

1960

# W. H. Park et al v. Dewey Jameson and Clara Jameson : Appellants' Petition for Rehearing and Brief in Support Thereof

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.

Cullen Y. Christenson; Christenson, Novak, Paulson & Taylor; Paul J. Merrill; Attorneys for Appellants and Defendants;

---

## Recommended Citation

Petition for Rehearing, *Park v. Jameson*, No. 9267 (Utah Supreme Court, 1960).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/3690](https://digitalcommons.law.byu.edu/uofu_sc1/3690)

This Petition for Rehearing 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).

---

---

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

**FILED**

SEP 25 1931

Clerk, Supreme Court, Utah

W. H. PARK, et al,  
Plaintiffs and Respondents,

vs.

DEWEY JAMESON and  
CLARA JAMESON,  
Defendants and Appellants,

**CASE  
NO. 9267**

and

THOMAS F. SPAULDING,  
Defendant and Respondent.

---

**Appellants' Petition for Rehearing and  
Brief in Support Thereof**

---

CULLEN Y. CHRISTENSON  
for CHRISTENSON, NOVAK, PAULSON  
& TAYLOR and PAUL J. MERRILL  
Attorneys for Appellants and Defendants  
Dewey Jameson and Clara Jameson

---

---

NEW CENTURY PRINTING CO., PROVO, UTAH

# INDEX

	Page
PETITION FOR REHEARING.....	1

## POINT I

THE DECISION OF THIS HONORABLE COURT FILED AUGUST 22, 1961, TO THE EFFECT THAT RESPONDENTS' PARTICIPATION, AS ADMITTED BY THEM AND AS FOUND BY THE COURT BELOW, IN SUBMITTING FALSE AND FRAUDULENT DOCUMENTS AND AFFIDAVITS TO THE VETERANS ADMINISTRATION AS A BASIS FOR A DIRECT LOAN TO APPELLANTS, IS NOT OBJECTIONABLE BECAUSE THE VETERANS ADMINISTRATION WAS NOT SHOWN TO BE INJURED THEREBY, AND CONSEQUENTLY NO BAR TO THE CLAIM ASSERTED BY RESPONDENTS HEREIN, IS CONTRARY TO SOUND PUBLIC POLICY AS ANNOUNCED BY THE CONGRESS OF THE UNITED STATES THROUGH THE SERVICEMENS READJUSTMENT ACT OF 1944 AS AMENDED BY CHAPTER 37, TITLE 38 UNITED STATES CODE .....	2 & 4
---	-------

## POINT II

THE SAID DECISION OF THIS HONORABLE COURT ALLOWING RESPONDENTS HEREIN TO RECOVER AMOUNTS IN EXCESS OF SUMS STATED IN WRITTEN CONTRACTS AND AFFIDAVITS SUBMITTED TO THE VETERANS ADMINISTRATION AS A BASIS FOR A DIRECT MORTGAGE LOAN TO APPELLANTS HEREIN CONSTITUTES CONDONATION OF A VIOLATION OF THE LAW AND SETS A PRECEDENT TENDING TO ENCOURAGE FUTURE VIOLATIONS THEREOF AND PARTICULARLY CIRCUMVENTION OF RULES AND REGULATIONS PERTAINING TO PROCEEDINGS INVOLVING THE VETERANS ADMINISTRATION .....	2 & 8
---	-------

## INDEX (Continued)

	Page
BRIEF OF APPELLANTS IN SUPPORT OF PETITION FOR REHEARING.....	3
STATEMENT OF FACTS.....	3
ARGUMENT .....	4
CONCLUSION .....	9

### AUTHORITIES CITED

Bamber vs. Mayeux, 93 So. 2d 687.....	7
Diamond vs. Willett, 37 So. 2d 338.....	7
Glosser vs. Powers, 71 SE 2d 230.....	7
Higby vs. Hooper, 221 P. 2d 1043.....	7
Jacobson vs. Greaves, 124 Atl. 2d 358.....	7
Lala vs. Maiorana, 333 P2d 862.....	7
Perkins vs. Hilton, 107 NE 2d 822.....	7
Sattler vs. VanNatta, 260 P. 2d 982.....	7
Young vs. Hampton, 228 P. 2d 1.....	6

### TEXTS CITED

33 ALR 2d 1286.....	7
---------------------	---

### STATUTES CITED

Rule (76e) Utah Rules of Civil Procedure.....	1
United States Code, Chapter 37, Title 38, formerly Servicemen's Readjustment Act of 1944.....	2, 4, 6, 7
United States Code, Paragraph 289, Title 18.....	8
United States Code, Paragraph 1001, Title 18.....	8

# In the Supreme Court of the State of Utah

---

W. H. PARK, et al,  
Plaintiffs and Respondents,

vs.

DEWEY JAMESON and  
CLARA JAMESON,  
Defendants and Appellants,

and

THOMAS F. SPAULDING,  
Defendant and Respondent.

**CASE  
NO. 9267**

---

## PETITION FOR REHEARING

---

COME NOW, Dewey Jameson and Clara Jameson, husband and wife, Defendants and Appellants, pursuant to Rule 76(e) of the Utah Rules of Civil Procedure and respectfully petition the Supreme Court of the State of Utah for a rehearing in the instant case upon the following grounds and for the following reasons:

## POINT I

THE DECISION OF THIS HONORABLE COURT FILED AUGUST 22, 1961, TO THE EFFECT THAT RESPONDENTS' PARTICIPATION, AS ADMITTED BY THEM AND AS FOUND BY THE COURT BELOW, IN SUBMITTING FALSE AND FRAUDULENT DOCUMENTS AND AFFIDAVITS TO THE VETERANS ADMINISTRATION AS A BASIS FOR A DIRECT LOAN TO APPELLANTS, IS NOT OBJECTIONABLE BECAUSE THE VETERANS ADMINISTRATION WAS NOT SHOWN TO BE INJURED THEREBY, AND CONSEQUENTLY NO BAR TO THE CLAIM ASSERTED BY RESPONDENTS HEREIN, IS CONTRARY TO SOUND PUBLIC POLICY AS ANNOUNCED BY THE CONGRESS OF THE UNITED STATES THROUGH THE SERVICEMENS READJUSTMENT ACT OF 1944 AS AMENDED BY CHAPTER 37, TITLE 38 UNITED STATES CODE.

## POINT II

THE SAID DECISION OF THIS HONORABLE COURT ALLOWING RESPONDENTS HEREIN TO RECOVER AMOUNTS IN EXCESS OF SUMS STATED IN WRITTEN CONTRACTS AND AFFIDAVITS SUBMITTED TO THE VETERANS ADMINISTRATION AS A BASIS FOR A DIRECT MORTGAGE LOAN TO APPELLANTS HEREIN CONSTITUTES CONDONATION OF A VIOLATION OF THE LAW AND SETS A PRECEDENT TENDING TO ENCOURAGE FUTURE VIOLATIONS THEREOF AND PARTICULARLY CIRCUMVENTION OF RULES AND REGULATIONS PERTAINING TO PROCEEDINGS INVOLVING THE VETERANS ADMINISTRATION.

# **Brief of Appellants in Support of Petition for Rehearing**

## **STATEMENT OF FACTS**

Briefly the facts relevant here are these:

This Honorable Court in its decision filed August 22, 1961, adopted the findings of the Court below to the effect that the written contract between Appellants Jameson and Respondent Spaulding (Defendants' Exhibit No. 6), the Bond of Respondent Park (Defendants' Exhibit No. 7), the affidavits under oath of Respondents Spaulding and Park (Defendants' Exhibits 8, 14 and 27) and other documents and information furnished the Veterans Administration invoked no obligation or liability among the parties to this action but were signed solely to enable appellants to get a Veterans Administration loan (R. 65, 66), and that the Respondents well knew that the Veterans Administration would and did rely upon such submitted documents in making such loan to Appellants (Defendants' Exhibit No. 12; Tr. 33, 37, 38, 43, 46, 47, 48, and 234 through 237), and in disbursing the loan funds most of which went to the Respondents (Tr. 40; Defendants' Exhibit No. 8; Tr. 39; Tr. 237; Defendants' Exhibit No. 14; Tr. 43, 44; Defendants' Exhibit No. 27; Tr. 235, 237; Defendants' Exhibit No. 12; Tr. 41, 42, 43).

This Honorable Court in sustaining the Judgment of the Court below to the effect that Respondents were entitled to recover from Appellants under alleged oral agreements at odds with and in excess of the said written contract and documents submitted to the Veterans Adminis-

tration concluded that since the Veterans Administration was not complaining before the Court and since no apparent injury has resulted to the Veterans Administration, the deceit practiced upon the Veterans Administration was of no consequence and therefore for other reasons stated in the opinion the alleged secret side agreement of the parties to this action should be enforced by the Court.

It is primarily in these conclusions wherein Appellants earnestly contend this Honorable Court has erred.

## ARGUMENT

### POINT I

THE DECISION OF THIS HONORABLE COURT FILED AUGUST 22, 1961, TO THE EFFECT THAT RESPONDENTS' PARTICIPATION, AS ADMITTED BY THEM AND AS FOUND BY THE COURT BELOW, IN SUBMITTING FALSE AND FRAUDULENT DOCUMENTS AND AFFIDAVITS TO THE VETERANS ADMINISTRATION AS A BASIS FOR A DIRECT LOAN TO APPELLANTS, IS NOT OBJECTIONABLE BECAUSE THE VETERANS ADMINISTRATION WAS NOT SHOWN TO BE INJURED THEREBY, AND CONSEQUENTLY NO BAR TO THE CLAIM ASSERTED BY RESPONDENTS HEREIN, IS CONTRARY TO SOUND PUBLIC POLICY AS ANNOUNCED BY THE CONGRESS OF THE UNITED STATES THROUGH THE SERVICEMENS READJUSTMENT ACT OF 1944 AS AMENDED BY CHAPTER 37, TITLE 38 UNITED STATES CODE.

There is no doubt in this case as to the fact that numerous documents to which Respondents were parties were



submitted to the Veterans Administration as the basis for a direct mortgage loan to Appellants Jameson. Appellants contend these documents were valid and subsisting instruments. Respondents contend, and this contention has been sustained by the Court below and by this Honorable Court, that such documents were never intended to represent the true agreement between the parties thereto but were executed and delivered solely for the purpose of inducing the Veterans Administration to act. Respondents contend and this Honorable Court appears to agree at this point, that the alleged secret side agreements among the parties hereto are the true agreements and are properly enforceable irrespective of the matters submitted to the Veterans Administration. This Honorable Court has held herein that the equitable doctrine of "Clean Hands" has no application because in its stated opinion Appellants have not been injured but have rather appeared to profit from the situation and since the Veterans Administration, object of the deceit and false statements Respondents contend were practiced herein, has not complained in this action, the alleged oral side agreements should be enforced. It is the position of Appellants that such a decision renders meaningless the formalities required by the Veterans Administration in this case and if such a doctrine is extended to other cases, at least in this Honorable Court, solemn written documents, many under oath, submitted to the Veterans Administration in quest of a government financed loan, need only have such substance and meaning as the parties thereto choose to decide unless the Veterans Administration rises up and complains that the law has been violated if the written instruments don't mean what they say.

It is clear that the application for a mortgage loan in this case to the Veterans Administration was made under the direct loan provisions of Chapter 37 Title 38, United States Code formerly referred to as Title III of the Servicemen's Readjustment Act of 1944. The Supreme Court of California in the case of *Young vs. Hampton*, 228 P. 2d 1, in interpreting the indicated Statute declared the obvious purpose of the legislation was to protect the borrowing veteran from acquiring property at an exorbitant price, upon which he would later default because of lack of sufficient means to continue the payments under the loan. The California Court went on to say "The statute was intended solely to aid the Veteran in the establishment of a home. Any benefit to a contractor was incidental. However, if a secret contract for an amount in excess of the appraised value may be exacted from a veteran, the purpose of the act is defeated." The California Court through Justice Edmonds went on to say in refusing to uphold a claimed secret side agreement almost identical to the situation before this Honorable Court:

"For the same reasons that a second lien which violates the basic public policy expressed in the Home Owners' Loan Act was held to be void, a contract which is contrary to the policy of the Servicemen's Readjustment Act is also unenforceable. To hold otherwise would invite builders to exact similar secret contracts with the assurance that they would be upheld."

While the *Young vs. Hampton* case arose under the insured loan provisions of said act, there is no reason to hold that a different policy should apply to a direct loan

situation such as now before this Honorable Court. In fact, paragraph 1811 (d) (1) Chapter 37, Title 38, United States Code states that direct loans by the Veterans Administration shall be subject to all applicable requirements and limitations as apply to guaranteed home loans. The case of *Bamber vs. Mayeux*, 93 So. 2d 687, a direct loan case, so holds.

The case of *Higby vs. Hooper* (Montana) 221 P. 2d 1043 except for the fact it concerns a guaranteed loan is a case almost identical to the case before this Honorable Court. The Montana Supreme Court therein refused to uphold a claimed lien by a contractor who asserted a claim in excess of representations made to the Veterans Administration as to the cost of construction. See also *Jacobson vs. Greaves* (New Jersey) 124 Atl. 2d 358; *Diamond vs. Willett* (Louisiana) 37 So. 2d 338, wherein the Louisiana Supreme Court held:

“The policy announced in these decisions of affording protection of the law to those whom the Federal loan statutes are designed to protect is a sound one. We conclude therefore, that a contract which violates and is contrary to the policy of the Servicemen’s Readjustment Act is also unenforceable.”

The attention of this Honorable Court is also directed to the cases of *Sattler vs. Van Natta* (Calif.) 260 P. 2d 982; *Perkins vs. Hilton* (Mass.) 107 NE 2d 882, 33 ALR 2d 1286; *Glosser vs. Powers* (Georgia) 71 SE 2d 230 and *Lala vs. Maiorana* (Cal.) 333 P. 2d 862, wherein agreements violating the spirit and policy of the Servicemen’s Readjustment Act were held unenforceable as being contrary to public policy.

## POINT II

THE SAID DECISION OF THIS HONORABLE COURT ALLOWING RESPONDENTS HEREIN TO RECOVER AMOUNTS IN EXCESS OF SUMS STATED IN WRITTEN CONTRACTS AND AFFIDAVITS SUBMITTED TO THE VETERANS ADMINISTRATION AS A BASIS FOR A DIRECT MORTGAGE LOAN TO APPELLANTS HEREIN CONSTITUTES CONDONATION OF A VIOLATION OF THE LAW AND SETS A PRECEDENT TENDING TO ENCOURAGE FUTURE VIOLATIONS THEREOF AND PARTICULARLY CIRCUMVENTION OF RULES AND REGULATIONS PERTAINING TO PROCEEDINGS INVOLVING THE VETERANS ADMINISTRATION.

Paragraph 289, Title 18, United States Code, reads as follows:

“Whoever knowingly and wilfully makes or presents any false, fictitious or fraudulent affidavit, declaration, certificate, voucher, endorsement, or paper or writing purporting to be such, concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the administrator of Veterans affairs . . . shall be fined not more than \$10,000.00 or imprisoned not more than five years or both. (See also paragraph 1001, Title 18, United States Code).

In the face of these statutes Respondents come before this Honorable Court and assert a right to enforce their claimed secret side agreements entirely at odds with and contrary to their representations to the Veterans Administration (Defendants' Exhibits No. 6, 7, 8, 12, 14 and 27).

Respondents openly admit the falsity of the representations to the Veterans Administrations, but they urge this Honorable Court to uphold their actions on the grounds that after all no one was injured by their misrepresentations. To sustain the position of Respondents not only does great violence to sound public policy but would sanction an apparent violation of Federal Law.

### CONCLUSION

Appellants earnestly submit that not only will public policy be violated and an apparent violation of law condoned if the present decision of this Honorable Court is allowed to stand, but precedent will be established in the State of Utah, which will invite others to enter into similar secret agreements with the assurance that such agreements will be upheld.

WHEREFORE, Appellants pray that a rehearing in this case be granted by this Honorable Court and that upon such hearing the decision of <sup>August</sup>~~September~~ 22, 1961, herein be reversed and the claims of the Respdnts be dismissed.

Respectfully submitted,

*Cullen Y. Christenson*  
CULLEN Y. CHRISTENSON

for CHRISTENSON, NOVAK, PAULSON  
& TAYLOR and PAUL J. MERRILL  
Attorneys for Appellants and Defendants  
Dewey Jameson and Clara Jameson