be made parties defendant to this action.

31 Further answering said complaint and by way

Transcript

of further defense thereto, these defendants further allege that the auditor's deed issued to Davis County, by the auditor of Davis County is null and void and of no effect, and that no title passed to Davis County by reason thereof for the following reasons, to wit: That said auditor's deed to Davis County and the quit claim deed to the plaintiff from Davis County is based upon a tax sale for the year 1933; that prior to the issuance of said auditor's deed to Davis County and on January 10, 1937, there was paid to the treasurer of Davis County the sum of \$164.43, which was the amount of the 1933 taxes so levied and assessed plus penalty and interest, which said sum was requested to be received by the treasurer of Davis County for the payment of the taxes for the year 1933; that notwithstanding such request said treasurer of Davis County credited said sum upon his books in the following manner: \$90.27 for the taxes of 1937 and \$74.16 on account of the taxes of 1936; that such application by said treasurer was unauthorized and that said treasurer had no right or authority to make such application of said money, but it was his duty to apply the same to the payment of the taxes for the year 1933 and said treasurer of Davis County should be made a party defendant to this action and upon the trial of said action should be by order of this court required to apply said money so paid in payment of the taxes for the year 1933, and that said court should make an order requiring that said treasurer be made a party defen-

dant for such purpose and these defendants request that such an order be by this court made and that said county treasurer of Davis County be made a party defendant herein for such purpose. That after such order is made and said money is applied to the payment of said 1933 taxes showing the same paid in full, that any auditor's tax deed issued by the county auditor of Davis County to Davis County based upon a tax sale for the year 1933 is void and of no effect and passes no title thereto for the reason that the taxes for 1933 were paid in full and said sale for such delinquency was nullified and that said quit claim deed issued to the plaintiff in pursuance to said auditor's tax deed is void and of no effect and no title passed to said plaintiff herein by reason thereof.

32 That after it is determined the amount of taxes that was actually due to Davis County by reason of such purported tax sale, if any sum is found to be due, these defendants herein herewith tender to the plaintiff herein any sum which Davis County was entitled to collect as taxes upon said premises if it is so found that they were entitled to collect any sum, to said plaintiff in return for a transfer of title to said premises or upon an order of the court requiring a transfer of title from the plaintiff to these defendants.

Further answering said complaint and by a way of further defense thereto, these defendants allege:

Transcript

1. That at the time of said purported tax sale and ever since said time the defendant, Alice Farnworth and her husband, James Farnworth, were the legal owners of said premises described in said complaint and that these answering defendants since November 4, 1935, have been and now are the equitable owners of all of said premises so described in plaintiff's complaint; that D. A. Skeen holds a mortgage on said premises, which is a lien thereupon and a matter of record, in the sum of \$1,000.00, together with interest upon said sum; that on the 9th day of April, 1938, James Farnworth and Alice Farnworth, his wife, represented by the said D. A. Skeen as attorney, brought an action against these answering defendants in the above entitled court attempting to foreclose a contract of sale and purchase between said Farnworths and these answering defendants; that after a trial of said action, the above entitled court made and entered a decree in said matter denying the plaintiffs the right to foreclose said contract; that by reason of such defeat, these defendants are informed and believe and therefore allege that the said James Farnworth and Alice Farnworth, his wife, and/or the said D. A. Skeen procured the plaintiff herein to purchase said property from Davis County for and on their or either of their behalf and that said plaintiff herein acted merely as the agent of the said Farnworths and/or the said Skeen in the purchase of said property from Davis County, and that the said Farnworths and/or

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the said Skeen furnished the money to the plaintiff herein with which to purchase said purported tax title from said Davis County, by reason of which these defendants are informed and believe and therefore allege that the actual purchasers of said tax title were the said Farnworths and/or the said D. A. Skeen, and that under said agreement with the plaintiff herein title will be subsequently passed by said plaintiff to the said Farnworths and/or the said D. A. Skeen; that by reason of such, the said purchase so made by the said Farnworths and/or the said Skeen who are both parties interested in said property or who claim some title or lien thereupon, was in effect a purchase for the benefit of all parties who had a legal or equitable title in and to said property or a lien thereupon and this court should by its order decree that said purchase was so made for the benefit of all parties interested in said premises whether interested as legal or equitable owners or by reason of liens thereupon.

33 WHEREFORE, these defendants pray that plaintiff take nothing upon his said complaint, but that the same be dismissed; that upon payment to the plaintiff of any sum found to be due legally as taxes upon said premises by reason of said tax sale, that said plaintiff's deed be cancelled and nullified and that by order and decree of this court, legal title to said premises be declared to be in James Farnworth and Alice Farnworth, his wife, and that equitable title be found to be in these answering

Transcript

defendants, to wit: Swen C. Jensen, Chris Jensen and Alma Jensen, his wife; that these defendants have their costs herein expended and that they have such other and further relief as is deemed meet and equitable in the premises.

E. LE ROY SHIELDS,
*Attorney for Defendants
 Swen C. Jensen, Chris
 Jensen and Alma Jensen,
 his wife.*

(Duly verified September 25, 1939)

Received a copy of the above answer this 27th day of September, 1939.

CHRIS MATHISON,
Attorney for Plaintiff.

(Filed in clerk's office September 25, 1939)

[TITLE OF COURT AND CAUSE]

34

ANSWER OF D. A. SKEEN

Comes now D. A. Skeen, and by way of answer to plaintiff's complaint on file herein, alleges:

1. That on or about the 11th day of February, 1935 the defendant Alice Farnworth and James Farnworth, her husband, made, executed and delivered their promissory note to this answering defendant, by and under which they agreed to pay to this defendant the sum of \$1,000.00 on or before one year from date, with interest at 6% per annum,

script

and to secure said note, the defendant Alice Farnworth gave to this answering defendant a mortgage covering the property described in plaintiff's complaint, which mortgage was duly recorded on February 13, 1935, at 9 o'clock A. M. in Book 1-N of Mortgages at page 94, of the records of Davis County, Utah.

2. That the said note, or any part thereof, has not been paid, and the whole amount of said indebtedness secured by said mortgage is now due.

WHEREFORE this answering defendant prays judgment establishing the said mortgage as a prior lien on the said property, and that such further judgment may be entered as is meet and proper in the premises.

A. U. MINER

Attorney for Defendant,

D. A. Skeen

35 (Duly verified October 10, 1939)

Received copy this 9th day of October, 1939.

CHRIS MATHISON

Attorney for Plaintiff

(Filed in clerk's office October 10, 1939)

[TITLE OF COURT AND CAUSE]

63 FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for hearing before the court on the 3rd day of November, 1939,

Transcript

upon the complaint of the plaintiff and the respective answers of the defendants, Swen C. Jensen, Chris Jensen, and Alma Jensen, his wife, D. A. Skeen, United States and Regional Agricultural Credit Corporation of Salt Lake City, Utah; the plaintiff being present in person and represented by his attorney, Chris Mathison, Esq. of Salt Lake City, Utah, and the defendants Jensen represented by their attorney, E. LeRoy Shields, Esq. of Salt Lake City, Utah, defendant D. A. Skeen being present in person, and the Regional Agricultural Credit Corporation of Salt Lake City, Utah being represented by its attorneys W. Q. Van Cott, Grant H. Bagley and D. Eugene Livingston, of Salt Lake City, Utah; the defendants Fera Decker and Zions Realty Company, and Davis County Drainage District No. 1, having been regularly and duly served with summons, but having failed to answer or otherwise appear, and the time of each of them so to do having expired, and the court having proceeded to hear the case, and to examine into and determine the legality of the plaintiff's title, and of the title and claim of all defendants, and evidence, oral and documentary, having

64 been introduced, and the court having required and received evidence of plaintiff's title and right of possession and having heard such evidence as was offered respecting the claims and title of each and all of the defendants, the court, from the evidence introduced, finds:

FINDINGS OF FACT

1. That the plaintiff, at the time of the commencement of this action and for many years prior thereto, was engaged in business in Salt Lake City, Utah, and for several years prior to the commencement of this action has been a resident of Salt Lake City, Utah.

2. That the defendant Zions Realty Corporation is a corporation duly organized and existing under and by virtue of the laws of the state of Utah, with its principal place of business in Salt Lake City, Utah.

3. That the defendant, Regional Agricultural Credit Corporation of Salt Lake City, Utah, is a corporation organized and existing under and by virtue of the acts of Congress of the United States of America, having the powers to hold property, transact business, and sue and be sued in its own name; and while the said United States was named as a party defendant in the action and judgment mentioned in paragraph 5 of these Findings of Fact, it was merely a nominal party to said action, and said action was brought in the name of the United States for the use of said Regional Agricultural Credit Corporation of Salt Lake City, Utah, and the latter was entitled to the benefit and avails of said judgment.

4. That the defendant, Zions Realty Corporation, at some time prior to the commencement of this

Transcript

65 action, had entered into some written agreement respecting the title to the lands and premises in question, the nature of which does not appear, but which constitutes a cloud upon the plaintiff's title to said land.

5. That the Regional Agricultural Credit Corporation of Salt Lake City, Utah, on or about the 14th day of March A. D. 1933, procured a judgment in the District Court of the United States for the District of Utah, central division, against the defendant Alice Farnworth, the then owner of the lands and premises herein involved, and others, and that said judgment was thereafter duly filed and docketed in the office of the clerk of the above entitled court at Farmington, Utah, and that said judgment now remains wholly unpaid and unsatisfied; and said judgment became a lien upon the lands which are the subject of this action.

6. That the Davis County Drainage District No. 1 is a body, corporate and politic, organized and existing under and by virtue of the laws of the State of Utah, and that the lands herein involved, and other lands, are included within its exterior boundaries.

7. That on or about the 4th day of November, 1936, James Farnworth and Alice Farnworth, his wife, the then title owners of the lands and premises herein involved, entered into a written contract with the defendants, Swen C. Jensen, Chris Jensen and

Transcript

Alma Jensen, his wife, whereby they, the said Farnworths, agreed to sell the said lands and premises herein involved to the said Jensens. That under the terms of the said written agreement, the said Jensens promised and agreed to pay all taxes assessed or accruing against the said premises from and after the date of said agreement, and that on or about the said 14th day of November A. D. 1935, the said Jensens went into possession of the lands and premises herein involved and have ever since said date remained in possession thereof and have received all rents, issues, and profits of said lands and premises, but have never since the said 4th day of November, 1935 paid the taxes levied and assessed against said premises or any part or portion thereof.

8. That on or about the 11th day of February A. D. 1935, the defendant Alice Farnworth and her husband, James Farnworth, made, executed, and delivered to the defendant D. A. Skeen their certain promissory note in the sum of \$1,000, payable on or before one year from date with interest at the rate of 6% per annum, and to secure said promissory note, the defendant Alice Farnworth made, executed, and delivered to the defendant D. A. Skeen, a mortgage covering the lands and premises herein involved, which mortgage was duly recorded on the 13th day of February A. D. 1935, in the office of the county recorder of Davis County, Utah, and that no part of the said note or interest has been paid to the said defendant, D. A. Skeen.

Transcript

9. That between the 4th day of November, A. D. 1935, and the date of the commencement of this action, the defendants, Chris Jensen and Alma Jensen, his wife, made, executed, and delivered to Fera Decker, an instrument in writing purporting to mortgage to the said Fera Decker, for valuable consideration, the lands and premises herein involved, which said purported mortgage was duly recorded in the office of the county recorder of Davis County, Utah.

10. That the lands and premises herein involved are included within the Davis County Drainage District No. 1, and that between the years 1933 and 1938, the said Davis County Drainage District No. 1 has levied and assessed Drainage District taxes upon and against said lands, none of which drainage taxes have been paid.

11. That on the 15th day of May A. D. 1939,
67 Davis County, a municipal corporation, for and in consideration of the sum of \$643.40, made, executed, and delivered to the plaintiff herein, a quitclaim deed conveying to the said plaintiff all of the right, title and interest of said county in and to the lands and premises herein involved, which lands and premises are described as follows:

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian: Running thence South 22 and 5/7 rods; thence West to Jordan River; thence North along the East bank to the North line

of Section 33; East to beginning, containing 80 acres.

Also beginning 22 and 5/7 rods South from the Northeast corner of Section 34 aforesaid; running thence South 52 1/3 rods; thence West to the Jordan River; thence North along the East bank of the Jordan River to a point 22 and 5/7 rods South from the North line of Section 33; thence East to beginning, containing 183 acres.

12. That the said quitclaim deed given by the said Davis County to the said plaintiff, consisted of tax title to the said premises based upon an auditor's tax deed issued by the auditor of Davis County to said Davis County, dated the 14th day of February, A. D. 1939, conveying the lands and premises herein described to Davis County for the non-payment of the taxes for the year 1933.

13. That after the issuance of the said auditor's tax deed of February 14, 1939, before the issuance of the said quitclaim deed by said Davis County to this plaintiff, the said lands and premises herein involved were duly and properly advertised for sale by said Davis County in the "Weekly Reflex," a newspaper published in Davis County, Utah. The first publication thereof appeared in the issue of Thursday, April 13, 1939, and it appeared in each issue, on each Thursday, thereafter to and including the issue of Thursday the 11th day of May, 1939, and the said notice

Transcript

stated that the said property would be sold on May 15, 1939.

68 14. That after the owners of the said property, and those interested therein, had failed and neglected to pay the taxes for the year 1933, and the same had become due and delinquent and notice of the said delinquency had been duly and properly published, the treasurer of Davis County on the 10th day of January A. D. 1934, made and executed a tax sale certificate to the said county of the lands and premises herein involved, and that no redemption was ever made from the said sale and the said tax sale certificate, and that said tax sale certificate and the said sale therein recited became the basis for the said auditor's tax deed of February 14, 1939, hereinabove mentioned. That there is no evidence of any fatal defect in any of the tax proceedings of Davis County, Utah, upon which the said auditor's tax deed was based for the non-payment of the taxes of 1933.

15. That on or about the 10th day of January 1938, one James Farnworth, husband of the defendant, Alice Farnworth, paid to the county treasurer of Davis County, the sum of \$164.43, which was the exact amount of the taxes for the year 1933 together with interest, penalties and costs thereon, and that the assessor applied said sum, first, to the payment of the 1937 taxes and interest, and the balance on the 1936 taxes.

16. That the county treasurer of Davis County,

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Utah, in his publication of the list of property delinquent for the taxes for the year 1933, did not, in listing or attempting to list the real property described in the complaint in this action, describe it as alleged in paragraph 1 of the first further answer and defense of the defendants, Swen C. Jensen, Chris Jensen, and Alma Jensen, his wife, and commencing on page 2 of said answer. That James Farnworth, or any other person, on the 10th day of January, 1937, or at any other time, did not, in paying the sum of \$164.43, which was the amount of the taxes assessed and levied against said property for the year 1933, plus penalty, interest, and costs, to the treasurer of Davis County, Utah, request or direct said treasurer to apply the same upon the unpaid taxes of the year 1933, and said treasurer did not accept the said sum in payment of, or covenant or agree to apply the same, or any part thereof, in payment of the taxes of said year, as alleged in the first paragraph of the second further answer and defense of said defendants, commencing on page 4 of said answer. That James Farnworth or the defendants, Alice Farnworth and D. A. Skeen, or either of them, did not procure the plaintiff to purchase said land from Davis County on their behalf or on behalf of any of them, nor as the agent or agents for them, or either of them, and said James Farnworth, Alice Farnworth, D. A. Skeen, or any of them, did not furnish to the plaintiff the money, or any part thereof, with which to purchase the tax title to said land or

Transcript

any part thereof, from Davis County, Utah, as alleged in paragraph 1 of the third further answer and defense of said defendants, commencing on page 5 of said answer.

17. That prior to the 15th day of May A. D. 1939, when the plaintiff purchased the land and premises herein involved from Davis County, the defendant, Alice Farnworth, who was heavily indebted to the plaintiff, approached the plaintiff and requested him to purchase the tax title of the lands and premises herein involved and also urged this plaintiff that he consult the defendant, D. A. Skeen, concerning the title to said premises. That the said plaintiff, upon the repeated importunities of the said Alice Farnworth did consult the said D. A. Skeen concerning the tax title to the lands and premises herein involved, and the said plaintiff was told by the said D. A. Skeen that the tax title to said land
70 and premises was good and valid and that if he invested money in the same his investment would be well secured.

18. That the plaintiff immediately after purchasing the said lands and premises from Davis County, entered into a written agreement whereby he gave the said D. A. Skeen an option to purchase the said lands and premises from the said plaintiff at any time within six months by paying the said plaintiff all he had paid for said tax title, plus interest at the rate of 8% per annum, and plus any expenses connected with said transaction.

19. That all of the money paid on the purchase of said tax title by the said plaintiff was from his own funds, and that no part of the said purchase price of the said tax title was furnished by Alice Farnworth or D. A. Skeen.

From the foregoing Findings of Fact, the court draws these

CONCLUSIONS OF LAW

1. That plaintiff is the owner and entitled to the possession, and ever since the 15th day of May, 1939, has been entitled to the possession of the lands and premises herein involved which are more particularly described as follows:

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian: Running thence South 22 and $5/7$ rods; thence West to Jordan River; thence North along the East bank to the North line of Section 33; East to beginning, containing 80 acres.

Also beginning 22 and $5/7$ rods South from the Northeast corner of Section 34 aforesaid; running thence South 52 $1/3$ rods; thence West to the Jordan River; thence North along the East bank of the Jordan River to a point 22 and $5/7$ rods South from the North line of Section 33; thence East to beginning, containing 183 acres.

2. That the said plaintiff's ownership and right of possession is superior to each and all of the

Transcript

71 claims of the said defendants, and the plaintiff is entitled to a decree of this court forever quieting his title in and to the said lands and premises herein involved.

3. That the deed conveying said lands, made and delivered by the auditor of Davis County, Utah, to said Davis County, Utah, is not void by reason of any of the defects if any, in the assessments, notices, advertisements, or any of the proceedings which resulted in said deed, alleged in the answers herein of said Swen C. Jensen, Chris Jensen, and Alma Jensen, his wife.

4. That the payment of the said sum of \$164.43 on January 10, 1935 by James Farnworth, upon taxes against said premises, was properly applied by the treasurer of Davis County in payment of the taxes for 1937 and partial payment of taxes for 1936, and did not constitute a redemption of the 1933 taxes on said premises.

5. That in purchasing said premises from Davis County, the plaintiff herein acted upon his own initiative, and in his own right, and that he did not at any time or at all, appoint or constitute D. A. Skeen or Alice Farnworth as his agent, nor did he purchase said premises in a fiduciary capacity for or with either of said persons, nor does he hold the title in trust for either D. A. Skeen or Alice Farnworth, or any other party to this action.

6. That the defendant Alice Farnworth is not

Transcript

the owner of the real property described in the complaint, and the said judgment of said defendant, Regional Agricultural Credit Corporation of Salt Lake City, Utah, is not a lien, first and prior or otherwise, thereon; and that the title to said real property vested in the plaintiff is not held in trust by said plaintiff for said defendant Alice Farnworth.

- 72 7. That the defendants Alice Farnworth, Swen C. Jensen, Chris Jensen, Alma Jensen, his wife, D. A. Skeen, Zions Realty Company, Fera Decker, and United States and Regional Agricultural Credit Corporation of Salt Lake City, Utah, or any of them, or those claiming or to claim by, through, or under said defendants, or any of them, have no right, title, estate, lien, or interest in or to said real property, or any part thereof, and all adverse claims by them, and each of them, and of those claiming by, through, or under them, or either of them, to said real property, or any part thereof, is without right, and the plaintiff, Roy Free, is entitled to a judgment that his title to said real property, and every part thereof, be quieted, as to any and all adverse claims of said defendants, and each of them, and those claiming or to claim by, through, or under them, or either of them, and that said defendants, and each of them, and those claiming or to claim by, through or under them, or either of them, be forever debarred and foreclosed from any right, title, estate, lien, or interest in said real property, or any part thereof.

Transcript

8. That said defendants, or either of them, is not entitled to take anything by their or either of their answers herein.

9. Plaintiff is entitled to his costs herein incurred as against the answering defendants.

Let judgment and decree be entered accordingly.

Dated this 10th day of June, 1940.

LESTER A. WADE,

Judge.

(Filed in clerk's office June 12, 1940).

[TITLE OF COURT AND CAUSE]

73

JUDGMENT AND DECREE

This cause came on regularly for hearing before the court on the 3rd day of November, 1939, upon the complaint of the plaintiff and the respective answers of the defendants, Swen C. Jensen, Chris Jensen, and Alma Jensen, his wife, D. A. Skeen, United States and Regional Agricultural Credit Corporation of Salt Lake City, Utah; the plaintiff being present in person and represented by his attorney, Chris Mathison, Esq. of Salt Lake City, Utah, and the defendants Jensen represented by their attorney, E. LeRoy Shields, Esq. of Salt Lake City, Utah, defendant D. A. Skeen being present in person, and the Regional Agricultural Credit Corporation of Salt Lake City, Utah being represented by its attorneys, W. Q. Van Cott, Grant H. Bagley and D.

Transcript

Eugene Livingston, of Salt Lake City, Utah; the defendants Fera Decker and Zions Realty Company, and Davis County Drainage District No. 1, having been regularly and duly served with summons, but having failed to answer or otherwise appear, and the time of each of them so to do having expired, and the court having proceeded to hear the case, and to examine into and determine the legality of the plaintiff's title, and of the title and claim of all defendants, and evidence, oral and documentary, having been introduced, and the court having required and received evidence of plaintiff's title and right of possession and having heard such evidence as was offered respecting the claims and title of each and all of the defendants, and having made and entered herein its Findings of Fact and Conclusions of Law thereon, now makes and enters herein its

JUDGMENT AND DECREE

IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED, that the plaintiff, Roy Free, was at the time of the commencement of this action, and now is, the owner in fee simple of the lands and premises involved in this action and that he is now, and has since the 15th day of May A. D. 1939, been entitled to the possession of the said premises; that neither of the defendants have any claim, right, title, equity or lien against the said lands and premises, or any part or portion thereof; that the said lands and premises are more particularly described as follows:

Transcript

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian: Running thence South 22 and 5/7 rods; thence West to Jordan River; thence North along the East bank to the North line of Section 33; East to beginning, containing 80 acres.

Also beginning 22 and 5/7 rods South from the Northeast corner of Section 34 aforesaid; running thence South 52 1/3 rods; thence West to the Jordan River; thence North along the East bank of the Jordan River to a point 22 and 5/7 rods South from the North line of Section 33; thence East to beginning, containing 183 acres.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, and each and all of them, and all persons claiming by, through, or under them, or either or any of them, are forever barred from any and all claim, right, title or interest of any name, nature or description in or to the
75 said property or any part thereof or any lien thereon.

IT IS FURTHER ORDERED that plaintiff have his costs and expenses herein incurred and taxed in the sum of \$14.40.

Dated this 10th day of June, 1940.

LESTER A. WADE

Judge

Receipt of a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Judgment

and Decree, acknowledged this 6th day of June, 1940.

E. LE ROY SHIELDS,

*Attorney for Swen C. Jensen,
Chris Jensen, and Alma Jen-
sen, his wife, Defendants.*

W. Q. VAN COTT,

D. EUGENE LIVINGSTON,
*Attorneys for Regional Agri-
cultural Credit Corporation of
Salt Lake City, Utah, Defen-
dants.*

D. A. SKEEN

(Filed in clerk's office June 12, 1940)

[TITLE OF COURT AND CAUSE]

78

MOTION FOR NEW TRIAL

Come now the defendants Swen C. Jensen, Chris Jensen and Alma Jensen, his wife, and Regional Agricultural Credit Corporation of Salt Lake City, Utah, a corporation, and move the court to vacate and set aside the findings of fact, conclusions of law and judgment and decree heretofore made and entered in the above entitled cause and to grant these defendants a new trial. This motion is based upon the following grounds:

1. Irregularity in the proceedings of the court and the orders of the court and abuse of discretion by which the defendants were prevented from having a fair trial.

Transcript

2. Accident and surprise which ordinary prudence could not have guarded against.

3. Newly discovered evidence, material for the defendants, which they could not with reasonable diligence have discovered and produced at the trial.

4. Insufficiency of the evidence to justify the judgment and decree and that it is against law.

5. Errors in law occurring at the trial and excepted to by the defendants.

6. Insufficiency of the evidence to justify the findings of fact made by the court.

79 7. No evidence was offered or received to support the findings of fact made by the court.

8. The conclusions of law made by the court are not supported by the findings of fact.

9. The judgment and decree is not supported by the findings of fact.

E. LE ROY SHIELDS

*Attorney for Swen C. Jensen,
Chris Jensen, and Alma Jen-
sen, his wife.*

W. Q. VAN COTT

D. EUGENE LIVINGSTON

*Attorneys for defendant Re-
gional Agricultural Credit Cor-
poration of Salt Lake City,
Utah.*

Received copy of the foregoing motion this 15th
day of June, 1940.

CHRIS MATHISON
Attorney for Plaintiff.

(Filed in clerk's office June 17, 1940)

[TITLE OF COURT AND CAUSE]

80-A ORDER ENTERED August 17, 1940.
 Lester A. Wade, Judge

Herein comes on to be heard Defendant's Motion for New Trial; Chris Mathison, Esq., appearing as counsel for the plaintiff and D. Eugene Livingston, Esq., and Grant H. Bagley, Esq., appearing as counsel for the defendants. The matter is argued. Ten days given to cite further authorities and if none are given, motion will be over-ruled.

[TITLE OF COURT AND CAUSE]

81 NOTICE

To the defendants Swen C. Jensen, Chris Jensen and Alma Jensen, and E. LeRoy Shields, their attorney, and to the defendant, Regional Agricultural Credit Corporation of Salt Lake City, Utah, and its attorneys, W. Q. Van Cott, Grant H. Bagley and D. Eugene Livingston:

You and each of you will please take notice that, pursuant to the order of the above entitled court made and entered on the 17th day of August, 1940, said defendant's Motions for a New Trial were over-

Transcript

ruled by the above entitled Court on the 27th day of August, 1940.

CHRIS MATHISON
Attorney for Plaintiff

Received copy of the foregoing notice this 17th day of September, 1940.

E. LE ROY SHIELDS
*Attorney for Swen C. Jensen,
Chris Jensen and Alma Jensen*

W. Q. VAN COTT

G. H. BAGLEY

D. EUGENE LIVINGSTON
*Attorneys for Regional Agri-
cultural Credit Corporation of
Salt Lake City, Utah.*

(Filed in clerk's office September 19, 1940)

[TITLE OF COURT AND CAUSE]

82

ORDER

The motion for new trial heretofore filed herein by the defendants Swen C. Jensen, Chris Jensen, Alma Jensen and United States Regional Agricultural Credit Corporation of Salt Lake City, Utah, a corporation, having been submitted to the Court, and by the Court considered,

IT IS NOW THEREFORE ORDERED that the said motion for a new trial is hereby overruled and denied.

Dated September 6th, 1940.

LESTER A. WADE

Judge

(Filed in clerk's office September 21, 1940)

Transcript

[TITLE OF COURT AND CAUSE]

83

ORDER

For good cause shown it is hereby ORDERED that the defendants Regional Agricultural Credit Corporation of Salt Lake City, Utah, a corporation, and Swen C. Jensen, Chris Jensen and Alma Jensen, his wife, may have up to and including the 1st day of November, 1940 within which to prepare and serve their bill of exceptions in the above entitled case.

Dated this 25th day of September, 1940.

LESTER A. WADE

Judge

(Filed in clerk's office September 26, 1940)

[TITLE OF COURT AND CAUSE]

84

ORDER

For good cause shown it is hereby ORDERED that the defendants Regional Agricultural Credit Corporation of Salt Lake City, Utah, a corporation, and Swen C. Jensen, Chris Jensen and Alma Jensen, his wife, may have up to and including November 30th within which to prepare and serve their bill of exceptions in the above case.

Dated this 26th day of October, 1940.

BY THE COURT:

LESTER A. WADE

Judge

(Filed in clerk's office October 26, 1940)

Transcript

[TITLE OF COURT AND CAUSE]

85

NOTICE OF APPEAL

TO THE PLAINTIFF ABOVE NAMED AND
THE DEFENDANTS ALICE FARNWORTH, D. A.
SKEEN, ZIONS REALTY COMPANY AND FERA
DECKER:

YOU AND EACH OF YOU are hereby notified
that the defendants Swen C. Jensen, Chris Jensen
and Alma Jensen, his wife, and Regional Agricultural
Credit Corporation of Salt Lake City, Utah,
a corporation, hereby appeal to the Supreme Court
of the State of Utah from the judgment and decree
in favor of the plaintiff and against the defendants
duly made and entered in the above entitled court
on or about the 10th day of June, 1940 wherein the
court adjudged and decreed that the plaintiff Roy
Free was the owner of the property described in the
plaintiff's amended complaint on file in the above
entitled cause and quieting the title of the plaintiff
to said property and awarding the plaintiff his costs
of suit.

Said appeal is taken from the whole of said
86 decree and judgment and upon questions of both law
and fact.

Dated this 22nd day of November, 1940.

E. LE ROY SHIELDS

*Attorney for defendants Swen
C. Jensen, Chris Jensen and
Alma Jensen, his wife.*

W. Q. VAN COTT
D. EUGENE LIVINGSTON
Attorneys for Regional Agricultural Credit Corporation of Salt Lake City, Utah.

Received copy of the foregoing notice of appeal
this 22nd day of November, 1940.

CHRIS MATHISON
Attorney for Plaintiff
D. A. SKEEN
Defendant

(Filed in clerk's office November 25, 1940)

BILL OF EXCEPTIONS

2 Alice Hess, a witness on behalf of the plaintiff,
testified that she is the County Recorder of Davis
3 County. She produced Book F of Auditor's Deeds.
At Page 411 is shown an auditor's tax deed which
was introduced in evidence and is in words and figures
as follows:

70340 AUDITOR'S TAX DEED "F" Page 411

PROPERTY SOLD TO COUNTY

THIS DEED, made the 14th day of February, A. D. 1939, between Davis County, State of Utah, by R. Bruce Major as Auditor of Davis County, State of Utah, party of the first part, and Davis County, State of Utah, party of the second part,
WITNESSETH:

THAT WHEREAS, as shown by certificate of sale made by Jens K. Nelson as County Treasurer of Davis County, aforesaid, dated

Transcript

January 10th, 1934 and hereinafter referred to, in the year 1933 the property hereinafter described, having been duly assessed according to law, there were duly levied for said year, State, State School, State High School, State Road, State Bounty, County, and Davis County School District, taxes in the aggregate amount of ONE HUNDRED TWENTY SEVEN and 40/100 DOLLARS, against James Farnworth on the real property hereinafter particularly described situate in Davis County, Utah, and

WHEREAS, on the 10th day of January, 1934, after due notice of assessment for said year, and notice of time and place for the payment of said taxes and the time when they would become delinquent, and opportunity to pay same having been given to said James Farnworth in the manner prescribed by law, and the said taxes being then past due, wholly unpaid and delinquent, the said Treasurer sold to Davis County, subject to redemption in the manner provided by law, the property hereinafter described, for the delinquent taxes for which said property is liable, assessed in the name of James Farnworth as owner for the year 1933, and costs of sale, together with the penalty provided by law, in the aggregate sum of ONE HUNDRED TWENTY SEVEN and 40/100 DOLLARS; and pursuant to law, the said Treasurer executed a certificate of sale covering said property, dated January 10th, 1934, to Davis County, and delivered same to Quayle Cannon as Auditor of Davis County, State of Utah, and

WHEREAS, four years have elapsed since the date of said sale and said property has not been redeemed therefrom,

NOW, THEREFORE, the said party of the

first part, as Auditor of Davis County, afore-said, in consideration of the premises, and pursuant to the provisions of Section 80-10-66, Revised Statutes of Utah, 1933, hereby conveys to Davis County, the said party of the second part, all that certain piece or parcel of land situated in Davis County, State of Utah, and described as follows, to-wit:

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian; running thence South $22 \frac{5}{7}$ rods; thence West to Jordan River; thence North along the East bank to the North line of Section 33, East to beginning, containing 80 acres.

Also beginning $22 \frac{5}{7}$ rods South from the Northeast corner of above Section; running thence South $52 \frac{1}{3}$ rods; thence West to the Jordan River; thence North along the East bank of the river to a point $22 \frac{5}{7}$ rods South from the North line of Section 33; thence East to beginning, containing 183 acres.

See Quit-Claim Deed
in 1-Q of Deeds,
Page 419

Witness my hand and seal as Auditor of said Davis County, the day and year first above written.

Signed, sealed and delivered
in the presence of
Zada Waite

R. BRUCE MAJOR
*Auditor of Davis County,
State of Utah.*

(SEAL)

Transcript

STATE OF UTAH }
 COUNTY OF DAVIS } ss.

On the 14th day of February, 1939, personally appeared before me as County Recorder of Davis County, State of Utah, R. Bruce Major the Auditor of Davis County, State of Utah, the signer of the foregoing instrument, who duly acknowledged to me that he, as such Auditor of Davis County, aforesaid, executed the same.
 My commission expires:

April 9th, 1939.

ZADA WAITE

Notary Public

(SEAL)

Bountiful, State of Utah

Recorded February 17th, 1939 at 3:40 P. M.

Abstracted 2/174

Certificate

UNITED STATES OF AMERICA

STATE OF UTAH }
 COUNTY OF DAVIS } ss.

I, Alice Hess, County Recorder in and for Davis County, State of Utah, do hereby certify and declare that the foregoing Auditor's Tax Deed from James Farnworth by R. Bruce Major, County Clerk, to Davis County, containing 2 sheets, is a full, true and correct copy of the Recorded Document as appears on record in the Office of the County Recorder of Davis County, Utah in Book "F" of Auditor's Tax Deeds, page 411.

Witness, my hand and official seal this 26th day of November, A. D. 1940.

ALICE HESS

*County Recorder in and for
Davis County, State of Utah*

(SEAL)

At this point the following colloquy occurred between the court and counsel:

4 A. No. This is the auditor's tax deed.

Q. We ask that you read that into the record, please.

A. You want me to read the description?

A. No, — the entire deed.

THE COURT: Do you think it is necessary to read it? Why not introduce it in evidence, and it may be copied?

MR. MATHISON: We offer that in evidence, the auditor's tax deed.

MR. SHIELDS: May we see it just a moment?

MR. BAGLEY: Your Honor, we object to it, on the ground it is immaterial and does not tend to prove any issue in this case.

THE COURT: What is that,—a regular auditor's deed to the plaintiff in this case?

MR. BAGLEY: It appears to be a regular auditor's deed, but there is an error in the description. It is objectionable on that ground. The description doesn't describe the property that the plaintiff seeks to quiet title to.

THE COURT: I will receive it in evidence.

MR. SHIELDS: We will contend it doesn't cover the property described in the complaint.

Transcript

THE COURT: If it doesn't prove what it is intended to prove, that will be a different question.

MR. MATHISON: I apparently didn't bring all my pleadings. Your Honor can look at yours. —We gave notice to the defendants, by Mr. Shields and Mr. Bagley, that we would ask leave to amend —I don't find the paper in my files—that on the 19th day of October, 1939, we would move the Court for leave to amend the complaint herein by interlining and substituting herein for words "Section 33" in
5 the second line of the second paragraph of the description, Paragraph 3 on Page 2, to the following: "Section 34."

THE COURT: In the second paragraph of the description?

MR. MATHISON: Yes, and it is on page — second paragraph of the description contained in Paragraph 3, on Page 2.

THE COURT: Yes, I have that.

MR. MATHISON: And that amendment was allowed?

MR. SHIELDS: Allowed?

MR. MATHISON: I think so.

MR. SHIELDS: I have no record of it.

MR. MATHISON: We will ask leave now, your Honor, to make that amendment, in accordance with that motion.

THE COURT: Somebody has crossed the figures "33" out and written in lead pencil "34."

Transcript

MR. MATHISON: I think that doesn't mean anything, your Honor.

MR. BAGLEY: I think it means someone has been tampering with the record.

THE COURT: Do you have any objection to the amendment?

MR. BAGLEY: I think it sets up an entirely different cause of action; it makes an entirely different tract of land that is involved in the law suit,—a new and distinct cause of action. I object to it upon that ground.

MR. SHIELDS: May the record show we voice the same objection.

THE COURT: Of course that describes different land. It is obviously a clerical error.

MR. BAGLEY: I am not sure it is a clerical error. Because of the records involved in this lawsuit I don't know that it is a clerical error at all. I don't think it is.

6 THE COURT: Well, of course it may be a correct description, for all I know.

MR. SHIELDS: I think the first description is a correct description so far as this proceeding is concerned.

MR. MATHISON: That may be true, but if the land is mis-described,—we are seeking to quiet title to a certain piece of ground. You may be right that in other records that are material in this case it is described as "Section 33," but we are asking to quiet title to this land as described in the amendment.

Transcript

THE COURT: Of course the wording of it indicates that when the person who wrote this description out wrote it down why he intended to say "34," because it says "Also."—The first description, it says it contains both of those sections. It says, "Also beginning 22 5/7 rods South from the Northeast corner of Section 33 aforesaid." Of course it could be either one of them. I just looked at the top of it. Of course if the land that you are concerned with in this second description is in Section 33, why I will allow you to amend it,—if that is the land you want to quiet title to.

MR. MATHISON: Substitute the figures "34" for "Section 33."

THE COURT: If that is where you want the description to begin.

MR. BAGLEY: That makes an entirely different tract of property from the one described in the complaint.

THE COURT: Haven't you all the time been talking about the same tract of land, or haven't you?

MR. BAGLEY: No.

MR. SKEEN: There is only one tract of land.

THE COURT: These people only own one tract of land?

7 MR. SHIELDS: James Farnworth owned one tract, and Alice Farnworth the other tract,—two separate deeds.

THE COURT: Is there a tract of land that the Farnworths have ever owned that the description—

Transcript

that this second description would be an accurate description of?

MR. SHIELDS: Yes, there is.

MR. SKEEN: There is only 263 acres all together. There is a portion left out in the description as it was originally, but the tax deed, as the record will show, covered the description as it is corrected by the amendment.

MR. SHIELDS: The portion that is left out is the portion retained by James Farnworth and now stands of record in his name. The other was transferred to Alice Farnworth in 1933.

THE COURT: This tax description—what does it describe?

MR. BAGLEY: That is a question of law, what it describes. It doesn't describe the tract described in the complaint.

MR. MATHISON: As we amended it, it does.

MR. BAGLEY: No it doesn't.

THE COURT: One place is a mile from the other.

MR. BAGLEY: That is true; but it is a perfectly clear description, an intelligent description.

THE COURT: That is true; but don't you both claim an interest in certain pieces of land and it is a question here entirely of whether or not it has been correctly described? There is no argument about what land they are trying to quiet title to, is there?

MR. BAGLEY: Well, there may be, your Honor.

Transcript

MR. SHIELDS: Here is the situation. The property described in the original complaint is the property deeded by James Farnworth to his wife.

THE COURT: Has James Farnworth got property that that first description would touch at all? I will be very much surprised if he ever claimed any interest in that Section 34.

MR. SHIELDS: James Farnworth has got property and retained property that is not described at all in the original complaint, but if they are permitted to amend then the amendment will cover the property he retained.

THE COURT: Isn't it obvious that if you plat-
ted these two pieces of property that the amendment covers the property intended, rather than the original description?

MR. SKEEN: Perfectly clear, your Honor.

THE COURT: If that is true, I will allow the amendment.

MR. SHIELDS: That is not true, your Honor.

MR. SKEEN: Can we have the ownership plat brought up?

MR. MATHISON: Mr. Bagley's client claims the lien on the property as is properly described.

THE COURT: You can amend your answer to cover the property now described.

MR. SHIELDS: If your Honor permits this amendment, I would have to amend my answer.

THE COURT: Does Mr. Farnworth own land in Section 30, with the description beginning at 22 5/7

Transcript

rods south from the Northeast corner of Section 33?

MR. SHIELDS: No, no. He owns property in 34.

THE COURT: Did anybody involved in this action own the property described in this second description?

MR. SHIELDS: Alice Farnworth owns it, by reason of a deed from James Farnworth, in December, 1933.

THE COURT: Well, do you claim that the Farnworths ever owned property described exactly alike in both of these sections?

9 MR. SHIELDS: No.

THE COURT: Then how is there any dispute here?

MR. SHIELDS: Here is the way the plat shows it: Here is the northeast corner of 34—

THE COURT: Yes.

MR. SHIELDS: The first description takes in 22 5/7 rods clear through here. The second description starts at this point here.

THE COURT: The first description will start over here somewhere else, won't it?

MR. SHIELDS: Yes, over here, and go 22 5/7 rods.

THE COURT: It wouldn't describe the same property. Let us see you follow this description the way it was originally described, assuming you are starting at the northeast corner of Section 33.

MR. SHIELDS: The first description?

THE COURT: The original description—the original description, in the second paragraph.

MR. SHIELDS: In the second paragraph?

THE COURT: Yes.

MR. SHIELDS: You read it and I will follow it.

THE COURT: The part you are drawing there.

MR. SHIELDS: Here is the northeast corner of 33, there.

THE COURT: All right; running thence south fifty-two—Beginning $22 \frac{5}{7}$ rods south from the Northeast corner of Section 33—

MR. SHIELDS: That is right here.

THE COURT: Here.

MR. SHIELDS: All right.

THE COURT: Running thence South $52 \frac{1}{3}$ rods—

MR. SHIELDS: Down to this point.

THE COURT: Yes,—and thence west to the
10 Jordan River.

MR. SHIELDS: That is over here.

THE COURT: Thence North along the east bank of the river to a point $22 \frac{5}{7}$ rods south from the north line of Section 33.

MR. SHIELDS: That is this point here.

THE COURT: Thence east to beginning.

MR. SHIELDS: That is over where we started.

THE COURT: Now, about your section 34. Join it onto that, so that we can get the description.

MR. SHIELDS: This is it here.

THE COURT: Do you claim that Mrs. Farnworth owns that land?

MR. SHIELDS: This L-shaped piece?

THE COURT: I mean only the described land.

MR. SHIELDS: She owns that.

THE COURT: Now let us see what it will do if we start at the Northeast corner of Section 34.

MR. SHIELDS: All right.

THE COURT: Beginning 22 $\frac{5}{7}$ rods south from the northeast corner of Section 34—

MR. SHIELDS: That would begin here.

THE COURT: Running thence South 52 $\frac{1}{3}$ rods.—

MR. SHIELDS: Over here.

THE COURT: And thence west to the Jordan River.

MR. SHIELDS: That would go clear over here.

THE COURT: And thence North along the east bank of the Jordan River to a point 22 $\frac{5}{7}$ rods south from the north line of Section 33; thence east to beginning.

MR. SHIELDS: That is back where we started from. This says, "Containing 183 acres."

THE COURT: Now, which one of those would
11 contain that many acres?

MR. SHIELDS: Both of them, I think, added together.

THE COURT: They undoubtedly intended 34 instead of 33.

MR. SKEEN: Here is the plat, that shows it.

Transcript

THE COURT: Both of them cover part of it.

MR. SKEEN: The correction includes the 263.

MR. SHIELDS: We maintain that the acreage doesn't have any thing to do with the description, isn't a part of it.

THE COURT: It seems to me it is obvious that in drawing this description somebody has made a mistake. I think they ought to be allowed to correct it.

MR. BAGLEY: If you go back over the entire history of the title, I don't know.

THE COURT: Does the plaintiff in this case claim all of this land?

MR. MATHISON: Yes, your Honor.

THE COURT: The plaintiff has a right to pick what he will sue for.

MR. MATHISON: And the Auditor's deed that has been introduced in evidence described it, starting with the northeast corner of Section 34,—the second parcel also beginning 22 5/7 rods south.

MR. SHIELDS: But both are mentioned in the first description, both 33 and 34.

THE COURT: Well, we will have to thrash that out; but at this time I will allow the amendment.

MR. BAGLEY: Well, then, your Honor, may the answer that has been filed by the Regional Agricultural Credit Corporation stand as the answer to the complaint as amended?

THE COURT: Yes. The record may so show.

12 MR. SHIELDS: I think our answer is suf-

Transcript

ficiently particular to cover the amendment, if your Honor please.

MR. MATHISON, CONT'D:

Q. Do you have a certificate of sale pertaining to this?

A. I haven't brought it up.

Q. What is the book that you just brought?

A. Original Ownership Plat, Sections 33 and 34, 2 North, 1 West.

Q. By whom was that plat made?

A. Margetts was the surveyor then. I don't know, unless it is on here.

THE CLERK: I think those plats have been made ever since Davis was a county.

Q. Are there pages in this book?

A. Yes,—56 and 57.

Q. In this book that you describe as the Ownership Plat of 2 North, 1 East?

A. It is 2—1 and 2 East and 2 North, and 1, 3 and 4 West.

Q. In this book, at page 56, do you find a plat describing the land that is described in the Auditor's deed?

A. "Also Section 34," here.

Q. And that shows the boundaries of the land described in the Auditor's deed which you brought in?

A. Yes, sir.

MR. MATHISON: We will offer this ownership plat in evidence, Pages 56 and 57.

Transcript

The plaintiff then introduced pages 56 and 57 of the original ownership plat, which is attached to the bill of exceptions. It is not practicable to attempt
14 to abstract this plat. The plaintiff thereupon introduced the notice of sale and the proof of publication. The notice is entitled "Notice of Sale of Property held by Davis County on Tax Deeds" and recites that the County Commissioners of Davis County will sell for cash on the 15th day of May, 1939 at 12:00 o'clock noon at the north front door of the county courthouse in Farmington City, Davis County, Utah, pursuant to Section 80-10-68 of the Revised Statutes of Utah, 1933 the following described property assessed in the following names, to-wit:

"LIST OF AUDITOR'S DEEDS ISSUED"

"JAMES FARNSWORTH — Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian; running thence South 22 5/7 rods; thence West to Jordan River; thence North along the East bank to the North line of Section 33; thence East to beginning, containing 80 acres.

"Also beginning 22 5/7 rods South from the Northeast corner of the above Section; running thence South 52 1/3 rods; thence West to Jordan River; thence North along the East bank of the river to a point 22 5/7 rods South from the North line of Section 33; thence East to beginning, containing 183 acres.

The notice was published in *The Weekly Reflex* and the affidavit of the publisher recites that it was

Transcript

published in said newspaper in its issue dated April 13, 1939 and was published in each issue of the paper on Thursday for four weeks thereafter for the full period of five insertions, the last publication thereof
 13 being in the issue dated May 11, 1939. The plaintiff thereupon offered in evidence the tax sale certificate which is in words and figures as follows:

This certifies that on the 10th day of January, 1934, in pursuance of law, I, as treasurer of Davis County, Utah, offered for sale subject to redemptions provided by law, the property situated in the County of Davis, State of Utah, hereinafter described, for delinquent State, State School, State High School, School Equalization Fund, County, District School, Dependent Poor, Dependent Mothers, War Veterans, County Exposition, Old Age Pension, State Bounty, Tubercular Indemnity, City or Town and County Road taxes for which said property is liable, assessed in the name of James Farnsworth as owner for the year 1933, together with the penalty provided by law and the cost of sale; that a description of the property named as follows, to-wit:

Beg NE cor of Sec 34, Twp 2 N, Rg 1 W, SLM; S 22 5/7 rds; W to Jordan River; N along E bank to N line of Sec 33, E to beg. cont 80 A. Also beg 22 5/7 rds S fr NE cor of above Sec; S 52 1/3 rds; W to Jordan River; N along E bank of river to a pt 22 5/7 rds S fr N line of Sec 33; E to beg. cont 183 A.

That the aggregate amount of taxes due the several taxing funds, penalty and costs for which the same was offered are as follows, to-wit:

Transcript

Total Taxes.....	\$122.94
Cost of Sale.....	2.00
Penalty	2.46
<hr/>	
Total.....	\$127.40

That pursuant to said offer no person offered to bid and pay the treasurer the amount of tax and costs required to be paid, as aforesaid; therefore, pursuant to law, said property was sold to Davis County, and this certificate issued as evidence thereof.

Dated January 10, 1934

JENS K. NELSON

Treasurer of Davis County, Utah.

The plaintiff next introduced in evidence his Exhibit C which is a tax deed, the contents of which are as follows:

TAX DEED

DAVIS COUNTY, a body corporate and politic of the State of Utah, grantor, hereby CONVEYS to J. ROY FREE, grantee of Salt Lake City, Utah, the following described real estate in Davis County, Utah:

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian, running thence South 22 5/7 rods; thence West to the Jordan River; thence North along the east bank of Jordan River to the north line of Section 33; thence East to beginning, containing 80.00 acres.

Also, beginning 22 5/7 rods South from

the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian, thence South 52 1/3 rods; thence West to the Jordan River; thence North along the east bank of Jordan River to a point 22 5/7 rods South of the north line of Section 33; thence East to beginning, containing 183.00 acres.

This conveyance is made in consideration of payment by the grantee of the sum of \$643.40, delinquent taxes, penalties, interest and costs constituting a charge against said real estate, which was sold to said county at preliminary sale for non-payment of general taxes assessed against it for the year 1933 in the sum of \$127.49 and recorded in Book "F" of Auditor's Tax Deeds, page 411, the same having been duly advertised and sold to the highest bidder at a public auction on the 15th day of May, A. D. 1939.

Dated this 15th day of May, A. D. 1939.

DAVIS COUNTY

By R. Bruce Major

County Auditor

Signed in the Presence

of:

Zada Waite

[SEAL]

STATE OF UTAH }
COUNTY OF DAVIS } ss.

On this 15th day of May, A. D. 1939, personally appeared before me R. Bruce Major, County Auditor of Davis County, who duly acknowledged to me that he executed the foregoing instrument for and in behalf of said Davis County.

Transcript

My commission
expires:

April 9, 1943

ZADA WAITE

Notary Public

Residence: Bountiful, Utah

[SEAL]

- 15 The plaintiff then rested. The witness Alice Hess was then called as a witness for the answering appellants. Her attention was directed to Book 1-L of Deeds, page 486, which was a deed from James Farnworth to Alice Farnworth, his wife. The deed
- 16 was introduced in evidence and it was stipulated that a certified copy might be considered as part of the evidence. The deed is as follows:

WARRANTY DEED

No. 56817

1-L 486

JAMES FARNWORTH, grantor, of Woods Cross, County of Davis, State of Utah, hereby CONVEY AND WARRANT TO ALICE FARNWORTH, his wife, grantee, of the same for the sum of Twenty-five and no DOLLARS, the following described tract of land in Davis County, State of Utah:

Beginning at the Northeast corner of Section Thirty-four (34), Township Two (2) North, Range One (1) West, Salt Lake Meridian, running thence South 22 5/7 rods; thence West to the Jordan River; thence Northerly along the East bank of the Jordan River to the North line of Section Thirty-three (33) Township and Range aforesaid; thence East to the point of beginning. Containing 80 acres, more or less.

Transcript

Also beginning 22 5/7 rods South of the Northeast corner of Section Thirty-three (33), Township and Range aforesaid; thence South 52 1/3 rods; thence West to the Jordan River; thence Northerly along the East bank of the Jordan River, to a point 22 5/7 rods South from the North line of Section Thirty-three (33) aforesaid, thence East to point of beginning. Containing 183 acres, more or less.

Together with all interests in certain artesian wells located upon Gun Club and W. I. Atkinson's lands, the last named being rights based upon a lease.

Subject to all rights of way for roads and pole lines hereto granted or acquired.

WITNESS the hand of said grantor, this Seventh day of December, A. D. 1933.

James Farnworth

Signed in the presence of
James A. Farnworth

STATE OF UTAH }
County of Salt Lake } ss.

On the Seventh day of December, A. D. 1933 personally appeared before me James Farnworth, the signer of the within instrument, who duly acknowledged to me that he executed the same.

My commission expires	Ernest Wright
June 29, 1937	Notary Public
	My residence is
[SEAL]	Salt Lake City, Utah

Recorded April 2nd, 1934 at 9:50 A. M. Abstracted 2/49-50

Hulda L. Brown
County Recorder

Certificate

UNITED STATES OF AMERICA

STATE OF UTAH }
COUNTY OF DAVIS } ss.

I, Alice Hess, County Recorder in and for Davis County, State of Utah, do hereby certify and declare that the foregoing Warranty Deed from James Farnworth to Alice Farnworth, his wife, containing 1 sheet, is a full, true and correct copy of the Recorded Document as appears on record in the Office of the County Recorder of Davis County, Utah in Book "1-L" of Deeds, page 486.

Witness my hand and official seal this 26th day of November, A. D. 1940.

[SEAL]

Alice Hess
County Recorder in and for
Davis County, State of Utah

Bryant S. Jacobs, a witness on behalf of appellants testified that he was the County Treasurer of Davis County and as such had custody of the assessment rolls of Davis County. At page 58, Line 34 is shown the assessment of property in the name of Alice Farnworth for the year 1935. The property assessed is described as follows:

"Beg. N.E. Cor Sec 34: S 22 5/7 rds,
W to Jordan River, N'y along E bank to N
line of Sec 33: E to beg. cont 80.00 acres.

“Beg. 22 5/7 rds S. fr. N. E. Cor Sec 34: S 52 1/3 rds: W to Jordan River; N’y along E bank of river to pt. 22 5/7 rds: S fr N. line of Sec 33: E to beg. cont 183.00 acres.”

18 The witness stated that the above described property was assessed to Alice Farnworth for the years 1934, 1936 and 1937 as well as 1935. After the assessment roll is certified to, the treasurer notices are mailed to the parties to whom the assessment is
19 made. Notice of assessment and tax notices are mailed to the party to whom the assessment is made and for the years 1934, 1935, 1936 and 1937 the assessment notices and the tax notices for the property above described were mailed to Alice Farnworth. From 1934 on, all tax notices and all notices relating to taxes were mailed to Alice Farnworth. It was then stipulated that James Farnworth paid to the County Treasurer the amount of the 1933 taxes and that the treasurer applied the payment upon 1937 taxes and the balance upon 1936 taxes. Under the contract of purchase between the Farnworths and the Jensens, Farnworth was required to pay the taxes for the year 1933 and 1934 on the property covered by the contract.

20 THE COURT: There were two years he was to pay under the contract?

MR. SHIELDS: He was to pay 1933 and 1934.

THE COURT: He paid enough to cover the 1933, but not enough to cover the two of them?

MR. SHIELDS: That is right.

Transcript

THE COURT: And he told the treasurer to apply it on the 1933, and the Treasurer said he
21 wouldn't apply it on that, but on the 1937.

MR. SHIELDS: I don't think he said how he was going to apply it; but it was applied to the 1937 and 1936.

The contract was later introduced in evidence. Its contents are as follows:

EXCHANGE AGREEMENT

Salt Lake City, Utah
November 4th, 1935

To Zion's Realty Company

In consideration of One Dollar and your efforts I hereby agree to exchange my property described as: 110 feet with improvements, located at 2004 South 11th East and the house and lot located at 567 East 5th South Street, City of Salt Lake, County of Salt Lake, State of Utah for property described as: 263 acres with improvements, all water rights, all implements now on the place, the first crop hay in the South end of the barn and the stack of hay West of the barn and the two head of horses now on the place, all located in Woods Cross and known as the James Farnworth place, County of Davis, State of Utah

ON TERMS AND CONDITIONS FOLLOWING,
TO-WIT:

I agree to convey my property, first above described, to owner of the second property, or his nominee, subject to no taxes, assessments or

other liens excepting one mortgage for the sum of \$950.00 payable \$14.68 per month and the general taxes for the year 1935 on the property at 2004 South 11th East, and one mortgage for the sum of \$3000.00 in favor of the Home Owners Loan Corp. on the property at 567 East 5th South, and conditions, restrictions, and reservations, if any, running with the land as shown of record.

The second property above described, to be conveyed to me, or my nominee, subject to no taxes, assessments or other liens excepting a bond for drainage and general taxes but I am to give a mortgage on the 263 acres in Woods Cross for the sum of \$5000.00 out of which all drainage bond and the general taxes or other liens are to be paid by the Seller excepting the general taxes for the year 1935. Said \$5000.00 is to be paid as follows; \$300.00 on the 10th day of Nov. 1936 and \$500.00 on the 10th day of each and every November thereafter until paid, said payments to include interest at the rate of 6% per annum. and conditions, restrictions and reservations, if any, to be mutually adjusted or prorated to November 10th, 1935 and possession of properties to be delivered as soon as deal is closed.

ADDITIONAL TERMS

In the event that the Seller does not pay the drainage bond and general taxes as set forth, then the Buyer may pay the same and all such payments are to be applied on the payments on the \$5000.00 mortgage above mentioned.

Upon acceptance of the within proposition on or before November 10th, 1935, I agree with-

Transcript

in five days thereafter to furnish you with all the necessary and customary papers, documents, money, certificate of the title or abstract from a reputable and reliable Company and to do everything requisite to properly consummate said exchange. The owner of the second property shall be allowed five days from date of such acceptance within which to furnish the necessary and customary papers, documents, money, certificate of title or abstract from a reputable and reliable Company and to do everything requisite to fulfill his obligations.

You are hereby irrevocably authorized to act as my agent in negotiating said exchange, with the privilege of representing the other party thereto, and I agree to pay you \$400.00 payable \$200 November 1st, 1936, \$200 November 1st, 1937, as commission, if you secure acceptance hereof at any time within the period aforesaid.

Signature:

CHRIS JENSEN
ALMA JENSEN

Witness:

BEN BOYCE

To Zion's Realty Company

I hereby accept the above offer and agree to all its terms and conditions and I agree to pay you \$400.00 as commission for your services.

Dated November 4th, 1935

JAMES FARNWORTH
ALICE FARNWORTH

It was thereupon stipulated that the Regional Agricultural Credit Corporation obtained a judgment

against the defendant Alice Farnworth and her husband James Farnworth in the amount as alleged in the answer; that it was docketed as alleged in the answer; that it is a valid and subsisting judgment
22 and that nothing has been paid on it.

Plaintiff Roy Free was thereupon called as a witness and testified that he resides in Salt Lake City and is engaged in two or three businesses, the principal one being the ice business.

23 He was acquainted with the defendant Alice Farnworth and had known her a number of years. Business transactions between them were carried on principally by her husband. He had had business transactions with her. He was also acquainted with her husband James Farnworth who is now deceased and had been acquainted with him several years. He was also very well acquainted with the defendant Mr. D. A. Skeen.

Q. As a matter of fact he is your attorney, is he not, at the present time?

A. In this here case Mr. Mathison is.

Q. Yes, but he is still your attorney, isn't he?

A. No.

Q. You say "No"?

A. I say "No" in this case.

Q. He has been your attorney for a number of years?

A. Mr. Skeen has never done any of that kind of work for me.—I never paid Mr. Skeen a dollar for services.

He made a mortgage loan to the defendant Alice Farnworth and her husband on a piece of property in Salt Lake City. The loan was made three or four years ago and is still unpaid. He advanced money to pay delinquent taxes on the property. He admitted that his deposition in this case was taken before trial at Salt Lake City.

Q. Now, then, I will ask you, Mr. Free, if you didn't testify at that deposition as follows:

"Answer: As I remember it, it was in Jensen's name or else it was a combination of them and Farnworth that owned the property when I took the loan. That is all I could say about it.

"Q. Now, before you made this loan on the Eleventh East property you had the title examined by a lawyer?

25 "A. Yes.

"Q. And Mr. D. A. Skeen examined the title for you?

"A. Yes, sir. He examined the title, as I remember, and said it was all right."

Q. Do you remember so testifying at the deposition?

A. Yes, sir.

Q. And it was true, was it not?

A. In examining the title—

Q. You can answer that yes or no. Was that statement true or correct?

A. Well, I would say yes and no. It was really examined for Mr. Farnworth, in a way. It was examined for me, but he took it to Mr. Skeen, and I never paid Mr. Skeen any fees at all. It was his pro-

posals that he might have it examined and verified, and I told him it would be a good thing to do; but I really took the title on the fact that Mr. Weeks had had it mortgaged prior to that—the real estate people,—and I felt the title was all right anyhow, and I hadn't had any obligations or any business with Mr. Skeen at all when I made this arrangement with Farnworth.

Q. Well, you want us to understand that Mr. Skeen examined the title for Mrs. Farnworth?

A. For Mrs. Farnworth?

Q. Yes.

A. I wanted to know about the title to the property, and they said it was all right, and if I wanted them to they would have Mr. Skeen examine it and it would not cost anything. So they did that.

Q. That was the Sugarhouse property?

A. That was the Sugarhouse property. Hadn't
26 anything to do with this property at all.

Q. Didn't he give you an opinion on the title?

A. No. No, there was no written opinion at all.

Q. And you never had any opinion from him?

A. I never had any opinion from him at all, Mr. Bagley.

THE COURT: Well, you said "no written opinion" when you answered before. Did he give you an opinion of any kind?

A. No; he really never gave me any opinion. The information was carried back over from Farnworth that the title was all right.

Transcript

Q. Weren't you asked this question, and didn't you make this answer:

"Q. And gave you an opinion to the effect that the title was all right to make a loan?

"A. Yes. I think I have the opinion."

Didn't you make that statement?

A. If that is in there I made that statement.

Q. And it is true and correct, isn't it?

A. No, it is not true, because I haven't that opinion.

Q. All right. That is all I want to know.—

A. I said "I think I have."

Q. I will ask you if I didn't ask you this question:

"Q. Now, how did you acquire the interest that you claim in this property that is described in your complaint here?

"A. Well, now, you speak about the 'complaint on this property.' What property? Is that the 11th East property described here?

"Q. You signed the complaint, didn't you, Mr. Free? I will show you a copy of the complaint.

"A. This is the farm ground, is it?

"Q. I understand it is the property out by Woods Cross, out in Davis County.

27

"A. Yes, I signed that.

"Q. You signed that complaint, didn't you?

"A. I signed that complaint.

"Q. And you signed it up in Mr. D. A. Skeen's office, didn't you?

"A. I guess it was in D. A. Skeen's office.

"Q. The Notary who took your acknowl-

edgement is the stenographer in Mr. D. A. Skeen's office, is she not?

"A. I don't remember of anybody being there.

"Q. Mrs.

"A. Did I sign that there, or was it at the Land Office? I guess I must have signed it up there. Mr. Skeen knows about it, but I don't think there was any lady connected with it to verify the signature there.

"Q. Mr. Skeen prepared the complaint for you, didn't he?

"A. He prepared the complaint, yes."

Q. Do you remember making those answers?

A. Yes.

Q. And that is correct, is it not?

A. Yes.

Q. And it is correct that Mr. Skeen was your attorney when you filed this complaint in this suit, and he prepared the complaint for you, and he is still your attorney,—isn't that correct?

A. He prepared the complaint, but that complaint was to be taken care of with the Farnworths, and it wasn't to be—It wasn't myself. As a matter of fact I never paid or agreed to pay Mr. Skeen anything for his services.

Q. As a matter of fact, Mrs. Alice Farnworth is the one who is paying Mr. Skeen for preparing the
28 complaint in this case, isn't that correct?

A. Well, I suppose it is. It is her property. I suppose that would be true. It was her or her son, because the old gentleman was dead at that time. I

Transcript

would like to say this, Mr. Bagley: When you started out there about—explained that you had been questioning me about the Sugarhouse property, and when you started to talk to me about that, I didn't know what you had reference to, whether it was that property or the other, because you just continued on.

Q. Well, I will just go a little further:

“A. Well, nevertheless, Mr. Skeen is your attorney in this present lawsuit, is he not?”

“A. Well, I would say so, yes.”

A. Yes.

When he came out to Farmington to bid in the property the defendant Skeen came with him. Defendant Skeen examined the records and advised him that he would be safe in bidding in the property at the sale.

Q. And you bid it in at his solicitation and at his request, and at the request of Mrs. Alice Farnworth; that is true, isn't it?

A. Well, not absolutely. I wouldn't say a request.

29 They solicited me and wanted me to. Mr. Skeen and Mrs. Farnworth solicited him and prevailed upon him to come out and bid in the property at the sale. He bid it in to protect Mrs. Alice Farnworth but not Mr. Skeen particularly. He became very well acquainted with Mr. and Mrs. Farnworth and his sympathy went out to the family when they told him they were going to lose their property out in Davis County. He told them he wasn't interested

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and then their son came down a number of times and tried to get him to help them out, and he finally told him he would rather not. Mr. Farnworth then wanted to know if I would go up to the office of Mr. Skeen with him and talk it over. I went up to Mr. Skeen's office with Mr. Farnworth and talked the matter over with Mr. Skeen and I told Mr. Skeen and Mr. Farnworth, as I had told the Farnworths before at my office, that I was only doing it because of the interest and my sympathy went out to them and I would like to help them if I could, and I told Mr. Skeen the same thing. Mr. Farnworth told me that he was owing Mr. Skeen somewhere in the neighborhood of \$1,000.00 for services and Mr. Skeen and we discussed that question and I told him that my interest was simply to see that they were protected all the way through, that is the Farnworths, and that Mr. Skeen would be fair in taking care of the account and
30 whatever came to Mr. Skeen would be fair in taking care of his account with Mr. Farnworth.

Q. Now, if you should prevail in this action of course you have no intention of depriving Mr. Skeen of his mortgage lien on the property, have you?

A. Oh, no, no.

Q. And you have no intention of depriving Mrs. Farnworth of any interest that she has in the property?

A. Why, no.

Q. In other words, you bid in this property to

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protect them and to help them out, didn't you?

A. Yes. I did it as an accommodation all the way through; to clear the property and make a satisfactory arrangement to everybody.

I don't regard this as a loan to the Farnworths. If the court should decide that the sale was void I would
31 look to the county for reimbursement. I don't see how I could, just up to this stage of the situation. I don't have any agreement with Mrs. Farnworth or with Mr. Skeen except the option to Mr. Skeen. I don't know the legal effect of the option but the amount of it is the amount I bid for the property plus an amount to take care of any inconveniences. In my deposition I testified as follows:

32 "Q. Now, of course you don't have any intention of depriving Mr. D. A. Skeen of his mortgage on this property by bidding it in at this tax sale, have you?

"A. Oh, no, no. As a matter of fact, Mr. Bagley, Mr. Skeen assured me he would take it off my hands.

"Q. Mr. D. A. Skeen assured you that he will protect you and take this property that you bid in at the sale off your hands?

"A. Yes.

"Q. That is the understanding?

"A. That was the fact in the case, Mr. Bagley."

A. Yes, he assured me at that time, and later on an option was made.

Q. You don't have that option with you?

A. Yes, sir.

Q. May I see it?—Now, I am going on to page 13, and I am going to ask you if you didn't make these answers in that deposition:

“Q. In other words, Mrs. Farnworth's interest in the property would be protected and not prejudiced by this?”

“A. That is what he assured me. When I said an agreement there was no agreement. I am just making expressions that I made regarding it.”

He admitted that the above questions were propounded to him and that he made the foregoing answers and that they were all true.

On cross-examination Mr. Free testified that Mr. Skeen explained to him that there was an obligation between Mr. Farnworth and him. I understood that Farnworth owed Skeen money. I have not given any thought to the matter of whom I would seek reimbursement from if the title I received from Davis County fails. If the title fails I certainly would look to whoever was liable to me for reimbursement. Before I bought this property I had a conversation with Mr. D. A. Skeen and Mr. Farnworth, Jr., or Mrs. Farnworth in Mr. Skeen's office regarding the property. This conversation had reference to my buying the property in Davis County.

Q. Before that conversation had you had some hesitancy about buying this property in Davis County?

A. Yes, sir, I did.

Q. And then what conversation did you have

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at the time you have indicated, that induced you to buy it?

A. Well, Mr. Skeen assured me that the title and everything was clear, and, as I stated before, I was interested in trying to help those people out of their dilemma.

Q. And did Mr. Skeen in that conversation say anything to you about taking the property off your hands?

A. He said that he would be glad to take it off my hands if I desired.

Nothing was said in that conversation about giving him an option. That came up later. I went back to Mr. Skeen's office and discussed it again and Mr.
35 Skeen said that he would be glad to give me an option to buy it, and I told him he had better go ahead and do that and fix up the option. This occurred probably a week or ten days after the sale. The option was not discussed before I bought the property. Mr. Skeen said he would be glad to take it off my hands if I didn't want to retain it. Exhibit D is the option referred to. It is as follows:

May 22, 1939

Mr. Roy Free
Salt Lake City, Utah

Dear Sir:

In respect to your inquiry as to a mortgage held by me on the Farnworth property at Woods Cross, I desire to advise you that I hold this

mortgage and no payment has been made upon it, either on the principal or interest. I understand you have purchased the property covered by the mortgage at the May tax sale by Davis County.

I have not checked the tax proceedings but I assume they are regular and if so, your purchase of the property vested in you a title free and clear of all judgment, mortgage and drainage district liens. It may be necessary in order to clear the title, for you to bring an action to quiet title and secure a decree therein. The amount you paid in purchasing the property however, constitutes a first and prior lien on this property to the extent of the amount paid and interest thereon against any claims by anybody by way of redemption or otherwise.

I was not in a position to purchase the property at tax sale myself but I am willing, in order to protect my interest in the mortgage, to check the tax records and advise you fully with respect to the matter and to institute and prosecute for you any action necessary to quiet title to the property, in consideration of your giving to me a first and prior option to purchase this property in order that I might realize on my mortgage, by my paying to you the amount of taxes paid by you, plus legal interest at eight per cent and your expenses of at least \$30.00 at any time within six months from this date; and this to be wholly without obligation on your part to pay any expense other than the actual court fees on any action instituted.

The property is described as follows:
Beginning at Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian, running thence South 22 5/7

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rods; thence West to the River Jordan; thence Northerly along the East bank of the River Jordan to the North line of Section 33, Township and Range aforesaid; thence East to beginning.

Also beginning at a point $22 \frac{5}{7}$ rods South of the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian; running thence South $52 \frac{1}{3}$ rods; thence West to the Jordan River; thence Northerly along the East bank of Jordan River to a point $22 \frac{5}{7}$ rods South from the North line of Section 33, township and Range aforesaid; thence East to the point of beginning, containing 183 acres. Subject to all rights of way for road and pole lines hereto granted or acquired.

I understand the amount of the tax paid by you to the county on the sale was \$656.30.

Yours very truly,

D. A. SKEEN

DAS:Dw

I hereby accept the foregoing proposition and hereby give and grant to D. A. Skeen an option to purchase said property on the terms and for the amount therein specified.

Dated this 15th day of May, 1939.

J. R. FREE

At the time of the meeting in Mr. Skeen's office I knew that Mr. Skeen had a mortgage on the property. That is what he told me.

On redirect examination he testified as follows:

Q. Mr. Free, just how were you going to protect Mrs. Farnworth if Mr. Skeen exercised his option there? Have you figured that out?

A. Why, Mr. Skeen would take this place off my hands at the purchase price plus the—

Q. How are you going to protect Mrs. Farnworth if Mr. Skeen gets his hands on it?

A. Why, I can't protect her. It was just a conversation between ourselves. I said I would like to see everybody protected; that was all,—and that he would be reasonable in the fees for the the services he had rendered Mr. Farnworth.

Q. You don't understand that there is anything in that option that prevents you from carrying out your understanding and arrangement with Mrs. Farnworth, do you?

A. Only a question of the dating of it—the option—as I understand, from a legal standpoint. Mr. Skeen has a right to take this off my hands and pay me this money up to and including the last date of the option.

Q. Are you relying upon Mr. Skeen to protect Mrs. Farnworth?

A. Well, I haven't assumed any responsibility of trying to protect Mrs. Farnworth, only just moral.—I said I wished to.

Q. That is the only reason you went into this, was to protect her in the whole affair?

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A. Well, I had an equal confidence in Mr. Skeen.

Q. Well, you still have confidence in Mr. Skeen, that if he exercises that option he will protect Mrs. Farnworth?

A. Why, sure.

- 37 I had heard about the judgment that the Regional Agricultural Credit Corporation has against Mr. Farnworth, but I understood from Mr. Skeen that the property was clear at the time I purchased it. The old gentleman Farnworth told me about the judgment that the Regional Agricultural Credit Corporation had. I didn't understand when I bid in this property that I would cut off the judgment of the Regional Agricultural Credit Corporation. Mr. Skeen told me that it was all clear and there would be no question about any of it. Mr. Skeen didn't tell me that the Regional Agricultural Credit Corporation judgment had been paid. Mr. Skeen assured me that the
- 38 titles and everything were all right. I don't think he assured me that my purchase would cut off the judgment in favor of the Regional Agricultural Credit Corporation. Mr. Farnworth told me about the contract with the Jensens covering the property. Mr. Jensen made a trade of some Sugarhouse property for
- 39 the Farnworth property. I knew that Mr. Jensen was on the property in Davis County living there when I bought the property. Mr. Farnworth didn't tell me anything about the lawsuit between him and the Jensens.

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Q. I mean at the time you discussed this present agreement didn't they tell you if you were successful in getting this title you could move Mr. Jensen out of this property and his contract would be at an end?

A. No. It was just a question of the title being clear.

Q. In substance and effect that is what you understood, wasn't it?

A. Why, after I made my option it was just a question of getting my money back again and having everybody satisfied. I never discussed about moving Jensen. I didn't want the farm.

Q. But you did understand, didn't you, that if you were successful that that would terminate Mr. Jensen's tenancy?

A. I suppose yes, from the standpoint of the right of possession.

Q. And that understanding came to you by virtue of the conversation you had at the time this was discussed, didn't it?

40 A. With Mr. Skeen, yes.

Q. Yes.—

MR. SHIELDS: That is all.

On redirect examination plaintiff testified that the check marked Exhibit E in the amount of \$656.30 was paid to Davis County for the property and that the check had been paid by the bank on which it was drawn.

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The defendant D. A. Skeen thereupon introduced in evidence his Exhibits 1 and 2, being note and mortgage in his favor. The note and mortgage are as follows:

\$1,000.00 Gold.

Salt Lake City, Utah, Feb. 11, 1935

On or before February 11, 1936, after date, for value received, the undersigned promises to pay to D. A. Skeen of Salt Lake City, or order, at his office in Salt Lake City, Utah, One thousand,Dollars in U. S. Gold Coin, with interest payable quarterly at the rate of six per cent per annum from date until maturity, together with costs and expenses 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 twelve per cent per annum until paid, both before and after judgment. If the interest is not paid when due, the legal holder 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 hereby guarantee payment of this note at maturity or at any time thereafter.

JAMES FARNWORTH
ALICE FARNWORTH

MORTGAGE

ALICE FARNWORTH, mortgagor of Salt Lake City, County of Salt Lake, State of Utah, hereby MORTGAGE to D. A. Skeen, mortgagee, of Salt Lake City, Utah for the sum of One

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thousand Dollars the following described tract of land in Davis County, State of Utah:

Beginning at the Northeast corner of Section Thirty-four (34), Township Two (2) North, Range One (1) West, Salt Lake Meridian, running thence South $22 \frac{5}{7}$ rods; thence West to the Jordan River; thence Northerly along the East bank of the Jordan River to the North line of Section Thirty-three (33), Township and Range aforesaid; thence East to the point of beginning. Containing 80 acres, more or less. Also beginning $22 \frac{5}{7}$ rods South of the Northeast corner of Section Thirty-three (33), Township and Range aforesaid, thence South $52 \frac{1}{3}$ rods; thence West to the Jordan River, to a point $22 \frac{5}{7}$ rods South from the North line of Section Thirty-three (33) aforesaid, thence East to point of beginning, containing 183 acres, more or less.

Together with all interests in certain artesian wells located upon Gun Club and W. I. Atkinson's lands, the last named being rights based upon a lease. Subject to all rights of way for roads and pole lines heretofore granted or acquired.

This mortgage is given to secure the following indebtedness:

One promissory note, of even date herewith, for \$1000.00 payable on or before one year from date, with interest at 6% per annum, interest payable quarterly.

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of

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reasonable Dollars attorney's fees in case of foreclosure.

Witness the hand of said mortgagor, this 11th day of February, A. D. nineteen hundred and thirty-five.

Alice Farnworth

Signed in the presence of
Vivian Smith

STATE OF UTAH }
COUNTY OF SALT LAKE } SS.

On the 11th day of February A. D. 1935 personally appeared before me Alice Farnworth the signer of the above instrument, who duly acknowledged to me that she executed the same.

Vivian Smith
Notary Public

[SEAL]

- 41 It was thereupon stipulated that the mortgage in favor of the defendant D. A. Skeen had been subordinated to the judgment of the Regional Agricultural Credit Corporation and that the mortgage was inferior to the judgment. The subordination agreement is marked defendant's Exhibit 4 and is as follows:

SUBORDINATION AGREEMENT

That certain mortgage from Alice Farnworth to D. A. Skeen dated February 11, 1935, recorded February 13, 1935, in Book 1-N of Mortgages, page 94, of the records of the County Recorder of Davis County, Utah, mortgaging to

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D. A. Skeen the following described property in Davis County, Utah:

Beginning at the Northeast corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian, running thence South $22 \frac{5}{7}$ rods; thence West to the River Jordan; thence Northerly along the East bank of the River Jordan to the North line of Section 33, Township and Range aforesaid; thence East to beginning.

Also beginning $22 \frac{5}{7}$ rods South of the Northeast corner of Section 33, Township and Range aforesaid; thence South $52 \frac{1}{3}$ rods; thence Northerly along the East bank of Jordan River to a point $22 \frac{5}{7}$ rods South from the North line of Section 33 aforesaid; thence East to the point of beginning, containing 183 acres,

is hereby subordinated in all particulars to that certain judgment rendered by the United States District Court for the District of Utah, Central Division, in the case entitled United States and Regional Agricultural Credit Corporation of Salt Lake City, Utah, v. James Farnworth, Alice Farnworth, John M. Park and Enid G. Park, transcript of which was filed in the records of the County Recorder of Davis County March 16, 1935 in Docket C page 59, said mortgage otherwise to remain in full force and effect.

D. A. SKEEN

STATE OF UTAH
COUNTY OF SALT LAKE } SS.

On the 27th day of May, 1936, personally appeared before me D. A. Skeen, the signer of

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the above instrument, who duly acknowledged to me that he executed the same.

ALPHA BRINGHURST
Notary Public

Residing at Salt Lake County, Utah

[SEAL]

My commission expires
Sept. 30, 1939

42 Thereupon the defendant's Exhibit 3 was introduced in evidence and is shown at page 68 of this abstract.

43 It was further stipulated that in paragraph 1 of the first further defense of the defendant Chris Jensen on page 2 of the answer the following addition to the description of the property might be added:
44 "Section 33-34, Township 2 North, Range 1 West, Salt Lake Meridian." It was also stipulated that the amount of money paid by Farnworth to the treasurer of Davis County for taxes on the property was the exact amount of the taxes due on the property for the year 1933, but that the treasurer did not apply the amount paid to the taxes for the year 1933.

ASSIGNMENT OF ERRORS

Come now the appellants and make the following assignment of errors upon which they will rely for a reversal of the judgment appealed from in the above entitled case.

ASSIGNMENT OF ERROR NUMBER 1

The court erred in admitting in evidence over the objection of appellants the auditor's tax deed (Tr. 4).

ASSIGNMENT OF ERROR NUMBER 2

The court erred in allowing the plaintiff to amend his complaint by striking out the words "Section 33" and inserting in lieu thereof the words "Section 34" (Tr. 4-11).

ASSIGNMENT OF ERROR NUMBER 3

The court erred in making and entering that portion of its findings of fact numbered 7 which reads as follows: "But never since the said 4th day of November, 1935 paid the taxes levied and assessed against said premises or any portion thereof for the reason that said finding is not supported by any evidence, and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 4

The court erred in making and entering its findings of fact numbered 11 for the reason that said finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 5

The court erred in making and entering its findings of fact numbered 12 for the reason that said

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finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 6

The court erred in making and entering its finding of fact numbered 13 for the reason that said finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 7

The court erred in making and entering its finding of fact numbered 14 for the reason that said finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 8

The court erred in making and entering its finding of fact numbered 15 for the reason that said finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 9

The court erred in making and entering its finding of fact numbered 16 for the reason that said finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 10

The court erred in making and entering its finding of fact numbered 19 for the reason that said

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finding of fact is not supported by any evidence and is contrary to the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 11

The court erred in making and entering its conclusions of law for the reason that none of said conclusions is supported by the findings of fact and are contrary to the findings of fact.

ASSIGNMENT OF ERROR NUMBER 12

The court erred in making and entering its conclusions of law for the reason that the same are erroneous and contrary to law and are contrary to the undisputed facts and the evidence.

ASSIGNMENT OF ERROR NUMBER 13

The court erred in making and entering the judgment and decree appealed from for the reason that said judgment and decree is not supported by the findings of fact and is contrary to the findings of fact.

ASSIGNMENT OF ERROR NUMBER 14

The court erred in making and entering the judgment and decree appealed from for the reason that the same is not supported by the conclusions of law and is contrary to the conclusions of law.

ASSIGNMENT OF ERROR NUMBER 15

The court erred in making and entering the judg-

ment and decree appealed from for the reason that the same is contrary to law and is not supported by the pleadings or the evidence and is contrary to the facts and the undisputed evidence.

ASSIGNMENT OF ERROR NUMBER 16

The court erred in making and entering the judgment and decree appealed from for the reason that the evidence is insufficient to support the judgment and decree in the following particulars: The evidence is insufficient to show that the taxes for the year 1933 were delinquent or unpaid, or that the property was assessed to the owner of record or that it was correctly described in the delinquent list or in the auditor's deed or in the deed to the plaintiff, or that Davis County acquired any title to the property by virtue of the tax sale, or that the property described in plaintiff's amended complaint was ever sold for delinquent taxes or that any title passed to Davis County or to the plaintiff by virtue of any valid tax sale, or that plaintiff ever at any time acquired any title in fee simple to the property. The evidence is conclusive that any interest in the property acquired by the plaintiff was held by him in trust for the defendant Alice Farnworth and was acquired by him for her use and benefit and not in his own right; that he purchased the property from Davis County to aid and assist the defendant Alice Farnworth to acquire a title to the property free from the liens and inter-

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ests of the appellants and to defraud and deprive the appellants of their liens and interest in said property.

ASSIGNMENT OF ERROR NUMBER 17

The court erred in failing to make findings of fact upon material issues raised by the pleadings.

ASSIGNMENT OF ERROR NUMBER 18

The court erred in overruling the appellant's motion for new trial.

D. EUGENE LIVINGSTON

W. Q. VAN COTT

Attorneys for Appellants.

Received copy of the foregoing assignment of errors this 11th day of January, 1941.

CHRIS MATHISON

Attorney for Respondent.