

1961

Albert J. Cope, Merlin B. Lybbert et al v. Bountiful Livestock Co. et al : Brief of Respondents

Utah Supreme Court

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In the Supreme Court of the State of Utah

ALBERT J. COPE, Administrator de bonis non of the Estate of Francis Cope, Deceased,

Plaintiff and Appellant,

MERLIN R. LYBBERT, Administrator of the Estate of William P. Epperson, deceased; ALLAN SHOTT, JR., ELOISE B. SHOTT; and ADELPHINE COPE SUDBURY,

Additional Plaintiffs and Appellants,

— vs. —

BOUNTIFUL LIVESTOCK COMPANY, DAVIS COUNTY, a municipal corporation, BRYANT JACOBS, Treasurer of Davis County, State of Utah, SALT LAKE PIPELINE COMPANY, a Nevada corporation, and SALT LAKE REFINING COMPANY, a Nevada corporation,

Defendants and Respondents.

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Case No.
9531

BRIEF OF RESPONDENTS, DAVIS COUNTY AND BRYANT JACOBS

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Case No.
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BRIEF OF RESPONDENTS, DAVIS COUNTY AND BRYANT JACOBS

STATEMENT OF FACTS

The respondents, Davis County, and Bryant Jacobs, Treasurer of Davis County, do not dispute the facts

as set forth in the brief of appellants and as amplified in the brief of respondents, Bountiful Livestock Company, Salt Lake Pipeline Company and Salt Lake Refining Company.

STATEMENT OF POSITION OF RESPONDENTS, DAVIS COUNTY AND BRYANT JACOBS

These respondents, Davis County and Bryant Jacobs, Treasurer of Davis County, by their answer denied appellants' rights of recovery as against any of the respondents and filed a cross-claim against the respondents, David Howard and Bountiful Livestock Company, for the purpose of preserving their right as against said respondents in the event Davis County and its Board of County Commissioners later determine that the County in good conscience should pursue any civil remedy it might have for the recovery of the property.

On February 14, 1961, a pre trial hearing was held before the Honorable Charles G. Cowley, District Judge, and the Judge called for briefs from appellants and respondents, Bountiful Livestock Company, Salt Lake Refining Company and Salt Lake Pipeline Company, on the question of whether or not the deed was void or voidable and if voidable by whom. Thereafter on May 10, 1961, the District Court rendered its decision that the deed from Davis County to Bountiful Livestock Company is not void but at most voidable and if said deed can be avoided, it can only be avoided by Davis County and not the appellants who are strangers to the transaction; (R. 169)

and that thereafter on July 7, 1961, the said District Judge signed the Judgment of Dismissal that the appellants take nothing under their complaint but that it be dismissed with prejudice and upon the merits; and the Court further ORDERED, ADJUDGED and DECREED that the dismissal of the complaint of the appellants "shall not impair or affect the claim of Davis County under its cross-complaints against Bountiful Livestock Company, Salt Lake Pipeline Company and Salt Lake Refining Company, the issues under such cross-complaints being hereby reserved for future determination" by the District Court. (R. 175)

The respondents, Davis County and Bryant Jacobs, therefore take the position that the matter now under consideration before this Court on appeal, does not directly affect the position of Davis County with the respect to its possible future rights of recovery, as against Bountiful Livestock, Salt Lake Pipeline Company and Salt Lake Refining Company, and for these reasons it does not feel under the responsibility of filing a brief.

The respondents, Davis County and Bryant Jacobs, further take the position that the appellants have no right of recovery as against any of the respondents and to that extent concur in points II, III, IV, (a) (b) (d) and (e) of the brief as submitted by respondents, Bountiful Livestock Company, Salt Lake Pipeline Company and Salt Lake Refining Company. The County does however reserve its right under its cross-claim as against Boun-

tiful Livestock Company, should it later be determined advisable to litigate these rights in the District Court.

Respectfully submitted,

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