

1970

## **Vern Shutte & Sons v. J. R. Broadbent And Earl Fredrickson : Brief of Appellant**

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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VERN SHUTTE & SONS,  
*Plaintiff and Respondent,*

vs.

J. R. BROADBENT,

*Appellant,*

and

EARL FREDRICKSON,

*Defendant.*

Case No.  
11987

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## BRIEF OF APPELLANT

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Appeal from Judgment of the District Court  
of Salt Lake County, Utah  
The Honorable Stewart M. Hanson, Judge

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*Plaintiff and Respondent,*

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J. R. BROADBENT,

*Appellant,*

and

EARL FREDRICKSON,

*Defendant.*

Case No.  
11937

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## BRIEF OF APPELLANT

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### NATURE OF THE CASE

This is an action for compensation for services allegedly provided the defendants by the plaintiff.

### DISPOSITION IN LOWER COURT

The case was tried to the Honorable Stewart M. Hanson, District Judge, sitting without a jury, in the

District Court of Salt Lake County. The plaintiff was awarded judgment as prayed against both defendants.

## RELIEF SOUGHT ON APPEAL

Defendant Broadbent seeks a reversal of the judgment entered against him and an order directing the District Court to enter judgment in his favor.

## STATEMENT OF FACTS

Before September 1, 1963, the defendants entered into an Agreement under which Fredrickson contracted the winter care and feeding at Burley, Idaho of two to three thousand calves owned by Broadbent. Broadbent agreed to pay Fredrickson \$.15 per pound of winter gain with an advance against current costs of \$.15 per head per day. The calves were to be re-delivered to Broadbent between May 15-June 1, 1964 and shipped to summer pasture in Wyoming. At the time of re-delivery an accounting would be made between Broadbent and Fredrickson. (Exhibit 5-D; R-29-30; 63).

Fredrickson entered into an agreement with local farmers Carl Nelson and Von Kincaid whereby they were to supply their yards, known as "Steele Ranch," and the feed and labor for the care of some of the Broadbent calves. Mr. Nelson engaged plaintiff Vern Shutte to chop the hay for use as feed. (R-69).

When Fredrickson brought the cattle to the Steele Ranch, Mr. Nelson did not know who owned them, nor did he know their ownership when he arranged with plaintiff Shutte to chop the hay. He was called as a witness for the plaintiff and testified:

“Q. At the time you contacted Mr. Shutte and asked him to feed the cattle which were in your feed yards, did you tell him whose cattle they were?

A. No, at the time—I did not.

Q. Did you later tell him prior to Mr. Hoffman's taking over?

A. Yes, I found out what the deal on the cattle was, who owned them and everything. Then he knew that. I told him before, when the cattle first came in I didn't know exactly whose it was, knew he (Fredrickson) was feeding cattle for several different parties.” (R-75).

Mr. Nelson described his understanding of responsibility for payment as follows:

“Q. This was the only understanding you ever did have, by anyone who had any authority for Broadbent, that Mr. Fredrickson was feeding this cattle on a gain basis, and you would have to look to him, down to the day he could not carry on any further?

A. Yes.” (R-73-74).

At the request of Carl Nelson, the plaintiff commenced chopping hay in December, 1963, and continued until April, 1964. Defendant Fredrickson paid him \$1,000 by check on his Smithfield bank account

on or about January 15, 1964. (R-54). Concerning the plaintiff's understanding of the relationship between Fredrickson and Broadbent, he testified:

“Q. And is it not a thing within your knowledge that while Earl Fredrickson was feeding these cattle he was doing it as an independent contractor and being paid by Broadbent on the basis of the pounds of gain that the cattle made while Fredrickson had them under his control and under his feeding directions?”

A. Yes, I heard that, and I heard he was working for Broadbent and it was a joint deal, so I don't know. We just did the chopping. I didn't discuss that part with Mr. Fredrickson.”

\* \* \*

Q. Mr. Shutte, at no time did J. R. Broadbent ever tell you that Earl Fredrickson was his employee or agent, did he?

A. I did not speak to him, never met the man.

THE COURT: You can answer that “Yes” or “No.”

A. No.

Q. At no time did Blaine Hoffman ever tell you that Earl Fredrickson was the employee or agent of Broadbent, did he?

A. No.

\* \* \*

Q. Well, nobody told you, did they, who had any authority at any rate, and that he was at any time the employee or agent of Broadbent?

A. Well, Mr. Nelson asked me to chop the

hay so I wanted to know who I was chopping it for.

Q. And he told you you were chopping it for Fredrickson?

A. Yes.

\* \* \*

Q. You never received any payment at that time from Fredrickson by draft or by check drawn against Broadbent, did you?

A. Not that I know of." (R-64, 65).

In February, 1964, Broadbent became concerned that Fredrickson did not have sufficient funds or feed on hand to complete his contract although, according to Broadbent's computations, a sufficient amount had been advanced to provide feed for the entire winter. Accordingly, on February 24, 1964, he confronted Fredrickson with his fears and Fredrickson agreed to step aside and permit Broadbent to retake possession of the cattle. (R-31-34). Broadbent and another of Fredrickson's customers, Jack Schwabacher, hired Blaine Hoffman to care for the cattle as their agents for the rest of the winter. (R-46). The plaintiff admits that he was paid in full for all labor and services furnished while Hoffman was feeding the cattle, (R-9) and that he was never told by Hoffman that Broadbent would pay Fredrickson's debts:

"Q. Mr. Oman asked you about a conversation that happened after Mr. Hoffman took over. Isn't it true that you had subsequent conversations with Mr. Hoffman wherein he agreed



to pay all bills against all the cattle prior to their being moved out?

A. No. He said he would have to see Mr. Fredrickson about the rest of it, but he would pay everything from now on, he will pay it, and he did.

Q. And he never told you he was going to pay all of the bills before the cattle were moved?

A. No.”

\* \* \*

It should be pointed out that the accounting between Broadbent and Fredrickson became the subject of another lawsuit filed before the District Court of Cache County, Utah, as Civil No. 163248. Neither in that case nor in the instant case did Fredrickson claim to have acted as Broadbent's agent at any time.

The trial court found “that from December, 1963 to April, 1964 the defendant, J. R. Broadbent, was the owner of certain cattle. Said cattle were located at Hazelton, Idaho, and that *the defendants, J. R. Broadbent and Earl Fredrickson, were jointly feeding said cattle. That, at the request of the defendants, the plaintiff chopped hay for them for a total amount of \$4,679.15. That there is now a balance due for the chopping of said hay the sum of \$1,035.05, which amount has not been paid although demand has been made.*

## ARGUMENT

THE TRIAL COURT ERRED IN FINDING BROADBENT AND FREDRICKSON WERE JOINTLY FEEDING CATTLE AT THE TIME PLAINTIFF'S CLAIM AROSE.

The record is devoid of evidence showing that Broadbent and Fredrickson were joint venturers in the feeding of the cattle.

This Court defined the elements of joint adventure in *Mukasey vs. Aaron*, 20 Utah 2d 383, 438 P.2d 702, saying:

“The relationship of a joint enterprise generally arises by way of contract. The restatement of law sets forth the elements which are essential to the establishment of a joint enterprise as follows:

“The elements which are essential to a joint enterprise are commonly stated to be four: (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control.”

In *Robinson Transport Company vs. Hawkeye Security Insurance Company* (Wyoming, 1963), 385 P.2d 203, the Supreme Court of Wyoming was urged to find a joint venture relationship between truckers. The Court declined, saying:

“As to the parties being joint adventurers, we look first to the nature of that relationship. Since the term is of recent origin, created by the courts of the United States, it may not be as clear as if the concept had been long embedded in the common law. However, there would seem to be no question that under any view of the relationship the joint adventurers would necessarily share both in the profits and losses. (Citations omitted).

\* \* \*

“In the present case the evidence disclosed no intention for Freese and the Robinson company to share either the profits or the losses, and the finding of the Court to that effect was fully justified. Accordingly, there was no joint venture.”

In the Broadbent-Fredrickson dealing there was no participation in profits or losses. Raising or lowering of livestock prices would not affect Fredrickson but would affect Broadbent. Raising or lowering of Idaho feed costs would not affect Broadbent but would affect Fredrickson. Neither would share in or be affected by the profits or losses of the other.

There was no evidence showing that Broadbent requested the plaintiff or Carl Nelson to perform any service for him before February 24, 1964, nor was there any showing whatever that Fredrickson was Broadbent's agent in dealing with Nelson or plaintiff.

The undisputed evidence shows that Fredrickson fed the cattle as an independent contractor until February 24, 1964, during which time the plaintiff's Com-

plaint arose. After that date, Broadbent was responsible for the cattle through his agent, Blaine Hoffman. The uncontradicted evidence is that Fredrickson had sole possession and control of the cattle until February 24, 1964 and that Broadbent had sole possession and control after that date, that at no time were they "jointly feeding said cattle." It is also undisputed that the plaintiff's employment when his claim arose was with Fredrickson through Carl Nelson and that Broadbent had no arrangements with either Mr. Nelson or the plaintiff prior to February 24, 1964.

### CONCLUSION

The judgment entered against defendant Broadbent should be reversed and judgment in favor of Broadbent should be entered, no cause of action.

Respectfully submitted,

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