

1967

## Alice Mae Buck v. Edwin Holt Buck : Brief In Support of Petition For Rehearing

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# IN THE SUPREME COURT OF THE STATE OF UTAH

UNIVERSITY OF UTAH

JUN 22 1967

ALICE MAE BUCK,  
*Plaintiff-Appellant,*

LAW LIBRA

vs.

Case No.  
10585

EDWIN HOLT BUCK,  
*Defendant-Respondent and  
Cross-Appellant.*

BRIEF IN SUPPORT OF  
PETITION FOR REHEARING

UNIVERSITY OF UTAH

JUL 10 1967

LAW LIBRARY

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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ALICE MAE BUCK,

*Plaintiff-Appellant,*

vs.

EDWIN HOLT BUCK,

*Defendant-Respondent and  
Cross-Appellant.*

Case No.  
10595

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## BRIEF IN SUPPORT OF PETITION FOR REHEARING

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### NATURE OF THE CASE

Petition for Rehearing to modify the decision of the Supreme Court in the above entitled matter, filed May 25th, 1967.

### STATEMENT OF FACTS

The Supreme Court in its recent decision in the above entitled matter stated that the Respondent was

culpable because of willful deceit in not relating to Appellant information received in a casual conversation with an attorney; and that both Appellant and Respondent entered into the marriage in good faith.

## STATEMENT OF POINTS

POINT I. THERE IS NO EVIDENCE TO JUSTIFY THE CONCLUSION OF THE SUPREME COURT THAT RESPONDENT IS CHARGEABLE WITH WILLFUL DECEIT.

POINT II. THERE IS EVIDENCE UPON WHICH THE TRIAL COURT COULD AND DID CONCLUDE THAT APPELLANT WAS KNOWLEDGEABLE ABOUT HER POSITION IN THE PURPORTED MARRIAGE.

POINT I. THERE IS NO EVIDENCE TO JUSTIFY THE CONCLUSION OF THE SUPREME COURT THAT RESPONDENT IS CHARGEABLE WITH WILLFUL DECEIT.

It is acknowledged that the Supreme Court may review the facts and the law. It is understood that in equity cases, every presumption is indulged in support of the findings of the trier of the facts, because of his having heard and seen the witnesses and his having been in a better position to determine their credibility. It is plain that he did not believe appellant. See: *Lawlor vs. Lawlor*, 121 U. 201, 240 P.2d 502; *West vs.*

West, 16 Utah 2d 411, 403 P.2d 22; Cheney vs. Rucker 381 P. 2d 86, 14 Utah 2d 205; Shaw vs. Jeppson, 121 U. 155, 239 P. 2d 745.

It also may be noted that Appellant did not raise the point of willful deceit, nor did the trial court consider it necessary to make a finding relating to it.

**POINT II. THERE IS EVIDENCE UPON WHICH THE TRIAL COURT COULD AND DID CONCLUDE THAT APPELLANT WAS KNOWLEDGEABLE ABOUT HER POSITION IN THE PURPORTED MARRIAGE.**

Here again, it is submitted, the trier of the fact, in the analysis of the demeanor of the witnesses and their testimony was in a better position to determine credibility and draw inferences from the testimony of the witnesses. An example of such testimony is at page 392 of the transcript.

In *Sonnicksen vs. Sonnickson*, 113 P2d 495, 45 C.A. 2d 46, the court stated what appears to sustain the rule in Utah, viz., that the reviewing court will indulge in all assumptions in support of the decree, tending to sustain it.

The court's attention is also directed to the cases cited in West's Pacific Digest 2d, Vol. 3, 1010 (1) t. Husband & Wife, where all cases support the trier of the fact in conclusions based on conflicting evidence subject to different inferences.

## CONCLUSION

It is submitted the trial court correctly found the issues involved, that the offending portions of the decision of the Supreme Court should be deleted, and that the trial court be sustained.

Respectfully submitted,

**RICHARD J. MAUGHAN**  
Attorney for Respondent