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Nolan J. Olsen; Attorney for Respondent.
Joseph R. Howell; L. J. Barclay; Attorneys for Appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

VANDA HOLMAN NAYLOR,

Plaintiff and Respondent,

-vs-

Case No. 14680

MELVIN CHARLES NAYLOR,

Defendant and Appellant.

BRIEF OF APPELLANT

Appeal from the judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, in favor of Plaintiff and Respondent and against Defendant and Appellant, dated May 25th, 1976.

Honorable Stewart M. Hanson, Judge

FILED

NOV 1 - 1976

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

VANDA HOLMAN NAYLOR,

Plaintiff and Respondent,

-vs-

Case No. 14680

MELVIN CHARLES NAYLOR,

Defendant and Appellant.

BRIEF OF APPELLANT

NATURE OF THE CASE

This is an appeal from the judgment of May 25, 1976 in which the Court gave ½ of the real property and the water stock connected therewith to the Plaintiff and Respondent, and the other ½ to the Defendant and Appellant. That on or about the month of July or August, 1956 the Plaintiff and Respondent employed the firm of Barclay and Barclay to obtain a Decree of Divorce for her. Defendant and Appellant signed a waiver of appearance. That all of the personal property had been divided and agreed as to the value between the parties. That the parties owned one acre of land the description of which is set forth in the complaint, the Findings Of Fact, and Conclusions Of Law and Decree Of Divorce. That upon September 19, 1956 Plaintiff and Respondent was granted a Decree of Divorce from the Defendant and Appellant, based upon the waiver of appearnace signed by the Defendant and Appellant. The Plaintiff and Respondent brought to the office the legal

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description of the property that she was to receive, and the description of the property that the Defendant and Appellant was to receive, including the legal description of the property that he purchased from Plaintiff and Respondent. Plaintiff and Respondent brought to the office a Memorandum of what the parties had agreed upon as to the operation of the remaining property, which was known as the business property on South State Street, Salt Lake County, State of Utah. The Plaintiff and Respondent was advised by her Counsel, L. J. Barclay, to wait until the Decree of Divorce became final before signing the Warranty Deeds, Bills of Sale and agreement as to the operation of the business property. This was agreed to by both parties. Both parties agreed to the division of the real estate, that the lot to the West of the acre was valued at $2,000.00 and that either party could buy the other out. Plaintiff and Respondent chose to sell her interest to Defendant and Appellant for the sum of $1,000.00. The next lot to the East had a duplex on it in which the Plaintiff and Respondent lived in and rented the other side. The next lot to the East was taken by the Defendant and Appellant. It was agreed between the parties that both lots were of equal value. The one that Plaintiff and Respondent obtained and the one that Defendant and Appellant obtained. The remaining property East of the 3 lots was business property on South State Street, Salt Lake County, State of Utah. The business property was to be held and operated jointly. That upon June 26, 1957 the Plaintiff and Respondent signed a Warranty Deed to Defendant and Appellant covering the lot that he was to receive, plus the description of the lot at the West end of the acre, that Plaintiff and Respondent sold her interest to the Defendant and Appellant. That the said Warranty Deed was notarized by Lawrence J. Barclay and the Witness thereon was David Barclay. That the said Warranty Deed was Recorded in the Office of the Recorder for Salt Lake County, State of Utah upon July 16, 1957. That Defendant and Appellant has been paying the taxes on the two parcels of land ever since the 26th day of June 1957. That upon June 26, 1957 Defendant and Appellant signed a Warranty Deed to the property on which the Plaintiff and Respondent Duplex was located, which the Plaintiff and Respondent Recorded in the Recorders Office for Salt Lake County, State of Utah upon the 22nd day of August, 1957, and has been paying taxes on the said property ever since June 26, 1957. The Warranty Deed was [illegible] Lawrence J. Barclay and the Witness thereon was David Barclay. That each

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party owned a ½ interest in the business property which was located on South State Street, Midvale, Salt Lake County, State of Utah, and each party paid ½ of the operating expenses, ½ of the taxes and received ½ of the profits, if there were any. Nothing was said by the Plaintiff and Respondent, whatsoever, about the foregoing transactions until January 3, 1975, when the Price Rentals, Inc., a Utah Corporation bought the entire acre. Plaintiff and Respondent gave a Warranty Deed to Price Rentals, Inc., a Utah Corporation for the property contained in the Warranty Deed of June 26, 1957 given to her by Defendant and Appellant, plus the ½ interest in the business property on South State Street, Midvale, Salt Lake County, State of Utah. Defendant and Appellant gave a Warranty Deed to Price Rentals, Inc., a Utah Corporation upon January 3, 1975 for the property as set out in the Warranty Deed from Plaintiff and Respondent to Defendant and Appellant dated June 26, 1957, plus his undivided ½ interest in the business property located on South State Street, Midvale, Salt Lake County, State of Utah. It had been agreed by and between the Plaintiff and Respondent and the Defendant and Appellant, that Plaintiff and Respondent should receive 29 and ½ per cent of the net sale of the 1 acre of land. That the Defendant and Appellant was to receive 70 and ½ Per cent of the net sale price of the 1 acre of land. That Plaintiff and Respondent has already received $25,000.00 plus her interest in the water stock, which she sold. Based upon the agreement between the Plaintiff and Respondent and Defendant and Appellant that Plaintiff and Respondent was to receive 29 and ½ per cent of the sale price. Plaintiff and Respondent would be entitled to $29,352.50 minus the $25.000.00.

That the Divorce complaint of the Plaintiff and Respondent filed September 17, 1956 contains the following in paragraph 5. b. "That the parties hereto have to their mutual satisfaction made division between themselves of all personal property owned by them". That the Findings Of Fact in the Divorce Case of the Plaintiff and Respondent was signed September 19, 1956 contains in paragraph 5. b. the following, "That the parties hereto have to their mutual satisfaction made division themselves of all personal property owned by them."

That the plaintiff and Respondent was to receive the following personal property at the agreed value thereof.

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	VALUE
1. Inside Furniture	$332.00
2. Buick Automobile	$150.00
3. Kenmore Range	$ 50.00
	$532.00

That the Defendant and Appellant was to receive the following personal property at the agreed value thereof:

	VALUE
1. All Outside Equipment	$435.00
2. All Barbering Equipment	$280.00
3. All Fishing Equipment	$ 35.00
4. Portable Clothes Closet	$ 27.50
5. Rug	$ 50.00
	$827.50

That there was a difference of $295.50, the difference of what Plaintiff and Respondent received and what the Defendant and Appellant received. The parties agreed to cut the $295.50 in half, and each receive the sum of $147.75.

That the office of Barclay and Barclay never did, at any time, represent the Defendant and Appellant in the Divorce action of the Plaintiff and Respondent. Plaintiff and Respondent brought to the office the descriptions of the real property and to whom it was to be Deeded to. Plaintiff and Respondent brought to the office of Barclay and Barclay 2 written memos as to the personal property and the value thereof and to whom it should go. Plaintiff and Respondent brought to the office of Barclay and Barclay a written memo containing the agreement of the parties as to the operation of the business property located at South State Street, Midvale, Salt Lake County, State of Utah. That a written agreement be prepared for her signature, and the signature of the Defendant and Appellant, which was done. It was from the descriptions of the real property, the lists of the personal property and the memo of the operation of the business, that 2 Warranty Deeds were prepared, 2 Bills of Sale were prepared and a written Agreement was prepared. The Warranty Deeds, the Bills of Sale and the Agreement were signed by the Plaintiff and Respondent and the Defendant and Appellant upon the 26th day of June, 1957 at the office of the Attorneys and Counselors at Law for Plaintiff and Respondent. Both parties were present in person.

L. J. Barclay, of the firm of Barclay and Barclay delivered to Plaintiff and Respondent in the month of August, 1956 $1,000.00 for the lot at the west end of the One Acre lot, and

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$147.75 as the difference in the value of the personal property, making a total of $1,147.75. Plaintiff and Respondent refused to sign any papers, whatsoever, until she received the $1,147.75 from L. J. Barclay, her Attorney and Counselor at Law.

DISPOSITION IN LOWER COURT

This matter came on for trial upon the 14th day of May, 1976 at the hour of 10:00 o'clock A.M. before Judge Stewart M. Hanson. Just prior to the opening of the Court Nolan J. Olsen, Attorney and Counselor at Law, for the Plaintiff and Respondent was in the office of Judge Stewart M. Hanson for what reason, I know not. Sufficient is it to say that when Judge Stewart M. Hanson took the bench he stated I know all about the case. At that time he held in his hand the file of the original Divorce action to-wit: Vanda Holman Naylor, Plaintiff -vs- Melvin Charles Naylor, Defendant; Civil Case No. 109,889, which contained a description of the only real estate that the parties, owned one acre plot.

At that time Judge Stewart M. Hanson asked L. J. Barclay the former Attorney in the Divorce action of the Plaintiff and Respondent what he was doing in this case, which L. J. Barclay responded that he was here to protect the integrity of his office, his deceased Brother David Barclay and himself. That he knew all about the entire transactions, to which Judge Stewart M. Hanson responded I know all about the case and you do not have to stay. You can go back to your office and take care of your Legal work, to which L. J. Barclay responded I am going to stay and be a witness as to what really happened. Judge Stewart M. Hanson then said there should be an exclusion of the witnesses. To which Nolan J. Olsen Counsel for the Plaintiff and Respondent stated I want the witnesses excluded and I was put out in the hall.

Isabel Barclay, Secretary for L. J. Barclay, remained in the Court room because she was not a witness. Judge Stewart M. Hanson stated Isabel take him back to his office or to dinner but get him out of here. To which Isabel Barclay stated no we are going to stay here we have to much at stake.

Counsel Joseph R. Howell was taken by surprise when Counsel for Plaintiff and Respondent admitted she had signed the Warranty Deed from her to the Defendant and Appellant on the 26th day of June, 1957. From the inception of this case the Plaintiff and

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Respondent has denied that the signature upon the Warranty Deed from her to the Defendant and Appellant was not her signature and was a forgery. That it was not the signature of the witness David Barclay, and that Lawrence J. Barclay did not Notarize the Warranty Deed.

Counsel for the Plaintiff and Respondent stated to the Defendant and Appellant that it was not her signature, although Counsel for Plaintiff and Respondent stated in and out of Court that Plaintiff and Respondent is getting old, is senile and very forgetful. Counsel still continued to advise Plaintiff and Respondent that it was not and could not be her signature upon the Warranty Deed given by her to the Defendant and Appellant.

During a recess Counsel for Plaintiff and Respondent told L. J. Barclay, former Counsel in the Divorce action of the Plaintiff and Respondent, that the signature on the Warranty Deed from Plaintiff and Respondent to Defendant and Appellant of June 26, 1957 was O. K., and that he, L. J. Barclay did not have to wait to be a witness, there upon L. J. Barclay told Counsel for the Plaintiff and Respondent that he intended to be a witness and would be a witness.

L. J. Barclay was called as a witness for Defendant and Appellant by his Attorney, Joseph R. Howell. The transcript from Page 61 to Page 70 inclusive contains the testimony with some corrections of L. J. Barclay under oath. L. J. Barclay was never cross-examined by the Court or Counsel for Plaintiff and Respondent, therefore it is a fair assumption that all of the testimony contained therein is true and correct. The humorous remarks made by Judge Stewart M. Hanson have been left out of the transcript, for example David Barclay was at the Stock Exchange, and L. J. Barclay was at the grocery store.

That on or about May 14, 1976 the memorandum of Judge Stewart M. Hanson was received by Counsel for Defendant and Appellant, Joseph R. Howell, in which he states that L. J. Barclay, former Counsel for the Plaintiff and Respondent was misled, he also states that it was a hoax on the part of the Defendant and Appellant.

It seems strange that Judge Stewart M. Hanson stated that he had known L. J. Barclay for over 50 ~~years~~ years and never at anytime questioned his honesty, integrity and professional conduct. That Nolan J. Olsen stated that he had known L. J. Barclay for 17 years and had never questioned his honesty, integrity and professional conduct. Yet in this case neither

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Judge Stewart M. Hanson nor Nolan J. Olsen listened and believed L. J. Barclay.

It is a well known fact in the legal profession that Judge Stewart M. Hanson listens to Attorneys without the apposing Attorney being present, and then makes his decision. The trial of this case was a farce because Judge Stewart M. Hanson had made his decision before he heard the case. Nolan J. Olsen Attorney for the Plaintiff and Respondent was well aware of Judge Stewart M. Hanson's attitude. Judge Stewart M. Hanson and Nolan J. Olsen, Counsel for Plaintiff and Respondent had a field day in their questions and answers of the Defendant and Appellant.

Prior to the filing for a motion for a new trial L. J. Barclay became associated with Joseph R. Howell Counsel for the Defendant and Appellant. Upon the 18th day of June, 1976 at the hour of 9:00 o'clock A.M. the motion for a new trial was argued before Judge Stewart M. Hanson. When Judge Stewart M. Hanson took the bench he stated in open Court to L. J. Barclay that he would not change his mind. L. J. Barclay presented the motion for a new trial together with numerous exhibits to up hold his contention for a new trial to Judge Stewart M. Hanson. Judge Stewart M. Hanson refused to listen and stated in open Court that he would not look at and examine the exhibits.

The Plaintiff and Respondent and her Counsel, Nolan J. Olsen, seem to have very little regard for the truth. First, they claim that L. J. Barclay was not her Attorney, when the record shows that he was her Attorney. Second, she claimed that she did not sign the Warranty Deed from her to Defendant and Appellant upon the 26th day of June, 1957, that it was a forgery. That Lawrence J. Barclay did not notarize the said Warranty Deed and neither did David Barclay witness the same. Plaintiff and Respondent finally admitted that it was her signature upon the Warranty Deed from her to the Defendant and Appellant. That it was notarized by Lawrence J. Barclay and witnessed by David Barclay. This was done when she was put under oath. Third, Plaintiff and Respondent denied that she signed a Bill of Sale from herself to the Defendant and Appellant upon the 26th day of June, 1957, and signed in the presence of DAvid G. Barclay but finally admitted under oath that she had signed the Bill of Sale. Fourth, Plaintiff and Respondent set forth in her complaint that she and Defendant and Appellant were going to resume their martial status, which was denied by Defendant and Appellant and which never took place. Fifth, Plaintiff

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Respondent stated that she had to take care of her eight grand-children, which is false because of the fact that their father is well able to care for them, and is taking care of them. Sixth, the list of personal property, put in evidence, was made out after the filing of this action. Seventh, Plaintiff and Respondent claimed that she lived in a chicken coupe the fact of the matter is that it was built into a duplex, which was 30 years ago. Eighth, Plaintiff and Respondent states that she has no money the fact of the matter is that she has received $25,000.00 on real property and $350.00 for the sale of one share of water stock and rent from one-half of the duplex that she lived in for 19 years. Nineth, Ture Defendant and Appellant and Plaintiff and Respondent spoke with each other because they were operating the business property together. Tenth, the picture of Plaintiff and Respondent and Defendant and Appellant does not indicate that they went back to live with each other. The fact of the matter is that most of the matters presented to the Court had no bearing upon the real legal issues as to the signing of the Warranty Deeds, Bills of Sale and the Agreement, but was for the purpose of clouding the legal issues and obtaining sympathy for the Plaintiff and Respondent. A check of the deposition given by the Plaintiff and Respondent will prove the fact to be that Plaintiff and Respondent togehter with her Counsel, Nolan J. Olsen, were pleading for sympathy.

Upon the 16th day of July, 1957 the Defendant and Appellant recorded in the Office of the Recorder for Salt Lake County, State of Utah, the Warranty Deed made, executed and delivered to him by the Plaintiff and Respondent upon the 26th day of June, 1957. Upon the 22nd day of August, 1957 the Plaintiff and Respondent recorded in the Office of the Recorder for Salt Lake County, State of Utah, the Warranty Deed made, executed and delivered to her by the Defendant and Appellant upon the 26th day of June, 1957. Thus there was only one piece of property left to-wit: The business property located upon South State Street, Midvale, Salt Lake County, State of Utah, covered by an agreement as to its operation dated June 26, 1957. The letter dated August 31, 1957 to Mrs. Vanda Naylor was in answer to her question as to the operation of the business property, which was the only property that they held jointly. Judge Stewart M. Hanson refused and ignored and would not allow L. J. Barclay to explain the dates that the Warranty Deeds were recorded, nor the agreement between the Plaintiff and Respondent and the Defendant and Appellant as to the

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operation of the only piece of property left that had not been disposed of but was to be operated jointly.

Plaintiff and Respondent is well aware of the fact that for 19 years she paid the taxes on the land which her duplex was located, which was deeded to her by Defendant and Appellant upon the 26th day of June, 1957 and recorded by her upon the 22nd day of August, 1957, in the Office of the County Recorder of Salt Lake County, State of Utah. Plaintiff and Respondent is well aware of the fact that she and Defendant and Appellant paid the taxes, each ½, upon the business property located on South State Street, Midvale, Salt Lake County, State of Utah. That she at no time paid any taxes, whatsoever, upon the property deeded by her to the Defendant and Appellant upon the 26th day of June, 1957 and recorded by him upon the 16th day of July, 1957, in the Office of the County Recorded of Salt Lake County, State of Utah.

Counsel, Nolan J. Olsen, for Plaintiff and Respondent could have acquainted himself with this entire situation if he had so desired. First by checking the records of the County Recorders Office for Salt Lake County, State of Utah. Two, by contacting Robert Van Sciver who was the former Attorney for the Plaintiff and Respondent in this matter. Third, by calling the Office of L. J. Barclay, who would have been very glad to explain the entire transaction to a fellow Attorney.

Plaintiff and Respondent and her Counsel, Nolan J. Olsen, wants One-half of the purchase price of the original one acre of land, which Judge Stewart M. Hanson in his decision was to the effect that she be given One-half of the purchase price of the original one acre of land.

RELIEF SOUGHT ON APPEAL

The Appellant seeks a reversal of the judgment order of May 25th, 1976 and the dismissal of this action.

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STATEMENT OF FACTS

Upon the 19th day of September, 1956 the plaintiff obtained a Decree Of Divorce, based upon a waiver from the defendant, signed by Judge Stewart M. Hanson. The Findings Of Fact contains the following, "That the parties hereto have to their mutual satisfaction made division between themselves of all personal property owned by them." The only real estate owned by the plaintiff and the defendant was a one acre plat described as follows to-wit:

> Commencing 52 Rods North and 11.9 Rods East from the East ¼ Corner of SEction 25, Township 2 South, Range 1 West, Salt Lake Meridian; thence North 4 Rods; thence West 40 Rods; thence South 4 Rods; thence East 40 Rods to the point of beginning.

Both parties agreed to the division of the real estate as follows: That plaintiff would retain the duplex where she was residing and renting the other side. Defenent prepared, executed and delivered a Warranty Deed of said property to plaintiff.

> Commencing 52 Rods North and 11.9 Rods East from the E¼ Corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian and at a point which is 212 Feet and 9 Inches West from said point of commencement; thence North 4 Rods; thence WEst 150 Feet; Thence South 4 Rods; thence East 150 Feet to point of beginning.
> Subject to a Right Of Way over the South 14 Feet thereof.
> Subject to existing Mortgage thereon and also subject to Easements and Rights of Way for Gas, Water and Sewer Lines.

Plaintiff recorded the Warranty Deed in 1957 and has been paying the property tax upon said property each and every year together with any and all encubrances thereon.

The defendant was to receive the following described property:

> Commencing 52 Rods North and 11.09 Rods East from the E¼ Corner of Section 25, Township 2 South, Range 1 WEst, Salt Lake Meridian and at a point which is 83 Feet and 9 Inches West from said point of commencement; thence North 4 Rods; thence West 129 Feet; thence South 4 Rods; thence East 129 Feet to the point of beginning.
> Subject to a Right Of Way over the South 14 Feet thereof.

The parties agreed upon the sum of $2,000.00 as the value of the said described property:

> Commencing 52 Rods North and 11.9 Rods East From the E¼ Corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian and at a point which is 362 Feet and 9 Inches West from said point of commencement; thence North 4 Rods; thence West 297 Feet 3 Inches; thence South 4 Rods; thence East 297 Feet 3 Inches to pont of beginning. Subject to existing Mortgage thereon and also subject to Easements and

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Either one could purchase the others Equity in said property. Defendant paid plaintiff $1,000.00 for her Equity in said real property. That defendant paid the Mortgage and all encumbrances upon said property. That defendant built a duplex upon said property. That defendant lived in one side and rented the other side. That plaintiff prepared, Executed and delivered a Warranty Deed to the defendant of the above described property that he was to receive, plus the above described property that he purchased from the plaintiff for the sum of $1,000.00. Defendant recorded the said Warranty Deed in the month of July, 1957, and has been paying the taxes thereon ever since.

That the only remaining property was the business property that faced on South State Street, Midvale, Salt Lake County, State of Utah, which is described as follows:

An undivided ½ interest in and to the following described property: and each party was to pay ½ of the taxes.

> Beginning at a point 52 Rods North and 11.9 Rods East from the East quarter corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian, running thence North 4 Rods; thence West 83 feet 9 Inches thence South 4 Rods; thence East 83 feet 9 Inches to the point of Beginning.

Each party owned an undivided ½ interest in said described real property.

That on or about the 3rd day of January, 1975 the plaintiff sold her interest to the real property by Warranty Deed to Price Rentals, Inc., a Utah Corporation.

> Commencing 52 Rods North and 11.9 Rods East from the E¼ Corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian and at a point which is 212 Feet and 9 Inches West from said point of commencement; thence North 4 Rods; thence West 150 Feet; thence South 4 Rods; thence East 150 Feet to the point of beginning.
> Subject to a Right of Way over the South 14 Feet thereof.
> Subject to existing Mortgage thereon and also subject to Easements and Rights Of Way for Gas, Water and Sewer Lines.
>
> An undivided ½ interest in and to the following property:
> Beginning at a point 52 Rods North and 11.9 Rods East from the East quarter Corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian, and running thence North 4 Rods; thence West 83 Feet 9 Inches; thence South 4 Rods; thence East 83 Feet 9 Inches to the point of Beginning.
>
> Subject to easements, restrictions, reservations and rights of way appearing of record or enforceable in law and equity and taxes for the year 1975 and thereafter.

That on or about the 3rd day of January, 1975 the defendant sold his interest to the real property by Warranty Deed to Price Rentals, Inc., a Utah Corporation.

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Beginning at a point 52 Rods North and 11.9 Rods East from the East quarter corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian, and at a point which is 83 Feet 9 Inches West from said point of beginning, and running thence North 4 Rods; thence West 129 Feet; thence South 4 Rods; thence East 129 Feet to the point of Beginning.

Beginning at a point 52 Rods North and 11.9 Rods East from the East quarter corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian, and at a point which is 362 Feet 9 Inches West from said point of beginning, and running thence North 4 Rods; thence West 297 Feet 3 Inches; thence South 4 Rods; thence East 297 Feet 3 Inches to the point of Beginning.

An undivided ½ interest in and to the following described property:

Beginning at a point 52 Rods North and 11.9 Rods East from the East quarter corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian, and running thence North 4 Rods; thence West 83 Feet 9 Inches; thence South 4 Rods; thence East 83 Feet 9 Inches to the point of beginning.

Subject to easement, restrictions, reservations and rights of way appearing of record enforceable in law and equity and taxes for the year 1975 and thereafter.

That the land sold by the plaintiff and the defendant to Price Rentals, Inc., a Utah Corporation was all the real property owned by the plaintiff and the defendant, which was the one acre plat as set out in the original Divorce Complaint of the plaintiff, the Findings Of Fact and Conclusions Of Law and Decree of Divorce.

That the interest of the plaintiff was figured as 29½ Per cent of the sale price according to the tax records.

That the interest of the defendant was figured as 70½ Per cent of the sale price according to the tax records.

This figure was based upon the real property taxes being paid by the plaintiff and the defendant.

That the plaintiff agreed to this division of 29½ Per cent to her and 70½ Per cent to the defendant. Plaintiff changed her mind after consulting with her present Counsel, and then demanded One-Half of the sale price of the One Acre of land.

That the plaintiff and the defendant agreed to the division of the personal property and the value thereof. The plaintiff received the following personal property:

	VALUE
1. Inside Furniture	$332.00
2. Buick Automobile	$150.00
3. Kenmore Range	$ 50.00

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That the defendant received the following personal property:

	VALUE
1. All Fishing Equipment	$ 35.00
2. All Barber Ship Equipment and Tools	$280.00
3. All Outside Equipment, Cement Miser, Wheel Barrow, Truck Trailer House, Boat and Carpenter Tools	$435.00
4. One Portable Clothes Closet	$ 27.50
5. One Rug	$ 50.00
Total:	$827.50

That the difference in the value of the personal property received by the defendant was $295.50, plaintiff and defendant agreed to divide the $295.50 One-Half to the plaintiff and One-Half to the defndant to-wit: $147.75.

That the Decree of Divorce between the plaintiff and the defendant as signed by Judge Stewart M. Hanson upon the 19th day of September, 1956. At that time the Decree Of Divorce would not become final until 6 months after the 19th day of September, 1956. Then then Counsel for the plaintiff advised plaintiff that it would be better to have the Warranty Deeds and Bill of Sales be signed after the Decree Of Divorce became final.

That plaintiff brought to the office of her former Attorney the descripton of the real property that she would receive, and the description of the real property that the defendant was to receive. She also brought the description of the business property on South State Street which they were to operate together. She also brought 2 lists of the personal property that she and the defendant were to receive, and the value thereof that the plaintiff and the defendant had agreed upon.

Nothing was said about the Execution of the Warranty Deed from the plaintiff to the defendant, and the Bill of Sale from the plaintiff to the defendant both Instruments having been Executed upon June 26, 1957, until Price Rentals, Inc., a Utah Corporation offered to buy the entire acre, which included plaintiff's interest and the defendants and their joint interest. This offer was made in the Fall of 1974.

Plaintiff employed Robert Van Sciver an Attorney and Counselor at Law to examine the entire transaction of the Warranty Deed from her to the defendant, the Warranty Deed from the defendant to her, the agreement to operate the business property jointly, the Bill of Sale of the personal property from plaintiff to the defendant, and the Bill Of Sale of the

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personal property of the defendant to the plaintiff. All 4 Instruments were made, Executed and Delivered to plaintiff and defendant upon June 26, 1957. Attorney Robert Van Sciver informed the plaintiff that the entire transaction of June 26, 1957 was proper and legal.

That plaintiff then employed Attorney Nolan J. Olsen of Midvale, Salt Lake County, State of Utah. He informed her that the signature upon the Warranty Deed dated June 26, 1957 from her to the defendant was not and could not be her signature. He also informed the plaintiff that the signature upon the Bill of Sale of the personal property from her to the defendant was not and could not be her signature.

Plaintiff came to the Office of her former Attorney and denied her signature on the Warranty Deed and the Bill Of Sale both dated June 26, 1957 from her to the defendant. Plaintiff admitted under oath that it was her signature upon the Warranty Deed and the Bill Of Sale both from her to the defendant.

That the defendnat paid into the office of the former Attorney for the plaintiff in the month of August, 1956 the sum of $1,000.00 as her One-Half of the agreed purchase price of the real property deeded by her to the defendant. That the defendant paid into the office of the former Attorney for the plaintiff, in the month of August, 1956 the sum of $147.75 as agreed upon by plaintiff and defendant, as the difference in the value in the personal property.

That in the month of August, 1956 the former Attorney paid to the plaintiff the sum of $1,147.75. That the plaintiff denied receiving the $1,147.75 from her former Attorney, but she finally admitted under oath that she did receive the $1,147.75.

That the water stock in question was already in the name of the defendant. Plaintiff agreed with her former Attorney that the water stock should go with the real property which she had sold her One-Half interest to the defendant for the sum of $1,000.00 to-wit:

> Commencing 52 Rods North and 11.9 Rods East from the E¼ Corner of Section 25, Township 2 South, Range 1 West, Salt Lake Meridian and at a point which is 362 Feet and 9 Inches West from said point of commencement; thence North 4 Rods; thence West 297 Feet 3 Inches; thence South 4 Rods; thence East 297 Feet 3 Inches to point of beginning. Subject to existing Mortgage thereon and also subject to Easements and Rights Of Way for Gas, Water and Sewer Lines.

That at the time the Divorce was entered on September 19, 1956 there was a mortage of [illegible] upon the one acre of land described in the complaint, Findings

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Of Fact and Conclusions Of Law and the Decree Of Divorce. That plaintiff and defendant each agreed to pay ½ of the $1,900.00 mortgage, which they did pay.

That Plaintiff and Respondent received one-half of the rentals of the business property which they held and managed jointly to-wit; the sum of $175.00 per month for a period of 19 years, when she sold her interest to Price Rentals, Inc., a Utah Corporation.

ARGUMENT

POINT I

The lower Court erred in awarding a judgment to the Plaintiff and Respondent for the reason the Plaintiff and Respondent had given a Warranty Deed to Defendant and Appellant dated June 26th, 1957 and recorded July 16th, 1957. Defendant and Appellant had given Plaintiff and Respondent a Warranty Deed dated June 26th, 1957 and recorded August 22nd, 1957, and signed an agreement for the operation of the business property located on South State Street, Midvale, Salt Lake County, State of Utah. Plaintiff and Respondent signed a Warranty Deed on or about the 3rd day of January, 1975 to Price Rentals, Inc., a Utah Corporation for the property that Defendant and Appellant deeded to her upon the 26th day of June, 1957, plus her one-half interest in the business property. Defendant and Appellant gave a Warranty Deed to Price Rentals, Inc., a Utah Corporation upon the 3rd day of January, 1975 for the property deeded to him upon June 26th, 1957 by Plaintiff and Respondent, plus his one-half interest in the business property.

It should be made clear in this action that the Plaintiff and Respondent and the Defendant and Appellant only owned one acre of land, the description of which was set out in the Divorce Complaint. Findings of Fact, Conclusions of Law and Decree of Divorce. The parties had agreed to a division of the one acre, but decided to wait until the Decree of Divorce became final, so that they could take the real estate as single persons. Upon the 26th day of June, 1957 Warranty Deeds were signed in the Office of Barclay and Barclay, Attorneys at Law for the Plaintiff and Respondent. The Plaintiff and Respondent signed a Warranty Deed to the Defendant and Appellant for the land the description of which was brought to the Office of Barclay and Barclay by Plaintiff and Respondent. The Defendant

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and Appellant signed a Warranty Deed to the Plaintiff and Respondent covering the property that she was to receive, which description she brought to the Office of Barclay and Barclay, her Counsel. Both parties agreed that 2 parcels of the one acre of land were equal in value. That Defendant and Appellant take the one parcel of land with 2 small sheds. That Plaintiff and Respondent retain that part upon which a duplex was located. At that time Plaintiff and Respondent was living in the duplex and rented the other side. The part of the acre to the west which is described in the second description of the Warranty Deed signed June 26th, 1957 by Plaintiff and Respondent. That said property was appraised by both parties as to the value thereof in the sum of $2,000.00. Plaintiff and Respondent sold her interest to Defendant and Appellant for $1,000.00. That Plaintiff and Respondent refused to sign the Divorce Complaint until she was given the $1,000.00, which she did receive from L. J. Barclay, her Counsel.

The only property left was that of the business rental property on South State Street, Midvale, Salt Lake County, State of Utah, which was held jointly, each party received $175.00 per month as their share of the rentals.

POINT II

Attitude of the Court and Counsel from the very Beginning of the alleged trial judge Stewart M. Hanson had made up his mind regardless of the evidence to be produced in the case. A reading of his memorandum decision, the transcript of the alleged trial, the argument for a motion for a new trial and the transcript of the motion for a new trial, will bear out this conclusion. Many of the remarks made by Judge Stewart M. Hanson are absent from the transcript of the alleged trial and the transcript of the motion for a new trial.

Counsel for Plaintiff and Respondent refused to cross-examine L. J. Barclay. He refused to interview Attorney Robert Van Sciver. He refused to interview L. J. Barclay. He refused to check the records of the County Recorder for Salt Lake County, State of Utah. He has used every conceivable statements that are not relevant to this matter. It is a fair conclusion from the actions of Counsel for Plaintiff and Respondent, that he did not want the true facts in this matter.

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CONCLUSION

1. That the Two (2) Warranty Deeds and the Two (2) Bills of Sale made, executed and delivered upon the 26th day of June, 1957 be declared valid, also the agreement be declared valid.

2. That the judgment made and entered by Judge Stewart M. Hanson upon the 25th day of May, 1976 be reversed.

3. That the matter be dismissed.

Respectuflly Submitted

Joseph R. Howell
and
L. J. Barclay

Attorneys for Defendant
and Appellant
Melvin Naylor

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