

16005

SECOND APPELLATE DISTRICT

20651

see 16002

CHARLES A. SUMMERS, Plaintiff

vs.

HAROLD W. TICE and ERNEST SIMONSON, Defendants

DIST. COURT OF APPEAL - SECOND DIST. FILED MAY 17 1947

J. E. DROWN Clerk  
*Sherrill*  
Deputy Clerk

CHARLES A. SUMMERS, Plaintiff

and

HAROLD W. TICE, Defendant

RESPONDENTS

vs.

ERNEST SIMONSON, Defendant

APPELLANT

NO. (Appeal by Ernest Simonson)

CLERK'S TRANSCRIPT

Appeal from the Superior Court, Los Angeles County HONORABLE JOHN A. HOLLAND, Judge Pro Tempore.

Appearances:

WERNER O. GRAF, ESQ., 608 S. Hill Street, Los Angeles 14, California, Counsel for Plaintiff and Respondent, Charles A. Summers.

MESSRS. W. J. PURCIEL and G. M. GALE, 4459 E. Gage Avenue, Bell, California, Counsel for Appellant, Ernest Simonson.

MAY 12 1947

MESSRS. WM. A. WITTMAN and JOSEPH D. TAYLOR, 8179 Seville Avenue, South Gate, California, Counsel for defendant, and Respondent, Harold W. Tice.

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CLERK'S TRANSCRIPT

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**FILED**

APR 25 1947

J. F. MORONEY, County Clerk

By E. E. Wilson  
Deputy

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I N D E X

No. 509835

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List of E X H I B I T S not copied but DESIGNATED  
for inclusion in appeal record per Rule 9 (c) of  
Rules on Appeal

Department 50

No. 509835

March 12, 1947.

(Plaintiff's Exhibits)

<u>Number</u>	<u>Description</u>
1	Photostatic copies of bank records
2	Escrow Instructions & Memo of agreement
3	4 Promissory notes
4	Opening statement-Harold W. Tice, etc.

Exhibits 2 and 3 may be withdrawn upon  
substitution of photostatic copies therefor.

(see minute order March 12, 1947, Dept. 50)



1 distant from the defendants, each of the defendants did  
 2 simultaneously discharge the shot gun in his hand so  
 3 carelessly, negligently and recklessly, as to cause some of  
 4 the bird shot in said shot guns to become lodged in  
 5 plaintiff's right eye and <sup>in</sup> /plaintiff's upper lip.

V

7 That plaintiff is in doubt as to the person from  
 8 whom he is entitled to redress and therefore has joined  
 9 both defendants in this action with the intent that the  
 10 question as to which of the defendants is liable, and to  
 11 what extent, may be determined by this Court.

VI

13 That as a direct and proximate result of the  
 14 carelessness and negligence of the defendants, and each of  
 15 them, as above set forth, plaintiff suffered the loss of  
 16 his right eye, injuries to his lip, excruciating physical  
 17 pain and anguish, all to his damage in the sum of  
 18 \$25,000.00.

VII

20 That as a further direct and proximate result of  
 21 the carelessness and negligence of the defendants, and each  
 22 of them, plaintiff was required to undergo an operation for  
 23 the removal of his right eye and was required to and did  
 24 employ physicians and surgeons to give him medical and  
 25 surgical care and attention and was required to spend  
 26 approximately 6 weeks in a hospital. That to date no

3  
1 charge has been made for the above mentioned items, and  
2 plaintiff is not certain whether any charge will be made  
3 therefor; but if a charge is made therefor, plaintiff will  
4 have suffered special damages in a sum sufficient to pay  
5 a reasonable amount for said medical care, attention and  
6 hospitalization.

7  
VIII

8 That plaintiff is informed and believes, and  
9 upon that ground alleges that he will in the future  
10 require further surgery in the area of his right eye, and  
11 that he will be required to spend large sums for such  
12 surgery, all as a result of the carelessness and negligence  
13 of the defendants, and each of them, as above set forth.

14 WHEREFORE, plaintiff prays judgment against the  
15 defendants, and each of them, for general damages in the  
16 sum of \$25,000.00, for special damages in such sum as he  
17 may be entitled to under the evidence, for costs of suit,  
18 and for such other and further relief as to the Court may  
19 seem meet and proper in the premises.

20  
21 WERNER O. GRAF  
Attorney for Plaintiff

(VERIFICATION)

22 -----  
23 (ENDORSED)

24 FILED 1946 JAN 25 PM 2:23  
25 J. F. MORONEY, County Clerk  
26 By K. Meachem, Deputy

1 (TITLE OF COURT AND CAUSE)

2 509835

3 ANSWER OF HAROLD W. TICE

4 Defendant Harold W. Tice, answering plaintiff's  
5 complaint, for himself only, admits, denies and alleges:

6 I

7 Admits the allegations of Pars. I, II, and III  
8 of the complaint.

9 II

10 Denies that this defendant was about 200 feet  
11 distant from plaintiff when the shot referred to in Par. IV  
12 was alleged to have been fired but alleges that the said  
13 distance was about 450 450 feet; denies that this defendant  
14 discharged his gun simultaneously or otherwise at the time  
15 of the alleged injury and alleges that he did not discharge  
16 his gun for a time of over five minutes before the  
17 accident occurred; alleges that this defendant was at all  
18 times alleged in the complaint in the exercise of due care  
19 for the safety of plaintiff and his other companion; denies  
20 that he shot plaintiff, directly or indirectly or all,  
21 or that plaintiff any injury through any negligence  
22 of defendant.

23 III

24 Defendant denies each and every material  
25 allegation of the complaint not heretore admitted or denied  
26 herein.



That there is delivery service by the United States  
mail at the place so addressed <sup>or</sup> and there is a regular  
communication by mail between the place of mailing and the  
place so addressed.

HAZEL E. MULLEN

Subscribed and sworn to before me  
this 9th day of February, 1946.

(SEAL) ROBERT S. FISHER  
Notary Public in and for the County  
of Los Angeles, State of California.

-----  
(ENDORSED) No. 509835

ANSWER OF HAROLD W. TICE

FILED 1946 FEB 11 PM 2:54  
J. F. MORONEY, County Clerk  
By S. Smuckler, Deputy.

(TITLE OF COURT AND CAUSE)

No. 509835

ANSWER

Comes now the defendant, Ernest Simonson, and for an answer to the complaint herein alleges, admits, and denies as follows:

I

Admits the allegations of paragraph one, of the complaint.

II

Admits the allegations of paragraph two, of the complaint.

III

Admits the allegations of paragraph three, of the complaint.

IV

Denies that on said 20th day of November, 1945, or at any time that this defendant, Ernest Simonson, discharged his shot gun so carelessly, negligently, or recklessly as to cause some of the bird shot in said shot gun to become lodged in plaintiff's right eye and in plaintiff's upper lip.

V

Denies each and every allegation in paragraph five, of said complaint.

VI

Denies that the defendant, Ernest Simonson, was

1 careless or negligent and denies that said carelessness or  
2 negligence was the direct and proximate cause of plaintiff's  
3 injury if any. Denies that plaintiff was injured in the sum  
4 of \$25,000.00 or at all.

5 VII

6 Admits the allegations that the plaintiff was  
7 required to undergo an operation for the removal of his  
8 right eye and that he was required to and did employee  
9 physicians and surgeons to give him medical and surgical  
10 care. But denies that any charge will be made therefore, and  
11 denies that plaintiff will have suffered special damages in  
12 any amount or at all.

13 VIII

14 Denies each and every allegation of paragraph eight  
15 of the complaint.

16 WHEREFORE, defendant prays judgment that the  
17 plaintiff take nothing by his complaint, for costs of suit  
18 herein and for such other and further relief as to the court  
19 may seem proper in the premises.

20 W. J. PURCIEL  
21 Attorney for Defendant

22 (VERIFICATION)  
23  
24  
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26

(AFFIDAVIT OF SERVICE BY MAIL - 1013a, C. C. P.)

1  
2 STATE OF CALIFORNIA, )  
3 COUNTY OF LOS ANGELES, ) ss.

4  
5 K. MUNDIE, being first duly sworn, says: That  
6 affiant is a citizen of the United States and a resident of  
7 the county of Los Angeles; that affiant is over the age of  
8 eighteen years and is not a party to the within above entitled  
9 action; that affiant's <sup>business</sup> residence address is 121 North  
10 Broadway, Los Angeles, California, that on the 14th day of  
11 February, 1946, affiant served the within Answer on the  
12 Attorney for the Plaintiff, Werner O. Graf, in said action,  
13 by placing a true copy thereof in an envelope addressed to  
14 the attorney of record for said plaintiff, at the <sup>residence</sup> office  
15 address of said attorney, as follows:

16 "MR. WERNER O. GRAF, Attorney at Law,  
17 912 Wm. Fox Building,  
18 608 South Hill Street,  
19 Los Angeles 14, California";

20 and by then sealing said envelope and depositing the same,  
21 with postage thereon fully prepaid, in the United States  
22 Post Office at Los Angeles, California, where is located the  
23 office of the attorney for the person by and for whom said  
24 service was made.

25 That there is delivery service by United States  
26 mail at the place so addressed <sup>or</sup> and there is a regular

1 communication by mail between the place of mailing and the <sup>10</sup>  
2 place so addressed.

3 K. MUNDIE

4 Subscribed and sworn to before me  
5 this 14th day of February, 1946

6 (SEAL) I. MOORE  
7 Notary Public in and for the County  
of Los Angeles, State of California.

8 -----

9 (ENDORSED)

0 FILED 1946 FEB 15 PM 2:38  
1 J. F. MORONEY, County Clerk  
2 By S. Smuckler, Deputy.

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1 (TITLE OF COURT AND CAUSE)

2 No. 509835

3 AMENDED ANSWER

4 NOW COMES the defendant, ERNEST SIMONSON, and  
5 filing this, his First Amended Answer, admits, denies and  
6 alleges as follows:

7 I

8 The defendant generally and specifically denies  
9 each and every allegation contained in the plaintiff's  
10 Complaint, except as herein specifically admitted or denied  
11 on information and belief.

12 II

13 The defendant admits the allegations contained in  
14 Paragraphs I, II, and III of the plaintiff's Complaint; and  
15 admits that the plaintiff did receive an injury in the right  
16 eye by the penetration of bird shot and injury of the upper  
17 lip by the penetration of bird shot; and admits that the  
18 plaintiff did lose his right eye; and that a physician did  
19 remove same.

20 AS A SEPARATE AND AFFIRMATIVE DEFENSE, THE  
21 DEFENDANT ALLEGES:

22 That the said plaintiff, CHARLES A. SUMMERS, did,  
23 then and there, at said time and place, conduct himself in a  
24 negligent and carless manner; and that said carelessness and  
25 negligence on the part of the plaintiff did, then and there,  
26 contribute to and cause the accident and the result of injury

1 complained of by said plaintiff; that because of and on  
 2 account of said negligence and carelessness of said plain-  
 3 tiff and as a proximate cause of said negligence and acts  
 4 and conduct of the plaintiff, the plaintiff did, then and  
 5 there, suffer said injuries as set forth in the plaintiff's  
 6 Complaint.

7 WHEREFORE, defendant prays judgment, that the  
 8 plaintiff take nothing by his alleged cause of action;  
 9 for his costs of suit incurred herein and for such other and  
 10 further relief as the Court may deem just and proper in the  
 11 premises.

12 GALE AND PURCIEL

13 By GORDON M. GALE

14 (VERIFICATION)

15 (AFFIDAVIT OF SERVICE BY MAIL - 1013a, C. C. P.)

16 STATE OF CALIFORNIA, )  
 17 COUNTY OF LOS ANGELES, ) SS.

18 Martha Smart, being first duly sworn, says: That  
 19 affiant is a citizen of the United States and a resident of  
 20 the county of Los Angeles; that affiant is over the age of  
 21 eighteen years and is not a party to the within above  
 22 entitled action; that affiant's business address is  
 23 4459 E. Gage Ave., Bell, California, that on the 26th day of  
 24 August, 1946, affiant served the within Amended Answer on  
 25 the Plaintiff in said action, by placing a true copy thereof  
 26 in an envelope addressed to the attorney of record for said

1 Plaintiff at the office address of said attorney, as follows:  
 2 "WERNER O. GRAF, 912 Wm. Fox Bldg., 608 S. Hill St.,  
 3 Los Angeles 14, California"; and by then sealing said  
 4 envelope and depositing the same, with postage thereon fully  
 5 prepaid, in the United States Post Office at Los Angeles,  
 6 California, where is located the office of the attorney for  
 7 the person by and for whom said service was made.

8 That there is delivery service by the United States  
 9 mail at the place so addressed and there is a regular  
 10 communication by mail between the place of mailing and the  
 11 place so addressed.

12 MARTHA SMART  
 Martha Smart

13  
 14 Subscribed and sworn to before  
 15 me this 26th day of August, 1946.

16 G. M. Gale  
 17 Notary Public in and for the County of  
 Los Angeles, State of California.

18 -----  
 19 (ENDORSED)

20 Received copy of the within  
 Answer this 30 day of Aug. 1946.  
 21 WERNER O. GRAF  
 Attorney for \_\_\_\_\_

22 FILED 1946 AUG 30 AM 10:36  
 23 J. F. MORONEY, County Clerk  
 By S. Smuckler, Deputy.  
 24 -----  
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1 (TITLE OF COURT AND CAUSE)

2 NO. 509835

3 FINDINGS OF FACT AND  
4 CONCLUSIONS OF LAW

5 The above entitled matter came on regularly for  
6 trial on the 9th day of October, 1946, in Department 31 of  
7 the above entitled court, the Honorable John A. Holland,  
8 Judge Pro Tempore presiding, plaintiff appearing in person  
9 and represented by his counsel, Werner O. Graf, defendant  
10 Harold W. Tice appearing in person and represented by his  
11 counsel, Wm. A. Wittman, and Robert S. Fisher, the defendant  
12 Ernest Simonson appearing in person and represented by his  
13 counsel, W. J. Purciel, and evidence having been introduced  
14 both oral and documentary by all of the parties to said  
15 action and the matter having been submitted to the Court  
16 for its decision, the Court now makes its finds of fact  
17 and conclusions of law as follows:

18 FINDINGS OF FACT

19 I

20 The Court finds that at all times mentioned in  
21 said Complaint that the said defendants, and each of them,  
22 were residents of the County of Los Angeles, State of  
23 California.

24 II

25 That on the 20th day of November, 1945, plaintiff  
26 and defendants, and each of them, were hunting quail on the

1 open range near Welton, California.

2 III

3 That on the said date, to-wit, November 20, 1945  
4 and shortly before the shooting which resulted in the loss of  
5 plaintiff's eye as hereinafter set forth, the defendants,  
6 and each of them, were armed with a 12 guage shotgun loaded  
7 with birdshot size 7 1/2.

8 IV

9 That prior to hunting quail, the plaintiff  
10 discussed with defendants, and each of them, that they were  
11 to be careful as to when they shot; that plaintiff instructed  
12 them that they were to keep in line.

13 V

14 That plaintiff proceeded up a hill and that he  
15 advised the said defendant, Simonson, that he was going up  
16 on said hill; that the evidence further disclosed that the  
17 said defendant, Simonson, advised the said defendant, Tice,  
18 that the plaintiff had gone up said hill.

19 VI

20 That the underbrush in the vicinity in which  
21 these defendants and plaintiff were hunting was about waist  
22 high and that the Court finds there was nothing to  
23 obstruct the view of the defendants, or either of them, as  
24 to where the plaintiff was and the Court further finds that  
25 the plaintiff was not guilty of contributory negligence in  
26 any manner whatsoever.

## VII

1  
2 That on the said 20th day of November, 1945, the  
3 plaintiff and defendants did hunt quail and did place  
4 themselves in a triangular position and that the said  
5 plaintiff was upon said hill and the Court further finds  
6 that the defendants, and each of them were advised and knew  
7 the whereabouts of said plaintiff.

## VIII

8  
9 That the evidence further disclosed that the  
10 defendant, Harold W. Tice, flushed a quail, and that said  
11 quail, at an elevation from the ground of about ten feet,  
12 flew between the plaintiff, Charles A. Summers, and the  
13 defendants, Ernest Simonson and Harold W. Tice; that the  
14 said Harold W. Tice shot at said quail when said bird was  
15 at the elevation of ten feet from the ground in the  
16 direction of the plaintiff and that the said Harold W. Tice  
17 knew that the said plaintiff was in that direction and that  
18 the said defendant, Ernest Simonson, also shot at said quail.

## IX

19  
20 That the defendants, and each of them, were guilty  
21 of gross negligence in firing a gun in the general direction  
22 of the plaintiff, knowing full well the place where the said  
23 plaintiff was located and the Court further finds that the  
24 said Charles A. Summers was not guilty of contributory  
25 negligence of any kind or character.  
26

X

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The Court finds that the statement made by the said Harold W. Tice to the police officers after the accident occured is untrue.

XI

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The Court further finds that the said statement made by the said Tice that he did not shoot for a period of three to five minutes afterwards is also untrue.

XII

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The Court finds that the defendants, and each of them, were approximately a distance of about 75 yards from the plaintiff at the time of the shooting and that within a very short space of time after said shooting the said plaintiff called to said defendants and told them that he was shot; that the defendants, and each of them went to where the plaintiff was and found that the said plaintiff had received a birdshot pellet in the right eye and another birdshot pellet in his upper lip.

XIII

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That as a direct and proximate result of the shots fired by defendants, and each of them, a birdshot pellet was caused to and did lodge in plaintiff's right eye and that another birdshot pellet was caused to and did lodge in plaintiff's upper lip.

XIV

25  
26

That it was necessary to remove the right eye of

1 plaintiff and the plaintiff did suffer great pain and was  
2 confined to the hospital at Sawtelle for a period of two  
3 days less than a month and also was confined to San Diego  
4 Hospital for a period of eighteen days and the Court finds  
5 that the said injuries suffered by the said plaintiff were  
6 the result of the gross negligence of the defendants, and  
7 each of them.

8 XV

9 That the said plaintiff at the time of the  
10 shooting was wearing a red hat and the Court finds that he  
11 was plainly visible to the defendants, and each of them.

12 CONCLUSIONS OF LAW

13 From the foregoing findings of fact the Court  
14 concludes as follows:

15 I

16 That the plaintiff is entitled to \$10,000.00 from  
17 the defendants, and each of them, together with his costs  
18 of suit incurred and that judgment be entered accordingly.

19 DATED this 25th day of November, 1946.

20 JOHN A. HOLLAND  
21 JUDGE PRO TEMPORE

22 -----  
23 (ENDORSED)

24 FILED NOV 27 1946  
25 J. F. MORONEY, County Clerk  
26 By J. A. Farnsworth, Deputy.

(12)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES

CHARLES A. SUMMERS,  
Plaintiff,

No. 509835

vs.

JUDGMENT

HAROLD W. TICE and  
ERNEST SIMONSON,  
Defendants.

Wholly unsatisfied by  
Sheriff 2/3/47  
With further costs of  
\$1.00.  
ATTEST: 2/10/47  
J. F. MORONEY, County Clerk  
By M. Boardman, Deputy.

The above entitled action came on regularly for trial on the 9th day of October, 1946, in Department 31 of the above entitled Court, the Hon. John A. Holland, Judge Pro Tempore presiding, plaintiff appearing in person and represented by his counsel, Werner O. Graf, defendant Harold W. Tice appearing in person and represented by his counsel Wm. A. Wittman and Robert S. Fisher, the defendant Ernest Simonson appearing in person and represented by his counsel, W. J. Purciel, and evidence having been introduced both oral and documentary by all of the parties to said action and the matter having been submitted to the Court for its decision and the Court having signed and filed written Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff do have and recover against the defendants and each of them, judgment in the sum of \$10,000,

1 together with his costs of suit incurred herein in the sum  
2 of \_\_\_\_\_ Dollars.

3 Dated this 25th day of November, 1946.

4 JOHN A. HOLLAND  
5 Judge Pro Tempore

6 -----

7 (ENDORSED)

8 FILED NOV 27 1946  
9 J. F. MORONEY, County Clerk  
By J. A. Farnsworth, Deputy.

10 ENTERED NOV 29 1946  
11 BOOK 1732 PAGE 1  
By R. E. Thompson, Deputy.

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(TITLE OF COURT AND CAUSE)

No. 509835

NOTICE AND REQUEST FOR REPORTER'S TRANSCRIPT

TO: CHARLES A. SUMMERS, Plaintiff, AND TO HIS ATTORNEY, WERNER O. GRAF; AND TO: ERNEST SIMONSON, Defendant, AND TO HIS ATTORNEY, W. J. PURCIEL; AND TO: THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the defendant, Harold W. Tice, has appealed to the District Court of Appeal, Second Appellate District, from the judgment made and entered in the above entitled action against the said defendant, and he hereby requests that there be prepared a reporter's transcript of the oral proceedings, including therein evidence offered or received and all rulings, acts or statements of the court, also all objections or exceptions of counsel, and all matters to which the same relate.

DATED: February 17th, 1947.

JOSEPH D. TAYLOR AND WM. A. WITTMAN

By JOSEPH D. TAYLOR  
Attorneys for defendant, Harold W. Tice

(AFFIDAVIT OF SERVICE BY MAIL-1013a, C.C.P.)

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STATE OF CALIFORNIA, )  
County of Los Angeles ) ss.

Sally Shelton being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 215 W. 7th St., Los Angeles 14, Calif., that on the 17th day of February, 1947, affiant served the within Notice and Request for Reporter's Transcript on the Attorney for Plaintiff, Charles A. Summers, and Attorney for defendant, Ernest Simonson in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said plaintiff and defendant at the office address of said attorneys, as follows

"Werner O. Graf, W. J. Purciel  
608 S. Hill St., 4459 E. Gage Ave.,  
Los Angeles 14, Calif. Bell, Calif.";

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

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That there is delivery service by the United States  
mail at the place so addressed <sup>or</sup> and there is a regular com-  
munication by mail between the place of mailing and the  
place so addressed.

SALLY SHELTON

Subscribed and sworn to before me  
this 17th day of February, 1947

(SEAL) JOSEPH D. TAYLOR  
Notary Public in and for the County  
of Los Angeles, State of California.

-----  
(ENDORSED)

FILED 1947 FEB 18 AM 9 51  
J. F. MORONEY, COUNTY CLERK  
By S. Smuckler, Deputy  
-----

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES

A. SUMMERS,  
Plaintiff  
vs.  
W. TICE and  
SIMONSON,  
Defendants

No. 509835

NOTICE OF APPEAL

NOW COMES the defendant, ERNEST SIMONSON, and  
as to the District Court of Appeal of the State of  
California from the judgment and the whole thereof entered  
above entitled action.

DATED this 25th day of February, 1947.

GALE AND PURCIEL

By GORDON M. GALE  
Attorneys for Defendant,  
Ernest Simonson

(AFFIDAVIT OF SERVICE BY MAIL--1013a, G. C. P.)

OF CALIFORNIA, )  
OF LOS ANGELES, ) SS.

Martha Smart being first duly sworn, says: That  
it is a citizen of the United States and a resident of  
County of Los Angeles; that affiant is over the age of  
ten years and is not a party to the within above en-  
d action; that affiant's business address is 4459

ge Ave., Bell, Calif.; that on the 25th day of Feb.  
, affiant served the within NOTICE OF APPEAL on the  
ntiff & Defendant, Tice, in said action, by placing a  
e copy thereof in an envelope addressed to the attorneys  
record for said Plaintiff and Defendant, Tice, at the  
ice address of said attorneys, as follows:

"Werner O. Graf  
912 Wm. Fox Bldg.  
Los Angeles, Calif.  
Wm. A. Wittman & Robert Fisher,  
8179 Seville Ave.  
South Gate, Calif.";

l by then sealing said envelope and depositing the same,  
h postage thereon fully prepaid, in the United States  
st Office at Los Angeles, California, where is located  
e office of the attorney for the person by and for whom  
id service was made.

That there is delivery service by the United States  
il at the place so addressed and there is a regular  
mmunication by mail between the place of mailing and  
e place so addressed.

MARTHA SMART  
Martha Smart

bscribed and sworn to before  
this 25th day of Feb. 1947.

SEAL) G. M. GALE  
Notary Public in and for the County  
of Los Angeles, State of California.

(ENDORSED)

FILED 1947 FEB 25 AM 10 24  
J. F. MORONEY, County Clerk  
By K. Meachem, Deputy

LE OF COURT AND CAUSE)

No. 509835

NOTICE AND REQUEST FOR CLERK'S TRANSCRIPT  
TO CHARLES A. SUMMERS, PLAINTIFF, AND TO HIS  
ORNEY, WERNER O. GRAF; AND TO HAROLD W. TIGE, DEFENDANT  
TO HIS ATTORNEYS, WM. A WITTMAN AND ROBERT FISHER; AND  
THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
AND FOR THE COUNTY OF LOS ANGELES:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE, that  
e defendant, ERNEST SIMONSON, has appealed to the District  
urt of Appeal, from the judgment made and entered in the  
ove entitled action against the said defendant, and he  
reby requests that a clerk's transcript be prepared and  
led of the pleadings, including the entire judgment roll,  
ie notice of appeal, notice and request for reporter's  
ranscript and this notice and request for clerk's tran-  
cript, and all exhibits introduced in evidence during the  
rial.

DATED this 25th day of February, 1947.

GALE AND PURCIEL

By GORDON M. GALE  
Attorneys for defendant,  
Ernest Simonson

TO WHOM IT MAY COME  
 THE COUNTY CLERK  
 OF THE COUNTY OF  
 MIAMI  
 DO HEREBY CERTIFY  
 THAT THE ABOVE  
 IS A TRUE AND  
 CORRECT COPY  
 OF THE ORIGINAL  
 FILED IN MY OFFICE  
 ON FEBRUARY 25  
 1947 AT 10:24  
 AM  
 BY K. MEACHEM,  
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(ENDORSED)

FILED 1947 FEB 25 AM 10 24  
 J. F. MORONEY, County Clerk  
 By K. Meachem, Deputy

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STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) SS

No. 509835

I, J. F. MORONEY, County Clerk and Clerk of the Superior Court in and for the County and State aforesaid, do hereby certify that I have compared the foregoing transcript with the original documents on file and/or of record in this office and that same contains a full, true and correct copy of the JUDGMENT ROLL consisting of the Complaint, Answer of Harold W. Tice, Answer of Ernest Simonson, Amended Answer of Ernest Simonson, Findings of Fact and Conclusions of Law, and copy of Judgment; also Notice and "Request for Reporter's Transcript on appeal (by defendant Harold W. Tice)", Notice of Appeal (by Ernest Simonson), Notice to Clerk to prepare Clerk's Transcript on appeal (by Ernest Simonson), together with the endorsements on said documents as the same now appear on file and/or of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court this 25th day of April, 1947.

J. F. MORONEY, County Clerk and Clerk of the Superior Court of the State of California; in and for the County of Los Angeles,  
By M. E. Settle Deputy.