

PAY36DUN

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEED

PURPOSE: PROPERTY DECREE

NAME OF AGENCY OR CONTRACTOR: ETHEL M. PAYNE, INDIVIDUALLY  
AND AS ADMINISTRATRIX OF THE ESTATE OF DAVID FRANKLIN  
PAYNE, OTHERWISE KNOWN AS D. FRANK PAYNE, DECEASED, ELLEN  
PAYNE AND JAMES PAYNE

STREET ADDRESS/PARCEL NAME/SUBDIVISION (LOT AND BLOCK):  
LOTS IN DUNDEE PLACE SUBDIVISION

PARCEL #: VICINITY OF 2945-132-( )

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1932

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

STATE OF COLORADO, )  
County of M e s a. ) ss.

IN THE DISTRICT COURT

No. 5899

CITY OF GRAND JUNCTION,  
a Municipal Corporation,

Plaintiff,

-vs-

ETHEL M. PAYNE, individually  
and as administratrix of the  
Estate of David Franklin  
Payne, otherwise known as D.  
Frank Payne, Deceased, ELLEN  
PAYNE and JAMES PAYNE,

Defendants. )

DECREE

The above entitled cause coming on for trial by the Court on this 1st day of April, 1936, one of the juridical days of the Court's March Term, 1936, the plaintiff appearing by Alexander Bowie, its attorney, the defendants appearing by E. B. Adams, their attorney, and evidence having been introduced by the plaintiff, the defendants having admitted each and all of the allegations of the plaintiff's complaint by their answer filed herein, and no evidence having been introduced by them; and the Court having considered such evidence and the record and files of this cause, Finds:

That by due and sufficient process in compliance with the law the Court acquired and has jurisdiction of each and all of the parties hereto, and of the subject matter hereof;

That the minor defendants Ellen Payne and James Payne were and are properly represented herein by Ethel M. Payne as their guardian duly appointed by the Court;

That it is established by competent and sufficient evidence and admitted by the defendants' answer to the plaintiff's complaint:

That the plaintiff is a municipal corporation duly created and existing as a Charter City under and by virtue of the provisions of Article XX of the Constitution of the State of Colorado, and its Charter adopted pursuant thereto;

That the defendant Ethel M. Payne is the widow, and the defendants Ellen Payne and James Payne are the minor children of David Franklin Payne, otherwise known as D. Frank Payne, who died intestate in the County of Mesa and State of Colorado, on or about the 30th day of September, 1935, leaving said widow and minor children as his sole heirs at law; that the defendant Ethel M. Payne is also the duly appointed, qualified and acting administratrix of the estate of David Franklin Payne, otherwise known as D. Frank Payne, deceased, under and by virtue of letters of administration issued from the County Court of said County of Mesa;

That prior to and on the 7th day of May, 1935, The Diocese of Colorado, a corporation, owned the following described real property in said County of Mesa, to-wit:

Lots numbered 1 to 12, both inclusive, and 15 and 16, in Block 2, Lots numbered 1 and 2, 5 to 8, both inclusive, 11 to 20, both inclusive, 25 and 26, in Block 3, Lots numbered 1 and 2, 5 to 8, both inclusive, 11 to 16, both inclusive, and 25 and 26, in Block 4, and Lots numbered 1 and 2, 9 to 12, both inclusive, and 31 and 32, in Block 5, all in Dundee Place, within the City of Grand Junction, in accordance with the recorded map or plat thereof;

and on said date said The Diocese of Colorado made and executed its quit-claim deed of said property to said D. Frank Payne, whose full and proper name was David Franklin Payne, and delivered such deed to the plaintiff pursuant to the agreement and understanding, and for the purposes, hereinafter set forth; and that on the 1st day of June, 1935, the plaintiff caused such deed to be recorded in the office of the County Clerk and Recorder of said County of Mesa, in Book 354, at page 294, of the records of said office;

That the aforesaid conveyance of said property by The Diocese of Colorado to said D. Frank Payne was so made at

the request of plaintiff, which paid to The Diocese of Colorado the consideration therefor in the sum of \$150.00, pursuant to an agreement and understanding between the plaintiff and said D. Frank Payne, as well as with said The Diocese of Colorado, that said D. Frank Payne would thus receive and thereafter hold the legal title to said property as a trustee for the use and benefit of the plaintiff until required by the plaintiff to convey said property to it or to any such person or persons as it might designate, and that said D. Frank Payne would convey said property, or any part thereof, to the plaintiff or to any person or persons designated by it whenever required by the plaintiff to do so; that by reason of the aforesaid facts, said D. Frank Payne never acquired or had any right, title or interest in or to said property other than as trustee thereof for the use and benefit of the plaintiff, as aforesaid; and that the plaintiff had not required said D. Frank Payne to convey any part of said property to it or to any other person or persons, and he had not made any conveyance thereof, prior to his death;

That prior to and on the 18th day of June, 1935, J. C. Ternahan owned the following described real property in said County of Mesa, to-wit:

Beginning at a point in the South line of Main Street, 100 feet West of the Northeast corner of Lot 2 in Block 9 of Richard D. Mobley's First Subdivision to Grand Junction, running thence South 155 feet, more or less to the Alley; thence running West 41.04 feet, more or less, to the East line of Plank Avenue; running thence North along the East line of Plank Avenue, 155 feet more or less, to the South line of Main Street; running thence East along the South line of Main Street 41.04 feet, more or less, to the place of beginning;

and on said date said J. C. Ternahan made, executed and delivered his quit-claim deed of said property to said D. Frank Payne, and delivered such deed to the plaintiff pursuant to the agreement and understanding and for the purposes hereinafter set forth; and that on the 21st day of June, 1935, the plaintiff caused such deed to be recorded in the office of the County Clerk and Recorder of said County of Mesa in Book 349 at page 312 of the records of said office;

That the aforesaid conveyance of said property by said J. C. Ternahan was so made at the request of the plaintiff, which paid the consideration therefor, pursuant to an agreement and understanding between the plaintiff and said D. Frank Payne as well as with said J. C. Ternahan, that said D. Frank Payne would thus receive and thereafter hold the legal title to said property as a trustee for the use and benefit of the plaintiff until required by the plaintiff to convey said property to it or to any such person or persons as it might designate, and that said D. Frank Payne would convey said property, or any part thereof, to the plaintiff or to any person or persons designated by it whenever required by the plaintiff to do so; that by reason of the aforesaid facts, said D. Frank Payne never acquired or had any right, title or interest in or to said property other than as trustee thereof for the use and benefit of the plaintiff, as aforesaid; and that the plaintiff had not required said D. Frank Payne to convey any part of said property to it or to any other person or persons, and he had not made any conveyance thereof, prior to his death;

That upon the death of said D. Frank Payne, the defendants, as his sole surviving heirs at law, became and are the succeeding trustees of said property for the use and benefit of the plaintiff as aforesaid;

That the plaintiff now requires the conveyance of part of said property, and soon will require the conveyance of other parts thereof, to it or to persons whom it will designate; but that by reason of their minority the defendants Ellen Payne and James Payne are incompetent to make such conveyances and to discharge their aforesaid trust duties, and the defendant Ethel M. Payne is unwilling to assume and discharge her duties thereof; and that it has therefore become and is necessary and proper that the Court appoint a competent succeeding trustee of said property in the stead of said defendants to discharge the aforesaid trust;

Upon such findings the Court has concluded and does conclude, as a matter of law and equity, that the plaintiff is entitled to the relief prayed in its complaint and hereinafter provided; and, therefore, It Is Hereby Ordered, Adjudged and Decreed:

That the above described property was conveyed to said D. Frank Payne by the aforesaid deeds, and the legal title thereto was held by him at the time of his death on or about the 30th day of September, 1935, as a trustee for the use and benefit of the plaintiff to hold and convey the same to the plaintiff, or to any person or persons designated by the plaintiff, whenever required by the plaintiff to make any such conveyance thereof;

That the defendants were and are the sole surviving heirs at law of said D. Frank Payne, deceased, whose full and proper name was David Franklin Payne, and as such became upon his death and now are the succeeding trustees of said property for the use and benefit of the plaintiff as aforesaid;

That The First National Bank in Grand Junction, of Grand Junction, Colorado, is hereby appointed as succeeding trustee of said property for the use and benefit of the plaintiff for the aforesaid purposes; that its written acceptance of such trust shall be filed of record in the office of the County Clerk and Recorder of said County of Mesa; that said The First National Bank in Grand Junction is hereby invested with the legal title to said property as such trustee with the duty and full power to convey said property, and any part thereof, to the plaintiff, or to any person or persons whom the plaintiff may designate, whenever the plaintiff shall require any such conveyance thereof; and that the request of the plaintiff to such trustee to convey said property or any part thereof to any person or persons other than the plaintiff shall be sufficiently evidenced either by the filing of

record of such request in writing in the office of the County Clerk and Recorder of said County of Mesa, or by the plaintiff joining with such trustee in the execution of any such deed or deeds;

That neither said D. Frank Payne nor any of the defendants herein ever acquired or had any rights, title or interest in or to said property, or any part thereof, except as trustee and succeeding trustees thereof for the use and benefit of the plaintiff, as aforesaid; and that the defendants are hereby discharged as succeeding trustees of said property, and are hereby divested of any and all rights, title and interest in and to said property;

That the conveyance of said property, or any part thereof, by said The First National Bank in Grand Junction, as trustee for the City of Grand Junction, either to the plaintiff or to any person or persons whom the plaintiff may designate as herein provided, by good and sufficient instruments of conveyance, shall convey to and invest in the grantee or grantees therein named all of the rights, title and interest which said The Diocese of Colorado, <sup>and J.C. Ternahan</sup> had and possessed in and to said property at the time when <sup>they</sup> ~~it~~ conveyed said property to said D. Frank Payne by <sup>their</sup> ~~its~~ aforesaid deeds.

Done by the Court this 1st day of April, 1936.

Straud M. Logan

District Judge

State of Colorado, )  
County of Mesa, ) SS

I, Joseph Quinn, Clerk of the District Court, in and for the County of Mesa, State aforesaid, do hereby certify that the above and foregoing is a true copy of a DECREE made and entered in Case Number 5899, entitled; City of Grand Junction, a municipal corporation, Plaintiff, vs. Ethel M. Payne, individually and as administratrix of the Estate of David Franklin Payne, otherwise known as D. Frank Payne, deceased, Ellen and James Payne, Defendants." as the same appears and is of record in my office.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Seal of said District Court at Grand Junction, Colorado, this 2nd day of April 1936.

  
Joseph Quinn

Clerk of the District Court.

STATE OF COLORADO, )  
County of M e s a. ) ss.

IN THE DISTRICT COURT

No. 5899

CITY OF GRAND JUNCTION, a Municipal Corporation, )  
Plaintiff, )

-vs-

ETHEL M. PAYNE, individually and as administratrix of the Estate of David Franklin Payne, otherwise known as D. Frank Payne, Deceased, ELLEN PAYNE and JAMES PAYNE, )  
Defendants. )

ACCEPTANCE OF APPOINTMENT

AS TRUSTEE.

Whereas, on the 1st day of April, 1936, the aforesaid Court made and entered a Decree in the above entitled cause whereby the undersigned, The First National Bank in Grand Junction, of Grand Junction, Colorado, was duly appointed as succeeding trustee of certain real property for the use and benefit of the City of Grand Junction, Colorado, for purposes therein set forth, and whereby the undersigned was required to file of record in the office of the County Clerk and Recorder of the County of Mesa, State of Colorado, its written acceptance of such trust; a certified copy of which Decree has been filed in the office of the County Clerk and Recorder of said County, in Book 355, at page 408, to which reference is hereby made for greater particularity;

Therefore, Be It Known By These Presents, that the undersigned, The First National Bank in Grand Junction, of Grand Junction, Colorado, has accepted and does hereby accept, its aforesaid appointment as succeeding trustee of said real property, described in said Decree, for the use and benefit of said City of Grand Junction and for the purposes set forth in said Decree.

Dated at Grand Junction, Colorado, this 2nd day of April, 1936.

THE FIRST NATIONAL BANK IN GRAND JUNCTION,

STATE OF COLORADO, )  
County of M e s a. ) ss.

By E. R. Thomas  
Trust Officer.

The foregoing instrument was acknowledged before me this 2nd day of April, 1936, by E. R. Thomas, Trust Officer of The First National Bank in Grand Junction, a corporation.

Witness my hand and Notarial seal. My commission expires January 11, 1937.

Lucy E. Hogan  
Notary Public.