

1955

# Raymond A. Kelly and Mildred C. Kelly v. Wendell Scott et al : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](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.

Alan H. Bishop; Counsel for Respondent;

---

## Recommended Citation

Brief of Respondent, *Kelly v. Scott*, No. 8403 (Utah Supreme Court, 1955).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/2430](https://digitalcommons.law.byu.edu/uofu_sc1/2430)

This Brief of Respondent 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](mailto:hunterlawlibrary@byu.edu).

RECEIVED

MAY 5 195

LAW LIBRARY  
U. of U.

In the  
**Supreme Court of the State of Utah**

FILED

APR 3 195

RAYMOND A. KELLY and MILDRED  
C. KELLY,

*Plaintiffs and Appellants,*

vs.

WENDELL SCOTT, ANNE SCOTT,  
and WILLIAM H. THAYNE, dba  
THAYNE & COMPANY,

*Defendants and Respondents.*

Clerk, Supreme Court, U. of U.

Case No.  
8403

**BRIEF OF RESPONDENT**

ALAN H. BISHOP,

*Counsel for Respondent*

*William H. Thayne.*

## TABLE OF CONTENTS

	Page
STATEMENT OF FACTS .....	1
ARGUMENT .....	1
CONCLUSION .....	3

In the  
**Supreme Court of the State of Utah**

---

RAYMOND A. KELLY and MILDRED  
C. KELLY,  
*Plaintiffs and Appellants,*

vs.

WENDELL SCOTT, ANNE SCOTT,  
and WILLIAM H. THAYNE, dba  
THAYNE & COMPANY,  
*Defendants and Respondents.*

Case No.  
8403

---

**BRIEF OF RESPONDENT**

---

**STATEMENT OF FACTS**

Respondent William H. Thayne, dba Thayne & Company, states that the appellants' brief makes a correct statement of facts.

**ARGUMENT**

THE LOWER COURT'S RULING IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE CONSENT OF APPELLANTS.

The record clearly shows that the original judgment in favor of Thayne was entered by the consent of plaintiffs

Kelly. Page 2 of the transcript of the hearing of March 4, 1954 shows the following statement:

“MR. HAYES: Mr. Livingston, you have seen the earnest money receipt which was procured by the defendant Thayne & Company and delivered to your client, the plaintiff, have you not?

“MR. LIVINGSTON: Yes, I have.

“MR. HAYES: And is it your understanding and belief that plaintiff company did earn a commission of \$800.00 in procuring this sale?

“MR. LIVINGSTON: Yes, that's right. That's correct.”

In addition to the above testimony the record shows that there was never filed by plaintiffs Kelly and Kelly any motion to set aside the judgment awarded on March 4, 1954, until July 5, 1955 at which time the lower court heard arguments of counsel and denied the said motion.

It is submitted that the matter of the real estate commission was adjudicated by the judgment entered on March 5, 1954, that the court by the Motion to Vacate Default Judgment dated the 3rd day of June 1955 was asked for equitable relief from the said default judgment. That the said court heard the arguments of counsel and exercised its discretion. That there is nothing in the record to indicate that the court abused its discretion in refusing to set aside the said default judgment.

## CONCLUSION

It is the conclusion of the defendant Thayne that the record supports the finding of the lower court by substantial competent evidence and that the judgment of the lower court granting to said defendant Thayne a judgment against the plaintiffs should be sustained.

Respectfully submitted,

ALAN H. BISHOP,

*Counsel for Respondent*

*William H. Thayne.*