

1948

J. M. Webb v. Margaret Webb : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Jensen & Jensen; Attorneys for Defendants and Appellants;

Cline Wilson & Cline; Attorneys for Plaintiffs and Respondents;

Recommended Citation

Brief of Appellant, *Webb v. Webb*, No. 7208 (Utah Supreme Court, 1948).

https://digitalcommons.law.byu.edu/uofu_sc1/928

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In the Supreme Court of the State of Utah

J. M. WEBB, and
SPENCER WEBB,
Plaintiffs

vs.

MARGARET WEBB and
MARGARET WEBB,
ADMINISTRATRIX OF
THE ESTATE OF
WILMER WEBB, Deceased,
Defendants.

No. 7,208

APPELLANT'S BRIEF

Appeal from the District Court, Millard County,
Utah, Honorable Will L. Hoyt, Judge.

Jensen & Jensen

Attorneys for Defendants and Appellants

Cline Wilson & Cline

Attorneys for Plaintiffs and Respondents

FILED
DEC 10 1948
SUPREME COURT, UTAH

CONTENTS

	Page
ARGUMENT	81-105
In a Law Action a Party Is Entitled To a Trial by Jury	83
Evidence of a Bona Fide Offer for Property is Admissible On the Question of Its Value—Statement of Error Number Two	84
Hearsay Conversations, and Confidential Conversations are Not Admissible Over Proper Objections—Statement of Errors Three to Seven, Inclusive	85-88
Findings of Fact Not Supported By, But Contrary To the Preponderance of the Evidence Will in Equity Be Vacated and Set Aside; and Conclusions of Law and Judgment Based Thereon Will Be Reversed—Statement of Errors Eight To Twenty, Inclusive, and Twenty-two and Twenty-three	88-102
An Accounting Will Be Ordered to Administratrix of a Deceased Partner's Estate — Statement of Error Twenty-two	102-3
CONCLUSIONS	103-5
STATEMENT OF FACTS:	
As To Pleadings	3-34
1. Complaint of Plaintiffs	
2. Counterclaim of Administratrix	4-10
3. Counterclaim of Margaret Webb, individually	12-20
4. Conclusions of Law	30-31
5. Findings of Fact — and	23-30
6. Decree	31-34
7. Reply	10-12
8. Reply	20-23
Facts As To Trial	34-36
Facts From Evidence	36-64
(a) Partnership	58-64
STATEMENT OF ERRORS	64-81

INDEX TO AUTHORITIES

CASES:	Page
Anderson v. Thomas, 108 U. 252, 159 P2d 142	87
Cardon v. Harper et al, 106 P. 560; 151 P2d 99	99
Ephraim Willow Creek Irr. Co. et al v. Olson et al 70 U. 95; 258P. 216	86
German-Am. St. Bk. v. Spokane C.R.R. & Nav. Co. 95 P. 261 (Wash.)	84
Hansen v. Hansen, 110 U. 222, 171, P2d 392	88
Kimball v. McCornick et al, 70 U. 189; 259 P. 313	103
Murray v. Murray, 47 P. 37	99
Palmer et al v. Palmer 26 U. 31; 72 P. 3	91
Petty et ux v. Clark et ux 102 U. 186, 129 P2d 568	83
Petty v. Petty et al, 164 A.L.R. 520, 168 P2d 818 (Ida)	
Re Bell's Estate, 29 U. 1; 80 P. 615	91-99
Re: Cover's Estate, 204 Pac. 583 (Cal.)	91-98
Peyton v. William C. Peyton Corp. 7 A.2d 737, 123 A.L.R. 1482	91
State Ex. Rd. Hansen v. Hart, 26 U. 229, 72P. 938	83
Boardman v. Lorentzen 52 L.R.A. (N.S.)	101
Redwine v. Redwine, 160 Ky, 282; 169 S.W. 864	101
Yordi v. Yordi (1907) 91 P. 348 (Cal.)	92
DIGESTS and TEXTS:	
17 Am. Jur. 728, sec. 72	101
24 Am. Jur. sec. 35 p. 193	100
26 Am. Jur. sec. 23, p. 182	101
26 Am. Jur. sec. 815 sec. 197	100
26 Am. Jur. sec. 197 p. 815	100
40 Am. Jur. sec 306 p. 342	103
22 C. J. 179 sec. 123	84
Jones On Evidence, sec. 748, 750	87
STATUTES:	
69-1-40 U.C.A. '43	103
104-49-3 (2) U.C.A. '43	87

In the Supreme Court of the
State of Utah

J. M. WEBB, and
SPENCER WEBB, Plaintiffs

vs.

MARGARET WEBB and
MARGARET WEBB, as
ADMINISTRATRIX OF
THE ESTATE OF
WILMER WEBB, Deceased,
Defendants.

No. 7,208

STATEMENT OF FACTS

This is a joint and several appeal by the defendants, Margaret Webb as the widow of Wilmer Webb, deceased, and Margaret Webb, as administratrix of the estate of Wilmer Webb, deceased. Except where otherwise noted the brief will be made as to both jointly and severally.

This appeal is from the following:

(1) The refusal of the court to grant a jury trial.

(2) The refusal of the court to admit certain testimony.

(3) The erroneous admission of testimony by the court.

(4) The findings of fact and parts thereof as is set out in the statement of errors.

(5) The conclusions of law as is set out in the statement of errors.

(6) The decree and the whole thereof adjudicating title in the plaintiffs as set out in the statement of errors.

(7) The failure or refusal of the Court to find and decree that the defendant widow and administratrix was entitled to the possession of property of Wilmer Webb not in the partnership described in defendants' counterclaims.

(8) The refusal of the Court to require the surviving partners to account herein to the said administratrix.

(9) The failure to hold that the deed and bill of sale, and each of them, were made without consideration and were only of force and effect to entitle plaintiffs to repayment of the moneys paid out for the expenses of Wilmer Webb's last illness and his funeral expenses.

(10) The findings and decree of the Court that Margaret Webb signed the deed with full knowledge and advice, that she accepted the \$500 check as a consideration and transfer of her rights in the property therein described.

(11) The failure of the Court to find said widow was a creditor of the estate of Wilmer Webb, and entitled out of his personal property included in the bill of sale to a reasonable family allowance, both before his death and after.

(12) The failure of the Court to hold the widow of Wilmer Webb was entitled to a statutory one-third right, title and interest in the real property of Wilmer Webb.

STATEMENT OF FACTS

The plaintiffs in this action are two brothers, J. M. Webb, sometimes known as "Jack," "John" and "Johnny," and Spencer Webb. There are two defendants, Margaret Webb as the widow of Wilmer Webb, deceased, and also as the administratrix of his estate. Wilmer Webb was the brother of the plaintiffs. He was also known as Wilmer E. Webb, Willmer and as "Tick." All the parties lived at Deseret, Millard County, Utah.

AS TO THE PLEADINGS:

To better understand the nature of the issues and defenses herein, we give the substance thereof or quote the pleadings.

Plaintiffs brought this action to quiet title to certain real estate located in Millard County, Utah, and in the complaint joined without separately stating an action to quiet title to certain personal property. The complaint alleged an action to quiet title which was pleaded in the usual short form. Coupled with this cause without separately stating it is an action to evict the defendant Margaret Webb from the home of Wilmer Webb, deceased.

The property described in plaintiff's complaint is as follows:

PARCEL A. All of Lots 3 and 4, Block 17, Plat "A," Deseret Town Survey, being part of Section 5, Township 18 South of Range 7 West, S.L.M. (home place of Wilmer Webb and Margaret Webb).

PARCEL B. The West $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 4, Township 18 South, Range 7 West, S.L.M. cont. 20 acres. (Wilmer's South Twenty).

PARCEL C. The West $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ and the East $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 4, Township 18 So., R. 7 West, S.L.M.; 40 acres.

PARCEL D. Lot 4 (being the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$) and the S.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Sec. 4; Lots 1 and 2 (being the North $\frac{1}{2}$ of the N.E. $\frac{1}{4}$), the South $\frac{1}{2}$ of the N.E. $\frac{1}{4}$, the North $\frac{1}{2}$ of the S.E. $\frac{1}{4}$, the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$, all in Section 5, Township 18 South, Range 6 West, Salt Lake Meridian.

Together with all water rights of whatsoever kind and nature, or howsoever evidenced, used for the irrigation of said lands, or any part thereof.

Together with the following described personalty and chattels used with and in connection with the farming operations of the above described premises and situated thereon or in close proximity therewith, to-wit:

- 9 ewes and lambs;
- 12 head dry ewes;
- 1 buck;
- 4 milk cows—not branded;
- 3 calves—milk strain;
- 1 Hereford bull branded ——— left ribs;
- 13 head Hereford cows and calves branded left ribs;
- 3 work horses;
- 1 saddle horse and saddle;
- 1 pig.

Also an interest and equity in machinery and equipment on the said premises and heretofore owned by Webb Brothers, heretofore consisting of the plaintiffs herein and the said Wilmer Webb, now deceased.

One Chev. 6 Sedan Automobile; 1938 Model; Serial No. 6HA05 21399; Motor No. 1720 110.

(R. 4-5)

ADMINISTRATRIX'S COUNTERCLAIM:

The defendant Margaret Webb as widow of Wilmer Webb and defendant Margaret Webb as administratrix of the estate of Wilmer Webb, deceased, filed separate answers and counterclaims.

As administratrix Margaret Webb by separate answer admitted the allegations of her ap-

pointment and qualification as administratrix, and joined issue with the plaintiffs upon all the other material allegations of the complaint. In addition she, as such administratrix, set out her affirmative defense and counterclaim, therein alleging that Wilmer E. Webb died intestate on the 4th day of July, 1946; that he was a resident of Millard County, Utah, at the time of his death, and as said administratrix further therein alleged:

II—That Margaret Webb is the surviving widow of Wilmer E. Webb, deceased; that from on or about the 21st day of July, 1945, to July 4, 1946, said Wilmer Webb stood in the relation of loco parentis to the three children of Margaret Webb; and that the estate of Wilmer E. Webb is charged with the duty of care, support, and maintenance of said widow and said children during his lifetime and for a reasonable time following the death of said decedent.

III—That on and between the 21st day of July, 1945, and the 4th day of July, 1946, the decedent, Wilmer E. Webb, was the owner of and, together with the defendant herein as his wife, during said time was in possession of the following described property in Millard County, Utah, to-wit:

(Parcel A above)

That thereon was and is situated the home of the said Wilmer E. Webb and of Margaret Webb, his widow. That at all times herein mentioned since the commencement of the above entitled action the defendant, Margaret Webb, has been and now is in possession of said property and claims the same as a widow's homestead under said Wilmer E. Webb, deceased, for herself and said three minor children.

IV—That defendant is informed and believes, and therefore alleges the facts to be that for many years

prior to March 18, 1946, the plaintiffs and Wilmer E. Webb, deceased, were partners in the farming and livestock business; and that at all times herein mentioned prior to March 18, 1946, said partnership was in possession of the following described property located in Millard County, Utah, to-wit:

Parcel 1—Parcel D above, and in addition: the S.E. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of Sec. 5, Township 18 South, Range 6 West, Salt Lake Meridian. Containing — acres.

Parcel 2 (hereinafter called Parcel "E"). The East $\frac{1}{2}$ of the East $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ of Sec. 8, Township 18 South, Range 6 West, Salt Lake Meridian. Containing 40 acres.

Parcel 3—The same as Parcel "C" above. Containing 40 acres.

That Parcels 1 and 2 aforesaid during said times were owned in an undivided one-third interest by each of J. M. Webb, Spencer Webb, and Wilmer E. Webb; but the possession and use thereof was in the partnership, and the income therefrom belonged to the partnership. That Parcel 3 aforesaid was owned by the said three brothers, John M. Webb, Spencer Webb, and Wilmer E. Webb, each an undivided one-third interest therein, but stood in the name of Webb Brothers; and that the use thereof and the crops therefrom were the property of the partnership.

V.—That on or about the 15th day of March, 1946, the decedent Wilmer Webb, was in need of monies with which to pay for his protracted illness, doctor bills, hospital bills, and monies for the maintenance of his family. That on or about said date said decedent and the defendant herein made and executed to the plaintiffs a certain deed covering all of the above described lands, together with water rights of whatsoever kind and nature or however evidenced, used for the irrigation of said land, or any part thereof, and as a mort-

gage and without any other consideration than as a mortgage, the same was delivered to the plaintiffs to secure the sums to be advanced for and on behalf of said Wilmer Webb and defendant, Margaret Webb.

VI.—That as defendant is informed and believes and therefore alleges the facts to be said Wilmer Webb was to further secure the payment of monies advanced by the plaintiffs and for monies to be advanced for the benefit of Wilmer Webb and defendant, Margaret Webb, on or about March 18, 1946, executed to said plaintiffs a bill of sale on all the property described, the description of which is made in paragraph 2 of plaintiffs' complaint which is made a part hereof by reference. And that pursuant thereto the plaintiffs did advance and pay out for the expenses of last illness, funeral expenses, and for the use and benefit of the defendant, Margaret Webb, (decedent, Wilmer Webb) approximately \$2000.00.

VII.—That on or about the 15th day of March, A. D. 1946, by the mutual consent of the plaintiffs and Wilmer Webb, said partnership herein referred to was dissolved. That in addition to the income and the crops from the above described lands as a part of the partnership assets said partnership on or about March 18, 1946, owned the following property:

1 grain grinder	hay rakes
1 tractor	wagons
1 threshing machine	2 harnesses
1 Chevrolet truck	1 cement mixer
mowing machines	1 manure spreader

and that the same is of a value unknown to the defendant, but on information and belief alleges the facts to be that said personal property above listed in this paragraph was reasonably worth the sum of \$3000.00. That at said time the plaintiffs promised and agreed to account for and pay to said Wilmer Webb the proportionate share of all the monies which had been previous-

ly collected by the plaintiffs, on account of said firm, and also to collect the debts due said firm, and to render from time to time to the defendant on demand full statements of the debts due to said firm and the payments made on account thereof and to pay over to Wilmer Webb his full share of the assets of said firm.

VIII.—That as this defendant is informed and believes and therefore alleges the facts to be, that prior to the dissolution of said firm and of winding up the business of said firm the plaintiffs collected large sums of money being to the sum of \$3000.00 more or less, on account of the income from the crops from said lands of the partnership; and that said plaintiffs have neglected and refused and still neglect and refuse to account with and pay to this defendant the proportionate share of the assets of said partnership so collected as aforesaid or any part thereof, although often requested by the defendant so to do.

IX.—That this defendant is informed and believes and therefore alleges the facts to be that the interest of the estate of Wilmer E. Webb in and to the above described property and the partnership assets are of a value of approximately \$10,000.00.

X.—(Omitted).

FOR A SECOND CAUSE OF ACTION

I. This defendant repeats and realleges paragraphs 1 and 2 of the foregoing first cause of action.

II. That at the time of the death of Wilmer Webb, July 4, 1946, he was the owner of and entitled to the possession of the following described property:

Here is described the same personal property described in plaintiffs' complaint, plus the following:

2 guns, scabbard.

1 pair field glasses.

2 watches.

miner's flashlight.
small hand tools.

4 pigs.

200 bushels of grain.

cash from the sale of U. S. Government bonds
in the denomination of \$700.00, to-wit: ap-
proximately \$500.00.

47 shares stock Delta Canal Company, Cert. No.
2853.

58 shares of stock in Deseret Irrigation Co., Cert.
No. 4409.

Other certificates of stock not known to this
defendant, and

Other sundry items of personal property not
known to this defendant.

III. That prior to the commencement of this ac-
tion the plaintiffs wrongfully and unlawfully took pos-
session against the will and without the consent of the
defendant and that prior to the death of Wilmer Webb
said persons wrongfully maintained the possession of
said property and claimed the same as their own, and
have since asserted they were the owners thereof.

IV. That prior to the commencement of this ac-
tion defendant has demanded of the plaintiffs herein
that they return the possession of the foregoing items
and that they relinquish their claims to the same against
this defendant; and that they have declined and refused
so to do, and assert their ownership thereof. The rea-
sonable value of the above named articles taken and re-
tained by the plaintiffs is the sum of \$1500.00.

WHEREFORE DEFENDANT PRAYS:

1. That the persons named in the first cause of
action who claim an interest herein be by the court or-
dered to be made parties hereto.

2. That the Court require the plaintiffs to make

an account of all the receipts and disbursements from or on account of the partnership property described in the foregoing answer and counterclaim; and that thereupon plaintiffs be required to pay over to this defendant any balance found due and owing to Wilmer Webb from said partnership account.

3. That the Court determine that the deed and bill of sale referred to in the foregoing counterclaim be determined to be a mortgage or mortgages; that the Court find the amount advanced or paid out by the plaintiffs which is secured by said mortgage and direct the plaintiffs to convey said property described in said instruments, and each of them, to this defendant upon payment of the indebtedness secured thereby.

4. That the Court make and enter an order that the possession of said property described in both the first and second causes of action which is still in existence and in control of the plaintiffs be forthwith delivered to this defendant.

5. That the Court make and enter a judgment in favor of this defendant and against the plaintiffs, and each of them, for the reasonable value of any items of personal property converted by them, and that said sum be determined by the Court.

6. For such other and further relief as to the Court may seem just and equitable in the premises.

(R. 20-25)

This answer and counterclaim of said administratrix was filed herein on June 10, 1947. The reply thereto was filed July 10, 1947.

(R. 27-29).

Said reply further admits Margaret Webb is the widow of Wilmer Webb; and her qualification as administratrix of his estate; that she was in possession of the home of Wilmer Webb,

but denied that she was entitled to the possession thereof. It further admits that at all times herein mentioned prior to March 18, 1946, plaintiffs and Wilmer Webb were partners in the farming and livestock business. It admits that the above described real tracts "B," "C," "D" and "E" (includes parcels "1," "2" and "3" above) were in the possession of said partnership and that the income therefrom belonged to said partnership; that the ownership of tracts "C," "D" and "E" above of said real estate was one-third in each of said brothers, but it stood in the name of said partnership, and the use thereof and the crops therefrom were property of the partnership (pars. 2, 3, 4, 5, Reply; R. 27). In addition it is in part as follows:

4. Admit the allegations of paragraph 3 of the said counterclaim, but deny that the said defendant is entitled to the possession of the property described in said paragraph either as a widow's homestead or otherwise.

5. Admit the allegations of paragraph 4 of said counterclaim.

6. Admit that on or about the 15th day of March, 1946, the decedent Wilmer Webb made and executed and delivered to these plaintiffs the deed referred to in paragraph 5 of said counterclaim, and allege that the said Margaret Webb likewise made, executed and delivered to these plaintiffs said deed; but deny that the same was given as a mortgage or that it was delivered to the plaintiffs to secure the sums alleged to have been advanced for said Wilmer Webb or to secure any other sums, and allege upon the contrary that said deed was so given by both said Wilmer E. Webb and by said Margaret Webb as a conveyance absolute and for a good

and valuable consideration.

8. Admit that the said partnership was by mutual consent dissolved and the partnership property mutually and amicably divided, but deny each and every other allegation in paragraph VII of the said counterclaim set forth.

11. Answering paragraph II of the second cause of action set forth in the said counterclaim, these plaintiffs deny—that at the time of the death of said Wilmer Webb, he was either the owner of or entitled to the possession of the property set forth in said paragraph and allege upon the contrary that prior to his death he conveyed the said property, excepting the guns and a pair of field glasses, to these plaintiffs for a good and valuable consideration and that at the time of the death of said Wilmer Webb, these plaintiffs were the owners of and entitled to the possession of said property.

(R. 27-28).

The reply denies the other material allegations of the counterclaim.

COUNTERCLAIM

Margaret Webb individually filed an amended answer and counterclaim herein on the 2nd day of September, 1947. Therein she joins issue with the complaint the same as she did as administratrix.

In addition therein she pleads that she owns in her own right an undivided one-third right, title, and interest, in and to the real estate and water rights in tracts "A" and "B" above described, and that she is entitled as the widow of Wilmer Webb to be and remain in possession of

the home of Wilmer Webb, as her homestead. She then pleads:

2. That said Wilmer Webb was also known as Wilmer E. Webb; that he died intestate on or about the 4th day of July, 1946, at Salt Lake City, Utah, and left surviving him the defendant herein Margaret Webb, as surviving widow, and as his sole surviving heir of his estate up to a value of \$25,000.00.

3. (Same in substance as II of administratrix's counterclaim above.)

4. That on or about the 21st day of July, 1945, Wilmer Webb was a man 42 years of age and in apparent good health, that at said time he held out to defendant herein he was the owner of a big modern home in Deseret, Utah, and was the owner of and interested in about 500 acres of land in the vicinity of Deseret, Utah, in part which he pointed out to defendant; and at said time he was in possession of and the owner of the following described lands in Millard County, Utah, to-wit:

A. (Parcel A. above, described here.)

(Parcel B. above, described here.)

B. Together with an undivided one-third right, title and interest in and to the following described property, located in Millard County, Utah, and described as follows:

(Parcel "D" above described here) and also the Southeast quarter of S.W. $\frac{1}{4}$ of Sec. 5, Twp. 18 S. R. 6 W. SLM, containing — acres.

(Parcel "C" and "E" above, described here.)

Together with 59 shares of the Deseret Irrigation Company,

Together with — shares of the Milville Irrigation Company,

Together with 47 shares of the Delta Canal

Company, represented by Certificate No. 2853.

C. Together with the following described personal property:

(Here is described same personalty as is described in par. II of administratrix's Second Cause of Action above),

and less:

grain, cash from U. S. Bonds, and certificates of water stock therein described.

Plus:—40 head of ewes; 30 head of Hereford cows and calves branded left ribs.

D. Together with an undivided one-third interest in the partnership of the partnership of Webb Brothers and that some of said property is described as follows:

(Same personalty here described as set out in paragraph VII of administratrix's counterclaim.)

E. And other property unknown to this defendant.

5. That from the 15th day of March, 1946, up to and including the 4th day of July, 1946, Wilmer Webb, the husband of defendant herein was the owner in fee simple of the above described real estate, and interests therein, and by and through the defendant herein from the 1st part of February, 1946, to July 4, 1946, said Wilmer Webb was in possession of the first above described tract of land, to-wit: Lots 3 and 4, Block 17, Plat A, Deseret Town Survey, as the home of said Wilmer Webb and the home of the defendant and her children; and by and through the plaintiff herein during said time, March 15, 1946, to July 4, 1946, Wilmer Webb was in possession of the other property above described. That the defendant is informed and believes and therefore alleges the facts to be that the property of Wilmer Webb at the time of his death was reasonably worth the sum of thirty thousand dollars (\$30,000.00); that on March 15, 1946, and up to and including the time of the death of Wilmer Webb defendant did not know the nature or value of her husband's property.

6. That Wilmer E. Webb began ailing in September, 1945, that his ailment continued to grow steadily worse until February, 1946; that in March, 1946, he was

hospitalized at Salt Lake City, Utah, and remained in the hospital at Salt Lake City, Utah, until his death. That about March, 1946, plaintiffs were informed and believed that the ailment of Wilmer E. Webb would be fatal and that he would not recover from the same; and that this was not known to the defendant until about June, 1946.

7. That on or about the 15th day of March, 1946, an attorney for the plaintiffs and Wilmer Webb called at said home of Wilmer Webb and then and there represented to her that Wilmer Webb had spoken to him about a divorce from the defendant; that he was a sicker man than he thought and suggested the defendant take a settlement of \$500.00; that a deed should be made from herself and her husband covering the partnership lands and her husband's farming lands to the plaintiffs herein; that said deed would make it more convenient for plaintiffs to run the business, that it would make it easier for plaintiffs to finance the medical and hospital expenses if herself and husband would make the deed; that her husband could get the property back when he came home, and all that he would need to do would be to repay the plaintiffs their money which they had paid out for and on his behalf. That defendant believed said statements to be true and she had a right to believe them, and acted thereon.

8. That on the 15th day of March, 1946, she was in strained financial circumstances; that then she did not know anything about the descriptions of the deed, could not tell what they were, and was not advised that the above described home place was included therein. And then without any separate or independent advice and without a payment of a fair consideration she took a \$500.00 check of plaintiffs' and signed said deed and gave it to said attorney, and then stated she would talk it over with her husband. That during the latter part of March she obtained independent advice upon said matter and discussed it over with Wilmer Webb and

thereupon she would not accept the \$500.00 check and did not cash the same; that she does now hereby tender and offers to return said check to the plaintiffs and hereby offers to repay the plaintiffs out of the Estate of Wilmer Webb all of their moneys that have been paid out for and account of said Wilmer Webb and his business and defendant herein.

9. That on or about the 15th day of March, A. D. 1946, the plaintiffs herein with the aid and cooperation of said Wilmer Webb procured from this defendant, Margaret Webb, and Wilmer Webb, said deed of conveyance of the above described lands, thereby vesting the apparent legal title to said lands in said plaintiffs, who caused the same to be recorded in the office of the county recorder of Millard County, Utah, on the 25th day of March, 1946, Book 27, of deeds, on pages 470-71.

10. That at the time said deed was executed and for a long time prior and subsequent thereto said Wilmer Webb was seriously ill with a disease to such an extent as to be incapable of transacting his ordinary business, and he never intended to the day of his death that said conveyance should operate as an absolute conveyance of his property; and this defendant did not intend and has not since intended said conveyance as a waiver of her statutory one-third interest in said property. But as defendant is informed and believes and therefore alleges the facts to be said deed was procured by the plaintiffs with the aid of Wilmer Webb, with the intention of cheating and defrauding this defendant out of her widow's one-third right, title and interest in and to the above described real estate; and that said deed and conveyance was made without any consideration.

11. The defendant is informed and believes and therefore alleges the facts to be that for many years prior to July 4, 1946, the plaintiffs and Wilmer E. Webb, deceased, were partners in the farm and livestock business, that at all times herein mentioned there was a partnership existing between the plaintiffs and

said Wilmer E. Webb and that at all times herein mentioned they stood as to each other in confidential relations.

12. That defendant is informed and believes and therefore alleges the facts to be on or about March 18, 1946, said Wilmer E. Webb executed to the plaintiffs herein a bill of sale on the above described personal property described in division D and C of paragraph 4 hereof, with the intention of cheating and defrauding this defendant of her right to support and maintenance for herself and her children out of his said estate and that said transfer was made without any consideration and is void against this defendant.

13. That by virtue of the conveyance designated in paragraphs 8, 9, and 12 above, the said Wilmer Webb was thereby rendered insolvent and was left without an estate.

14. That by virtue of the said deed and bill of sale the plaintiffs are in possession of some of said land and personal property of Wilmer Webb, deceased, claiming to be the exclusive owners thereof, and they refuse to permit the defendant to have any part thereof, or of the rents and profits therefrom. That in equity defendant is the owner of a statutory one-third right, title, and interest in and to said real estate above described and in equity is the owner as an heir of Wilmer Webb of the first \$25,000.00 in value of said estate, subject to the debt to the plaintiffs above referred, and subject to the expenses of administration and to the debt of maintenance and support of the defendant and her children and subject to being probated in the matter of the estate of Wilmer E. Webb, deceased.

For a Second Affirmative Defense and
Count this defendant alleges:

1. Defendant repeats and reallages by reference the allegations of the foregoing paragraphs of the Affirmative Defense and Counterclaim numbered 1, 2, 3, 4,

5, 6, 9, 10, 11, 12, 13, and 14 of the foregoing counterclaim.

2. That Wilmer Webb up to the time of his death held out to this defendant that he loved, cherished her, and asked her not to leave his home in Deseret but to stay there for his comfort and to care for him upon his return from the hospital. That notwithstanding said representations of love, affection and care for this defendant, which plaintiffs well knew, said Wilmer Webb and the plaintiffs herein counselled together to defraud this defendant of her statutory one-third right in Wilmer Webb's property; to defraud her of any inheritance from Wilmer Webb and his estate; to defraud her of her homestead in Wilmer Webb's property and to defraud her of her right to support and maintenance of herself and minor children from the estate of Wilmer Webb.

3. That pursuant thereto on or about the 9th day of March, 1946, they represented to this defendant that they wished the possession of deeds to the real property for the purpose of making the mortgage upon the home place of the parties to obtain money with which to pay doctor and hospital expenses of Wilmer Webb; and that on the 15th day of March, 1946, they represented to her that the deed was made for a matter of convenience in the operation of the partnership business of plaintiffs and Wilmer Webb, and as security for the advancement of moneys to pay for Wilmer Webb's hospital and medical bills. That plaintiff relied upon said representations as true, and had a right to rely thereon, and that under said representations plaintiffs obtained possession of the deeds, stocks and bonds of Wilmer Webb, deceased. That thereby on the 15th day of March they obtained from defendant her signature of the above referred to deed and Wilmer Webb executed the above referred to deed and bill of sale to the plaintiffs on the 18th day of March, 1946, all with the intent to hinder and defraud the defendant herein and

prevent her from securing her statutory one-third right, title and interest in said real property, and thus to prevent her from securing her homestead in Wilmer Webb's property, and thus to prevent her from securing care, and support of herself and minor children from said property. That the said representations in this paragraph set out, if the claims of the plaintiffs are true as set out in their complaint are false and fraudulent as to this defendant; and that thereby she will suffer great loss and damage for which she has no plain, or speedy remedy adequate at law.

For a Third Affirmative Defense and Count this Defendant Alleges:

1. Defendant repeats and realleges by reference the allegations of the foregoing paragraphs of the Affirmative Defense and Counterclaim numbered 1, 2, 3, 4, 5, and 6.

2. That ever since the 15th day of March, 1946, the defendant herein, Margaret Webb, has been and now is in possession of the following described property, claimed by the plaintiffs, located in Millard County, Utah, and described as follows:

All of Lots Three (3) and Four (4) Block Seventen (17), Plat "A," Deseret Survey, being part of Section Five (5), Township Eighteen (18) South, Range Seven (7) West, Salt Lake Base and Meridian.

1 1938 Chevrolet Sedan, Serial No. 6H005-21399, Motor No. 1720-110.

That the real estate described in this paragraph is the home place of defendant and is hereby claimed as a widow's homestead by defendant as a widow of Wilmer Webb, deceased, for herself and her minor children, and that the reasonable value thereof is unknown to this defendant, but upon information alleges it to be of a value of \$6,000.00.

WHEREFORE THIS DEFENDANT PRAYS:

1. That the deed above referred to from Wilmer Webb and defendant herein to the plaintiffs herein be cancelled and set aside, both as to this defendant's signature thereto and Wilmer Webb's execution thereof.

2. That the bill of sale above referred to from Wilmer Webb, deceased, to the plaintiffs herein be cancelled and set aside.

3. That if said instruments are not vacated and set aside that said deed and bill of sale, and each of them, be held to be a mortgage or mortgages upon the property therein described from Wilmer Webb and defendant herein to the plaintiffs to secure their moneys which they paid out for the use and benefit of Wilmer Webb and this defendant; and that they be directed to reconvey said property to defendant herein as administratrix of the estate of Wilmer Webb, deceased; and to deliver possession thereof to this defendant as said administratrix.

4. That it be adjudged and decreed by the Court that the plaintiffs, and each of them, have no right, title or interest in the property described in paragraph 4 of the defendant's counterclaim except as mortgagee and heirs to a value of over \$25,000.00; and that the defendant's claims thereto against the adverse claims of the plaintiffs, and each of them, and all persons claiming by, through and under them, be quieted and that this defendant have judgment for restitution of the premises subject to the payment of debts and the probate thereof.

5. For such other and further relief as to the Court may seem just and equitable in the premises. (R. 35-43).

REPLY:

To said pleading the plaintiffs made the

same reply as to the counterclaims of Margaret Webb, administratrix, and further replied: That they admitted the allegations of paragraphs 2 and 3 above, except they denied Wilmer Webb stood in the relation to said children as a parent. They denied most of the material allegations above, except as they specifically pleaded:

5. Admit that said Wilmer Webb was a man of about 42 years of age on or about the 21st day of July, 1945; admit that at said time he was the owner of the premises substantially as set forth in paragraph 4 of said alleged counterclaim, and at said time he owned 59 shares of Deseret Irrigation Company water stock and 47 shares of Delta Canal Company stock, being water rights represented by certificates of stock in incorporated irrigation companies; that concerning the personal property described in said paragraphs plaintiffs admit that said Wilmer Webb, prior to on or about March 15, 1946, owned such personal property as is described more fully in plaintiffs' complaint on file herein, and deny that he was the owner of any personal property set forth in paragraph 4 of said alleged counterclaim other or different than or in addition to the personal property described in said paragraph 4 of alleged counterclaim; deny each and every allegation in said paragraph set forth excepting as herein otherwise admitted or qualified.

7. Admit the allegations of paragraph 6 of said alleged counterclaim; excepting that plaintiffs deny that in February, 1946, they were informed or believed that the ailment of Wilmer E. Webb would be fatal, and allege upon the contrary that until a few days prior to his death they did not know how long he would live, but had been informed and believed that he would always thereafter be an invalid but might live for a number of years.

8. Deny that on or about the 15th day of March, 1946, or at any other time or at all, an attorney for the plaintiffs contacted said defendant; admit that an attorney for Wilmer Webb called upon said defendant and discussed a property settlement between said defendant and Wilmer Webb; deny each and every other allegation contained in paragraph 7 of said alleged counterclaim.

9. Deny each and every allegation contained in paragraph 8 of said alleged counterclaim, excepting that plaintiffs admit the said defendant did not cash said check for \$500.00.

12. Admit that for many years prior to July 4th, 1946, the said Wilmer E. Webb and plaintiffs were partners in a farming business and operation; and allege that said parties for some years prior to March 15th, 1946, or thereabouts, ran some livestock in common, but not as partners; and deny each and every other allegation contained in paragraph 11 of said alleged counterclaim.

13. Admit that on or about March 18th, 1946, said Wilmer Webb executed to the plaintiffs a bill of sale on certain personal property as set forth and described in their complaint on file herein; and deny each and every other allegation contained in the paragraph No. 12 of said alleged counterclaim.

15. Admit that plaintiffs are in possession of some of said land and personal property by virtue of said deed and bill of sale claiming to be owners thereof, and admit that they dispute the right or title of said defendant to any part thereof; and deny each and every other allegation contained in paragraph 14 of said alleged counterclaim.

19. Admit that ever since the 15th day of March, 1946, the defendant Margaret Webb has been and now is in possession of the realty described in paragraph 2 of the third affirmative defense; deny that she is now

in possession of said automobile; admit that said defendant now claims a widow's homestead in said realty but allege that said claim is false and untrue and that she parted with any interest or equity in said realty by virtue of said warranty deed executed by her in favor of these parties; deny each and every other allegation contained in paragraph 2 of the said third affirmative defense.

Plaintiffs prayed for dismissal of defendant's counterclaims and for relief as in complaint set out.

(R. 44-47).

The defendant's request for a trial by jury was denied, which will be later treated. After trial to the Honorable Will L. Hoyt, sitting as Judge of said Court, the Court made the following finds of fact, conclusions of law, and decree:

FINDINGS OF FACT

The findings of fact and conclusions of law to which no exceptions have been taken by the defendant are as follows:

From the Findings of Fact:

1. That the defendant Margaret Webb is now and has been since on or about the 26th day of August, 1946, the duly appointed, qualified and acting administratrix of the estate of Wilmer Webb, deceased.

2. That the defendant Margaret Webb inter-married with the deceased, Wilmer Webb, at Fillmore, in Millard County, Utah, on or about the 21st day of July, 1945, and ever since said date and up to the date of the death of said Wilmer Webb, they were husband and wife.

3. That said Wilmer Webb died intestate on or

about the 4th day of July, 1946, at Salt Lake City, Utah, and left surviving him the defendant Margaret Webb, as surviving widow, and left no issue or descendants.

4. That at the time of the marriage of the defendant Margaret Webb was the mother of three minor children between the ages of nine months as the youngest and eight years as the eldest; that after the marriage of Wilmer Webb and Margaret Webb the children were taken into the home of said parties and jointly cared for by said parties and were supported by said Wilmer Webb.

5. That Wilmer Webb began ailing during the month of September, 1945, and that his ailment continued to grow steadily worse until February, 1946; that in March, 1946, he was hospitalized at Salt Lake City, Utah, and remained in the hospital at Salt Lake City, Utah, until his death on or about the 4th day of July, 1946.

11. That said Margaret Webb has continued to and now does occupy the home and has continued to use the automobile until about June of 1947, when plaintiffs repossessed the same by legal action.

15 . . . that the reasonable market value of the personal property . . . conveyed by Wilmer Webb to the plaintiffs is \$4671.00, including approximately \$575.00 as the value of war savings bonds.

19. That it was stipulated in open court by counsel for the plaintiffs and counsel for the defendants that the defendant Margaret Webb, as administratrix of the estate of Wilmer Webb, deceased, was entitled to and should have delivered to her one thirty-two caliber Special Winchester Rifle and case, one pair of field glasses and one wrist watch in the event the wrist watch is located by either of the plaintiffs, and that there should be paid to her as such administratrix the sum of \$90.00, being one-third of the value of one hundred

bushels of grain, an additional sum of \$90.00 being the equity of Wilmer Webb in \$270.00 of partnership assets paid to plaintiffs for feed pellets, and the additional sum of \$141.0 being the equity of Wilmer Webb in \$423.00 of partnership assets paid to plaintiffs for alfalfa seed, and the Court finds, pursuant to the said stipulation that the foregoing property and foregoing sums of money are assets of the estate of Wilmer Webb and in the possession of said plaintiffs.

From the Conclusions of Law:

5. That the following property and money in the possession of the plaintiffs belong to and are assets of the estate of Wilmer Webb, deceased, and that the defendant, Margaret Webb, as administratrix of the estate of Wilmer Webb, deceased, is entitled to the immediate possession thereof, to-wit:

One thirty-two caliber Special Winchester Rifle and case; one pair of field glasses and one wrist watch in the event the wrist watch is located by either of the plaintiffs, and the sum of \$321.00.

The following are the findings of fact and conclusions of law to which exceptions are taken by plaintiff to-wit:

From Findings of Fact:

5. . . . that sometime prior to March 14th, 1946, the plaintiffs and defendant Margaret Webb knew that said Wilmer Webb was seriously ill, and on March 15th, 1946, when Margaret Webb executed the deed hereinafter mentioned, she knew that Wilmer Webb was in the hospital and that he might be a permanent invalid, and she had reason to believe that his illness might be fatal.

6. That from a time shortly after the marriage of the parties until said Wilmer Webb was taken into the hospital as aforesaid, he and said Margaret Webb

had a number of differences and there was some discussion between them of a separation and divorce.

7. That sometime prior to March 14th, 1946, one Dudley Crafts, an attorney at law, had a conversation with Wilmer Webb at the Holy Cross Hospital at Salt Lake City, and that Wilmer Webb discussed with Mr. Crafts some arrangement for having his hospital expenses and medical bills taken care of, and that he also discussed with Mr. Crafts the marital difficulties that had been existing between himself (Wilmer Webb) and Margaret Webb; that he requested Mr. Crafts to visit said Margaret Webb, who was then residing at Deseret in Millard County, Utah, and in the home then owned by said Wilmer Webb, to see and determine if Margaret Webb was willing to effect a reconciliation and remain at said home permanently as the wife of Wilmer Webb and to take care of him when he should return home, and if she was unwilling so to do then to make some arrangements with the plaintiffs, his brothers, to take care of him during the balance of his lifetime and pay the expenses incident to his illness and provide for him the balance of his lifetime; that thereafter, and on March 15th, 1946, said Crafts visited Margaret Webb at Deseret, Utah, and discussed with her the matter of reconciliation, and was informed by Margaret Webb that a reconciliation was, in her opinion, not possible; that said Crafts then discussed with Margaret Webb a proposal of having the plaintiffs, as brothers of said Wilmer Webb, look after Wilmer Webb and during the balance of his lifetime pay the hospital and medical bills and provide for him the necessary and attention required, in consideration of which they should receive a deed to his real estate and a bill of sale to his personal property.

That Margaret Webb consented to such an arrangement and Mr. Crafts then discussed with her the matter of some consideration to be given her for relinquishing her interest in the real estate and other property;

that Margaret Webb stated to Mr. Crafts that she did not want anything excepting the right to occupy the said home until shortly after the school term should end in May of 1946, and the right to use the car of said Wilmer Webb until such time; that Mr. Crafts stated that she should have some money with which to live and support herself until she should be able to re-establish herself, and suggested that the plaintiffs pay her \$500.00 in cash; that she thereupon stated if Wilmer Webb was paying such amount she would not care to accept the same, but if it was being paid by the plaintiffs she would accept the sum of \$500.00 and would execute a deed to the real estate of Wilmer Webb; that Mr. Crafts then left and prepared a deed which is the plaintiffs' exhibit 1 for conveyance to the plaintiffs of the real estate therein described; that shortly thereafter Mr. Crafts again visited said Margaret Webb and presented the deed for her signature, and that she at that time again agreed to execute the deed. She carried the deed to the office of a Notary Public in Deseret, signed and acknowledged the same and immediately thereafter delivered it to Mr. Crafts and accepted a check of the plaintiffs for the sum of \$500.00. That at the time Margaret Webb signed the deed it had not been signed by Wilmer Webb, but was executed by Wilmer Webb on the 18th day of March, 1946, at the hospital in Salt Lake City, Utah, and immediately thereafter delivered to the plaintiff Spencer Webb by said Wilmer Webb.

8. That when said deed was executed by Margaret Webb and delivered to Mr. Crafts, she knew it covered the real estate described therein, including the home of Wilmer Webb; that she knew it was a deed and not a mortgage, and she was not laboring under the belief that it was a mortgage or that it was given as security for the moneys to be paid by the plaintiffs for the care of and for the hospital and medical bills of Wilmer Webb, and that she had been fully informed by Mr. Crafts of the nature of the instrument.

9. That altho said Margaret Webb had not consulted an attorney before executing said deed and accepting said check for \$500.00, she was well informed as to the kind of property and the nature thereof then owned by Wilmer Webb and had some idea of its value; that she had lived in the house for some months and was acquainted with the farming operations carried on between Wilmer Webb and his brothers and was substantially acquainted with the nature and extent of the property included in said deed.

10. That after executing said deed and accepting the said check for \$500.00, Margaret Webb consulted an attorney, and thereafter did not cash said check, but that she brought no action to rescind or annul or cancel the deed until after the death of Wilmer Webb and not until she counterclaimed in the present action.

12. That on the 18th day of March, 1946, the said Wilmer Webb executed and delivered to the plaintiff Spencer Webb a bill of sale and being plaintiffs' exhibit 2, and at or about the same time delivered to said plaintiff Spencer Webb the transfer papers and certificate of title to the car, with the intention of transferring the title thereto to the said plaintiffs.

13. That the plaintiffs and each of them agreed with said Attorney Crafts, who was then and there acting as attorneys for Wilmer Webb, that in consideration of the transfer to them by Wilmer Webb of the property described in plaintiffs' exhibits 1 and 2, they and their wives would take care of and look after Wilmer Webb as long as he lived and would pay his hospital and medical bills as long as he lived and would also pay to Margaret Webb \$500.00 for her interest in the property; and said plaintiffs did pay the said \$500.00 by delivering their check in her favor and which check was received by Margaret Webb.

14. That pursuant to the agreement between plaintiffs and said Wilmer Webb, and with full knowledge and prior consent of said Margaret Webb, all as

more particularly in these findings stated, plaintiffs have paid all of the expenses incurred by Wilmer Webb for hospital, medical and doctor's care, and have paid all of his funeral expenses, amounting to the sum of approximately \$1750.00; and said plaintiffs were ready and willing to take care of said Wilmer Webb for the balance of his lifetime.

15. That the reasonable market value of the realty and water rights conveyed by Wilmer Webb to the plaintiffs is \$8966.00; that the reasonable market value of the personal property so conveyed by Wilmer Webb to the plaintiffs is \$4671.00. . . .

16. That some war savings bonds were turned over to plaintiffs by Wilmer Webb in pursuance of the agreement between the plaintiffs and said Wilmer Webb, as aforesaid, some of which bonds were purchased in the name of Wilmer Webb and Spencer Webb, and some of which were purchased in the name of Wilmer Webb and J. M. Webb, the total value of which was approximately \$575.00; that the bonds were cashed by plaintiffs and used to pay a part of the expenses incurred by Wilmer Webb.

17. That the plaintiffs did not connive with Wilmer Webb, nor he with the plaintiffs, to defraud the defendant Margaret Webb out of any inheritance to which she might be entitled from Wilmer Webb and his estate; that said plaintiffs did not obtain possession of said deed and bill of sale and bonds through fraud or misrepresentation, and that the said deed and bill of sale were executed by Wilmer Webb and Margaret Webb for a good and valuable consideration.

18. That all of the allegations contained in the answer and counterclaim of Margaret Webb as administratrix of the Estate of Wilmer Webb, deceased and the allegations contained in the answer and counterclaim of Margaret Webb as an individual, which are adverse to and inconsistent with the foregoing findings, are not true.

20. That since on or about the 18th day of March, 1946, these plaintiffs have been and now are the owners of and are now entitled to the immediate possession of the premises more particularly described in paragraph II of their complaint on file herein and being the same premises as are described in plaintiffs' exhibit 1, together with all water rights of whatsoever kind and nature or howsoever evidenced, used for the irrigation of said lands and the whole thereof; that since on or about the 18th day of March, 1946, these plaintiffs have been and now are the owners of and are now entitled to the immediate possession of the personal property and chattels more particularly described in paragraph II of their complaint on file herein and being the same personalty as are described in plaintiffs' exhibit 2; and that the defendant herein, Margaret Webb, and the defendant Margaret Webb as administratrix of the estate of Wilmer Webb, deceased, has no right, title, interest or estate therein.

21. That the partnership existing between the plaintiffs and Wilmer Webb prior to the death of said Wilmer Webb was dissolved and terminated by mutual agreement between the parties; that no sufficient evidence has been presented to the Court in the trial of the within cause to justify the taking of an accounting in this cause.

CONCLUSIONS OF LAW

1. That the plaintiffs herein are the owners in fee simple absolute of the real property hereinbefore and in the complaint in this cause described, together with the water rights appurtenant thereto.

2. That the plaintiffs are the owners absolute of the personal property hereinbefore and in the complaint herein described.

3. That the plaintiffs are entitled to the immediate possession of the said realty, water rights and personal

property.

4. That the plaintiffs are entitled to a judgment quieting their title to the said realty, water rights and personal property, as prayed for in their complaint, as against the defendant Margaret Webb, as an individual and as administratrix of the estate of Wilmer Webb, deceased, and all persons claiming or to claim the same or any part thereof under her in either capacity, and declaring and determining that said defendant in either capacity, has no right, title, interest, equity or estate therein.

6. That the said defendant is entitled to take nothing by reason of her counterclaim as an individual, or by reason of her counterclaim as administratrix of the estate of Wilmer Webb, deceased, excepting as hereinbefore set forth.

7. That the defendant is not entitled to any accounting upon the evidence as produced in the trial of said cause, but the right to an accounting should be at this time and in this cause rejected and denied without prejudice to the right of defendant to apply for an accounting hereafter, if she be so advised.

8. That plaintiffs are entitled to their costs of suit herein incurred.

Judgment is hereby ordered to be entered accordingly.
ingly. (R. 51-8)

The following is the decree from the whole of which defendants except, other than the last ten lines of paragraph "5" thereof, to-wit:

DECREE

This cause came on regularly for trial before the Court sitting without a jury on the 3rd day of September, 1947, and was continued from time to time and completed on the 6th day of September, 1947. Messrs

Cline, Wilson and Cline appeared as attorneys for the plaintiffs, and Messrs. Jensen and Jensen appeared as attorneys for the defendants; and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law and having directed that judgment be entered in accordance therewith—

Now therefore, by reason of the law and findings aforesaid:

It is Hereby Ordered, Adjudged and Decreed:

1. That the plaintiffs, J. M. Webb and Spencer Webb, were at the time of the commencement of this action, and now are the owners absolute in fee simple of the premises described in the complaint on file herein and more particularly hereinafter described, and their right and interest in the said premises as such owners in fee simple is hereby declared and established.

2. That the said plaintiffs were at the time of the commencement of this action, and now are, the owners absolute of the personal property and chattels described in the complaint on file herein and more particularly hereinafter described, and their right and interest in said personal property and chattels is hereby declared and established.

3. That the said defendant, Margaret Webb, as an individual, and said defendant, Margaret Webb, as administratrix of the estate of Wilmer Webb, deceased, and all persons claiming under the said Margaret Webb, either in her individual capacity or as such administratrix, and each and all of them, be, and they are hereby forever barred from any and all claim of right, title or interest in and to the said premises and to the said personal property and chattels, or any lien thereon, or any part thereof.

4. That the said plaintiffs are entitled to the im-

mediate possession of the said premises and of the said personal property and chattels, and are hereby awarded the process of this Court to place them in the possession thereof.

5. That the said defendant shall take nothing by reason of her counterclaim in this action filed as an individual, or by reason of her counterclaim in this action filed as administratrix of the estate of Wilmer Webb, deceased, excepting that by stipulation of the parties through their respective counsel, made in open court, the defendant, Margaret Webb as administratrix of the estate of Wilmer Webb, deceased, is entitled to and is hereby awarded the possession of one thirty-two caliber Special Winchester Rifle and case, one pair of field glasses and one wrist watch belonging to Wilmer Webb, (in the event the wrist watch is located by either of the plaintiffs) together with the sum of \$321.00, and that said defendant is hereby awarded the process of this court, if necessary, to place her in the possession of said chattels and for the collection of the said sum of money.

6. That the said defendant either in her capacity as an individual or in her capacity as administratrix of the estate of Wilmer Webb, deceased, is not entitled in this action to an accounting against and from the plaintiffs or either of them, but the right to an accounting is in this cause hereby rejected and denied without prejudice to the right of said defendant to apply in an appropriate action for an accounting hereafter, if she be so advised.

7. That plaintiffs are hereby awarded against the said defendant their costs in and about this action expended, and hereby taxed at the sum of \$———.

That following is a description of the property affected by this decree, the same being situated in the County of Millard, State of Utah, and more particularly described as follows, to-wit :

*(Lands described in plaintiffs' complaint).

Together with all water rights of whatsoever kind and nature or however evidenced, used for the irrigation of said lands, or any part thereof.

Together with the following described personalty and chattels used with and in connection with the farming operations of the above described premises and situated thereon or in close proximity therewith, to-wit:

(Same as described in complaint).

Also, all other livestock owned by one Wilmer Webb, now deceased, or in which he had an equity on March 18th, 1946.

Also all of the right, title, interest and equity of Wilmer Webb, now deceased, in and to all machinery and equipment of every kind, nature and description owned by Webb Brothers, a co-partnership and heretofore consisting of J. M. Webb, Spencer Webb and said Wilmer Webb.

One Chev. 6 Sedan automobile, 1938 Model — Serial No. 6 Ha 05-21399; Motor No. 1720-110.

Judgment rendered this 2nd day of February, 1948.

WILL L. HOYT,
Judge of the District Court.

FACTS AS TO THE TRIAL:

On the 16th day of June, 1947, before the issues were joined herein on the motion of the attorneys for the plaintiffs the case was set down for a non-jury trial on the 15th day of July, 1947 (it having also previously been set upon the same basis).

The issues herein were first joined on the 10th day of July, 1947, and on the 14th day of

July, 1947, the defendants sent to the clerk of the above district court the jury fee and with it a written request that the case be set for a jury trial.

On the 15th day of July, 1947, in the absence of counsel for the defendants, and upon the motion of counsel for the plaintiffs, the Court directed the clerk to return the jury fee and set the case for a non-jury trial on the 3rd day of September, A. D. 1947. On the 3rd day of September, 1947, the defendants renewed their request for a jury trial; which request was denied, and exception taken.

The plaintiffs over the objections of the defendants introduced a deed (Ex. 1) and a Bill of Sale (Ex. 2) and then waived their claim to damages against the defendants and rested. (tr. 4-10).

At the outset of the defendants' case demand was made upon the plaintiffs to produce the checking account, the record of the bank, of the deposits and withdrawals of Webb Brothers, consisting of plaintiffs and Wilmer Webb, deceased, of the certificates of irrigation stock, and of the checking account of Webb Brothers established on or about the 15th of March, 1946, together with the records of said partnerships. They were so ordered to do. (tr. 11-12).

After the conclusion of the trial and before the findings were made, counsel stipulated the defendant administratrix was entitled to the pos-

session of the personal property and to receive the sum of money set out in finding 19, to-wit: thirty-two caliber Special Winchester Rifle and case, one pair of field glasses and one wrist watch (if found) and to a payment of \$321.00. It was this gun, the scabard, and another gun which disappeared from the house when she was away. It was this pair of field glasses that was gone when she returned one time; and it was this flashlight and the small hand tools which disappeared out of the house when she wasn't there. After her husband went to the hospital about six or seven times every time she came back from her mother's she could see where somebody had been in the house. One time they padlocked Wilmer's trunks. (tr. 46-8).

FACTS FROM EVIDENCE

On the 21st day of July, 1945, Wilmer Webb was a single man of 42 years of age and in apparent good health. On said date he married the defendant herein, Margaret Webb. At that time she was the mother of three minor children, Allen, Linda and Mary, ages two to nine years, inclusive. Said children were then living with Margaret Webb. After said marriage she and said three children lived with their mother and Wilmer Webb in his home and were supported by him until February, 1946, when he went to Salt Lake for medical treatment; and they continued to live in said home until after the trial herein. (tr. 12-15).

The family lived happily together until October 1945.

During the first part of November, 1945, John Webb, one of the plaintiffs, complimented the defendant on the improved situation of his brother Wilmer — the deceased; and in substance said that Tick seemed much happier after he and the defendant were married, and that Tick had improved very much and looked much nicer since he was married (tr. 105).

In September, 1945, Wilmer Webb began to complain of pain and distress in his back.

From September, 1945, Wilmer Webb's illness gradually grew worse until about the 8th day of February, 1946, when it had progressed so far that he went to Salt Lake City for treatment, and he did not return thereafter to live in his home. In the latter part of October or first part of November, 1945, they occupied separate bedrooms with mutual consent. From December, 1945, until the 8th day of February, 1946, Wilmer Webb from time to time received medical attention from a doctor. (tr .12-15; 81).

From February 8, 1946, to about the 8th day of March, 1946, he lived at his niece's (Glena's) in Salt Lake City (tr. 82, —). About March, 1946, he entered the Holy Cross Hospital (Ex. A.)

Between February 28, 1946, and March 2nd or 3rd, 1946, Margaret Webb was in Salt Lake

City with her brother Arlo, at the L. D. S. Hospital, who was in a critical condition from injuries sustained in an automobile wreck (tr. 81-83, Ex. Y, R). During that time she saw her husband twice or three times and called him by phone several times (tr. 82-3).

During this time Mrs. Webb asked for the license plates on the car of her husband, and did not get them (Ex. 3). Without current license plates she drove the car from Salt Lake City to Deseret. When she arrived home she wrote the following letter to Wilmer Webb:

March 5, 1946.

DEAR TICK:

I'm sorry I didn't get a letter off yesterday, but we didn't come down here until Monday morning. The house was so cold it seemed hours before it warmed up.

How are you feeling today? I hope better. Please take care of yourself so you can soon come home.

I felt terrible about not getting up there to see you but I know my head just wasn't clear enough to find my way up there. As it was I had almost a straight shot to Highway 91 and I couldn't have found my way out any other way.

Arlo had a hard chill just before I left and Merwin couldn't leave him, to bring me.

I got home alright, didn't even see an officer.

Tick, guess I forgot to tell you that Jack fixed the float in the tank, some time ago so the pump doesn't run so often.

It isn't fair to you to have us here using your house and cream checks when you could use them so I will start looking around and see what arrangements I can

make. Then you won't have so much to worry about. Things will be better, the sooner I can get away. If there is anything I can do for you, be sure and let me know.

As soon as I get things arranged I will let you know. Follow the doctors orders carefully and get well soon.

Sincerely,

MARGARET.

(Ex. "Y," tr. 145)

The envelope, Exhibit Y-1, shows said letter was mailed on the 5th day of March, 1946, to Wilmer Webb at his niece's residence where he was then staying.

On or about the 8th day of March, 1946, Margaret Webb wrote to her husband as follows:

March 8, 1946

DEAR TICK

Just a few lines to let you know everything is fine down here, and hope you are feeling better by now, so you can soon come home.

I can't pay the light bill until I take the cream to Delta and I can't take that until I get the license plate for the car. It makes no difference to me, if you want to keep them up there, I won't ask your folks to take it for me, they are doing enough.

It wouldn't look very good for me to walk out on you while you are ill, so hurry and get well.

MARGARET.

P.S. I've had so much s - - - handed me the last 2 years a little more from you won't hurt me any.

MARGARET.

(Ex. 3 tr. 83.)

On or before the 8th of March, 1946, he had entered the Holy Cross Hospital and thereupon his niece wrote the following letter to John (Johnny) Webb, one of the plaintiffs herein, at Deseret, Utah. It is as follows:

S. L. C. Ut
Mar. 8, 1946

JACK:

I'm up here to the hospital and as Tick can't write laying down I'll tell you what he wants.

He said go to the secretary or the trunk and get the deed to the house and bring up so he can mortgage it to get some money for his hospital fee. He said he's almost certain its in the secretary.

He said to see Dudley to see if everything is legal in it and where he has to sign.

GLENA.

I'm getting Tick to sign it to so you'll know its him that wants it done.

WILLMER WEBB.

(Ex. "A," tr. 17)

The plaintiff John M. Webb received said Exhibit "A" from the post office on the 9th of March, 1946. That day he forthwith showed it to Dudley Crafts (tr. 139, 190, 208). That night he then took said Exhibit "A" to the home of Margaret Webb, and exhibited it to her (tr. 17, 139).

At that time, March 9, 1946, he then told Mrs. Webb that Wilmer had gone to the hospital, that he and Spencer would go up to Salt Lake City the next day and find out what the condition of Wilmer was and what he needed (tr. 18), that he said he wanted to look for some checks and receipts as there was some question on some of the taxes on the partnership property and that

he couldn't locate them and he wanted to go look at them; that she turned on the light in the room where the writing desk was; that she then took care of the children; that when John Webb had finished he said something that he had found some papers that would take care of the tax notice, it was not the right receipt, but he had found some that he thought would do; that when he left he didn't show what papers he took (tr. 19-20).

That on the same night, March 9, 1946, he took from the trunk of Wilmer Webb in the home of Wilmer Webb and Margaret Webb the War Savings Bonds he found there; that he later cashed the bonds and applied some of the money on the hospital expenses of his brother (tr. 139); that at the same time he also took some water certificates from the secretery of Wilmer Webb and sent them to Salt Lake City (the water certificate here involved) (tr. 142); that at the same time he took from the desk or chest where Wilmer kept his deed and papers some papers and tax notices. These tax notices or papers he delivered to Dudley Crafts the next day. tr. 142-4).

The next day or so (Mar. 10-13) J. M. Webb made that particular trip to Salt Lake City to see his brother Wilmer Webb who was in the Holy Cross Hospital and took with him Attorney Dudley Crafts (tr. 128-9). He thought it was before Exhibit "A" was written; and it was before the deed, plaintiffs' Exhibit 1 was drawn. He returned from that trip before the 13th of March (tr. 246).

On the 9th day of March, 1946, Spencer Webb heard about the Exhibit A of the defendant.

Spencer was also in Salt Lake City between about the 10th and 13th day of March, 1946, to see his brother Wilmer, and that he and Jack made the trip together—although he didn't remember definitely they went together (tr. 221-2; 224).

On the 10th day of March, 1946, Wilmer was expecting his brother Jack. On that date he wrote a letter to Margaret, his wife. (Ex. E). It was posted on the afternoon of the 12th at Salt Lake City, and is as follows:

Salt Lake City
March 10, 1946

DEAR MARGARET:

I haven't sent the license plates. Because I have been here in the Hosp. about a week and the Plats are still up to Glena and she hasent come down to often. but I will send them down when Jack's comes back I think he will be up to day. Honey dont think that the reason I havent sent them was not to keep you from using the car Please believe I have got to try and raise about \$1000 to pay the Docteurs I have 5 different Doctors and my Hosp. and my Blood transfusion they cost \$25 each, and from what I can learn I have got quite a few yet I have taken 2 all ready Honey you said would do any thing to help me while I was up here. You can by at least staying till I can come home and can help me more by staying mutch longer, for I dont love any body else. But you and ever think I have said you know I didnt mean them Please believe me If I loose you my world is all shot

You said you were going to look around Honey Please don't until I get home. I shure would of like to of had you come up. I was going to wright you a check but you didn't come up.

I haven't been feeling so good to day and I am trying to write to you only wish I could be with you instead of writting to you.

Honey hough is the kids all write I home and how or you by now. all write I hope. I just cant bring my self to geather so I guess I had better ring off for now.

I still love you so good night
as ever,

TICK.

Willmer Webb,
Salt Lake City, Utah,
Holy Cross Hosp.
Ward 2, Room R.

(Ex. "E," tr. 29)

During the 14th day of March, 1946, Margaret received the above letter at Deseret, Utah (tr. 28). On that day and on the morning of the 15th of March she answered as follows:

March 14, 1946.

DEAR TICK:

Received your letter today was glad to hear from you and hope you soon feel better. That is the only thing you should think about is getting well. Don't worry about anything down here we are getting along alright. I guess things can go along like this for a while longer at least until you are on your feet again and can take care of your self.

The chickens were laying 12 and 13 eggs a day until I came up there and when I got back I only got 6 and 7. It has taken me 10 days to get them laying right again.

Aunt Cary was down again today to see how you were.

I had a card from mother today. Arlo is still unconscious and very restless. They think they have the meningitis checked but said it might have gone to his brain. Doesn't seem like he has much of a chance. All we can do is hope I guess.

I dug that old dead tree up the other day, it sure makes the place look different.

Ruby and Melburn and La Mar were up there last Saturday. And Glenna is going up Friday with Avon's mother. I'll write mother tonight and let her know where you are. She was asking about you the other day.

Afton has gone home now, so guess I better go up home Saturday and see if Cal and Dennis need any washing done.

The children are fine. Mary hangs around my neck so much its a wonder I can get anything done.

Will write again soon and you write when you can and let us know how you are.

Sincerely,

MARGARET.

(Ex. R, tr. 114 —)

MORNING

Did Jack Bring the license plates? He didn't say when he brought the milk, and I won't ask him. If he did he will probably bring them up later today. From the way he talked you won't be able to do much for quite a while. Do you think I can learn to milk, I don't like animals but guess I can make myself do it. I think I would rather than waiting all hours for him to bring the milk, and any way I can't find anything to say to him any more. I get more in the dumps all the time.

MARGARET.

Shortly after noon of the same day, the 14th of March, 1946, the plaintiffs met with Dudley Crafts in his office at Delta, Utah (tr. 224, 226, 234, 238, 249). After discussing matters with Dudley Crafts a short time, J. M. Webb drew the following check:

DELTA BRANCH BANK	97-147-12
of Richfield Commercial & Savings Bank	
Delta, Utah, 3-14 1946, No. —	
Pay to the order of: Cash	\$445.57
Four Hundred forty five and 57/100 - -	DOLLARS
WEBB BROS.	
by J. M. WEBB.	
(last check)	(Ex. U)

He then left the office of Mr. Crafts and went to the Delta Brank Bank and cashed said check (tr. 227, 249-50, Ex. U last check attached). There has never been any money in said Webb Brothers account since then (Ex. I, Ex. U, tr.

250). On that same afternoon the 14th day of March, 1946, Defendant's Exhibit "F" was drawn tr. 250). It is in words and figures as follows:

DELTA BRANCH BANK	97-147-12
of Richfield Commercial & Savings Bank	
Delta, Utah, March 15, 1946,	No—
Pay to the order of Margaret Webb	- - - \$500.00
Five Hundred and no/100	- - - DOLLARS
J. M. & SPENCER WEBB,	
by J. M. WEBB.	

(Ex. F., tr. 250)

An examination of this exhibit shows definitely two different pens were used upon the some (tr. 251). And it appears to us that the writing of the body of it is very similar to the signature of Dudley Crafts upon the plaintiffs' Exhibit "I."

On the morning of March 15, 1946, Dudley Crafts came to the home of Wilmer and Margaret Webb between 10 and 11 o'clock a. m. He stated he represented Wilmer and Webb Brothers. He remained about an hour. Mr. Crafts, herself, and her two youngest children were present. He asked if Mrs. Webb knew that Wilmer had come over to see him about a divorce. She told him she didn't; that Wilmer had spoken of going over, but he had never told her he had gone. Crafts said Wilmer needed some money for his hospital and doctor bills, that he said "they" wanted her to get a divorce, and wanted to know what she would take as a settlement; that they didn't specify who "they" were, but she understood it was Webb Brothers; that she told him she didn't know what was a fair settlement. That he then told her most of the

farm properties were in the partnership and said that Wilmer didn't know how ill he was, and probably he wouldn't be able to work for a year, maybe a year and a half; that if "we" (Margaret and Wilmer) would sign this property over to the brothers (plaintiffs) they would pay his hospital and doctor bills, then if such time came that he was able to work again, all he would have to do would be to repay the money they had spent, and his property would be returned to him; that the plaintiffs and Wilmer were in partnership; and that he figured Wilmer would get more value out of his property by letting the brothers have it, than by trying to sell it to an outside party. Mr. Crafts finally asked how \$500 would be as a settlement. She didn't know what the \$500 was to be for as she had refused to get the divorce, but had told him that if Tick wanted to get one that was a different matter, but Tick had not told her that he did want a divorce. She did not remember anything being mentioned about her statutory one-third or her homestead rights. He also mentioned Mr. Webb had a 20-acre farm of his own south of town tr. 31-4).

On cross-examination she testified that she was upset at Mr. Crafts' conversation in view of the letter from her husband of the day before, March 14, 1946 (tr. 57); that when Mr. Crafts came was the first she had ever met him; and that Crafts explained he represented Webb Brothers, Wilmer and his brothers too, and he had represented them for years (tr. 60-1); that Mr. Crafts wanted to know what she would take for settlement, that they wanted her to go and get a divorce; that she told him, "If Wilmer wants one, that is up to him," that "I don't want one," that he (Crafts asked if I knew what

would be a fair settlement; and that she said she didn't have the least idea what a fair settlement would be; that she received the \$500 check from Mr. Crafts with the view Wilmer would have the money he needed to take care of him; that she was concerned over his health and welfare; that she didn't cash the \$500 check (tr. 62-3); that she received the check and intended to go up and see Wilmer about it. She did tell Mr. Crafts she didn't think she and Wilmer could ever get along together as long as he was as touchy as he was." (tr. 64). Crafts said that when Wilmer was able to work again he would get it (his property) back again (tr. 66); that she thought the effect of the deed she signed was what Mr. Crafts said: "that if Wilmer was able to work his farm land again, Wilmer could repay the money and could have his land turned to him." (tr. 91, 66); that she did discuss with Mr. Crafts keeping possession of the car until after school was out and turning it to Wilmer, and live in the home until then, but the leaving was upon the question if Wilmer wanted her to leave (tr. 94-5).

Dudley Crafts testified that sometime before noon, about 10 o'clock or later, on the morning of the 15th of March, 1946, he called at Mrs. Webb's home and introduced himself; that he told Mrs. Webb that Wilmer had previously come to him about filing a suit for divorce, and explained his practice; that he felt sure that if Wilmer had brought her into his office that he and she would have compromised their differences and gone back home and lived happily as man and wife; that Wilmer wanted to effect a reconciliation and go on living as man and wife more than anything else in the world; that Crafts asked if she was willing to stay in the

house and care for him during his illness and let the domestic difficulties work themselves out (tr. 193-6); and that Mrs. Webb stated that under the circumstances she was not willing to stay in the house and care for him during his illness and let the domestic difficulties work themselves out, that she had been hurt too deeply; that she didn't think they could get along unless their feelings changed; that he asked her if she was willing to get a divorce and that she said that she would not file a suit for divorce, but that she had made up her mind to pull out as soon as the present school term had ended. Mr. Crafts told her that Wilmer was greatly worried about money matters and that he had to get his property in shape for settlement of his obligations; that he asked if she was willing to make a property settlement and then go ahead, file for a divorce, and that Wilmer would then know how much property he had left to make arrangements for his care during the remainder of his life; that she said a property settlement could be arranged; that she only wanted what she brought but she would not file for a divorce. Crafts said that Wilmer couldn't get a divorce, he was in the hospital flat on his back, "and we would have to make some arrangement that he had to have some money, and a comparatively large amount immediately;" that he then told her that if she was not willing to stay there and take care of Wilmer it was his desire to transfer the rest of the property to his brothers, with the understanding that they would take care of the obligations, doctor bills and hospital expenses and support and care for him during the remainder of his life; that she said she didn't want any of his property. Mr. Crafts told her that if she executed that document she

would be signing away all her rights of every kind and nature in the property Wilmer had and that he didn't think she should do it without some consideration, without some counsel. She said she felt that he (Wilmer) should get all of his property to take care of him under his condition. Mr. Crafts said that Wilmer would not be paying the money but it would be the brothers. And she said if Wilmer would get the proper care and attention while he was in Salt Lake she was willing to sign the deed and to take the check; that he told her that he thought \$500 was a reasonable amount (tr. 192-6).

Margaret took the stand and denied that she ever in substance and effect in that conversation, or at all, said to Mr. Crafts the following: That her feelings were such that she and Wilmer couldn't get along; that her feelings were changing toward her husband; that she had made up her mind to pull out as soon as school ended; that she would not under any circumstances stay longer when school was out; that she didn't want any of his property; that all she wanted was what she brought there; that what she wanted was to use the car until she could get a new location and get settled down. She also testified that Dudley Crafts did not in substance and effect ask her in said conversation whether she was willing to wait in the home and effect a reconciliation; but what he did ask was whether or not we could get along or not. She in substance answered that they had settled all their differences before he went to Salt Lake and that as far as she was concerned they had been reconciled (tr. 256-258).

Her husband did not make a full disclosure about his property to her; there was not a full or fair disclosure of the nature or value of the

home, his interest in the 500 acres of land and twenty acres besides, or the cattle or sheep; that he never told her how many or what the value was of the home, land, cattle, or sheep; and that she never made any inquiry about that during the marriage; that when the deed was signed, she didn't discuss with Mr. Crafts whether the home was included; she had the impression the partnership property was in the deed, but the home was not. (56-7). She was not familiar with the values of these items of personal property (tr. 107).

Dudley Crafts returned that afternoon, March 15, 1946, to the home of Margaret Webb just after school was out, about 4:00 o'clock p. m. (tr. 35, 196). He met Mrs. Webb outside of her house as she was ready to leave for Holden. He told her he had the deed prepared, and the check with him; and told her they wanted to take the paper to Salt Lake City and asked if she wouldn't take it across the street to the notary public and sign it. She did so. When she returned Mr. Crafts signed as a witness on the fender of the car. The whole afternoon transaction took about three or four minutes (tr. 36, 67, 196-7).

She did not express a willingness to Mr. Crafts to take the \$500; that she took it with the view Wilmer would have the money he needed to take care of him; and that she was concerned over the health and welfare of Wilmer; that she didn't accept the \$500 as long as she didn't cash it; that she didn't intend to use it until she talked with Wilmer; and that the same day she received the check she left to go see Wilmer (tr. 63-6).

She drove to Holden that day (her mother's

home). When she got there she decided to go see Wilmer. She borrowed a tire. She borrowed \$10 from a lady to pay on expenses (tr. 37). On the way to Salt Lake City she stopped at Nephi to see her attorney, Udell Jensen (tr. 40-41).

On the morning of the 18th she had a conversation with her husband about the deed. She asked him if he knew that the home was on the deed with the other property; asked him whether she should take the check (\$500) and pay it on the home. Wilmer was still owing on it (tr. 37-39). He said that he didn't know whether the house was on the deed or not; and that he didn't know about them (plaintiffs) giving her this check, and he didn't know just what was going on. She told him that he didn't need the home while he was sick (in the hospital); but that he did need a home to come to (tr. 39).

While Wilmer was in the Holy Cross hospital Mrs. Webb was advised that he would soon be able to get out and come home; that she had no idea he would pass away so quickly, that when she signed the deed she had the idea he might live for a number of years; and even as late as June she didn't know how serious he was. It was not until about June 15th that she was advised how serious Wilmer was (tr. 71).

The value of the property of Wilmer Webb on or about the 15th day of March, 1946, was stipulated or admitted by the parties to be as follows:

Personal property specifically described in Plaintiffs' Exhibit "2".....	\$3116.00
One-third interest of Wilmer Webb in personal property described in paragraphs VII of administratrix's counterclaim and para-	

graph 4 D of Margaret Webb's counterclaim (total value \$1430.).....	470.00
Chevrolet car of Wilmer Webb.....	450.00
One-third interest of Wilmer Webb in real estate described in paragraph 4 B of Margaret Webb's counterclaim.....	2460.00
59 shares of water rights represented by certificate in Deseret Irrigation Co.....	1000.00
47 shares of water right in Delta Irrigation Co.	1786.00
Plaintiffs admit the value of the real property, parcel A of the complaint, and first description of 4 A of the counterclaim of Margaret Webb.....	4000.00
Against the latter plaintiff's counsel suggested a deduction of \$910 because Wilmer Webb held title thereto in trust for his brothers and sisters named in the administratrix's counterclaim (tr. 135)	
Defendants claim the value to be \$2000 or more than admitted by the plaintiffs (tr. 183-6).	
Plaintiffs admitted the value of second description in 4 A of Margaret Webb's counterclaim	550.00
Total	\$13,382.00 (tr. 133-36)

The Court added to the first three items above \$575.00 as the cash J. M. Webb received from the War Savings Bonds taken from Wilmer's trunk, then added an additional \$70.00 to the value of said items to make the total personalty \$4671.00 (findings 15, 16). The Court found the above water certificates to be part of the value of the real estate but apparently deducted the \$910.00 suggested by Mr. Cline as the debt of trustees holding the title to said property. Above omitted all additional value of \$3000.00 for the home place as testified to and offered by Mary Anderson (tr. 183-6).

Mrs. Webb did not know anything about the

description of real estate. The first she ever saw description of real estate was on March 15, 1946, and that she didn't understand them at all (tr. 40); that she was entirely inexperienced in farming or livestock operations, that this was the first time she was ever around a farm (tr. 53); that she didn't know that if she signed such a deed she would convey away whatever equity she had in the property (tr. 66).

In September, 1946, was the first Margaret Webb ever learned the plaintiffs' Exhibit "2" existed (tr. 40-41).

Plaintiffs have never paid anything to Margaret Webb or the estate of Wilmer Webb, except for the specific items mentioned in finding "19" above and the sum of \$212 deposited to his account on April 8, 1946 (tr. 131). Plaintiffs maintain they are the owners of the property involved herein by virtue of said exhibits "1" and "2." They admit they did not pay Wilmer anything for it; and maintain they owe the defendants nothing for it (tr. 120-21, 237, 244).

On plaintiffs claim to the car of Wilmer Webb the evidence is that the automobile described in the complaint belonged to Wilmer; that he left the key for it with his wife to use; that when she went to Salt Lake in February, 1946, she retained the possession of it until August, 1946, when the plaintiffs took it away by the sheriff, after the defendants had refused to deliver it to the plaintiffs; that the plaintiffs never paid anything for the car (tr. 41-43).

About February, 1946, when J. M. Webb went to get the license plates for said car he took the title certificate out of it and kept it after that (tr. 142). At the request of Wilmer, J. M. Webb got the license plates for the car and

gave them to Margaret. He did so when he returned from his trip to Salt Lake City and gave them to her. Plaintiffs contend by the signing of the papers the car belonged to them (tr. 42). Jack brought the license plates from Salt Lake City the night of the 14th of March, the day previous or the same day Mr. Crafts called (tr. 100). Title Certificate number 527371 issued to Jack Webb on April 30, 1946, on the car in question was upon motion of defendants delivered to and impounded by the Court. It is the certificate issued in lieu of the one Jack Webb took from the car of the plaintiff (tr. 150-51).

On plaintiffs' claim to the water stock and the bonds the evidence is: Once or twice after the marriage of Wilmer and Margaret she had observed papers of value in his writing desk, and in his trunk said papers. Prior to the night that Jack went into said writing desk and trunk (March 9), she had observed water stock there and had seen some bonds in the trunk. Wilmer had made the statement before their marriage there was \$1500.00 in War Savings Bonds there. Since Jack was there that night (March 9) she has made search for said papers and no papers of value were left there after that. She did find Exhibits "B" and "C" among the papers after that. About Christmas time of 1945 Wilmer took his water stock up to the bank at Delta to borrow money on it. That is the last she saw the water certificates. Exhibit "B" is an envelope on the face of which is a promissory note to the Delta Brank Bank of the Richfield Commercial and Savings Bank dated December 3, 1945, on which it appears he pledged certificate number 4409 representing fifty-eight shares of stock in Deseret Irrigation Company to secure the loan. It is marked paid "12-17-45."

Exhibit "C" is an envelope on the face of which is a promissory note to the same bank dated January 15, 1945, on which it appears he pledged certificate number 2853 representing forty-seven shares of stock of Delta Canal Company. It is marked paid "2-5-45." After Wilmer's death she made search for these certificates and could not find them (tr. 20-2). Said exhibits with the security was returned to the maker thereon, Wilmer Webb, when the notes were paid (tr. 78).

On the night J. M. Webb showed Margaret Webb exhibit "A" (March 9 or 10) he took the war savings bonds from the trunk of Wilmer Webb. Later he cashed said bonds and deposited the cash therefrom in his own personal account; that he applied part of the money from said bonds upon the hospital expenses of Wilmer Webb; and that there were no other payments upon the hospital expenses or paid to Wilmer by either of the plaintiffs than those set out on Exhibit "CC," "W" to "W-8" inclusive, and \$4.51 on telephone bills and \$10.00 to Dr. Clawson (tr. 139-141).

On the same night (March 9 or 10) J. M. Webb took from Wilmer Webb's secretary or trunk his water certificates, and sent them to Salt Lake City; and that he delivered the papers he obtained from the writing desk in Wilmer's home to Dudley Crafts (tr. 141-42, 144) .

Each of the brothers had approximately the same number of shares of water represented by certificates of stock, and the water therefrom was used anywhere on any of their partnership or private lands—they were all thrown in together (tr. 145-47).

Certificate No. 4475 representing 59 shares

of Deseret Irrigation Company stock which was issued March 23, 1946, in the name of plaintiffs herein was the certificate issued in lieu of the certificate which Jack took from the home of Wilmer the night of March 9. Certificate No. 2963 representing 47 shares of stock of the Delta Canal Company issued in the name of the plaintiffs on April 2, 1946, was the certificate issued in lieu of the other certificate previously owned by Wilmer. Said certificates were impounded with the clerk of the above court awaiting the outcome of this appeal (tr. 152).

After J. M. Webb took the title certificate to Wilmer's car, after he took the war savings bonds and water certificates, and after the plaintiffs came into possession of Exhibit "1" and "2" they paid the following items for and on behalf of the last illness, funeral and burial expenses of Wilmer Webb, to-wit:

4-8-46 Deposit to Wilmer Webb's account to cover Holy Cross Hospital and Doctor bills (tr. 130-31, X-1 and X-2)	\$ 212.00
6-5-46 Electric fan.....	13.20
7-5-46 Dr. John M. Coletti, in full	115.00
7-5-46 Dr. Clawson, in full.....	10.00
7-5-46 Salt Lake Gen. Hosp. in full.....	545.05
7-6-46 Tri-State Lumber, lumber and cement	9.74
7-7-46 L. N. Nickle, Tick's burial expense....	425.95
7-22-46 Hulda Dewsnup, cemetery.....	2.00
7-27-46 Dr. Dave Moffett, phone call.....	8.95
8-8-46 Dr. M. M. Wintrobe, in full.....	175.00
4-12-47 Willmer's head-stone.....	112.00

Total \$1628.89

(tr. 130-1, 126)

(Ex. W to W-8 incl. and Ex. CC)

The conveyances plaintiffs' Exhibit "1" and "2" left Wilmer Webb insolvent and unable to support or care for his wife, the children taken into his home and his widow after his death

(Ex. "G," L-1, tr. 100-102, 260-1).

During the period of January 1946 until the death of Wilmer Webb the financial support given to the defendant was meager. The average which she received from January 1, 1946, to July 4, 1946, was about \$10.00 per month (tr. 259). In January, 1946, there was sale of pigs for over \$200.00, she didn't know what happened to the money, she didn't get any of it. In February, 1946, she received two \$5.00 checks (tr. 102-3). From March 1st to the 15th she received nothing. From March 15, 1946, to July 4, 1946, she received the following amounts from sale of cream which came from Wilmer's cows:

March 21,.....	\$ 4.00
March 28,.....	3.74
April (total).....	12.07
May (total).....	11.70
June	5.60
July 1,.....	1.49
July 27,.....	2.94
August 13,.....	2.59

Total	\$44.13
	(tr. 100-102)

From the time her husband went to Salt Lake City in February and for the next several months she and the children didn't have what they needed to eat; they had the same things all the time. February 28, 1946, to March 2, 1946, when in Salt Lake City with her brother she did not have any money for taxi fare (tr. 82). The reason why she didn't have any money was that on two or three occasions when she was in Salt Lake she asked her husband for money and he didn't give her any, although she tried to press the matter. She had credit at the store (in Deseret) but no prospect of paying for it. As long as Wilmer was living he didn't want her to

run any store bills and she respected his wishes (tr. 260-1).

During the months of January to July 4, 1946, the cost of Mrs. Webb and her children to live in the home was approximately \$80.00 per month (tr. 258-9).

During this period of time (February-July, 1946) her folks would give her things to eat, and sometimes they would give her a dollar or two when they could spare it. And one of the neighbors sent her five pounds of flour when she was out and the store was out too (tr. 102).

PARTNERSHIP:

The financial situation of the partnership of Webb Brothers has never been settled. After repeated demands of the plaintiffs to produce the records of said partnership, only fragmentary accounts were produced (Ex. H, I, S, T, U, W, tr. 124).

Exhibits "H" and "I" were the ledger sheets of the Richfield Commercial & Savings Bank of Webb Brothers from December 1, 1943, to March 14, 1946, which show the amounts of the checks drawn upon the account and the deposits made to the same, together with the dates thereof. The business of Webb Brothers was to use this account as an operating account for the payment of operating expenses. Apparently the sales of the property of the partnership were often made for cash and cash deposited to the account (tr. 73-4).

Exhibit "S" is twenty-six checks in different amounts dated from April 13, 1944, which is check number "1" to July 3, 1944, check number "27," together with the statement of the bank

which shows payment of said checks and two deposits totaling \$4,899.91. Twenty-five of these checks were signed "Webb Bros. by J. M. Webb." One was signed "Webb Bros. by Spencer Webb." The notations on these checks show in part: "Payment in full for 1944 payment on contract No. 43-5," "for cleaning of seed and 100 new bag," "1944 payment on contract No. 43-6," "two canvas dams," "care of mother," "cement and lumber," "funeral expense," "funeral expense," "labor on hay fork," "parts of machinery," "repair on truck and mower," "payment in full of contract No. 43-5."

The above checks were the checks which were outgoing from the partnership account (tr. 121). No other records of the partnership for that period were produced (tr. 122).

Exhibit "T" is twenty-seven checks of various amounts dated from April 13, 1944, to October 27, 1944, together with the bank statement of the Delta Brank of the Richfield Commercial & Savings Bank which connects with the statement in Exhibit "S." These are the record of items of expenditures from the partnership for the period of July 3, 1944, to November 2, 1944. No others were produced (tr. 122). They are numbered from number "2" to number "47." Twenty-two of them are signed "Webb Bros. by J. M. Webb" and five are signed "Webb Bros. by Spencer Webb." Notations on said checks in part are: "labor in hay," "for grave service," "milking," "for bolts for truck," "mower parts," "thresher parts," "for threshing machine." There is one deposit in the amount of \$400. The last entry on said statement is November 2, 1944.

Exhibit "U" is eleven checks of varying

amounts dated from January 16, 1946, to March 14, 1946, together with the statement of the Delta Branch of the Richfield Commercial & Savings Bank which shows the record of payments of said checks by said bank. These are the records of the expenditures of said partnership for said period. Ten of said checks are signed "Webb Bros. by J. M. Webb" and one is signed "Webb Bros. by Spencer Webb." In this group of checks one in the amount of \$682.80 was missing and unaccounted for (tr. 122-3). Notations on said checks in part are: "for cement mixed," "truck coil-points," "1946 payment contract No. 43-6," "truck license 1946," "8 lb. powder, labor spraying cattle," "home clippers, "cattle 1946 grazing."

Testimony showed that the item of March 14, 1946, in amount of \$445.57 was the last item of the "Webb Brothers Partnership" account; and on that day the Webb Brothers account was closed in the bank at Deseret; and that J. M. Webb was the one who personally closed the account (tr. 124-5).

Exhibits "H" and "I" show they are the bank's records of the same items of deposits and withdrawals as are shown upon Exhibits "S," "T" and "U." In addition said "H" and "I" show that on and between November 9, 1944, and January 17, 1946, from said account there were withdrawn seventy-seven (77) separate items totaling approximately \$3,665.50; and during said period there were six (6) deposits totaling \$3587.83. The balance on hand at the beginning of the period was \$99.39 and at the end of the period \$21.72. Although repeated requests were made for the production of these records and accounts and the order was made to produce them, they were not produced.

J. M. Webb received the cancelled check and statements from the U. S. Post Office (tr. 123). As far as he knew these statements and checks were laying around his house. J. M. Webb did not remember or tell the Court what the items of deposit were on the property which produced the income (tr. 121-4). He testified his best recollection was the deposit of \$1448.05 on February 8, 1946, came from the sale of cattle (tr. 149). Probably said amount was from sale of partnership seed (check No. 59 of Exhibit DD).

The \$400.00 deposit item shown upon the back of Exhibit "H" and on the bottom of Exhibit "T" under date of November 2, 1944, are the same item. Said \$400.00 came from a personal note signed by J. M. Webb (tr. 75).

Exhibit "J" is the record of the Delta Branch Bank of the Richfield Commercial & Savings Bank. It shows the opening of the account of J. M. or Spencer Webb of Deseret with the item of \$500.00. It shows deposits of \$377.07 on March 19, 1946, and of \$1625.25 on March 29, 1946. It shows substantial withdrawals during the latter part of March 1946. For this same period no checks, withdrawals, or deposits from the account were produced, although demand was made for the same and the order of the Court entered to produce them. On the 29th day of March, 1946, there was an overdraft of \$769.47 which was taken care of the same day. It shows that on April 23, 1946, the account dropped to \$464.35. When considered with Exhibit "K," "K-1," "K-2," and "K-3," the account remained below \$500.00 until May 31, 1946. Said "K" exhibits show the account below \$500 during the following periods:

July 15, 1946, to November 12, 1946, during which time it went to nothing.

December 11, 1946, to March 12, 1947, during which time there was an overdraft of \$609.03.

The amount of \$445.57 partnership funds of Webb Brothers consisting of the plaintiffs and Wilmer Webb was placed in the partnership account of J. M. and Spencer Webb on March 15, 1946, with other money to open the account in the amount of \$500.00 (tr. 149, 230). It was this \$500 which on that day was in the bank to cash the \$500 check to Margaret Webb, if she presented it. The fourth item of deposit in this new account of J. M. and Spencer Webb was under date of June 3, 1946, in the amount of \$422.92. (Ex. V) (tr. ———). Said amount was received from Oasis Seed Plant by its check No. 264 dated 6-1-46 payable to Webb Bros. in the sum of \$422.91, which is Exhibit "BB." It came from seed crop of Webb Bros. during the fall of 1946 tr. 235-6).

Exhibit "DD" is a group of checks from the Oasis Seed Plant to Webb Bros. as follows:

Check No. 191	Endorsed
4-13-44.....\$ 4834.21	"Webb Bros. by J. M. Webb"
Check No. 227	
5- 1-44..... 658.70	"Webb Bros. by J. M. Webb"
Check No. 514	
3-29-45..... 2054.43	"Webb Bros.
Check No. 606	
5-25-45..... 310.38	"Webb Bros.
Check No. 952	
12-18-45..... 1000.00	"Webb Bros. by Willmer Webb"
Check No. 59	
2- 7-46..... 1448.05	"Webb Bros. by Spencer Webb"
Check No. 264	
6- 1-46..... 442.91	"Webb Bros. by Spencer Webb"

Total \$11,728.68

Deposits on Exhibits "H" and "I" which correspond with the above items are:

4-13-44.....	\$4241.21	short.....	\$793.00
5- 2-44.....	658.70		
3-29-45.....	1234.09	short.....	820.34
5-25-45.....	none made	short.....	310.38
12-20-45.....	1000.00		
2- 7-46.....	1448.05		

No explanation is given by the surviving partners of these shortages.

There were debts owing by the partnership of J. M., Wilmer and Spencer Webb on March 15, 1946; and some of these have been paid out of the account of partnership of J. M. and Spencer Webb (tr. 15415).

There is a substantial conflict in the evidence as to the number of the cattle and whether or not they were the cattle of the partnership. The public assessment records of Millard County on January 1, 1946, showed an assessment of ten horses, 95 cattle and 27 feeder cattle and 107 head of sheep that were assessed to "Webb Brothers" as the "owner or possessor." The tax on these animals and the particular land upon which they were assessed was \$152.04 and was to "Webb Bros." (tr. 116-18 . Said taxes were paid from the funds in the account of J. M. and Spencer Webb on November 23, 1946 Ex. "A-A"). The recollection of J. M. Webb was there were between 90 and 100 head of cattle gathered in the fall of 1945; that they were cattle of Webb Brothers, Jack, Spencer and Walmer, and that Wilmer had about 13 head tr. 171).

The recorded mark and brand was in the name of "Webb Bros." as is shown by exhibits "O" and "P." The brand was in three positions on the left side, which plaintiffs testified indi-

cated separate ownership of the animals so branded. (tr. 162-4).

The animals of John, Spencer, and Wilmer ran together during the fall of 1945 and winter of '45-'46; and the partnership crops were fed to the animals (tr. 160, 164); and the witness, John, didn't know whether there were any sales of these animals during January, February, March, and April, 1946; that he didn't keep track of the sales, and that he didn't know a thing about it (tr. 165); and that from November 1945 to May 1946 he didn't remember whether there were any sales of the animals or not; that he didn't keep track of any sales during that time if there had been any (tr. 166).

The sheep, about 100 head which were at Wilmer's in March, 1946, were put on the range and were back there again in the fall in her corral; concerning the three milch cows there was no change until after June, 1946, except the milk got a little less until August, 1946; and about September 1st John left a note and said if we'd come down we could get two quarts; that the heifers and cows are still at the place; that there were four weiner pigs there about March, 1946, and they were there until the fall of 1946 when they disappeared off the place (tr. 23-24, 49-50).

STATEMENT OF ERRORS

Come now the defendants Margaret Webb and Margaret Webb as administratrix of the estate of Wilmer Webb, and upon the record and pursuant to the appeal taken herein, hereby jointly and severally state as errors committed by the Fifth District Court of Utah in and for Millard County, prior to the trial, at the trial of

said cause, subsequent thereto and in its findings of fact, conclusions of law and decree, and upon which statements the defendants and appellants jointly and severally rely for a reversal of said decree and for a direction to the District Court to find in favor of the defendants and appellants herein and against the plaintiffs and respondents herein to vacate and set aside the findings of fact, conclusions of law and decree excepted to, and to require the plaintiffs to make a partnership accounting to the administratrix of Wilmer Webb's estate, as is more particularly set out, as follows:

1. The Court erred in denying the defendants' request for a jury trial of the causes set out in plaintiffs' complaint and upon the replevin and conversion cause of the administratrix of said estate.

2. The Court erred in excluding the offer of the testimony of the defendants' witness Mary A. Anderson, as follows:

Q I ask you whether you are ready, able and willing to buy that home?

MR. CLINE: Just a moment, your Honor, I object to that as being incompetent and immaterial. I never have understood what a person is willing to pay for a piece of property is any indication of its value MR. JENSEN: Usually the method is by experts.

(Argument.)

THE COURT: I believe the objection should be sustained. Will you read the question?

(Question read)

THE COURT: The objection is sustained.

Q And I ask you whether or not you were in March of 1946, able to have purchased that home.

A Yes sir.

MR. CLINE: I object to that as incompetent.

THE COURT: The objection is sustained.

MR. JENSEN: Now, for the purpose of the record, may it show that Mrs. Mary A. Anderson is ready, able and willing to buy and pay for the description designated as follows:

"Lots 3 and 4, Block 17, Plat "A", Deseret Survey, being part of Section 5, Township 18 South, Range 7 West,"

being the former home of Wilmer Webb, in the sum of \$7000?

MR. CLINE: I think the record may show his offer to prove that.

MR. JENSEN: We offer to prove by this witness, and the witness would testify as I have now stated, that she would so do. In other words, to make the record clear, we now offer to prove by the witness, if permitted to testify in answer to our question, that at this time she is ready, able and willing to pay for all of lots 3 and 4, Block 17, Deseret Town Survey, part of Section 5, Township 18 South, Range 7 West, Salt Lake Meridian, together with the improvements thereon and a marketable title the sum of \$7000, and that as of March 15, 1946, she would have been and was ready, able and willing to pay for that same home and improvements with marketable title the sum of \$6000.

MR. CLINE: We resist the offer. I would like to include in our objection to the offer, that no proper foundation has been laid for the reception of such evidence.

THE COURT: The objection is sustained.

3. The Court erred against Margaret Webb individually, and erred against her as administratrix of the estate of Wilmer Webb, deceased, in admitting the following conversation over the objection of the defendants that as to Margaret Webb the conversation was hearsay, and that as to the administratrix of Wilmer's estate the witness was incompetent, the Court admitted the conversation in substance as follows:

A conversation which was had between Dudley Crafts and Wilmer Webb, deceased, between the

10th and 14th days of March, 1946, in the Holy Cross Hospital at Salt Lake City and out of the presence of Margaret Webb, the substance of which was that he was requested by Wilmer Webb to effect a reconciliation with his wife and that if that couldn't be done, to make what arrangements should be made to take care of the expenses and take care of him for the rest of his life, and that Mr. Crafts suggested to Wilmer that if his wife would assume no responsibility along that line that Mr. Crafts see his brothers to see if they would not take care of Wilmer the rest of his life and pay the hospital expenses and doctor bills and take care of him as long as he lived and that he make a property settlement with them and that he convey all his property to his brothers "if he was willing to assume that responsibility". (tr. 190-2)

3a. That the Court erred in failing to grant the motion to strike said conversation for the reason that it pertained to a future agreement of support (incompetent and immaterial) and that said conversation was privileged as to the administratrix, which privilege the administratrix had not waived and that it was incompetent within the dead man's statute (tr. 190-192).

3b. The Court erred in admitting Dudley Craft's testimony over the defendants' objections to a conversation had with Wilmer Webb at Salt Lake City some time after his conversation with Mrs. Webb (March 15), on the grounds that said conversation as to Margaret Webb was hearsay, incompetent, immaterial and irrelevant and upon the objection as to the administratrix of the estate of Wilmer Webb, it was incompetent as a conversation with a dead man, and that she would not waive the privilege of an administratrix as to conversations had between the decedent and his attorney, which conversation was in substance as follows:

That he related the conversation which took place between himself and Margaret Webb substantially as he testified to it in court, that Wilmer asked what arrangements had been made with Jack and Spencer to take care of him and that he said that he had taken every precaution to see that Wilmer would be taken care of and that he had required the promise of the boys and got the promises of their wives as well that they would care for him, and that he did that after he came to the conclusion that there was no possibility of Margaret Webb staying there (in the home) or ever being his wife, and that Wilmer had just as well make his mind up to forget it, as that was all there was to it (tr. 200).

(d). That the Court erred in denying the motion of Margaret Webb individually to strike said conversation on the ground it was hearsay, incompetent, immaterial and irrelevant to her. And the Court erred in failing to strike said conversation as to the administratrix on the ground that it was incompetent under the dead man's statute and as to said administratrix it was incompetent, immaterial and irrelevant (tr. 200).

4. The Court erred in admitting the testimony of Dudley Crafts as to a conversation in his office on the afternoon of March 14, 1946, with the plaintiffs herein out of the presence of the defendant and over the objection of the defendant Margaret Webb that the same was hearsay; incompetent, immaterial and irrelevant, and as to the administratrix that it was incompetent, purporting to be self-serving declarations, and that said conversation was in substance as follows:

That Mr. Crafts told the plaintiffs that the condition of Wilmer was extremely serious, that some arrangement would have to be made for his care, that Wilmer might live a number of months, or that he might live

a number of years, but no matter what happened, he never again would be able to work, it would be likely that he would be a helpless cripple the rest of his life and some financial arrangement would have to be made to care for him as long as he lived; that it was probably Wilmer's desire to convey to them all of his property with the definite promise on their part that they would pay all of his doctor bills, hospital expenses and other obligations and that they would support and care for him as long as he lived regardless of how long he lived or how serious his condition became; Mr. Crafts asked the plaintiffs if they were willing to assume the responsibility of definitely caring for him as long as he lived and pay his bills regardless of how much it cost them. They said they were, and that they would do that; that they considered it their obligation. Mr. Crafts said that he had to have more than their promise, that he wanted them to talk it over with their wives and report back to him what they were willing to do after discussing it with their wives, but he told the plaintiffs their wives were the ones to say, they would have the responsibility of nursing him if he came out of the hospital back to Deseret. That the plaintiffs said that they would consult their wives regarding the situation, and that the plaintiffs came back late that afternoon, March 14, 1946, or the next morning and told Mr. Crafts they had consulted their wives; that Spencer's wife said she couldn't undertake it because of the small children; that Jack's wife had said she was perfectly willing to take the brother right into their home and nurse and care for him as long as he lived. And that after that conversation or about the time of Wilmer's death neither of the plaintiffs communicated with Mr. Crafts that they had changed their intention (to take care of Wilmer).

The last sentence was admitted over the same objection as above stated, with the following objection, that it was calling for a conclusion and a mere supposition (tr. 203-206).

5. The Court erred in admitting the testimony of Dudley Crafts as to a conversation in his office on March 15, 1946, with the plaintiffs herein, out of the presence of Margaret Webb and over the objection of the defendant Mar-

garet Webb, that the same was hearsay, incompetent, immaterial and irrelevant, and as to the administratrix that it was incompetent, purporting to be self-serving declarations, and that said conversation affected the property rights of defendants, and was in substance as follows:

That he told the plaintiffs that it had now been arranged where they were definitely to assume the responsibility of paying Wilmer's hospital bills and doctor bills, and that he (Wilmer) would now be ready to convey to them all of his property, that Margaret Webb had joined in that conveyance, that it was now their responsibility during the rest of his life to see that he was properly taken care of; that he told the plaintiffs he knew they would do it. The plaintiffs said there wouldn't be any doubt, they would start immediately and go to Salt Lake in the morning or the next day and try to make definite arrangements to pay his hospital and doctor bills and expenses of that kind and that if he could come out of the hospital at that time they would make arrangements to take him right into Jack's home and take care of him. That Mr. Crafts told the plaintiffs that Mrs. Webb was to live in the home until school was out, that in addition she was to have the use of the car and that there were no license plates on it; she requested the plates be put on; that Jack told Mr. Crafts that he would get the license plates and put them on the car so she would have the use of it and that Mr. Crafts told them about the arrangement to supply Mrs. Webb with Milk as they had done in the past, and that "he" said he would do it until after school was out (tr. 206-208).

6. The Court erred in admitting the testimony of Spencer Webb as to a conversation in the office of Dudley Crafts on the afternoon of March 14th, 1946, in the presence of J. M. Webb and out of the presence of Margaret Webb, that the same was hearsay as to the defendant Margaret Webb individually, and that it was incompetent, irrelevant and immaterial as to both defendants and purported to be a self-serving

declaration, and that said conversation affected the property rights of the defendant, and was in substance as follows:

Mr. Crafts said he had been to Salt Lake City and talked with the witness's brother, that he (Wilmer) was in pretty bad shape; that something had to be done to meet his expenses at the hospital and doctor bills, and Mr. Crafts asked the plaintiffs if they were willing to take on the responsibility of caring for him (Wilmer) and paying his hospital bills and doctor bills for the rest of his natural life if in return his property was deeded to the plaintiffs; that the plaintiffs told Mr. Crafts that they had worked together all their lives, that they wouldn't quit now; that they were willing to take the responsibility. Mr. Crafts asked if the plaintiffs would go home and talk to their wives and see if it was O. K. with them. That they did that. That the conversation continued the next morning, March 15, 1946, in Mr. Crafts' office with the three persons present and Mr. Crafts told them that the papers, bills of sale, were fixed "these papers mentioned where we were to take over the expense of my brother" and that these papers were drawn up where we were supposed to take the responsibility for his property and to take care of him the rest of his natural life in consideration for the property and upon the payment to her of \$500 she was to sign a release of her interest in the real estate and personal property and she should be given permission to live in the home until school was out, and that the plaintiffs were supposed to put the license on the car so that she could have the use of that until school was out and for a few days after to locate a place to move to; and that the plaintiffs gave Mr. Crafts the check for \$500 and he gave the deed to the witness (tr. 214-216).

7. The Court erred in admitting the testimony of the plaintiff J. M. Webb as to a conversation in Mr. Crafts' office on the afternoon of March 14th, 1946, in the presence of plaintiffs and out of the presence of the defendants, that the same was hearsay as to the defendant Margaret Webb individually, and that it was incompetent, irrelevant and immaterial

as to both defendants and purported to be a self-serving declaration, and that said conversation affected the property rights of the defendants and was in substance as follows:

That Mr. Crafts wanted to know if "we" were willing to take the responsibility of caring for Wilmer and take care of all his expenses and what not, and that if he should need medical care we should give him this and take care of all the expenses while he was sick and thereafter, and that we would take him and take care of him when he returned from Salt Lake; that Mr. Crafts suggested that somebody would have to take care of him (Wilmer) the rest of his natural life and that it was no more than right that we should have the property for doing so in this respect. That Mr. Crafts, as he remembered it, said he wanted something else a little more definite; that he suggested both Spencer and I talk it over with our wives, if it was agreeable to take him to the home when he came from Salt Lake City, he would probably be of no value so far as work, and that he would not be able to do any more work the rest of his life; that his back or his body was lacking in calcium and that he was unable to work any more and would probably be an invalid the rest of his life. Mr. Crafts asked us to ask our wives if they were willing to do that. That they did ask their wives, and that the next day, March 15, 1946, shortly after dinner plaintiffs and Mr. Crafts continued the conversation; that the wife (of the witness) agreed to let him bring him there to the house and was willing to take care of him the best we could; that as he remembered (someone said) after Margaret left the house the plaintiffs were to move Wilmer to the house and go right there and take care of him in that

particular house, and that she was to move out right after school was out; that she was to have the use of the car and the home until then and the witness was supposed to furnish her milk in consideration of this, and the plaintiffs were supposed to have all of his (Wilmer's) property other than "we was to pay her this \$500" (tr. 239-241).

.8 That the Court erred in making and entering the following part of its finding number "5":

"that some time prior to March 14th, 1946, the defendant Margaret Webb knew that said Wilmer Webb was seriously ill, and on March 15th, 1946, when Margaret Webb executed the deed hereinafter mentioned, she knew that he (Wilmer Webb) might be a permanent invalid, and she had reason to believe that his illness might be fatal"

in that said part is not supported by and is contrary to the great preponderance of the evidence (tr. 31-4, 39, 66, 71, 81-3, 114, 145, Ex. "Y", "E", "R").

9. The Court erred in making and entering its finding of fact number six for the reason the same is not supported by and is contrary to the great preponderance of the evidence in that it was Wilmer Webb who tried to find a way to get a divorce.

10. The Court erred in making and entering its finding of fact number "7" for the reason that the first paragraph therein is not supported by any competent evidence, but is based solely upon hearsay and incompetent evidence; and for the reason that the second paragraph thereof is not supported by and is contrary to the great preponderance of the evidence, and particularly that the evidence affirmatively

shows that Dudley Crafts, J. M. Webb and Spencer Webb met on the afternoon of the 14th day of March, 1946, in the office of Mr. Crafts at Delta and decided that all of the property should be transferred to the plaintiffs; that on the basis of getting financial aid for Wilmer Webb for medical aid and hospital expenses they secured the signature of Margaret Webb to a deed and left a \$500 check with her without any opportunity of Margaret Webb getting independent advice, and without being fully informed of her marital rights; and without knowing what the nature, kind and value of her husband's property. (Ex. "Y", "A", "E", "R", "I", "J", "F", "U", tr. 250, 114, 30-37, 39-40, 65, 71, 193-7, 222, 224, 246, 139).

11. The Court erred in making and entering its finding of fact number "8" for the reason that the same is not supported by and is contrary to the great preponderance of the evidence, and particularly the part that she knew said deed covered the real estate described therein including the home of Wilmer Webb, and that she was not laboring under the belief that it was security for the moneys to be paid by the plaintiffs for the care of and for the hospital and medical bills of Wilmer Webb, and that she had been fully informed by Mr. Crafts of the nature of the instrument. (Ex. "Y", "A", "U", "R"; tr. 17, 19-22, 36-41, 130-36, 45-6, 62-9, 100-2, 142-4).

12. That the Court erred in making and entering its findings of fact numbers "9" and "10" for the reason that the same is not supported by and is contrary to the great preponderance of the evidence, and particularly the parts that she executed the deed and accepted the \$500 check, that she was well informed of the kind, nature, extent and value of the property included in the

deed. (Ex. "Y," "A," "E," "U," "F," "G," tr. 40-41, 44-5, 56, 100-102, 133-36, 139, 142-4, 160-1).

13. The Court erred in making and entering its finding of fact number "12" for the reason that the same is not supported by and is contrary to the great preponderance of the evidence, and particularly that part which finds Exhibit "2" was not executed with the intention of depriving Margaret Webb of her right to maintenance and suport; and that there is no competent evidence of any other transfer papers made by Wilmer Webb (Ex. "Y", "A"; tr. 9, 17-21, 30-40, 65-71, 100-102, 130-1, 259).

14. That the Court erred in making and entering its finding of fact number "13" for the reason that the same is not supported by and is contrary to the great preponderance of the competent evidence introduced, and that there is no competent or substantial evidence of any valid consideration or contract for future support and maintenance of Wilmer Webb or to pay Margaret Webb \$500 for her interest in the property; and that no payment of \$500 was ever made to or received by Margaret Webb (Ex. "A," "Y," "R," "U," "F"; tr. 31-40, 58-73, 190-92, 200-10, 214-16, 238-41, ————).

15. The Court erred in making and entering its finding of fact number "14" for the reason that the same is not supported by and is contrary to the great preponderance of the evidence; and that there is no competent evidence to support any agreement between Wilmer and th plaintiffs herein for future support and maintenance including medical and hospital expenses (Ex. "A", "Y", "R", "U", "F", tr. 31-40, 58-73, 190-92, 203-6, 214-16, 238-41).

16. The Court erred in making and entering that part of finding of fact number "15" excepted to, for the reason said portion is not supported by and is contrary to the great preponderance of the evidence, and particularly in that the value of the water certificates were added to the value of the land and as to the administratrix they are personalty, and the additional value of the home over the admitted value of \$4000, to-wit: \$3000 was excluded from the values of realty therein (tr. 133-36, 183-87).

17. The Court erred in making and entering its finding number "16" for the reason that the same is not supported by and is contrary to the great preponderance of the evidence, and particularly there was no evidence of any delivery of the War Savings Bonds, but the evidence clearly established a wrongful taking and conversion of the same to the amount of \$575.00 (Ex. "A", tr. 20-1, 139, Finding 15); and further there was no competent evidence of any agreement to deliver said bonds to the plaintiffs by Wilmer Webb.

18. The Court erred in making and entering its finding number "17" for the reason that the same is not supported by and is contrary to the great preponderance of the evidence, and particularly that part which provides that the said deed and bill of sale were executed by Wilmer Webb and Margaret Webb for a good and valuable consideration (Ex. "A", "Y", "E", "R" tr. 17-21, 100-102, 130-1, 139, 203-6, 214-6, 259, 238-41).

19. That the Court erred in making and entering its finding of fact number "18" for the reason that the same is not supported by the pleadings and is contrary to the great preponderance of the evidence; and on the contrary, the

pleadings and the great preponderance of the evidence establish the following and the Court failed to find the following:

(a) That on and between the 21st day of July 1945, and the 4th day of July, 1946, the decedent, Wilmer E. Webb, was the owner of and together with his wife, during said time was in possession of the following described property in Millard County, Utah, to-wit: All of Lots 3 and 4, Block 17, Plat "A", Deseret Town Survey — being the home place of Wilmer and Margaret Webb.

which allegation was made in paragraph III of the administratrix's counterclaim and admitted in paragraph "4" of plaintiff's reply thereto (R. 20, 27). The great preponderance of the evidence establishes the same fact. (See references to statements of error, 8 to 20 inclusive).

b) That for many years prior to March 18, 1946, the plaintiffs and Wilmer Webb, deceased, were partners in the farming and livestock business; and that at all times herein mentioned prior to March 18, 1946, said partnership was in possession of the following described property located in Millard County, Utah, to-wit:

Lot 4, and the S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of Sec. 4; lots 1 and 2, the S. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, the N. $\frac{1}{2}$ of S.E. $\frac{1}{4}$, the S.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$, and S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 5, Twp. 18 S., R. 6 W. S.L.M.

The E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of Sec. 8, Twp. 18 S. R. 6 W. S.L.M.

The W. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$, and E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ S.W. $\frac{1}{4}$ Sec. 4, Twp. 18 S.R. 7 W., S.L.M.

that during said time the possession and use thereof was in the partnership, and the income therefrom belonged to the partnership, * * * * as is set out in paragraph "IV" of said counterclaim and which allegations are admitted by paragraph "4" of the reply thereto (R. 21, 27). The great preponderance of the evidence establishes the same facts. Ex. H, I, S, T, U, V, W, AA, DD, tr. 121-5, 235-6).

(c) That on or about the 15th day of March, A. D. 1946, by the mutual consent of the plaintiffs and Wilmer Webb, said partnership herein referred to was dissolved.

which allegation was set out in paragraph "VII" of said counterclaim of said administratrix and admitted by paragraph "8" of the reply thereto (R. 22, 28); and which fact is established by Exhibits 1, 2, F, H, I, U, V).

(d) That in addition to the income and the crops from the above described lands as part of the partnership assets, said partnership on or about March 18, 1946, owned the following property:

1 grain grinder	hay rakes
1 tractor	wagons
1 threshing machine	2 harnesses
1 Chevrolet truck	1 cement mixer
mowing machines	1 manure spreader

which allegation of paragraph "VII" of the administratrix's counterclaim was clearly established by the testimony of Mrs. Webb, and not disputed by any evidence of the plaintiffs tr. 51-2.

(e) That the plaintiffs have collected large sums of money upwards of \$11,728.68, during the years of 1944 to June 1, 1946 from sale of alfalfa seed, and that they received large sums of money from other sources which are not fully disclosed by the evidence; and that they have not accounted to the administratrix of the expenditures of the same; and that although requested so to do have refused and still neglect and refuse to make any accounting to the administratrix of Wilmer Webb's estate. (Ex. DD, H, I).

which are allegations of said counterclaim and are clearly established by Exhibits "H", "I", "BB", and "DD" and the testimony of all of the parties to this proceeding. (Said exhibits, par. IV, VII, of administratrix counterclaim and par.

4 and 8 of plaintiff's reply; tr. 51-2, 73-4, 121-5, 149, 230, 235-6).

(f) That Margaret Webb on the 15th day of March, 1946, did not intend to waive her statutory one-third right, title, and interest in the real property of Wilmer Webb; that Wilmer Webb and his attorney, Dudley Crafts, did not make to her a full and fair disclosure of the property of Wilmer Webb on said day; that she did not have any independent advice upon the execution of plaintiffs' Exhibit "1" until after the 15th day of March, 1946; and that said Margaret Webb did not intend to waive her homestead.

(g) That Margaret Webb and Wilmer Webb, and each of them, executed the plaintiffs' Exhibits "1" and "2" with the intention that the same should facilitate the accounting in the partnership of Webb Brothers, consisting of the plaintiffs and Wilmer Webb; that Wilmer Webb did not intend to part with all his right, title, and interest in said property; that said instruments were executed as security for the repayment of his hospital and doctor expenses; and that said property was to have been his upon the return and the payment of the sums advanced, to-wit: \$1628.89.

(h) That the court failed to find that there was no evidence to support the transfer by Wilmer Webb to the plaintiffs of the following personal property:

1. His 1938 Chevrolet Automobile
2. His war savings bonds
3. His certificates of water stock
4. His hand tools and personal belongings
5. His 4 pigs

for the reason that the same (f), (g), and (h) are established by the clear preponderance of the evidence (Ex. A, Y, R, F, 2, 3, and references under statements of error 8 to 17 incl.)

20. That the Court erred in making and entering its finding of fact number ———, for the reason that the same is not supported by and is contrary to the great preponderance of the evidence, and especially the portions thereof that find the plaintiffs are the owners of the property described in their complaint and the defendant, Margaret Webb, and the defendant,

Margaret Webb as administratrix of the estate of Wilmer Webb have no right, title, and interest therein. (See all references above).

21. That the Court erred in making and entering that part of its findings of fact number "21" to the effect that there was no sufficient evidence to justify the taking of an account in this cause; for the reason the same is not supported by and is contrary to the great preponderance of the evidence. (See partnership references above).

22. The Court erred in its conclusion of law number one, erred in its conclusion of law number two, erred in its conclusion of law number three, erred in its conclusion of law number four, erred in its conclusion of law number six, erred in its conclusion of law number seven, and erred in its conclusion of law number eight, and each and all of them, for the reason that each of said conclusions are contrary to law, based upon erroneous findings of fact and is against and contrary to the clear preponderance of evidence.

23. The Court erred in making and entering its decree in favor of the plaintiffs and against the defendants, and each of them, and the whole of said decree wherein it adjudges that the plaintiffs are the owners absolute in fee simple of the premises described in the plaintiffs' complaint; and further erred in making and entering its decree in favor of the plaintiffs and against the defendants, and each of them, wherein it adjudges the plaintiffs are the owners absolute of the personal property in the complaint and therein described. Said Court erred in decreeing that the defendant, Margaret Webb, in her individual capacity and also in her capacity as administratrix of the estate of Wil-

mer Webb take nothing by the separate counterclaims, or either of them, except as stipulated; and further erred therein in decreeing that the administratrix of Wilmer Webb's estate was not entitled to an accounting in said proceeding.

ARGUMENT

The plaintiffs in this action claim to be the owners in fee simple or absolute of the property described in plaintiff's complaint under and by virtue of a "quit claim deed," "bill of sale," oral agreement, and performance of the same. The contents of the deed are as follows:

"QUIT-CLAIM DEED

"WILMER WEBB and MARGARET WEBB, his wife, Grantors of Deseret, County of Millard, State of Utah, hereby QUIT CLAIM to J. M. Webb and Spencer Webb, Grantees, of Deseret, Utah for the sum of Ten (\$10.00) and no/100.....Dollars, and other good and valuable consideration, the following described tracts of land in Millard County, State of Utah:

"(descriptions in complaint)

Together with all water rights of whatsoever kind and nature, or howsoever evidenced, used for the irrigation of said lands, or any part thereof.

"Witness the hands of said grantors, this 15th day of March, 1946.

Signed in the presence of:

Dudley Crafts

/s/ Willmer Webb

/s/ Margaret Webb"

(Acknowledgement was by Margaret Webb on March 15, at Deseret and by Wilmer Webb at Salt Lake City on March 18, 1948.)

The contents of the Bill of Sale are as follows:

"BILL OF SALE

"Know all men by these presents: That I, Wilmer

Webb, of Deseret, Millard County, Utah, for value re

ceived, the receipt of which is hereby confessed and acknowledged, do by these presents sell, assign, and ^{transfer} unto J. M. Webb and Spencer Webb of Deseret, Utah the following personal property situated in the County of Millard, State of Utah:

“(descriptions in complaint)

“And all other livestock owned by me or in which I have an equity.

“Also, all my right title and interest in all machinery and equipment of every kind, nature and description owned by Webb Brothers, heretofore consisting of myself and the said J. M. Webb and Spencer Webb.

“Dated this day of March, 1946

Witness: M. C. Yanhi /s/ Wilmer Webb”
acknowledged in Salt Lake City March 18, 1948.

The defendants maintain the plaintiffs are not the owners of the above property or any of it, except their interest in the partnership property which is admitted. Defendants maintain Margaret Webb is the owner of a widow's one-third right, title, and interest in said estate; that the administratrix of Wilmer's estate is the owner of the balance of the property for Mrs. Webb, his sole heir, subject to the rights of the plaintiffs to be repaid the amount of expenses of last illness and funeral expenses paid by them; and subject to their possession for the partnership of Webb Brothers of the partnership assets to wind up the business and make an account. Defendant administratrix maintains the plaintiffs must close up Webb Brothers partnership, make and account to her as such, and pay over the amount found due. She claims title to the property involved herein is in plaintiffs as trustees for defendant administratrix as the purported contract for future support is sustained only by incompetent evidence, and also the purported

transfer of the same as against the wife of Wilmer Webb is without consideration and a fraud on the rights ~~to maintenance~~ of a wife and widow. She also maintains she was a creditor of Wilmer for the right to a reasonable maintenance; and the conveyances were in fraud of rights.

ASSIGNMENT NUMBER ONE: IN A LAW ACTION A PARTY IS ENTITLED TO A TRIAL BY JURY—

The plaintiffs' complaint was an action at law to quiet title to property and to oust the defendant from possession of certain parts thereof. The second cause of action set out in the counterclaim of the administratrix was an action to recover for the administratrix the possession of the personal property of the estate, and for that not returned to recover the value thereof as in an action for conversion. These are legal actions. Upon the determination of said causes, we maintain the defendants were entitled to a trial by jury. Upon equitable issues, we asked the jury be advisory to the Court.

Within four days after this case was at issue, the defendants requested a jury trial and tendered to the clerk of the court the fee. At the outset of the trial, the defendants excepted to the failure of the Court to grant a jury trial.

“Where the issues are legal issues, the fact that equitable relief may be prayed for, * * * , ‘is not sufficient to deprive either party of his rights to have the legal issues submitted to a jury.’ ”

State ex rel Hansen v. Hart, 26 U. 229; 72 P. 938, 939, as affirmed in Petty et ux v. Clark et al, 102 U. 186, 129 P. 2d 568

ASSIGNMENT NUMBER TWO: EVIDENCE OF A BONA FIDE OFFER FOR PROPER- TY IS ADMISSIBLE ON THE QUESTION OF ITS VALUE—

The evidence here offered and rejected was a bonafide offer to buy the property which was not consummated because of the litigation. Here was Mary A. Anderson looking for a home, who had made inquiry for homes and the value thereof and was ready, willing and able to pay \$7000.00 cash for the home place involved, yet the court found its value to be \$4000.00. If the rule were so archiac or hide-bound to only receive the judgment of men, instead of realities, we'd certainly have hardening of the legal arteries.

"It is said in some cases the bona fide offers to purchase land which the owner has declined are competent,***, while on the other hand such an offer does,****, involve an estimate that the land is worth at least as much as the amount offered, and is therefore relevant to show, on behalf of the owner, that the land is worth not less than such amount.

22 C. J. 179 sec. 123

"The offer of a price for property made in good faith and rejected by the owner is competent as evidence of value.

German-American State Bank v. Spokane C. R. R.
& Nav. Co. 95 Pac. 261 (Wash).

Accordingly we submitted the Court erred in its findings as to the value of the real estate involved herein to the extent the home place was worth \$3000.00 more than found by the Court, and the rejection of the evidence in this respect

was error.

ASSIGNMENTS THREE TO SEVEN: HEAR-SAY CONVERSATIONS, AND CONFIDENTIAL CONVERSATIONS ARE NOT ADMISSIBLE OVER PROPER OBJECTIONS--

The Court in this case admitted testimony by three different witnesses as to four different conversations out of the presence of the defendant, Margaret Webb, and admitted them to bind her. Two of these conversations were also outside of the presence of Wilmer Webb, and two purported to be with him, but outside the presence of any other person who now lives than Dudley Crafts. These were likewise admitted over proper objections both against the defendant administratrix and Mrs. Webb individually. Without these conversations in the record to bind Margaret Webb it appears to us there is no competent evidence to establish the consideration claimed by plaintiffs. The same is true as to the administratrix.

These were the conversations under which the Court adopted the view that a valid agreement was made by and between Wilmer Webb on one side and the plaintiffs on the other that they would pay his doctor, hospital, and medical bills and also pay for or provide all his care and attention the remainder of his days. There is no writing in the record to sustain this claimed agreement; and although Mr. Crafts testified he was hired to make sure this arrangement would be good and be carried out, yet he testified he prepared no such writing, nor did he take the signature of the plaintiffs, or anyone else to bind them to the terms of such an agreement, or what the agreement was.

At the outset it may be well to inquire of the record as to whose attorney Mr. Crafts was in

writing the plaintiffs' Exhibits "1" and "2" and in getting Mrs. Webb's signature to Exhibit "1", the deed. Over our objection he testified he did not represent either of the plaintiffs, or them (tr. 199). He ought to know. It appears to us the record indicates otherwise. First, he said he saw the letter from Glena to J. M. Webb on the 9th day of March, 1946; that Jack brought it right up to him as soon as he had received it; that was during the day time in his office (tr. 208); and that prior to March 14, 1946, when he told Jack he would like the plaintiffs to call at his office Jack had been in to see Mr. Crafts several times; that although he saw the statement in defendants' Exhibit "A" that Wilmer wanted to make a mortgage for his hospital fee, he didn't prepare the mortgage (tr. 209). Second, the result of the employment according to the plaintiffs is that they got all their brothers' property in exchange for a \$500 check (not cashed) and payment of \$1628.89 debts. Part of these debts were paid with money which came from his bonds. Plaintiffs didn't change their homes or situation whaever to carry out this agreement to carry for their brother and didn't part with any of their assets until after their brother was dead and they had possession of all of the income property.

In connection with the person whom Attorney Dudley Crafts represented our Court has announced the rule:

"The rule is general, with very few exceptions, that the declarations of an alleged agent made out of court are inadmissible to prove his agency, where the question of agency is material."

Ephraim Willow Creek Irr. Co. et al. v. Olson

et al. 70 U. 95, 258 P. 216.

But accepting the fact that Dudley Craft was only Wilmer's attorney, where does that leave us. May he disclose these conversations with his principal after the death of the principal and without the consent of the administratrix of the estate of said decedent?

"A familiar rule of the common law forbids an attorney or counselor at law, unless his client consents, from disclosing communications which have been made by the client or advice which he may have given to the client.

Jones on Evidence sec. 748, p. 1344-5.

"In the absence of statute, the privilege is permanent; it may be claimed by the client's ** administrator as against a stranger after the client's death."

ib sec 750 p. 1350.

Our statute 104-49-3 (2) U. C. A. '43 is to the same effect. Similar effect, Anderson v. Thomas, 108 U. 252, 159 P2d 142. In respect to this case it will be observed that Mr. Crafts was not asked by either of the grantors to be a witness and the evidence affirmatively shows he merely added his name after Mrs. Webb signed out of his presence.

We submit there is nothing in the record to entitle the Court to admit these hearsay conversations against Margaret Webb. The general rule should maintain " * * * , it is settled practice of courts to exclude hearsay evidence." Jones on Evidence p. 561 Civil Cases, 4th ed. Our own Court has put the rule well in a similar case:

Certain answers to questions involved surmise, hearsay and conclusions. The court did not err in not receiving them in evidence. Indeed, the court could not base any finding on such answers without indulging in speculation. The fact that the case was one in equity and required that the court 'hear all of the facts as claimed by each party in order to decide where the

equity lies', as stated by appellant's counsel, is no basis for the admission of incompetent evidence."

Hansen v. Hansen, 110 U. 222, p. 225-6; 171 P2d 392

It is upon the above incompetent conversations the plaintiffs sought to show Margaret Webb had parted with her right to a widow's one-third, her homestead, and her right to the property described in plaintiffs' complaint, as well as the additional property described in defendants' counterclaeims. We submit the admission of said conversations were prejudicial error.

ASSIGNMENTS EIGHT TO TWENTY,
AND TWENTY-TWO TO TWENTY-THREE:
FINDINGS OF FACT NOT SUPPORTED BY,
BUT CONTRARY TO THE PREPONDER-
ANCE OF THE EVIDENCE, WILL IN
EQUITY BE VACATED AND SET ASIDE;
AND CONCLUSIONS OF LAW AND JUDG-
MENT BASED THEREON WILL BE RE-
VERSED.

Did the representations of the defendants' exhibits "A", and "E", and the representations of Dudley Crafts to Mrs. Webb ring true? We submit they did not in the following particulars:

First, the representations of Glena and Tick to Margaret through John Webb that he be given access to the valuable papers to get the deed to the house so Wilmer could mortgage it was not carried out, nor attempted to be carried out, but instead was used to get water certificates of value of \$2786.00, war savings bonds of at least the value of \$550.00, or a total of \$3336.00 worth of valuable paper upon which

money could have been obtained immediately. The taking of said papers was unknown to Margaret Webb, nor was said fact disclosed to her although Jack testified he took the papers to Dudley Crafts (tr. 144). Jack Webb said the water certificates were sent to Salt Lake City. And between the 9th and the 14th day of March, 1946, Jack and Spencer Webb went to Salt Lake City to see their brother and took Dudley Crafts with them to see Wilmer. Yet when Wilmer's letter dated March 10 and mailed March 12, 1946, at Salt Lake City, arrived on the 14th it holds out to Mrs. Webb "Please believe I have got to try and raise about \$1000 to pay the Doctors I have 5 different Doctors and my Hosp. and my Blood transfusion get cost \$25 each, and from what I can learn I have got quite a few yet." The next day Dudley Crafts stated to Mrs. Webb: "that Wilmer was greatly worried about money matters and that he had to get his property in shape for settlement of his obligations" "we would have to make some arrangement that he had to have some money, and a comparatively large amount immediately."

One statement made by Mr. Crafts (according to him) was that Wilmer would not pay any part of the \$500 to Mrs. Webb. When the arrangement was made in his office to take the money from the Webb Brothers which included Wilmer on the 14th of March and offer it to her on the 15th of March, he knew or should have known his statement was not true.

Second: A look at the record fails to show one creditor that demanded any money at that time, fails to show any request for money or any payment of any money on account of any of said represented demands at or near that time. Plaintiffs submitted nothing to support said

representations. The first statement defendant found is dated April 4, 1946. Then on April 8, 1946, the plaintiffs finally deposited \$212.00 to the account of Wilmer Webb to pay on his hospital bill, part of which money came from Wilmer's bonds.

Third: The records show that by March 23, 1946, the \$1000 water certificate had been transferred to and issued in plaintiffs' names; that by April 2, 1946, the \$1786 water certificate had ben transferred to and issued in the name of the plaintiffs; that Wilmer's war bonds were cashed for at least \$575.00 and part of it went to pay on the hospital bills.

Said representations of need for money by Wilmer Webb and his attorney were the primary means by which the signature of Margaret Webb was obtained upon the deed. On the money representations we submit the great preponderance of evidence in said financial representations were not true.

Up to the 18th day of March, 1946, Wilmer and his brothers were partners closely and confidentially associated. But neither plaintiff disclosed anything of his or their dealings with the property or even invited Mrs. Webb to go to Salt Lake City to see Wilmer after he received defendants' Exhibit "A" (tr. 245, 219-22).

We have in the statement of facts pointed out those which show that Mrs. Webb was not advised of the property holdings, the value, nature or extent thereof. So not only was she not advised, but the information given was misleading.

"Where a wife did not know what property her husband had, and did not know the value of the same, a relinquishment by her of her one-third interest in his

real estate, given her by Revised Statutes 1898, section 2862, in consideration of \$225, where the actual value of his real estate was \$7,000, was so inequitable as to render the transaction unenforceable."

In Re Bell's Estate, 29 U. 1; 80 P. 615
Re Cover's Estate 204 Pac. 583 (Calif.)

The facts as testified to by Mr. Crafts are substantially as the facts in the following case, wherein the chief witness testified it was distinctly understood that the wife was to leave and from that time forward she was no more to be the decedent's wife:

"The agreement, therefore, being one calculated or intended to facilitate the securing of a divorce a vinculo matrimonis, is contrary to the policy of the law and is void. The law is well settled that courts will refuse to enforce any contract, as against public policy, which is intended to promote the dissolution of the marriage status."

Palmer et al v. Palmer, 26 U. 31; 72 P. 3

In this case from the evidence, it appears there was a confidential relation between Wilmer Webb and his wife, Margaret. His letter professed the greatest of love and admiration for her as did the message by his attorney to her. Her letters and conduct showed a marked respect and steadfastness to him. She stayed at their home without the friendship of the plaintiffs and without appreciable support for months, in accordance with his request to her. At his request—not hers—she signed the deed by which the plaintiffs seek to keep all.

A fiduciary dealing with his principal is under duty to advise the latter to seek independent counsel whenever such counsel would be of real assistance to the principal in deciding whether to enter into the transaction.

Peyton v. William C. Peyton Corp.

..... Del., 7 A. (2nd) 737
syl. 3, 123 A.L.R. 1482

Whenever independent advice is indispensable in

order to sustain a transaction between a fiduciary and his principal, it is not enough that the fiduciary urge his principal to obtain such advice, but the transaction will be avoidable, at the election of the principal, if such advice is not, in fact had.

supra syl. 4 Peyton v. Peyton Corp.

Yordi v. Yordi (1907) 91 P. 348 (Cal.)

The rule holding one signing an instrument to be conclusively bound thereby is inapplicable to a transaction prompted by a fiduciary with his principal, by which the latter, through contradictory and colorable expressions in the contract is swaged into a position of inconvenience and disadvantage.

Peyton v. Peyton Corp. syl. 16 supra

One examines the conversation of Mr. Crafts with Wilmer Webb which occurred between the 10th and 13th of March, 1946, as testified to over defendants' objections, and it cannot be found therein that there was any direction to or authority given Crafts by Wilmer Webb to transfer his property to his brothers. That was the suggestion of Dudley Crafts to Wilmer Webb, to which suggestion there was no answer of Wilmer Webb. Pursuant to that conversation, Mr. Crafts said to Mrs. Webb: "That she knew and I knew Wilmer was extremely ill and he had requested me to come down there to please talk to her for the purpose of trying to effect a reconciliation, there wasn't anything in the world he wanted as much as to effect a reconciliation with her and go on living as man and wife." That was the purpose of his employment by his own statement. Did he follow the employment? or proceed beyond the scope thereof?

Without any knowledge or information whatsoever to Mrs. Webb of any kind in the early afternoon after dinner on the 14th day of March, 1946, Attorney Crafts called the plaintiffs to his office in Delta.

The conversation didn't progress very long before John Webb and Spencer Webb agreed that the partnership should be immediately ended; that they would take the money of the partnership therein and place it in their own joint account. Accordingly John went to the bank before two o'clock that afternoon, March 14, 1946, and withdrew all of the partnership funds of Webb Brothers (Ex. "U"). From the hearsay incompetent conversation of said three all of them then knew Wilmer had an incurable disease; that his vertebrae was dissolving and going into the blood stream and he would be a helpless cripple the rest of his life and never again be able to do work (tr. 235, 204-7). Mr. Crafts said some financial arrangement would have to be made to care for him as long as he lived and

"it was probably his desire to convey to them all of his property, transfer it to them, with the definite promise on their part that they would pay all of his doctor bills, hospital expense and other obligations, and that they would support and care for him as long as he lived, regardless of how long he lived or how serious his condition became".

Mr. Crafts instructed them further to consult their wives (tr. 204-7). At the same time they told Mr. Crafts they were willing to take a deed to all of Wilmer's property and his personal holdings; and that without talking or consulting Wilmer's wife about that matter.

We submit that Mr. Crafts did not in his conversations with Mrs. Webb on the 15th day of March, 1946, make a full and fair disclosure of the nature, kind, and value of the property of Wilmer Webb, his situation, or his negotiations with the plaintiffs, and what he proposed to do with Wilmer Webb's property.

When Mr. Crafts returned that afternoon, March 15, 1946, and met Mrs. Webb outside of the house as she was about to leave, she merely examined the wording of the above deed and did not pay any attention to the descriptions therein. She knew nothing about descriptions. Her examination of the deed did not disclose that it was to be used as a basis for any care and maintenance of Wilmer Webb or to pay his expenses of last illness and funeral expenses; and at that time, Mr. Crafts did not inform Wilmer's wife that a bill of sale would be taken upon practically all of the personal property of Wilmer Webb which the plaintiffs had not already taken into their possession.

Mrs. Webb tried to follow that part of Mr. Crafts' advice to give the matter consideration and to get counsel. As soon as school was out she started for Holden, for her mother's place. But Mr. Crafts intervened and wanted the deed signed. Upon his urging the necessity of signing immediately, she did. But she still sought advice. First she had to borrow a tire, then find a woman who would loan her \$10.00 so she could go to see her husband at Salt Lake hospital. Two or three days later, Mrs. Webb was on the way to see her husband at the hospital in Salt Lake City. She then consulted Udell R. Jensen, an attorney. She then continued on to Salt Lake to see her husband.

On the 18th of March, 1946, she spent the day with her husband. She exhibited the \$500.00 check to him and talked to him about the deed; and her only answer was that he didn't know about whether the home was in the deed or not, and what was going on down there, and not to bother anything about the check, to go home and await his return. She returned to her home

and did as her husband suggested.

The testimony of Margaret as to the substance of the conversation between herself and Attorney Crafts clearly shows her understanding of the conversation with him was that she would be willing to do anything to see that Wilmer was adequately and properly taken care of; and that her intention was that she was signing the papers to the plaintiffs that they could better run the partnership business; that the property would be Wilmer's when he returned and paid off the amounts they paid to take care of him; and that she had no thought or intention that the conveyance was an absolute one or that she was giving up her widow's one-third in the event Wilmer passed away, which she did not contemplate at that time.

It will be remembered that Mrs. Webb spent practically all of the day of the 18th of March, 1946, with her husband in the hospital at Salt Lake City, Utah; that she cared for him during the day, fed him his lunch, asked him about the above deed, and exhibited to him the defendants' Exhibit "F"—a \$500.00 check. The plaintiffs testified that on that very day and afternoon they saw Wilmer Webb and that he signed the deed; the bill of sale was admitted without any showing of the signature or who was present, but was undoubtedly signed at the same time. Wilmer Webb on that day did not tell his wife that he had or was going to sign such a deed. He did not disclose to her that either of said instruments would be used as the basis of any asserted agreement for Wilmer's care and support, and there is nothing in the record to disclose that at the time he signed the deed and bill of sale that he knew or that it was explained to him that they would be used for the transfer

of his property to his brothers and leave Mrs. Webb without any inheritance if Wilmer died; nor is there anything in the record that he intended them to be so used.

Sometime after the 15th of March, when Mr. Crafts again called to see Wilmer Webb, Wilmer did not know that said instruments were going to be used or claimed as a basis for such transfer and conveyance of his property to his brothers. From the hearsay incompetent conversation between Mr. Crafts and Mr. Webb after said instruments had been signed, it appears that Wilmer "wanted to know just exactly what had occurred when I visited Margaret down there * * *. And then he wanted to know more about the arrangements that had been made with Jack and Spencer, to take care of him." The answer of Mr. Crafts was that he had "used every precaution I knew of to see that he would be properly taken care of I hadn't done it upon the promise of the boys alone, I knew they would do it, but I had consulted the boys' wives and got their promise as well, they promised they would care for him. I came to the conclusion, after talking with Margaret there was no possibility of her staying there, or ever being his wife, he just as well make up his mind to forget about it, that is all there was to it." The closing phrase "That is all there was to it" means to us that Mr. Crafts had convincingly and conclusively so informed Mr. Wilmer Webb that there would be no reconciliation and that the arrangements which Mr. Crafts had made were going to stand.

It will be observed that the above conversation is entirely void of any agreement, consent or knowledge upon the part of Wilmer Webb that the arrangements made by Mr. Crafts were

satisfactory to him or were what he had authorized or intended.

Now what happened after that conversation? The testimony of the plaintiffs was to the effect that Spencer Webb could not assume to care for Wilmer if he came out of the hospital. The testimony of J. M. Webb on cross-examination was that he did not have facilities to care for Wilmer, but they had in mind taking Wilmer to his own home when Mrs. Webb vacated. There was no preparation made and nothing was done to care for Wilmer Webb in any way different or in addition to what the situation was before March 15, 1946. The record discloses that on March 14, 1946, the plaintiffs and Mr. Crafts were advised that Wilmer's illness would be fatal, and the only reasonable inference from the same is that he would be cared for in the hospital where he was until his death. There were no payments of debts or expenses, as has been pointed out, until after he death of Wilmer Webb. Accordingly, we submit upon the question of the consideration for the instruments:

FIRST, there is no competent evidence in the record to sustain any oral agreement that the plaintiffs would care for Wilmer Webb during the balance of his life or pay his hospital bills or expenses of last illness after he passed away.

SECOND, that there is no substantial evidence in the record that any agreement for care and support during the balance of Wilmer's life was authorized to be made by him or was made and entered into by him.

THIRD, that the great preponderance of the evidence is that the arrangements made by Attorney Crafts for execution of the instruments

was not upon a full or fair disclosure, and as to Mrs. Webb was entirely inadequate.

In the *Re Cover's Estate* below the settlement consideration was property of \$14,000 value. The husband was worth about \$200,000; and where the contract was entered into without ~~the failure for~~ making the disclosure *of the* estate, or the rights which by such agreement she surrendered it was held the settlement was obtained by presumptive undue influence; and the fact her husband was reputed to be a man of wealth did not impute to her knowledge of the value and character of his estate to excuse the failure for making the disclosure.

"A husband in dealing with wife must act in good faith, and to avoid the presumption of undue influence emanating from the procurement of any advantage over her must make a full, and fair disclosure to her of all that she should know for her benefit and protection concerning the nature and effect of the transaction, or must deal with her at arm's length, as he would with a stranger, advising her as to her rights in the premises.

Re Cover's Estate, 204 Pac. 583, (Calif.)

It will be remembered that Margaret Webb was not supported by Wilmer Webb during the last five months of his life and that \$80.00 per month was the reasonable amount necessary to support his wife and family, so that at the time of signing exhibits "1" and "2" she was a present and future creditor of Wilmer Webb and his estate for the maintenance of herself and her children which by now amounts to more than \$1500.00. With the record of no payments made to her, or arrangements made for her support it appears to us the bill of sale and deed were fraudulent as to her right of support and maintenance.

We desire to call to the Court's attention the

reasoning of this Court in a recent fraudulent conveyance case which appears to be pertinent law when applied to the facts of this case. It was there considered that where there was no fair consideration given and where no actual change of position or any difference in the change of possession of the property was shown, the fact that there had been a deed and a bill of sale and a manipulation of funds was not sufficient to avoid the same being a fraudulent conveyance, and the Court so held:

- *"Bankruptcy.*—In bankruptcy trustee's action to recover land conveyed and personally sold by bankrupt to his wife on ground of fraud on his creditors, evidence warranted finding of lack of fair consideration for deed and bill of sale, so as to render them invalid, even if there was no actual fraudulent intent. Utah Code 1943, 33-1-1 to 4."

Cardon v. Harper et al, 106 U. 560; 151 P. (2d) 99

"While there is some authority to the contrary, many courts have taken the view that the general rule requiring judgment is abrogated by a statute which, as in the case of Uniform Fraudulent Conveyance Act, sec. 1 (U.C.A. '43, 33-1-1 to 4) defines a creditor as a person having any claim, whether matured or unmatured, liquidated, absolute, fixed, or contingent, and defines the word 'debt' as including absolute, fixed, or contingent*-*"

Petty v. Petty et al 164 A.L.R. 520; 168 P (2d) 818 (Ida.)

In the above case, the right of a child to set aside a conveyance on the duty to support, was upheld. The same rule was announced as to the right of the wife in *Murray v. Murray*, 115 Cal. 266; 47 P. 37; 37 L.R.A. 626, as annotated above.

A similar rule is announced:

"It is generally held that a wife, in respect of her right to maintenance or alimony, is within the protection of

statutes or the rule avoiding conveyances or transfers in fraud of creditors or other person to whom the maker is under legal liability. It seems this is so irrespective of whether the conveyance or transfer was made before and in anticipation of a suit by the wife for divorce, or for maintenance or alimony * * *

26 Am. Jur. 815, sec 197

That as between a husband and wife, her right to be maintained from his property, especially if the husband views the situation that a divorce is pending, is well settled:

"As in Fraud of Support, Maintenance, or Alimony,— It is generally held that a wife, in respect of her right to maintenance or alimony, is within the protection of statutes or the rule avoiding conveyances or transfers in fraud of creditors or other persons to whom the maker is under legal liability."

26 Am. Jur., Homestead, Sec. 197, p. 815

On the question of whether the conveyance is fraudulent or not when connected with future support of the grantor, we observe the following:

"Future Support.—Ordinarily, a transfer of property in consideration of future support is held to be invalid, at any rate, as to existing creditors whose rights are prejudiced by such transfer. Thus, the transaction must be held to have been illegal where it appears that the transferor or grantor did not retain sufficient assets to pay his debts, as where he executed a conveyance of all his property."

24 Am. Jur., Fraud and Deceit, Sec. 35, p. 193

According to the ancient statutes of fraud, such an agreement is not a valuable consideration:

"An agreement on the part of the transferee to support the transferor during the lifetime of the latter is not, according to some authorities, a valuable consideration within the purview of the Statute of Elizabeth. Other decisions hold that the transaction is sustainable against the transferor's creditors."

24 Am. Jur., Fraud and Deceit, Sec. 23, p. 182

In this situation, there is no doubt that the health of the grantor was poor; that he was suffering from a serious ailment and knew it; and that his opportunity to deal was not good. Under those circumstances, the consideration is inadequate to support the conveyance:

“The grantor, or those claiming under him, may show that under all the circumstances, and in view of the unnatural character of the transaction, and the value of the property conveyed, the agreement to support is so inadequate a consideration that a prima facie case of undue influence or fraud is thereby established; especially where the grantor was weak mentally and physically.”

Boardman v. Lorentzen, 52 L.R.A. (N.S.) p. 480 Anno.

“In cases of postnuptial contracts, as in antenuptial contracts, for the release of dower it is not enough that the husband granted property to the wife equal to or exceeding the value of her dower interest; it must be proved that the postnuptial agreements must be equitable and must be voluntarily made by the wife free from the influence of deceit or fraud. Hence the provision in lieu of dower must be adequate, fair, just, and equitable to the wife in every respect and it must be entered into with competent, independent advice and full knowledge of her interest in the estate and its approximate value. Such a contract may be set aside by the wife on proof that she was influenced by fraud or deceit or on a showing of a lack of consideration.”

17 Am. Jur., 728, sec. 72

“The presumption is that the contract is not fairly made when the wife agrees on the verge of her husband’s death to take at his death property greatly less in value than her share as fixed by law where no contract is made.”

Redwine v. Redwine, 160 Ky. 282; 169 S. W.

864 ib. p. 728 nt. 1

ASSIGNMENT NUMBER TWENTY-ONE:—

AN ACCOUNTING WILL BE ORDERED TO ADMINISTRATRIX OF DECEASED PARTNER'S ESTATE—

The pleadings in this case establish the fact that there was a partnership of the plaintiffs and Wilmer Webb; that they dissolved the partnership on or about the 18th day of March, 1946; and that the plaintiffs have not accounted to the administratrix of Wilmer Webb's estate. We have submitted much documentary evidence and there is much oral evidence adduced to establish that there never has been an accounting by and between Wilmer Webb and the plaintiff or the plaintiff and the administratrix of Wilmer's estate. We have requested that the Court order the plaintiffs to account as the records herein show they have come into possession of all of the personalty, realty, the cash, and the credits of Wilmer Webb, deceased, and are in possession of all of the records. No agreement or evidence was adduced to show why the accounting should not be made.

In this connection we call the Court's attention to the fact exhibits "1" and "2," the deed and bill of sale, do not purport to transfer Wilmer Webb's right to payment for said property, to his cash, water stock, bonds, accounts receivable, nor to his share in an accounting upon settlement of the partnership.

The Court denied our request to an accounting.

"The right to an account of his interest shall accrue to any partner or his legal representative as against the winding-up partners or the surviving partnership or the persons or partnership continuing the business, at the date of the dissolution in the absence of any agreement to the contrary."

"Consequently, it is the duty of surviving partners to render an account of the performance of their trust to the personal representatives of the deceased partner, and to pay to them the share of such deceased member in the surplus of firm property, whether it consists of real or personal assets."

40 Am. Jur. Partnership sec. 306, p. 342

"In partner's action for accounting against executors of deceased partner, on proof that partnership existed,, plaintiff would be entitled to accounting during its existence, even though exact dates of its inception and dissolution were not made certain."

Kimball v. McCornick et al, 70 U. 189; 259 P. 313

CONCLUSION

Based upon the record herein submitted to this Court, we submit the defendants were denied a most sacred right of trial by jury upon the law causes of action herein which involved the determination of whether there was consideration for the transfers to the plaintiffs; that no substantial competent evidence was admitted herein to suport the claimed oral contract of support and the performance thereof; and upon said issues the cause should be reversed. We further submit that upon the equitable counterclaims, the great preponderance of the evidence herein does not support the findings of fact; that the findings of fact, conclusion of law, and decree made and entered by the District Court herein from which this appeal is taken, should be vacated and set aside, and the District Court should be directed to make and enter its findings of fact, conclusions of law, and decree in favor of the defendants and against the plaintiffs upon the following equitable issues:

(a) That the deed and bill of sale were executed as a matter of convenience in the wind-

ing up of the partnership of Webb Brothers and as security for the return of the property upon payment of \$1628.89 to the plaintiffs; that said instruments be set aside and all of the property therein be determined to be the property of the Estate of Wilmer Webb, subject to said debt and administration thereof. That if this Court in equity should not so find, that in such event it should find: (b) That a full and fair disclosure of the status of Wilmer Webb's estate was not made to Margaret Webb; that she did not know the status thereof; and that she did not waive or intend to waive her widow's statutory one-third right, title, and interest in the real estate of Wilmer Webb, and that she is entitled to her statutory one-third interest therein and a homestead. (c) That it was fraudulent as to her right of support and maintenance from Wilmer Webb that all of his estate was included in said deed and bill of sale herein; and that she is entitled to reasonable support from January, 1946, until date hereof out of the personal estate included in the bill of sale, and the real estate included in the deed. (d) That there is no evidence to support the finding of the Court that any transfer was made to the plaintiffs by Wilmer Webb of the following:

1. His 1938 Chevrolet automobile
2. His war savings bonds
3. His certificates of water stock
4. His hand tools and personal belongings
5. His 4 pigs

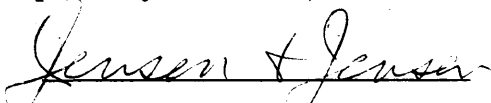
And the Court should further find:

That the defendant administratrix is entitled to an accounting of the partnership of Webb Brothers consisting of plaintiffs and Wilmer Webb, and thereupon to order payment to

Margaret Webb, administratrix, the amount due.

Dated this 16 day of December, 1948.

Respectfully submitted,



JENSEN & JENSEN,

Attorneys for Defendants and

Appellants.



Received copy this ——— day of December,
1948.

Attorneys for Plaintiffs.