1970

Arliean Vickers Barrett and George C. Barrett v. Leland H. Vickers, Sterling D. Vickers and Ethelyn Vickers, and Joseph S. Barrett and Ethel v. Barrett : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

ARLIEAN VICKERS BARRETT
and GEORGE C. BARRETT,
Plaintiffs and Respondents,

vs.

LELAND H. VICKERS,
Defendant and Respondent,

STERLING D. VICKERS and
ETHELYN VICKERS, his wife,
Defendants,

JOSEPH S. BARRETT and
ETHEL V. BARRETT, his wife,
Defendants and Appellants.

Case No.
11787

BRIEF OF APPELLANT

Appeal from a Judgment of the Fifth Judicial District Court in and for Juab County, Honorable C. Nelson Day, Judge

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TABLE OF CONTENTS

STATUTES CITED

TEXTS CITED

CASES CITED

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NATURE OF THE CASE

This is an action by the plaintiffs Arliean Vickers Barrett and George C. Barrett for partition of property in which each of the parties hereto has an interest or

for the sale of the property and division of the proceeds and for an accounting of the equities of the parties in the property.

DISPOSITION IN LOWER COURT

Trial was had before the Honorable C. Nelson Day, Judge of the District Court of the Fifth Judicial District in and for Juab County. The Judge entered an order granting the plaintiffs the George C. Barretts a judgment against the estate of Leland H. Vickers, deceased, for the sum of $34.25; and a judgment against the defendant Ethelyn Vickers Johnson, as successor in interest of defendants Sterling D. Vickers, deceased, and Ethelyn Vickers for the sum of $27.70. Judgment was awarded in favor of the defendant Joseph S. Barrett as successor in interest of the defendants Joseph S. Barrett and Ethel V. Barrett, deceased, against the estate of Leland H. Vickers, deceased, for the sum of $1,007.16; and in favor of the said defendant Joseph S. Barrett against the plaintiffs the George C. Barretts for the sum of $665.58. Finally a judgment was entered partitioning the property known as the Old Vickers Ranch east of Nephi, Utah, between the four principal interests as more specifically outlined on page 2 of the Judgment (R page 51).

RELIEF SOUGHT ON APPEAL

The appellant seeks an order remanding the action to the District Court for further trial and proper dis-

position relative to the amounts of the judgments granted in favor of the appellant which judgments the appellant alleges to be deficient and with respect to the partition of the property which the appellant alleges to be in error, or in the alternative, should this court determine the facts as revealed by the exhibits and testimony of witnesses to be sufficiently clear to allow a final disposition of the case, for a determination of the proper amounts due and owing and an order remanding the case to the District Court for entry of judgment as specifically determined and outlined by this court so as to conclude this litigation which has now been pending for 28 years.

STATEMENT OF FACTS

The preliminary facts out of which this case arose are amply set out in the case of *Barrett vs. Vickers,* 116 P.2d 772, 100 Utah 534 (1941). In that case the Supreme Court upheld the decision of Judge Will L. Hoyt to the effect that each of the four interest holders or pairs of interest holders owned an undivided one-fourth interest in and to the contract with the State Land Board (defendant's Exhibit 2). The present action was commenced by Arliean Vickers Barrett and George C. Barrett to partition the property or to sell the property and divide the proceeds in 1942. Trial was had, however, judgment was not rendered thereafter by the trial court until December 21, 1960 by which judgment the court decreed the property could not be par-

tioned without substantial injury to the property and the rights of the parties. The court did not, however, enter a decree that the property be sold.

The parties were dissatisfied with the judgment and again brought their problem before the Utah Supreme Court. (*Barrett vs. Vickers,* 362 P.2d 586, 12 Utah 2d 73 (1961)). This court stated in its opinion on that case:

> It is obvious that where a co-tenancy is undesirable to one or more of the parties and they cannot agree upon a solution to the problems it presents there must be some method of terminating it. To meet such exigencies our statutes provide that when an action is brought the court 'must order a partition according to the respective rights of the parties,' or alternatively upon proof 'to the satisfaction of the court, that . . . the partition cannot be made without great prejudice to the owners, the court may order a sale thereof.' The proceeds must then be allocated according to the interests of the parties. A cotenant who has properly invoked the aid of this statute is entitled to one or the other of these remedies as a matter of right. The failure of the court to grant either was error and this case must be remanded for determination of what should be done in that regard.

The case was retried September 17, 1962 by a different judge, the judge who had originally tried the case having retired, but again judgment was delayed and was not finally rendered on the matter until June 21, 1969 (R pp. 50-52).

From the time this action was first commenced in 1942 to the present time the parties have been in constant controversy resulting in a variety of additional lawsuits between the parties as to personal claims. All personal claims were excluded by the trial court in its pretrial order, (R. pp. 1-2) which was read into the transcript at page 16 and interpreted further at page 17. Following the original lawsuit and the determination of the interests of the parties in and to the contract the various parties made sporadic payments sufficient to maintain the group rights with the State Land Board but resulting in a confusion of equities, rights and interests which would tax the wits of the most qualified accountant.

The trial judge in 1945 finally recommended that somebody pay off the State Land Board in an effort to reduce the complications of the contract. This was done in 1945 and 1946 when Ethelyn Vickers and Sterling Vickers paid what was estimated to be the balance of their share and Ethel V. Barrett and Joseph S. Barrett paid the balance of the contract to the State Land Board (plaintiff's Exhibit F, State's Exhibit A, and plaintiff's Exhibit Q).

Various improvements were made upon the property, principal among which was the repair of the dam which had been washed out by a flood (Tr. pp. 86-87) and which necessitated placing the entire farm under cultivation to obtain Federal assistance (Tr. pp. 94, 95 and 224). This was done by Joseph S. Barrett (Tr. pp. 94, 96 and 100).

The details of the contributions made by the defendant Joseph S. Barrett and his wife and the improvements made by him are more specifically outlined with specific references to the record and transcript in those portions of this brief which deal with the points of alleged error on the part of the trial judge in ruling contrary to the evidence at the trial.

The testimony with regard to whether or not the property could be partitioned was conflicting and ambiguous (Tr. pp. 76, 150, 182, 185, 189, 190, 200). The plaintiff, George C. Barrett testified that the temporary division was not entirely satisfactory, (Tr. 200) and that he would not be interested in any of the divided portions, but that which he had specifically chosen for his own use (Tr. 189).

The court did not appoint referees to determine how the property should be divided.

The court filed a memorandum opinion on January 3, 1969 (R. pp. 29-30) which resulted in objections from both the plaintiffs and the defendant, Joseph S. Barrett, individually and as successor in interest of the defendant, Ethel V. Barrett (R. pp. 31-36), following which an informal conference was held between counsel for the parties and the court and being unable to resolve the differences informally, a formal hearing was scheduled and argument had relative to the objections filed. Thereafter, the court entered its Findings of Fact and Conclusions of Law and Judgment on June 21, 1969 (R. pp. 44-52) in which it abandoned its memorandum deci-

sion and awarded additional property to the George C. Barretts. This additional property was obtained from portions previously allotted to defendant Leland H. Vickers Estate under the memorandum decision in return for which certain property previously allocated to Joseph S. Barrett under the memorandum decision was allocated to the Leland H. Vickers Estate, along with some grazing land formerly allocated to the George C. Barretts.

The parties had, while the action was pending, divided the cultivatable property between themselves in a manner which although not satisfactory to any of the parties, (Tr. pp. 23, 76, 189, 200) had permitted some workable basis for use of the property during the long pendency of this action. The trial court followed this division to some degree in the judgment and divided the property based upon Findings of Fact No. 2, page 1 that each of the parties was entitled to an undivided one-fourth interest in and to the property (R. p. 45) and on the theory that the property allocated to each was an approximation of one-fourth of the monetary value of the farm.

The court found the reasonable value of the permanent improvements erected on the property by Joseph S. Barrett was $260.00 (R. p. 46) and the court set out in Paragraph 6 of the Findings of Fact the proportionate credits allowed to each of the parties for payments made toward the contract including a consideration of the judgment rendered in 1940 by Judge Hoyt (R. p. 45).

During the pendency of this action the defendant Sterling D. Vickers passed away and his wife Ethelyn Vickers has remarried and is now Ethelyn Vickers Johnson. The defendant Leland H. Vickers has passed away and the plaintiff Arliean Vickers Barrett has been appointed as Administratrix of his estate and appeared at the trial of this action in 1962 both as plaintiff and as defendant in her capacity as Administratrix of the estate of Leland H. Vickers. The defendant Ethel V. Barrett became incompetent and was such during the trial of the case in 1962 with the defendant Joseph S. Barrett representing her interests as guardian. After the trial of the case in 1962 the defendant Ethel V. Barrett passed away and the defendant Joseph S. Barrett is her successor in interest herein. The defendant Joseph S. Barrett has himself subsequently remarried.

ARGUMENT

POINT I

THE COURT ERRED IN ITS FINDINGS AS TO THE AMOUNT OF PAYMENTS MADE BY EACH OF THE CO-TENANTS.

The payments of each of the co-tenants are set out in plaintiff's Exhibit F (which carries two sets) and State's Exhibit A. Appendix "A" hereto is an outline of payments of each of the parties by date and and the amount paid as consolidated from the three statements of the State Land Board. The reconciliation of these

three sets of records of payment, commencing subsequent to the judgment of Judge Hoyt in favor of the plaintiffs against the parties in the total amount of $119.89, show that the defendant George C. Barrett paid an additional $508.69 not $716.54 as set out by the court. The defendant Sterling D. Vickers and Ethelyn Vickers paid an additional $868.71 not $836.41 as set out by the court and the defendant Joseph S. Barrett and Ethel V. Barrett paid an additional $2,085.94 not $2,051.93 as set out by the court. Only the contributions of the defendant Leland H. Vickers were correct as outlined by the court.

POINT II

THE COURT ERRED IN TAKING JUDGE HOYT'S JUDGMENT INTO ACCOUNT IN COMPUTING CREDITS AND EQUITIES OF THE PARTIES.

The judgment of $119.89 net against the three defendants in favor of the plaintiffs should not have been taken into account by the trial court in the computations of subsequent credits and equities of the parties but rather should be considered separately as a judgment against each defendant based upon Judge Hoyt's breakdown as to the liability of each defendant as set forth in Paragraph 3 of Page 3 of the Judge's August 15, 1940 decree (Defendant's Exhibit No. 2).

Defendant Joseph S. Barrett and his wife Ethel V. Barrett would be charged with $70.16 less one-third

of the total 'costs' of $96.70 awarded by the trial court and the Supreme Court leaving a net judgment in favor of the plaintiffs, the George C. Barretts in the amount of $37.93 plus interest thereon at the rate of 8 per cent per annum from the date of that judgment until paid.

It is noted that no effort has been made to enforce that judgment by execution proceedings or otherwise and that as a matter of law that judgment has been barred since August 15, 1948 since it has never been renewed. (Section 78-12-22 Utah Code Annotated as amended.) The plaintiff cannot now revive that judgment by attempting to consolidate it as a credit in the present action. That judgment was a separate, distinct, and enforceable judgment from the date it was incurred until it expired by limitations in 1948, fourteen years prior to the commencement of the trial which is the subject of the present appeal.

POINT III

THE COURT ERRED IN GRANTING THE LELAND H. VICKERS ESTATE AN OFF-SET IN THE AMOUNT OF $450.00.

The court allowed $450.00 as the reasonable value of work and labor performed by defendant Leland H. Vickers for and on behalf of defendants Joseph S. Barrett and Ethel V. Barrett (R. p. 46).

In the first instance there was no testimony of any kind entered in the trial of the case as to the extent, if

any, of the specific services performed by Leland H. Vickers, although there were some references to individual dealings (Tr. pp. 80, 83, 84, 111, and 130). Further, there was no testimony whatsoever given at trial as to the value of services, labor or work performed, if any, by Leland H. Vickers for and on behalf of Joseph S. Barrett or Ethel V. Barrett. Nor was there any evidence as to any agreed compensation for services.

In the absence of any evidence whatsoever as to services performed, if any, and the value of services performed, the court certainly cannot arbitrarily arrive at some estimate of the extent of services or the agreed compensation for services, if any, and/or of the value to be placed thereon. Likewise, it is equally clear the court cannot draw from sources outside the record to establish the extent of services, if any, or the value thereof (*Tucker Realty vs. Nunley*, 396 P.2d 410, 16 Utah 2d 97 (1964)).

There were obviously a variety of dealings and disputes between the defendant Joseph Barrett and his wife, Ethel, and the defendant, Leland H. Vickers, (Tr. pp. 80, 83, 84, 111 and 130), all of which transactions resulted in a lawsuit which was eventually settled through court action in which all personal services were taken into account (Tr. pp. 125, 126, and 127). (The lawsuit referred to was Joseph S. Barrett vs. Leland S. Vickers, Civil No. 3769 in the District Court of the Fifth Judicial District in and for Juab County. The case was dismissed with prejudice on stipulation of par-

ties in 1958.) Further, Joseph S. Barrett testified without contradiction or opposing evidence of any kind that Leland H. Vickers did not perform any services in return for money advanced for payment on the property or for improvements made to the property and that all services which were performed were in return for personal claims of the parties which had been settled in the action above referred to (Tr. pp. 127 and 131).

Thus evidence of any such claims, if there had been any would be precluded by res adjudicata as having been determined and concluded in the action previously filed and settled between the parties.

In addition to the above the court's own finding in Paragraph 11 of the Findings of Fact would bar consideration of this purported offset. In Paragraph 11 of the court's Findings of Fact (R. p. 47) the court stated:

> That the adjudication of this case involves only an adjudication as to the right to partition the property involved herein and a settlement of the claims between the parties for the cost of said property and the cost of the permanent improvements which were errected thereon but *does not involve an adjudication of any other claims which the parties may have had or attempted to assert against the others which said claims were specifically excluded.* (e.a.)

The court's finding is amply substantiated by the transcript (Tr. pp. 13, 16 and 17).

It is eminently clear therefore that even if there had been testimony and evidence as to the extent of the

work and labor performed, if any, by Leland H. Vickers on behalf of Joseph S. Barrett and his wife and/or as to the value thereof, by the court's own ruling that testimony would be beyond the scope of the case and would be excluded from consideration.

POINT IV

THE FINDINGS OF FACT PREPARED BY THE TRIAL COURT CONSTITUTE ERROR.

The Findings of Fact do not set out a basis from which it can be determined how they were derived. There is no accounting made available by the court to show what rate of interest was charged, for what periods of time, on what specific contribution. The parties are thus left with no way by which the findings can be reconciled with the record and the transcript of the testimony taken in the trial of the case.

POINT V

THE COURT ERRED IN HIS COMPUTATIONS OF THE AMOUNTS OWED BY EACH OF THE PARTIES TO THE DEFENDANT JOSEPH S. BARRETT.

The credits to which each of the parties is entitled is a technical accounting question on which the court should have appointed an accountant as a referee to make the necessary computations. The court apparently

attempted to do this without the aid of special skills of an accountant in spite of the explicit suggestion of this court in *Barrett vs. Barrett,* 362 P.2d 586 12 Utah 2d 73 (1961) that the trial court appoint a referee for this purpose. As a result the trial court was unable to resolve the accounting problem.

Appendix "B" is an accountant's computation as to credits for each of the parties, commencing with the payments of October 5, 1940. The payments prior to that date having been resolved and consolidated into Judge Hoyt's Judgment of August 15, 1940. The accountant has divided the liability into four equal parts and credited each party with payments as and when made by him and charged each party with interest at the rate of four per cent per annum on all unpaid principal prior to the due date of any installment thereon and eight per cent per annum on past due installments and interest as outlined by the contract (Defendant's Exhibit 1). After the point where the contract was paid off to the State Land Board, pursuant to the trial court's Conclusion of Law No. 1, (R. p. 44) the defendant Joseph S. Barrett has been subrogated to the rights of the State Land Board as against the parties who are in arrears in their payments on the contract. He is thereafter entitled to all amounts then due and owing to the State Land Board, together with all amounts thereafter becoming due and owing with interest at the rate of four per cent per annum on all unpaid installments of principal not yet due and interest at the rate of eight per cent per annum on all past due installments

of principal and interest. The accountant did not compound the eight per cent per annum interest charged on past due principal and interest.

The amount therefor due and owing to the defendant Joseph S. Barrett by the plaintiffs the George C. Barretts as of the date of the court's Findings of Fact and Conclusions of Law and Judgment on June 21, 1969, was $1,152.56 for contributions toward the purchase price of the property, not $536.88 as found by the court. The amount due and owing to the defendant Joseph S. Barrett by the estate of Leland H. Vickers was $2,231.61 for contributions toward the purchase price of the property not $878.46 as found by the court.

POINT VI

THE COURT ERRED IN FINDING THE VALUE OF THE IMPROVEMENTS MADE UPON THE PROPERTY BY JOSEPH S. BARRET WAS $260.00.

The evidence was clear that the dam alone cost $484.27 of which amount only Mrs. Johnson paid her one-fourth share to the defendant Joseph S. Barrett (Tr. pp. 86 and 87). There is no evidence or testimony to the contrary. There is no question but that the dam was, and that the court intended to find the dam was a permanent improvement and a necessary expenditure to preserve the value of the property.

In order to obtain the participation of the Federal

government for the repair of the dam, it was necessary the entire farm be placed under cultivation (Tr. pp. 94, 95 and 224). This Joseph S. Barrett did and in connection therewith planted alfalfa (Tr. pp. 101 and 247). The alfalfa itself was a benefit to the land and one which the plaintiffs and the defendant Leland H. Vickers received the benefits from and which the plaintiffs and the estate of Leland H. Vickers continue to harvest for their own use and benefit and which the court noted would continue to benefit the land for a period of approximately 25 years (Tr. pp. 100, 101 and 252).

There was substantial expenditure for ditches which benefited the entire land, purchased (Tr. pp. 71, 79 and 90 and the defendant's Exhibit 18). These various ditches and their maintenance were necessary in order to benefit from the dam which had been installed.

Joseph S. Barrett also put in a substantial amount of fencing (Tr. pp. 71, 83, 84 and 107) all of which benefited the various co-tenants.

Further, the court specifically found that clearing of the brush from the George Barretts' portion of the land, was a permanent improvement to the land (Tr. p. 93). The amount of the above expenses and others are set out in Defendant's Exhibit 18.

If even the dam alone, without consideration to the above-mentioned items or the other contributions made by Joseph S. Barrett (Defendant's Exhibit 18) were taken into account, the plaintiffs the George C. Barretts

and the defendant Leland H. Vickers would each be indebted to the defendant in the sum of $121.05 plus interest at six per cent as opposed to the $65.00 allowed by the court. The error of the trial court is clear. The entire question of improvements must be reviewed either by this court, if possible, or on retrial of the cause before the trial court.

The defendant Joseph S. Barrett should be entitled to judgment in the amount of one-fourth of the reasonable value of all the improvements made upon the property as against the plaintiffs the George C. Barretts and one-fourth of the reasonable value of permanent improvements upon the property against the estate of Leland H. Vickers, together with interest on each sum at the rate of six per cent per annum from the date the improvements were completed.

POINT VII

THE FAILURE OF THE COURT TO MAKE A RULING IN THIS CASE AFTER THE TRIAL FOR A PERIOD IN EXCESS OF SIX YEARS CONSTITUTES REVERSIBLE ERROR.

Our legislature has recently declared that delay beyond a sixty day period is unreasonable unless circumstances causing such delay are beyond the personal control of the judge (Section 78-7-25 Utah Code Annotated 1953 as amended). In addition the judge is

required to make a monthly written report to the District Court Administrator on all cases held by him under advisement which have been fully submitted for his consideration and determination for a period of sixty days or more. (Section 78-7-26 Utah Code Annotated 1953 as amended.)

This attorney has been able to find no cases which have dealt with a situation where a trial judge procrastinated for a period of six years prior to handing down his ruling. The longest period of time found was a period of 2½ years in the case of *Dusbabek vs. Bowers*, 43 P.2d 97, 173 Okl. 53 (1934). That case held that the trial judge had not lost jurisdiction through failure to enter the judgment and the parties had not been prejudiced thereby.

The only Utah case found dealing specifically with delay in entry of judgment is a criminal case *Kolb vs. Peterson,* 168 Pac. 97, 50 Utah 450 (1917), which held that in a criminal action the court did not lose jurisdiction of the case thus making the sentence illegal where the court failed to enter judgment within a period of two days as required by Section 5154 *Compiled Laws of Utah* 1907 but rather delayed judgment for a period of six days after the sentence was rendered.

In the present case the wife of the defendant Joseph S. Barrett has died since the trial of this case and due to the extreme delay the only attorney now representing the parties in the action who appeared at the trial of the cause is the attorney for the plaintiffs. It is a prac-

tical improbability and a realistic assumption that the trial judge could not retain the facts of this trial in his memory for a period in excess of six years and then make a decision based upon the evidence placed before him at the trial even with the use of notes taken at the trial. The reality of the trial judge's fallible memory is evidenced by his Findings of Fact and Conclusions of Law which are replete with errors, assertions and conclusions in clear contradiction to the testimony entered at trial as transcribed and presently available to this court.

POINT VIII

THE COURT ERRED IN ITS RULING THAT THE PROPERTY WAS A PROPER SUBJECT FOR PARTITION.

The first trial on this case determined the property could not be equitably partitioned. The trial court, however, did not make a ruling with regard to sale and division of the proceeds. This court's decision in that case was to the effect that if a proper petition is made for partition or sale of the property the petitioner is entitled to one of the two remedies (*Barrett vs. Vickers,* 362 P.2d 586, 12 Utah 2d 73 (1961)). The case was remanded to the trial court for further action consistent with that decision. This court did not in that case overrule the trial judge's decision that the property could not be partitioned. The proper action and disposition of the case once received again by the trial court should

have been for a determination of the credits and interest of the parties and procedures and arrangement for sale and division of the proceeds. Retrying the question as to whether or not the property could be partitioned was beyond the authority of the court and contrary to the decision and directive of this court to process the matter in accordance with the opinion handed down.

In the subsequent trial of the matter the testimony again was contrary to a partition. Joseph S. Barrett stated that he did not believe the property could be divided, that it would be an injury to the overall value of the property and could be done only at a great loss (Tr. p. 76). None of the parties indicated satisfaction with the division of the property as it had been temporarily dividend and was being used. Even the plaintiff George Barrett, who recommended a division which would place one-quarter section more in the area in which he would participate (Tr. p. 150) was not satisfied. He testified that if the property were divided as he proposed that it be divided he would not be satisfied with any portion of the property except that particular portion which he had previously selected and had previously been using (Tr. pp. 85, 185, 189, 190, 200 and 201). The evidence is amply clear that the ranch is small and in its entirety would support only minimal crops or a small herd of sheep or cattle (Tr. pp. 181, 182, and 183). Further the water rights to the ranch were of such a nature that if divided further would result in inadequate irrigation (Tr. pp. 179, 215).

POINT IX

THE PARTITION ORDERED BY THE COURT IS IN ERROR.

Section 78-39-12 Utah Code Annotated 1953 as amended states:

> . . . upon the requisite proofs being made, it (the court) *must* order a partition according to the respective rights of the parties as ascertained by the court and *appoint three referees therefor*, . . . (e.a.)

Thereafter Section 78-39-13 and Section 78-39-14 specify the duties and powers of the referees and the procedure to be used in their report. In the present case no referees were appointed by the court, an omission in clear violation of the statute and which constitutes reversible error.

A partition must in every case be equitable and no one given an unnecessary advantage. (In Re *Ferguson's Estate*, 139 Pac. 438, 44 Utah 234 (1914)). Under the Judgment as outlined by the court, the stockyard area which the plaintiff George C. Barrett testified had as much value as the residential areas and was worth as much as the cultivatable ground (Tr. p. 191), was awarded to the plaintiffs, including all of the stockyard fences and corral work, most of which was installed by the defendant Joseph S. Barrett. The dwelling constructed by the defendant Joseph S. Barrett, upon the farm was likewise awarded, together with the residential parcel No. 3, to the plaintiffs. The cultivatable

portions of the land serviced by the ditches dug by the defendant Joseph S. Barrett were awarded to the plaintiffs and Leland H. Vickers Estate. The property protected by the fences erected by Joseph S. Barrett was awarded to the plaintiffs and Leland H. Vickers Estate. Much of the Alfalfa planted by the defendant Joseph S. Barrett was awarded to the plaintiffs and to the Leland H. Vickers Estate and the land cleared by the defendant Joseph S. Barrett of brush and debris was awarded by the court to the plaintiffs.

All of the above was ordered by the court under the guise of justice while at the same time the court denied to the defendant, Joseph S. Barrett, the right of recovery for expenditures in establishing these improvements. All of which brings us as far from the equitable mandate of In Re Ferguson's Estate as the trial court could possibly have strayed without following the division suggested in court by the plaintiff, George C. Barrett (Tr. pp. 149 and 150).

POINT X

THE COURT ERRED IN RULING THAT EACH OF THE PARTIES HAD AN UNDIVIDED ONE-FOURTH INTEREST IN THE LAND AND WERE ENTITLED TO A PORTION THEREOF APPROXIMATELY EQUAL TO ONE-FOURTH THE VALUE.

The original decision of Judge Will L. Hoyt, (Defendant's Exhibit 2), which was affirmed by this court

in the case of *Barrett vs. Vickers,* 116 P.2d 772, 100 Utah 534 (1941), stated in paragraph 1, page 2 of the Judgment:

> that the plaintiff's are the owners and holders in their own rights of an undivided one-fourth interest in and to the following described *contract* and the property rights represented thereby, . . . (e.a.)

and in paragraph 2 that each of the defendants with their respective wives were the owners of an undivided one-fourth interest in "said contract."

In this court's decision in that case, the court specifically avoided the issue here in question when it stated at page 775 of the *Pacific Reporter*:

> Until one party or another has defaulted in his share of the payment, the issue of whether or not the others, if they pay his share, may increase their interest, does not arise. That question is not before us in this case.

The other parties having now defaulted in their share of the payments and such payments having been made by the defendant Joseph S. Barrett, the defendant Joseph S. Barrett has become equitably entitled to a proportionately larger share. Especially would this be so where no effort has been made by the defaulting parties to reimburse Joseph S. Barrett for the monies necessarily advanced in the preservation of the contract over a period of 24 years. (*Knesek v. Munzy,* 129 P.2d 853, 35 Okl. 1343 (1942).

When Joseph S. Barrett paid the balance of the payments due and owing to the State Land Board, he became, as properly determined by the trial court, subrogated to the rights of the State Land Board. It is imminently clear that had the co-tenants defaulted and had the defendant Joseph S. Barrett not paid their individual shares, the State Land Board would have foreclosed the contract and all of the parties would have forfeited their interests therein and received nothing for their investments. (Paragraph 4 C of Defendant's Exhibit No. 1).

It is also clear that if the property were sold by the parties to raise money to pay the State Land Board, each of the parties would have been entitled to receive benefits from the sale of the property equal to the proportionate shares contributed by them in payment over and above the amounts necessary to satisfy the claims of the State Land Board. Being now subrogated to the rights of the State Land Board, Joseph S. Barrett would be entitled in such an event to that portion which would have gone to the State Land Board had it not been cleared from the contract. How then can it be said if the property is partitioned in lieu of being sold with the proceeds of the sale divided pursuant to the equities of the parties, that the defendant Joseph S. Barrett should receive less?

The provisions of Section 78-39-12 of the Utah Code Annotated, 1953, as amended, must surely anticipate that the parties to a partition would receive equal

and equitable treatment under either of the two alternatives. Joseph S. Barrett would therefore be entitled to an award of property equal proportionately to the amount of his investment therein.

The same would apply with regard to costs and expenses advanced by Joseph S. Barrett for the improvement and protection of the property. In the case of *Ames vs. Ames,* 225 P.2d 85 170 Kan. 227 (1950) the court stated at page 88 of the Pacific Reporter:

> The extent to which the improvements enhanced the value of the land was clearly a necessary and indispensable consideration in a just and equitable partition and settlement of the rights of the co-tenants in and to the proceeds of the sale.

Here again if the defendant Joseph S. Barrett would receive a proportionately full reimbursement for the improvements to the property from the other co-tenants in the event of a sale of the property, he certainly could not in justice and equity be placed in a less secure position by a partition of the property.

The court should, therefore, have made a determination as to the fractional interests of the various parties and then appointed referees to study the property and develop a plan of partition equated to the fractional equities of the co-tenants.

Point XI

THE COURT SHOULD HAVE DECREED THAT THE MONEY JUDGMENTS GRANTED BY THE COURT WERE EXPRESS AND PRIOR LIENS AGAINST THE PROPERTY PARTITIONED AND AWARDED TO THE CO-TENANTS.

If the court should hold that each party in spite of his contribution or lack thereof toward the purchase contract retained a one-fourth interest in and to the entire tract of land then as an absolute minimum to protect the interest and rights of the defendant Joseph S. Barrett the court should have decreed that the money judgments granted by the court were express and prior liens against the property dating to the date of his payment of the disproportionate share and to the dates of payments and expenditures for the improvement and preservation of the property.

There could have been no partition without paying out the contract to the State Land Board and getting title and there was danger that the contract would be forfeited by the state during the litigation. Under the circumstances and at the urging of the trial court Joseph S. Barrett paid the balance due on the contract for the benefit of the co-tenants. This payment entitled him to an equitable lien upon the interests of the other co-tenants to secure contribution based upon principles of equity and not upon contract.

A suit for partition is an equitable proceeding, and it is a general rule that all equities should be considered and appropriate adjustments made. (68 C.J.S. p. 208 et seq., *Akley v. Bassett,* 209 P. 576, 189 Cal. 625 (1922)).

In Vol. 2 *Leonard A. Jones Treatise on the Law of Liens,* 3rd edition, Edward M. White, Bobbs Merrill Co., 1914 Ind. pp. 395 and 396, the author states:

> In the case of a joint purchase of land, an excess of purchase-money paid by one of the purchasers is a lien upon the interest of the other. Where the adventure is joint, each is entitled to participate equally in it, without regard to equality of payment; *but it is a clear principal of equity, that the common property will be held bound for any excess paid by one over the other* . . . (e.a.)
>
> . . . If one tenant in common redeems a mortgage upon the property held in common, he acquires an equitable lien upon the interests of his cotenant for the payment of his proportion of the redemption money; and a court of equity will enforce such lien by decreeing that the interest of such cotenant shall be sold in case of his default in repaying such money, and that the proceeds shall be applied to the extinguishment of the lien.

See also: *Calkins v. Steinbeck,* 4P. 1103, 66 Cal. 117 (1884); *Koboliska v. Swehla,* 77 NW 576, 107 Iowa 124 (1898); *Thurston v. Holden,* 265 P. 697, 45 Ida. 724 (1928) and *Knesek v. Muzny,* 129 P.2d 853, 35 Okl. 1343 (1942).

It would seem strange indeed, if the co-tenants were entitled to a decree partitioning the property free of any lien when under the circumstances the property could not have been partitioned at all without paying the debt to the state. Equity will surely not permit such an injustice.

With respect to the claims of Joseph S. Barrett for contribution for necessary repairs and improvements, the trial court obviously intended to and did rule that necessary repairs and improvements were made by Joseph S. Barrett on the property. Some of these improvements benefited the entire land such as dam, others benefited specific portions of the land. Since the rights of the parties are based upon equitable principles it would be manifestly inequitable to permit the co-tenants whose property has been repaired or improved to have the benefit of such repairs and improvements without contributing his, or her, share of the expense. The rule with respect to necessary repairs is clearly stated at 2 *Jones on Liens*, Supra pages 146 and 147 as follows:

> One joint tenant or tenant in common has a lien upon his cotenant's interest in the property for the expense of necessary and useful repairs made upon it whereby a common benefit has been conferred on the owners, so that ex aequo et bono they ought to pay for such a benefit. Unless the property could be so charged for such repairs, which one tenant is willing to make, the property might remain unfit for use, and worthless or unprofitable to both tenants. *One tenant*

> *should not be forced to let his property go to ruin, or to sell his interest, because his cotenant is unwilling or unable to make the necessary repairs.* Neither should the tenant who is willing to incur the cost of making such repairs be forced to do so at his own expense without security for the repayment of his cotenant's share, but *the law should afford him immediate security therefor by means of a lien upon his cotenant's interest.* (e.a.)

The repair of the dam, the fences, the ditches and other repairs testified to by defendant Joseph S. Barrett (Defendant's Exhibit 18) would certainly come under this rule.

In 1 *Tiffany Real Property,* Second Edition, Callaghan & Co., 1920, Chicago, pp. 687 and 688, it is stated:

> In equity it has been held that a cotenant who makes improvements in good faith may be entitled, on partition of the property, to have assigned him as his share the portion which he has improved, if this can be done without injury to the other cotenants; and, when this cannot be done, *the other cotenants may be required, as a condition of partition, to pay to the improving tenant the amount to which their shares have been benefited by the improvements made by him in good faith,* or he may be allowed for them out of the proceeds of the sale of the property in the partition proceeding . . . (e.a.)

See also 86 C. J. S., p. 451, where the rule for the application of equitable principles is discussed:

Under certain circumstances, however, a tenant in common may enforce contribution for permanent improvements or secure an allowance of compensation therefor in equitable proceedings; and, as discussed in Partition Sec. 139, the general rule is that, where a cotenant places improvements on the common property, equity will, in partition proceedings, take this fact into consideration, and in some way compensate him therefor, as, for example, by an allotment of the portion of the land on which the improvements are placed to him as his share, without regard to its enhanced value by reason of such improvements, or, where it is impossible so to allot the improvements to him, requiring the other cotenants to pay to him their proportionate share of the enhancement of value resulting from such improvement. *Likewise, on an accounting and distribution of the estate, as in the case of an intestate succession, or distribution of the proceeds of a sale thereof, an allowance may be made to a cotenant who has, in good faith, placed improvements on the common premises for the common benefit, enhancing their value.* A cotenant's right to compensation for improvements made by him on the common property is primarily a question for the court, and the court will determine the right to relief on the basis of the application of the equitable principles involved to the factual showing of the individual case. (e.a.)

In 40 Am. Jur. p. 32, the rule is stated thus:

While at common law a tenant in common could not claim contribution in an action at law for partition of the property for necessary improvements made on the common property without the consent of his cotenant, in equity a dif-

ferent rule applies, and the court acting on the maxim 'he who seeks equity must do equity' will take such improvements into consideration in decreeing a partition, *even though made without consent or promise of contribution,* provided they are necessary, useful, substantial and permanent enhancing the value of the estate. This rule has been adopted and applied, with but rare exceptions, in every jurisdiction where the action for partition is considered as one calling for equitable interposition and relief. (See cases therein cited.)

See also: *Dahlhammer v. Schneider,* 252 P.2d 807, 197 or 478 (1953); *Ventre v. Tiscornia,* 138 P. 954, Cal. 598 (1913); and *Indra v. Wiggins,* 28 NW (2d) 485, 238 Iowa 729 (1947).

The practical result of a lien established as of the time of the advancement of the funds is to guarantee to the parties so advancing funds, on a joint purchase contract or advancing funds for the improvement of property owned by co-tenants, the benefit of their investment. It prevents co-tenants who cannot or will not advance their share from benefiting from their inaction. It prevents intervening lien holders whose rights might become fixed prior to the date of judgment, from divesting the co-tenant advancing the money of the benefit of his contribution. Such a rule of law likewise prevents occurrences, such as those anticipated by Section 78-22-1.1, Utah Code Annotated, 1953, as amended, from divesting the co-tenant of his investment through circumstances which could conceivably com-

pletely drain a small estate of funds, including proceeds of the sale of the property, through priority claims of last illness and probate fees and expenses. Such is the potential in the present case as relates to the estate of Leland H. Vickers.

Point XII

THE COURT'S GRANTING OF JUDGMENT ON BEHALF OF THE PLAINTIFFS AGAINST THE LELAND H. VICKERS ESTATE WAS ERROR.

This judgment is obviously some portion or remnant of the original judgment granted by Judge Will L. Hoyt on August 15, 1940. That judgment is no longer enforceable, the Statute of Limitations having expired long before the trial in the present case.

It may not be readily apparent that defendant Joseph S. Barrett would be properly concerned with a judgment granted by the court on behalf of the plaintiffs against the estate of defendant Leland H. Vickers, however, as alluded to above the preservation of the Leland H. Vickers Estate is of direct concern to Joseph S. Barrett for purposes of satisfying his own judgment against the estate.

The granting of this judgment against the estate of Leland H. Vickers serves merely to transfer to the plaintiffs additional funds which might otherwise be available to the satisfaction of the judgment by Joseph

S. Barrett. This is particularly so, in the light of the fact that one of the plaintiffs has placed herself in the contradictory position of both plaintiff and defendant, being the Administratrix of the Leland H. Vickers Estate. The conflicting interests of this anomalous situation is undoubtedly more than clear to the court and it is suggested is of itself reversible error.

CONCLUSIONS

From the foregoing the defendant Joseph S. Barrett makes the following conclusions:

The property should not have been partitioned. A sale should have been ordered and the property sold and the proceeds divided according to the interests of the parties. The equities of the co-tenants should be properly determined and a share of the proceeds of the sale proportionate to his overall contributions toward the purchase contract and improvements and preservation of the property should be awarded to Joseph S. Barrett. In this regard the minimum amount of indebtedness to be determined as against the plaintiffs would be $1,152.56 as of June 21, 1969, plus $121.05 together with interest thereon at the rate of six per cent per annum from the date the dam was completed and such additional amount together with interest thereon at six per cent per annum from the dates of each expenditure as the court determines to have been a necessary expenditure in the preservation of the property and/or a permanent improvement thereon.

The minimum amount of indebtedness to be determined as against the estate of Leland H. Vickers would be $2,231.61 as of June 21, 1969 plus $121.05 together with interest thereon at six per cent per annum from the date the dam was completed and such additional amount together with interest thereon at six per cent per annum from the dates of each expenditure as the court determines to have been a necessary expenditure in the preservation of the property and/or a permanent improvement thereon.

If the court determines the trial court was correct in its decision that the property should be partitioned, then a determination should be made as to the equities of the parties in the property based upon their contributions toward purchase price, improvements and necessary repairs. Referees should be appointed to study the property and a division made thereof between the parties proportionate to their equities.

If the court should hold that each party is entitled to a division of the property equal to one-fourth of the value thereof then an express equitable lien dating to the date of contribution toward the purchase price and to the dates of payments made for preservation and improvement of the property should be declared so as to secure to the defendant Joseph S. Barrett the benefits of his investment and so as to prevent the plaintiffs and the estate of Leland H. Vickers from benefiting and profiting from their inaction and becoming unjustly enriched thereby.

If the court finds that from the evidence and testimony now before it, it cannot make a ruling consistent with the above then the case should be remanded to the trial court for a new trial with specific and definite instructions and an outline as to the law governing the fact situation of the parties so as to effect a disposition thereof which is as prompt and equitable as possible.

Respectfully submitted,

E. EARL GREENWOOD, JR.
JAY A. MESERVY

Attorneys for Appellant

APPENDIX "A"

Payments made by Joseph S. and E. V. Barrett

Date	*Payment*
10-5-40	$ 47.85
10-2-42	34.23
3-31-43	135.25
8-10-43	66.24
3-2-44	65.68
7-11-44	32.20
10-5-44	32.60
12-1-44	31.62
7-11-45	541.59
7-11-45	541.59
3-26-46	557.09
	$2,085.94

Payments made by Leland H. Vickers

Date	*Payment*
10-5-40	$ 47.84
12-2-41	50.00
10-2-42	34.22
7-11-44	32.20
11-30-44	31.62
	$195.88

Payments made by George C. and A. V. Barrett

Date	*Payment*
10-5-40	$143.53
10-7-41	135.64
3-31-42	36.51
10-3-42	34.22
3-31-45	34.18
5-28-45	124.61
	$508.69

Payment of Sterling and Ethelyn Vickers

Date	*Payment*
10-5-40	$47.84
12-5-41	50.00
10-3-42	33.55
8-9-43	66.24
3-2-44	65.68
7-11-44	32.19
11-30-44	31.62
7-11-45	541.59
	$868.71

Appendix 'B'

LELAND PAYABLE

		No. of Days	Total Payment	Bal. Owing	Bal. if on Sched.	Amount Past Due	8% Int. Increase	8% Int. Payment	8 % Int. Balance
4-4-40	Beginning balance			758.81	758.81				
6-1-40	Interest to due date	58		763.70	738.84	24.86			
10-5-40	Payment	126	47.84	726.90	738.84	0	.70	.70	0
12-1-40	Interest to due date	57		731.50	718.87	12.63			
6-1-41	Interest to due date	182		746.04	698.90	47.14	.51		.51
12-1-41	Interest to due date	183		760.25	678.93	81.32	1.92		2.43
12-2-41	Payment	1	50.00	712.78	678.93	33.85	.02	2.45	0
6-1-42	Interest to due date	181		726.43	658.96	67.47	1.36		1.36
10-2-42	Payment	123	34.22	704.42	658.96	45.46	1.84	3.20	0
12-1-42	Interest to due date	60		708.81	638.99	69.82	.61		.61
6-1-43	Interest to due date	182		721.73	619.02	102.71	2.82		3.43
12-1-43	Interest to due date	183		734.32	599.05	135.27	4.18		7.61
6-1-44	Interest to due date	182		746.43	579.08	167.35	5.47		13.08
7-11-44	Payment	40	32.20	731.37	579.08	152.29	1.49	14.57	0
11-30-44	Payment	142	31.62	713.70	579.08	134.62	4.81	4.81	0
12-1-44	Interest to due date	1		713.76	559.11	154.65	.03		.03
6-1-45	Interest to due date	182		725.07	539.14	185.93	6.25		6.28
12-1-45	Interest to due date	183		736.03	519.17	216.86	7.56		13.84
6-1-46	Interest to due date	182		746.53	499.20	247.33	8.77		26.61
12-1-46	Interest to due date	183		756.68	479.23	277.45	10.06		32.67
6-1-47	Interest to due date	182		766.37	459.26	307.11	11.22		43.89
12-1-47	Interest to due date	183		775.71	439.29	336.42	12.49		56.38
5-1-48	Interest to due date	182		784.59	419.32	365.27	13.61		69.99
12-1-48	Interest to due date	183		793.12	399.35	393.77	14.85		84.84
6-1-49	Interest to due date	182		801.20	379.38	421.82	15.93		100.77
12-1-49	Interest to due date	183		808.91	359.41	449.50	17.15		117.92
6-1-50	Interest to due date	182		816.18	339.44	476.44	18.18		136.10
12-1-50	Interest to due date	183		823.08	319.47	503.61	19.38		155.48
6-1-51	Interest to due date	182		829.54	299.50	530.04	20.37		175.85
12-1-51	Interest to due date	183		835.63	279.53	556.10	21.55		197.40
6-1-52	Interest to due date	182		841.28	259.56	581.72	22.49		219.89
12-1-52	Interest to due date	183		846.56	239.59	606.97	23.66		243.55
6-1-53	Interest to due date	182		851.41	219.62	631.79	24.55		268.10
12-1-53	Interest to due date	183		855.88	199.65	656.23	25.69		293.79
6-1-54	Interest to due date	182		859.92	179.68	680.24	26.54		320.33
12-1-54	Interest to due date	183		863.57	159.71	703.86	27.66		347.99
6-1-55	Interest to due date	182		866.80	139.74	727.06	28.47		376.46
12-1-55	Interest to due date	183		869.64	119.77	749.87	29.57		406.03
6-1-56	Interest to due date	182		872.06	99.80	772.26	30.33		436.36
12-1-56	Interest to due date	183		874.09	79.83	794.26	31.41		467.77
6-1-57	Interest to due date	182		875.70	59.86	815.84	32.12		499.89
12-1-57	Interest to due date	183		876.92	39.89	837.03	33.18		533.07
6-1-58	Interest to due date	182		877.73	19.92	857.81	33.85		566.92
12-1-58	Interest to due date	183		878.13	0	878.13	34.88		601.80
6-21-69	Interest to date of judgment	3852		878.13	0		751.68		1,353.48

SUMMARY

Bal. past due	$ 878.13
8% Int. owing	1,353.48
	$2,231.61

GEORGE BAY PAYABLE

		No. of Days	Total Payment	Bal. Owing	Bal. if on Sched.	Amount Past Due	8% Int. Increase	8% Int. Payment	8 % Int. Balance
4-4-40	Beginning Bal.			758.81	758.81				
6-1-40	Interest to due date	58	0	763.70	738.84	24.86			
10-5-40	Payment	126	143.53	631.21	738.84	0	.70	.70	0
12-1-40	Interest to due date	56	0	635.13	718.87	0			
6-1-40	Interest to due date	182	0	647.97	698.90	0			
10-7-41	Payment	128	135.64	521.55	698.90	0			
12-1-41	Interest to due date	54	0	524.68	678.93	0			
3-31-42	Payment	120	36.51	495.17	678.93	0			
6-1-42	Interest to due date	61	0	498.53	658.96	0			
10-3-42	Payment	124	34.22	471.18	658.96	0			
12-1-42	Interest to due date	58	0	474.22	638.99	0			
6-1-43	Interest to due date	182	0	483.81	619.02	0			
12-1-43	Interest to due date	183	0	493.65	599.05	0			
6-1-44	Interest to due date	182	0	503.63	579.08	0			
12-1-44	Interest to due date	183	0	513.87	559.11	0			
3-31-45	Payment	120	34.18	486.54	559.11	0			
5-28-45	Payment	58	124.61	365.07	559.11	0			
6-1-45	Interest to due date	4		365.23	539.14	0			
12-1-45	Interest to due date	183		372.66	519.17	0			
6-1-46	Interest to due date	182		380.20	499.20	0			
12-1-46	Interest to due date	183		387.93	479.23	0			
6-1-47	Interest to due date	182		395.77	459.26	0			
12-1-47	Interest to due date	183		403.82	439.29	0			
6-1-48	Interest to due date	182		411.99	419.32	0			
12-1-48	Interest to due date	183		420.37	399.35	21.02			.85
6-1-49	Interest to due date	182		428.45	379.38	49.07	.85		2.85
12-1-49	Interest to due date	183		436.16	359.41	76.75	2.00		5.95
6-1-50	Interest to due date	182		443.43	339.44	103.99	3.10		10.18
12-1-50	Interest to due date	183		450.33	319.47	130.86	4.23		15.47
6-1-51	Interest to due date	182		456.79	299.50	157.29	5.29		21.87
12-1-51	Interest to due date	183		462.88	279.53	183.35	6.40		29.29
6-1-52	Interest to due date	182		468.53	259.56	208.97	7.42		37.79
12-1-52	Interest to due date	183		473.81	239.59	234.22	8.50		47.26
6-1-53	Interest to due date	182		478.66	219.62	259.04	9.47		57.79
12-1-53	Interest to due date	183		483.13	199.65	283.48	10.53		69.26
6-1-54	Interest to due date	182		487.17	179.68	307.49	11.47		81.70
12-1-54	Interest to due date	183		490.82	159.71	331.11	12.44		95.09
6-1-55	Interest to due date	182		494.05	139.74	354.31	13.39		109.50
12-1-55	Interest to due date	183		496.89	119.77	377.12	14.41		124.75
6-1-56	Interest to due date	182		499.31	99.80	399.51	15.25		140.99
12-1-56	Interest to due date	183		501.34	79.83	421.51	16.24		158.04
6-1-57	Interest to due date	182		502.95	59.86	443.09	17.05		176.06
12-1-57	Interest to due date	183		504.17	39.89	464.28	18.02		194.84
6-1-58	Interest to due date	182		504.98	19.92	485.06	18.78		214.57
12-1-58	Interest to due date	183		505.38	0	505.38	19.73		647.18
6-21-69	Interest to date of judgment	3852					432.61		

SUMMARY

Bal. past due	$ 505.38
8% Int. owing	647.18
Total owing	$1,152.56

STERLING \| PAYABLE

		No. of Days	Total Payment	Bal. Owing	Bal. if on Sched.	Amount Past Due	8% Int. Increase	8% Int. Payment	8 % Int. Balance
4-4-40	Beginning balance			758.81	758.81				
6-1-40	Interest to due date	58	0	763.70	738.84	24.86			
10-5-40	Payment	126	47.84	726.90	738.84	0	.70	.70	0
12-1-40	Interest to due date	57		731.50	718.87	12.63			
6-1-41	Interest to due date	182		746.04	698.90	47.14	.51		.51
12-1-41	Interest to due date	183		760.25	678.93	81.32	1.92		2.43
12-5-41	Payment	4	50.00	713.05	678.93	34.12	.07	2.50	0
6-1-42	Interest to due date	178		726.48	658.96	67.52	1.35		1.35
10-3-42	Payment	124	33.55	705.22	658.96	46.26	1.86	3.21	0
12-1-42	Interest to due date	59		709.54	638.99	70.55	.61		.61
6-1-43	Interest to due date	182		722.46	619.02	103.44	2.85		3.46
8-9-43	Payment	69	66.24	666.02	619.02	47.00	1.59	5.05	0
12-1-43	Interest to due date	114		673.86	599.05	74.81	1.19		1.19
3-2-44	Payment	91	65.68	616.94	599.05	17.89	1.51	2.70	0
6-1-44	Interest to due date	91		623.00	579.08	43.92	.36		.36
7-11-44	Payment	40	32.19	594.13	579.08	15.05	.39	.75	0
11-30-44	Payment	142	31.62	572.12	579.08	0	.47	.47	0
12-1-44	Interest to due date	1		572.18	559.11	13.07			0
6-1-45	Interest to due date	182		583.49	539.14	44.35	.53		.53
7-11-45	Payment	40	541.59	45.22	539.14	0	.39	.92	0
12-1-45	Interest to due date	143		45.94	519.17				
6-1-46	Interest to due date	182		46.87	499.20				
12-1-46	Interest to due date	183		47.82	479.23				
6-1-47	Interest to due date	182		48.79	459.26				
12-1-47	Interest to due date	183		49.78	439.29				
6-1-48	Interest to due date	182		50.79	419.32				
12-1-48	Interest to due date	183		51.82	399.35				
6-1-49	Interest to due date	182		52.87	379.38				
12-1-49	Interest to due date	183		53.95	359.41				
6-1-50	Interest to due date	182		55.04	339.44				
12-1-50	Interest to due date	183		56.16	319.47				
6-1-51	Interest to due date	182		57.30	299.50				
12-1-51	Interest to due date	183		58.47	279.53				
6-1-52	Interest to due date	182		59.65	259.56				
12-1-52	Interest to due date	183		60.86	239.59				
6-1-53	Interest to due date	182		62.09	219.62				
12-1-53	Interest to due date	183		63.35	199.65				
6-1-54	Interest to due date	182		64.63	179.68				
12-1-54	Interest to due date	183		65.94	159.71				
6-1-55	Interest to due date	182		67.27	139.74				
12-1-55	Interest to due date	183		68.64	119.77				
6-1-56	Interest to due date	182		70.03	99.80				
12-1-56	Interest to due date	183		71.45	79.83				
6-1-57	Interest to due date	182		72.89	59.86	13.03	.53		.53
12-1-57	Interest to due date	183		74.11	39.89	34.22	1.38		1.91
6-1-58	Interest to due date	182		74.92	19.92	55.00	2.24		4.15
12-1-58	Interest to due date	183		75.33	0	75.33	64.48		68.63
6-21-69	Interest to date of judgment	3852			0				

SUMMARY

Bal. owing	$75.33
8% Loan	68.63
Total owing	$143.96

JOSEPH BA[illegible] PAYABLE

		No. of Days	Total of Payments	Bal. Owing	Bal. if on Sched.	Amount Past Due	8% Int. Increase	8% Int. Payment	8 % Int. Balance
1-4-40	Beginning Balance			758.81	758.81				
6-1-40	Interest to due date	58	0	763.70	738.84	24.86			
10-5-40	Payment	126	47.85	726.89	738.84	0	.70	.70	0
12-1-40	Interest to due date	57		731.49	718.87	12.62			
6-1-41	Interest to due date	182		746.03	698.90	47.13	.51		.51
12-1-41	Interest to due date	183		760.24	678.93	81.31	1.92		2.43
6-1-42	Interest to due date	182		773.97	658.96	115.01	3.29		5.72
10-2-42	Payment	123	34.23	757.61	658.96	98.65	3.14	8.86	0
12-1-42	Interest to due date	60		761.87	638.99	122.88	1.32		1.32
3-31-43	Payment	120	135.25	639.74	638.99	.75	3.28	4.60	0
6-1-43	Interest to due date	62		644.14	619.02	25.12	.01		.01
8-10-43	Payment	70	66.24	583.11	619.02	0	.39	.40	0
12-1-43	Interest to due date	113		590.43	599.05	0			
3-2-44	Payment	91	65.68	530.72	599.05	0			
6-1-44	Interest to due date	91		536.09	579.08				
7-11-44	Payment	40	32.20	506.27	579.08				
10-5-44	Payment	86	32.60	478.51	579.08				
12-1-44	Payment	57	31.62	449.92	559.11				
6-1-45	Interest to due date	182		459.02	539.14				
7-11-45	Payment	40	541.59	(80.33)	539.14				
7-11-45	Payment	0	541.59	(622.12)					
3-26 46	Payment	115	557.09	(179.21)					