

1941

Lauren W. Gibbs, Inc. v. E. E. Monson, Joseph Chez,
and Rulon F. Starley, and the Securities
Commission of the State of Utah : Abstract of
Record

Utah Supreme Court

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Grover A. Giles; Attorney General of Utah; and Delbert M. Draper; Attorneys for Defendants and Appellants;

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In the Supreme Court

OF THE

State of Utah

LAUREN W. GIBBS, INC., a corporation,

Plaintiff and Respondent,

vs.

E. E. MONSON, Secretary of State of the State of Utah, JOSEPH CHEZ, Attorney General of the State of Utah, and RULON F. STARLEY, State Bank Commissioner of the State of Utah, as members of the Securities Commission of the State of Utah, and the SECURITIES COMMISSION OF THE STATE OF UTAH,

Defendants and Appellants,

No. 6331

ABSTRACT OF RECORD

Appeal from Third District, Salt Lake County,
Honorable Allen G. Thurman, Judge

GROVER A. GILES,
ATTORNEY GENERAL OF UTAH, and
DELBERT M. DRAPER
Attorneys for Defendants and Appellants

FILED

FEB 18 1941

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COMPLAINT

Tr. 1 Comes now the plaintiff, and for cause of action against the defendants alleges:

1. That the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Utah.

2. That the defendant, E. E. Monson, is the duly elected, qualified and acting Secretary of State of the State of Utah, and, as such, chairman and member of the Securities Commission of the State of Utah; that the defendant Joseph Chez is the duly elected, qualified and acting Attorney General of the State of Utah, and, as such, a member of the Securities Commission of the State of Utah; and that the defendant Rulon F. Starley is the duly appointed, qualified and acting Bank Commissioner of the State of Utah, and, as such, a member of the Securities Commission of the State of Utah.

3. That the said defendants E. E. Monson, Secretary of State, Joseph Chez, Attorney General, and Rulon F. Starley, Bank Commissioner, constitute the Securities Commission of the State of Utah.

4. That under date of August 12, 1939, the Utah Securities Commission, over the signature of the defendant E. E. Monson, Chairman, issued an order to show cause addressed to the plaintiff herein, which said order is in words and figures as follows:

“Information in writing having been filed with the State Securities Commission of the State of Utah showing that one or more of the officers or directors of your company has engaged in a practice of the sale of securities, which is fraudulent and in violation of law, and has demonstrated the unworthiness of your company to transact the business of a dealer in securities in the State of Utah,

“Pursuant to the provisions of Section 82-1-21, Revised Statutes of Utah, 1933, you are hereby ordered to show cause, if any you have, at the office of the Utah Securities Commission in the State Capitol Building, Salt Lake City, Utah, on the 28th day of August, 1939, at the hour of 10 A.M., on said day, why your registration as a dealer in securities heretofore granted by the State Securities Commission should not be cancelled.”

without in anywise furnishing to the plaintiff the “information in writing” referred to in said order to show cause, or any portion thereof, or any information concerning the nature thereof.

5. That together with said order to show cause there was addressed to the plaintiff a suspension order under the same date and signature as said order to show cause, which said suspension order reads as follows:

“IT IS HEREBY ORDERED by the Utah State Securities Commission that the registration as a dealer in securities of Lauren W. Gibbs, Inc., formerly Lauren W. Gibbs Company, Real Estate, Insurance, Securities, with its principal place of business in Salt Lake City, Salt Lake County, State of Utah, and whose present business address is 65 North State Street in Salt Lake City, is hereby suspended upon the following grounds.

I.

“That the said Lauren W. Gibbs, Inc., formerly Lauren W. Gibbs Company, Real Estate, Insurance, Securities, through one or

more of its officers or directors has been guilty of a fraudulent act in connection with the sale of certain securities and has demonstrated its unworthiness to transact the business of a dealer in securities within the State of Utah.

"This Order of Suspension shall remain in force pending the hearing by the Commission on the citation to show cause issued to said Company this date why its registration as a dealer in securities heretofore granted should not be cancelled."

6. That said suspension order was illegal and void and failed to state facts sufficient or any facts at all justifying or in anywise sustaining said suspension order, and that said suspension order was issued contrary to law.

7. That thereafter and on the 22nd day of August 1939, a so-called bill of particulars was furnished to the plaintiff herein over the signature of A. Ezra Gull, Executive Director of the State Securities Commission, wherein and whereby the defendants became the complainants, the prosecutors and the Court, all combined in one tribunal, contrary to and in violation of the due process clause of the Federal and State constitutions, to-wit, Article XIV of the Amendments to the Constitution of the United States of America, and Section VII, Article I of the Constitution of the State of Utah.

8 That the said so-called bill of particulars wholly failed to set forth facts sufficient to support

or sustain in anywise the said order to show cause served upon the plaintiff herein by the defendants herein on August 12, 1934, as more particularly set forth in paragraph 4 hereof; that said bill of particulars failed to set forth facts sufficient to constitute a cause of action against the plaintiff herein or to state facts sufficient to constitute a cause for the suspension of the plaintiff from transacting business as a dealer in securities within the State of Utah, and particularly failed to state facts sufficient to constitute fraud or any violation of law, either as set forth in said notice of August 12, 1939, or at all.

9. That at no time herein mentioned nor at any time during the proceedings had before the defendants against the plaintiff herein, as aforesaid, was the plaintiff herein informed as to the defendants' informant, nor was he confronted with said informant or complaining witness, contrary to law and to the due process clause of the Federal and State constitutions hereinbefore more particularly referred to.

10. That said order to show cause came on for hearing before the full Commission on the 27th day of September, 1939, the Attorney General sitting as a member of said Commission, and his deputy appearing as attorney for the Commission and prosecutor of the plaintiff herein, the plaintiff herein appearing by its Attorney, Henry D. Moyle.

11. That upon conclusion of the evidence adduced by the Attorney General the matter was continued by the Commission until the 20th day of October, 1939; that on the 20th day of October, 1939, the proceedings were continued before said Commission, at which time and place the plaintiff herein was served with what was entitled an amended bill of particulars, dated the 20th day of October, 1939, appearing over the signature of A. Ezra Gull, Executive Director of the Securities Commission; that said so-called Amended bill of particulars wholly failed to set forth facts sufficient to support or sustain in anywise the said information served upon the plaintiff herein by the defendants herein on August 12, 1934, as more particularly set forth in paragraph four hereof; that said amended bill of particulars failed to set forth facts sufficient to constitute a cause of action against the plaintiff herein or to state facts sufficient to constitute a cause for the suspension of the plaintiff from transacting a business as a dealer in securities within the State of Utah, and particularly failed to state facts sufficient to constitute fraud or any violation of law, either as set forth in said notice of August 12, 1939, or at all.

12. That the evidence of the plaintiff herein was adduced and the matter was argued and submitted to the Commission for its determination.

12a. That the defendants are wholly without

jurisdiction to enter their final order or cancellation dated November 18, 1939, as aforesaid, or at all, for the reason and upon the grounds that all of the transactions therein mentioned pertain to securities expressly exempted by law, to-wit, municipal bonds, and contrary to and in violation of Section 29, Article 6 of the Constitution of the State of Utah, and constitute an isolated transatcion expressly exempted from the defendant's jurisdiction by law.

12b. That a transcript of the proceedings was taken by the Commission, and that this plaintiff has requested and demanded of the Commission a copy thereof, but that except for portions of the evidence adduced by the Commission itself, the defendants have failed and refused to give to the plaintiff a copy of the transcript of the evidence adduced, although formal and frequent demand thereof has been made.

12c. (Included by Amendment to Complaint dated March 12th, 1940). That the defendants are wholly without jurisdiction to enter their final order of cancellation, dated November 18, 1939, as aforesaid, or at all, for the reason and upon the grounds that Title 82 of the Revised Statutes of Utah, 1933, and particularly Section 82-1-21, subsection (4) thereof, is contrary to law and contrary to and in violation of Article V, and Section 1 of Article VI, of the Constitution of Utah, and constitutes a delegation to an administrative body and to the

Executive branch of the State government, powers and functions properly belonging and appertaining to the Legislative department thereof.

13. That the plaintiff has been informed and believes and, therefore, alleges the fact to be that the Commission had before it at the time of its determination a complete transcript of the evidence adduced by the Commission but had not transcribed and did not have before it, in transcribed form, the evidence adduced by the plaintiff.

14. That thereafter and on the 18th day of November, 1939, the Commission signed what purports to be its findings of fact and conclusions, which were thereafter served upon this plaintiff herein, and whereby the Commission ordered the cancellation of plaintiff's registration as a dealer in securities, which said registration had theretofore been granted to the plaintiff by the State Securities Commission, according to law; that a copy of said findings of fact and conclusions is hereto attached and hereby made a part hereof, marked "Exhibit A".

15. That said findings of fact and conclusions are contrary to and not supported by and outside the issues raised by the order to show cause, the order of suspension, the bill of particulars, or the amended bill of particulars, or all of them.

16. That the said findings of fact and conclusions are not supported by, are in conflict with

and go beyond the evidence adduced at said hearing, and that said evidence does not justify, sustain or support said findings of fact or conclusions.

17. That said conclusions are not supported by and are beyond the findings of fact and are contrary to law.

18. That said conclusions are contrary to the evidence and to the findings of fact and are contrary to law and that the order of cancellation is contrary to law.

19. That the plaintiff, pursuant to the provisions of Title 82-1-41, Revised Statutes of Utah, 1933, being directly affected and aggrieved by the final order of the Securities Commission of the State of Utah, as aforesaid, cancelling its registration as a dealer in securities in the State of Utah, said order having been purportedly made under the provisions of said Title 82 of the Revised Statutes of Utah, 1933, institutes this action within thirty days after notice of such order against the Commission and the members thereof for the purpose of having this Court determine all questions of law and fact pertaining to the said order of cancellation, and to cause the same to be set aside.

20. That to this end the plaintiff is entitled to have an order entered herein requiring the defendants, and each of them, to return to this Court within the time allowed by law for answer hereto

a full and complete transcript of the proceedings heretofore had, as aforesaid, before said Commission, in order that the same may be reviewed by this Court according to law, and that the order of suspension heretofore entered therein by the defendant commission be upon a full and complete hearing thereof by the above entitled Court set aside and revoked.

21. That the plaintiff herein has committed no act in the sale, purchase or exchange of securities either of commission or omission which in anywise justifies or sustains the final order of cancellation of registration of the plaintiff as a dealer in securities, dated November 18, 1939, or at all, and is entitled to have said order of cancellation set aside and revoked and its registration as a dealer in securities reinstated.

22. Plaintiff further alleges that at the hearing of this matter before the Commission it was conceded by the attorney general that there was no charge of actual fraud and no evidence of actual fraud, and that at most it might be considered constructive fraud; that it was further admitted that there was no fraud on the part of the plaintiff herein nor was there any intent to defraud, and that no evidence was adduced either on behalf of the plaintiff herein or the Commission in anywise showing any fraud or intent to defraud.

23. That the Commission has no jurisdiction

inasmuch as municipal bonds are expressly exempted under the State Securities Act and can be issued, sold or otherwise dealt in without registration or license as a dealer first had and obtained from said State Securities Commission, defendant herein; that the State of Utah and its various departments have dealt and now continue to deal with unlicensed dealers, both in the purchase and sale of municipal bonds from and to the State of Utah.

WHEREFORE, plaintiff prays judgment against the defendants setting aside and revoking the order of cancellation of registration entered by the defendants against the plaintiff on the 18th day of November, 1939, and that the defendants be required to return to this Court a transcript of the proceedings had before it in the matter of the order to show cause issued to the plaintiff herein, as hereinbefore set forth, together with a transcript of the evidence adduced at the hearing upon said order to show cause, within the time allowed by law for the defendants to answer the complaint of the plaintiff herein, and for such other and further relief as may be proper in the premises.

MOYLE, RICHARDS & McKAY

Attorneys for Plaintiff.

Duly verified.—Filed December 18, 1939.

EXHIBIT A.

THE STATE SECURITIES COMMISSION
OF THE STATE OF UTAH.

IN THE MATTER of the Order to Show Cause Issued to Lauren W. Gibbs, Inc., formerly Lauren W. Gibbs Company, Real Estate-Insur- ance-Securities also known as and hereinafter referred to as Lauren W. Gibbs Company and Gibbs Company	} FINDINGS OF FACT and CONCLU- SIONS
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Tr. 9 This matter came on regular to be heard before the State Securities Commission of Utah on the 27th day of August, 1939, and continued thereafter on set dates through the 21st day of October, 1939.

The honorable Grover A. Giles, Assistant Attorney General of Utah appeared as counsel for the State of Utah and Henry D. Moyle, Esq., appeared as counsel for the defendant Lauren W. Gibbs, Inc.

The Commission received documentary evidence submitted on behalf of the State and of the defendant and heard oral testimony and received stipulations on behalf of the State and the defendant herein, and having considered said evidence and testimony and the arguments of counsel and being fully advised in the premises now makes the following:

FINDINGS OF FACT:

1. That Lauren W. Gibbs, Inc., is a corporation organized and operating under the laws of the State of Utah and is the lawful successor of Lauren W. Gibbs Company, Real Estate-Insurance-Securities, a corporation. That Lauren W. Gibbs was on or about November 6, 1936 to the time of the hearing herein, the Chairman of the Board of Directors of the Lauren W. Gibbs, Inc., and was an officer and incorporator of this Company and its predecessor, Lauren W. Gibbs Company, Real Estate-Insurance-Securities.

2. That on or about November 6, 1936, the City of Mt. Pleasant in the State of Utah was indebted in the sum of \$25,000 incurred in supplying the City with water, which debt was secured by a bond issue in the sum of \$25,000 and bearing interest at 6% per annum, which bond issue and whole thereof was to become due July 1, 1939, and in addition said City was indebted in the sum of \$32,000 on its electric light system which indebtedness was secured by bond issue in the sum of \$32,000, bearing interest at $5\frac{1}{2}\%$ and maturing \$5,000.00 in each of the years 1937, 1938, and 1939 and similar amounts in later years.

3. That on or about November 7, 1936, the Lauren W. Gibbs Company, Real Estate-Insurance-

Securities, submitted a proposal to Mt. Pleasant City as follows:

“WHEREAS, Mt. Pleasant City has outstanding \$25,000 6% Water Bonds maturing July 1st, 1939, and

WHEREAS, Mt. Pleasant will not have at that time sufficient sinking fund to retire said bonds and will be in the necessity of extending or refunding same, and

WHEREAS, some of said bonds are held by clients of the Lauren W. Gibbs Company, Real Estate-Insurance-Securities, and it is their opinion that said clients would be willing to accept at this time an extension or refunding of said bonds and a reduction in interest,

NOW, THEREFORE, the Lauren W. Gibbs Company, Real Estate-Insurance-Securities, agree to use their best efforts to extend or refund same or any part thereof said extension or refunding to provide for the new maturity dates to be proportionately as shown below and to carry interest at the present coupon rate until July 1st, 1939, and thereafter to carry interest at the rate of $4\frac{3}{4}\%$.

\$4,000—12-1-51	\$4,000—12-1-54
4,000—12-1-52	4,000—12-1-55
4,000—12-1-53	5,000—12-1-56

The Lauren W. Gibbs Company, Real Estate-Insurance-Securities, agree as well to provide the

necessary extension forms or refunding bond blanks, together with all necessary proceedings for your adoption and attorney's opinion approving the legality of said extension or refunding. For these services you are to pay us \$2.00 for each \$100.00 in bonds refunded.

We reserve the right to increase or decrease the coupon rate of interest provided that in doing so we adjust the principal amount with the result that the total cost to you on principal and interest over the period is decreased.

(in hand writing) Contract includes \$15,000 light bonds also due 1937, 38, 39. 1937 maturities are to be handled on same basis as above except to bear $4\frac{1}{4}\%$. 1938 on same as above except $4\frac{1}{2}\%$ int.

Respectfully submitted
LAUREN W. GIBBS COMPANY
Real Estate-Insurance-Securities
By (signed) Lauren W. Gibbs

The above and foregoing proposition is hereby accepted for and on behalf of the Mt. Pleasant City, by order of the City Council in legal session.

IN WITNESS WHEREOF, we have hereunto set our hands this 14th day of November 1936.

(signed) JUSTUS O. SEELY, Mayor

ATTEST: (signed) E. W. WALL

City Recorder

4 That on November 7, 1936 the City Council of Mt. Pleasant City passed a resolution accepting the proposal of said Lauren W. Gibbs Company and on November 14, 1936, the Mayor and City Recorder accepted in writing the proposal aforesaid.

5 That pursuant to its proposal the Company aforesaid thereafter proceeding to provide the necessary refunding bond blanks, together with all necessary proceedings by Mt. Pleasant City in the issuance of said bonds, including an attorney's opinion approving the legality of said refunding bonds.

That in preparing said bond forms the said Company made said bonds payable at its own office and had by its original proposal reserved the right to increase or decrease the coupon rate of interest.

6 That after receipt of said bond forms and other papers prepared by said Company the City Council of Mt. Pleasant City did on the 26th day of January, 1937, resolve to issue refunding bonds for the purpose of retiring its old issues of waterworks and electric light bonds, as above set out.

That in said resolution said City Council represented as follows:

"WHEREAS the owners of said bonds have offered to accept refunding bonds of said Mt. Pleasant City in exchange for their present holdings of \$25,000 Mt. Pleasant bonds and accept said refunding bonds at a lower rate of interest,"

7. That the Beneficial Life Insurance Company was the holder of \$12,000 of said waterworks bonds, but no offer was made to said Company to exchange new refunding bonds for old outstanding bonds, but on the contrary it appears from the minutes of the meeting of the Council of Mt. Pleasant City on January 26, 1937, that said bonds were ordered sold to Lauren W. Gibbs Company, Real Estate-Insurance-Securities in consideration of the return to Mt. Pleasant City of the outstanding waterworks bonds.

8. That the said Lauren W. Gibbs Company took delivery of all of said refunding bonds before it had delivered a single outstanding waterworks bond to Mt. Pleasant City, and that on April 10, 1937, the said Lauren W. Gibbs Company sold \$22,000 of said refunding bonds to the State Land Board of Utah for the Sum of \$28,845.22, on which date the City of Mt. Pleasant had outstanding in the hands of the public \$47,000 in waterworks bonds and an additional \$3,000 being held by the Lauren W. Gibbs Company.

9. That the same understandings and agreements were had between said Lauren W. Gibbs Company and Mt. Pleasant City with respect to \$15,000 of its electric light bonds that were had with respect to the waterworks bonds. That said Company took delivery of said refunding electric

light bonds before it delivered a single outstanding electric light bond, and on or about July, 1937, said Lauren W. Gibbs Company sold \$12,000 of said refunding electric light bonds to the Industrial Commission of the State of Utah, whereby the City of Mt. Pleasant became indebted to the public on outstanding waterworks bonds in the sum of \$27,000 with an additional \$3,000 held by the Lauren W. Gibbs Company.

10. That as of the 26th day of January 1937, the total assessed valuation of all taxable property in Mt. Pleasant City was \$628,950.

11. That the total bonded indebtedness of said City on said day was \$99,000 and the amount of all unpaid indebtedness of said city, floating or otherwise exclusive of said bonded indebtedness, was \$7,180, making a total indebtedness of \$106,180. That the authorized indebtedness of said City as of said date was \$75,474.

12. That of February 23, 1937, Mt. Pleasant City issued and delivered to the said Lauren W. Gibbs Company \$40,000 in bonds thereby increasing its outstanding indebtedness to \$146,180, contrary to the resolution of the City Council of Mt. Pleasant City as follows:

“Section 5. Be it further resolved that said bonds shall be issued in place of the bonds to be refunded in such a way that the debt of said Mt.

Pleasant City is not increased through the issuance of these bonds."

13. That on July 8, 1939, said Company had failed to keep its agreement to exchange refunding bonds for the old outstanding bonds of the same character, which failure was noted by the City Council of Mt. Pleasant City in its minutes of a meeting held July 8, 1939, and action on such failure was taken as shown by said minutes, as follows:

"The matter of paying L. W. Gibbs Co. the money due for bond proceedings of 1937 and interest coupons paid by them for the city, was discussed. It was moved by Councilman Olsen and seconded by Councilman Paulsen that the L. W. Gibbs Co. be notified that the City was prepared to pay the amount due them upon delivery to the city of the \$13,000.00 of bonds outstanding which the said L. W. Gibbs Co. had agreed to deliver in January, 1937. Also to notify said company that the securities now held by the City for the faithful performance of their agreement, would not be surrendered until these bonds were delivered. The motion carried."

14. That on August 12, 1939, the date when said Company was ordered to appear in this matter, the said Lauren W. Gibbs Company had not returned to Mt. Pleasant City \$12,000 of outstanding water-works bonds in lieu of refunding bonds taken and sold by said Gibbs Company.

15. That from February 23, 1937, to August 12, 1939, it does not appear that the said Lauren W. Gibbs Company made any attempt to exchange refunding bonds for outstanding bonds to be redeemed, but it does appear in a letter of said Company to L. R. Christensen, Attorney for Mt. Pleasant City, that the said Lauren W. Gibbs Company was making efforts to buy said outstanding bonds below the price asked by the holders thereof, and that said Company invited Mt. Pleasant City to make representations to the Beneficial Life Insurance Company that it, Mt. Pleasant City, would be aided in its refunding program if the Beneficial Life Insurance Company would reduce its selling price upon the bonds held by the Beneficial Life Insurance Company, when in truth and in fact, only the Lauren W. Gibbs Company would be benefited by such reduction.

16. That neither Mt. Pleasant City nor the Lauren W. Gibbs Company who prepared the forms and directed the issuance of said bonds offered to sell said refunding bonds to the Industrial Commission of Utah as required by law, nor were said bonds offered for sale to the public.

17. That among the forms and proceedings, prepared by the said Lauren W. Gibbs Company for adoption by the City of Mt. Pleasant, was the bond form which was adopted by Mt. Pleasant City in which appears the following language:

"It is hereby further certified, recited and declared that all conditions, acts and things essential to the validity of this bond exist, have happened, and have been done and that every requirement of law affecting the issue hereof has been duly complied with and that this bond is within every debt and other limit prescribed by the Constitution and Laws of said State of Utah, and that the full faith and credit of said Mt. Pleasant City are hereby irrevocably pledged to the punctual payment of the principal and interest of this bond according to its terms."

18. That the Lauren W. Gibbs Company received the sum of \$28,485.22 upon the sale of said refunding bonds which money they failed to deliver to Mt. Pleasant City and which money they held without the creation of a trust from April 10, 1937, until the time of this hearing, contrary to the provisions of Chapter 14 of the Laws of Utah, 1937.

1. From the foregoing findings of fact the Commission concludes that the Lauren W. Gibbs Company misled and engineered the City Council of Mt. Pleasant City, into exceeding its statutory debt limit contrary to its agreement with said city.

2. That the Lauren W. Gibbs, Inc., attempted to get a City Official of Mt. Pleasant City to make misrepresentations to the Beneficial Life Insurance Company.

3. That the interests of the taxpayers of Mt.

Pleasant City were jeopardized by increased indebtedness against which they had as security only the solvency and the ability of the Lauren W. Gibbs, Inc. to pay, and certain collateral security delivered to the City in July, 1938.

4. That the interests of the State Land Board and the Industrial Commission of Utah were jeopardized in that failure of the Lauren W. Gibbs, Inc. to fulfill its agreement with Mt. Pleasant City would have rendered the bonds bought by said departments of less value than they paid for them.

5. That the interests of the holder of outstanding bonds of Mt. Pleasant City were jeopardized in that they were given no opportunity to exchange bonds held by them for the new refunding bonds without penalty or premium.

6. That the said Lauren W. Gibbs, Inc. has conducted itself in an unworthy manner by reason of which its registration should be cancelled. That an order be and is entered accordingly.

Dated this 18th day of November, 1939.

THE STATE SECURITIES COMMISSION OF THE STATE OF UTAH

(signed) E. E. MONSON, Chairman

(signed) JOSEPH CHEZ, Member

(signed) R. F. STARLEY, Member

ORDER

(Title of Court and Cause)

Tr. 15 Good cause therefor appearing and on motion of counsel for plaintiff, IT IS ORDERED that the defendants return to this Court within twenty days from date of service hereof, a full and complete transcript of the proceedings had by the defendants in the matter of the order to show cause issued to Lauren W. Gibbs, Inc., formerly Lauren W. Gibbs Company, Real Estate-Insurance-Securities, also known as and hereinafter referred to as Lauren W. Gibbs Company and Gibbs Company, over the signature of said Commission, and that pending the determination of this cause and until the judgment of this Court becomes final, the order of the defendants cancelling plaintiff's registration as a dealer in securities dated November 18, 1939, shall be suspended and the right of plaintiff to do business in the State of Utah as a licensed dealer in securities shall continue.

Dated this 18th day of December 1939.

(Seal)

Allen G. Thurman, District Judge

DEMURRER

(Title of Court and Cause)

Tr. 26 Come now the defendants in the above entitled action and demur to the petition or complaint of the plaintiff on file herein on the following grounds:

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

2. That said complaint is ambiguous in that it cannot be told therefrom whether a new and independent action is sought to be instituted or whether a writ of review of the proceedings of these defendants against the plaintiff herein, as described in said complaint, is sought, or whether said complaint is intended to be an appeal from the order of these defendants in said proceedings.

3. That said complaint is unintelligible for the reasons set forth in paragraph 2 hereof.

4. That said complaint is uncertain for the reasons set forth in paragraph 2 hereof.

5. That the Court has no jurisdiction of the subject of the action on appeal for the reason that no notice of appeal has been given and no bond or security for costs ordered or posted.

6. That the Court has no jurisdiction of the subject of the action on review for the reason that Title 82, Revised Statutes of Utah, 1933, under which plaintiff's action is instituted, authorizes no review of the proceedings of the Securities Commission of the State of Utah.

JOSEPH CHEZ, Attorney General

By: G. A. Giles, Deputy.

D. M. DRAPER

Filed Jan. 18, 1940.

NOTICE

(Title of Court and Cause)

TO MOYLE, RICHARDS & McKAY, Attorneys
for Plaintiff:

Tr. 28 You will please take notice that on Saturday, the 3rd day of February, 1940, at 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of Judge Allen G. Thurman of the above entitled Court in the City and County Building, Salt Lake City, Utah, the defendant will move said Court for its order setting aside its order dated December 18, 1939, and entered herein, suspending the order of the Securities Commission dated November 18, 1939, cancelling plaintiff's registration as a dealer in securities.

That said motion will be made upon the ground that said Court had no jurisdiction to suspend said order without a hearing and without fixing or requiring the posting of a bond.

Said motion will be based upon this notice and the files and records in the above entitled action.

Also, please take notice that at the same time and place defendant's demurrer on file herein will be called up for argument and disposal.

Dated at Salt Lake City, Utah, January 18th 1940.

JOSEPH CHEZ, Attorney General

By: G. A. Giles, Deputy

D. M. DRAPER

Filed January 18, 1940.

DEMURRER TO AMENDMENT

(Title of Court and Cause)

Tr. 33 Come now the defendants in the above entitled action and demur to the amendment to the complaint on file herein on the grounds and for the reasons stated in the original Demurrer on file herein, which grounds are hereby adopted as fully as if copied herein.

JOSEPH CHEZ, Atty. Gen'l.

D. M. DRAPER

Attorneys for Defendants.

Filed March 19, 1940.

ENTERED ORDER

(Title of Court and Cause)

Tr. 34 This Court having heretofore heard defendants Demurrer to Plaintiff's Complaint and Motion to Vacate an Order of this Court suspending the order of the Securities Commission, dated November 18, 1939, cancelling plaintiff's Registration as a dealer in Securities and having taken under advisement the matter of its decision thereon, now orders that said Demurrer be overruled and that said motion be denied, and it is further ordered that Defendants be given 10 days after Notice of Entry to Answer.
Dated December 27, 1940.

ALLEN G. THURMAN, Judge

NOTICE

(Title of Court and Cause)

To the defendants and to their attorneys, Messrs
Joseph Chez and D. M. Draper:

Tr. 38 You and each of you will please take notice that
on the 27th day of December, 1940, the demurrer
of the defendants to the amendment to the complaint
of the plaintiff was overruled and the motion of the
defendants was denied, and the defendants were
given ten days after notice in which to answer.

You will please govern yourselves accordingly.

HENRY D. MOYLE,

Filed January 7, 1941. Attorneys for Plaintiff

ELECTION TO STAND ON DEMURRER
AND MOTION

(Title of Court and Cause)

Tr. 35 Come now the defendants in the above entitled
action, after notice duly received of the over-ruling by
this Court of the Demurrer and the denial of the
Motion heretofore interposed by them in the above
entitled action, and hereby inform the Court that
they decline to plead further in said case and elect
to stand upon said Motion and Demurrer.

JOSEPH CHEZ, Attorney General

By: G. A. Giles, Deputy

D. M. DRAPER,

Filed January 4, 1941. Attorneys for Defendants

JUDGMENT

(Title of Court and Cause)

Tr. 37 The order of the Court overruling the demurrer and denying the motion interposed by the defendants herein to the complaint of plaintiff on file herein and giving leave to the defendants to answer within ten days after notice having been served on the defendants' attorneys on the 3rd day of January, 1941, and the defendants having filed their written notice of election not to answer by reason of which the plaintiff is entitled to judgment in accordance with the prayer of its complaint,

NOW, THEREFORE, it is ADJUDGED that the Order of the Securities Commission of the State of Utah cancelling the registration of the plaintiff as a dealer in securities be and the same is hereby set aside and held for naught.

The parties to said action to bear their own respective costs.

DONE in open court this 4th day of January, 1941.

(Seal) ALLEN G. THURMAN, Judge

Filed January 4, 1941.

NOTICE OF APPEAL

(Title of Court and Cause)

TO THE ABOVE NAMED PLAINTIFF,
LAUREN W. GIBBS, INC., a corporation, and ITS
ATTORNEYS, MOYLE, RICHARDS & Mc-
KAY:

Tr. 39 You and each of you will please take notice that the defendants in the above entitled action hereby appeal to the Supreme Court of the State of Utah from the Judgment rendered and entered on the 4th day of January, 1941, for and in behalf of the plaintiff in the above named Court, in plaintiff's favor and against the defendants; and from the Order of said Court denying defendants' Motion to set aside an Order of said Court dated December 18th, 1939, and over-ruling defendants' Demurrer on file in said cause.

The said appeal is from said Judgment and Order and the whole thereof, and is based upon the files and records in said case.

GROVER A. GILES, Attorney General of Utah
D. M. DRAPER

Attorneys for the defendants.

Filed January 15, 1941.

 ASSIGNMENTS OF ERROR

(Title of Court and Cause)

Come now E. E. Monson, Secretary of State of the State of Utah, Joseph Chez, Attorney General of

the State of Utah, and Rulon F. Starley, State Bank Commissioner of the State of Utah, as members of the Securities Commission of the State of Utah, and the Securities Commission of the State of Utah, the appellants in the above entitled action, and each of them jointly, severally and separately assign the following errors upon which they rely for a reversal of the Judgment and Orders rendered in the above entitled cause by the District Court of the Third Judicial District in and for Salt Lake County, State of Utah.

I.

The Trial Court erred in making and entering its Order of December 18, 1939, in the following particulars:

1. It suspended an order of the Securities Commission dated November 18, 1939, on mere motion of respondent's Counsel, ex parte, without notice to appellants, and without affording appellants an opportunity to be heard.

2. It authorized respondent to continue to do business as a licensed dealer in securities, pending final determination by the Court of the action instituted by respondent.

3. It failed to require a bond or other security from respondent pending such final determination by the Court.

All of which acts and omissions were contrary

to law, and the plain provisions of Chapter 1, Title 82, Revised Statutes of Utah, 1933.

II.

The Trial Court erred in denying appellants' Motion for an Order to set aside its suspending Order of December 18, 1939.

III.

The Trial Court erred in the exercise of its discretion, if it had discretion, and clearly abused such discretion with respect to matters stated in Assignments I and II herein.

IV.

The Trial Court erred in over-ruling appellants' Demurrer to respondent's Amended Complaint on file in said cause.

V.

The Trial Court erred in making and entering its final Judgment in said cause setting aside and holding for naught the said Order of the Securities Commission dated November 18, 1939, for the reason that said Judgment is contrary to law.

GROVER A. GILES, Attorney General
of the State of Utah

DELBERT M. DRAPER,
Attorneys of Defendants & Appellants.

Filed.....