

# Tenth Circuit Court of Appeals - Order & Judgment\*

## Ensminger v. Farm Credit Bank & First National Bank

### Understanding the Decision

After reviewing the Ensminger case and discussing it with Mr. Ensminger, this narrative has been prepared to summarize the Ensminger case and the Tenth Circuit decision.

Mr. Ensminger, with a foreclosure case in progress in a state/District court in Oklahoma, filed a suit in Federal District court for the Western District of Oklahoma to establish superior title to the property being foreclosed on. He was attempting to force the Federal District court to convene as a court "in" law for the purpose of establishing that he, through land patent, had the highest title to his property. It should be noted that this was an entirely new case and had nothing to do with the foreclosure case in the state court.

As a matter of strategy, the laws he cited to create a federal question for the Federal District court were the patent laws of the U.S. dealing with "intellectual patents", or patents on inventions. As expected, the two banks moved to dismiss for lack of subject matter jurisdiction because the laws cited had nothing to do with land patents. The District court agreed with the banks' motions and dismissed the case for lack of subject matter jurisdiction, again, as expected.

As soon as the District court dismissed the case Mr. Ensminger filed a notice of appeal. He did not, however, proceed with the appeal at that point and the time to file the appeal expired. He then received a letter from the Tenth Circuit court (on their own initiative) approximately two months later informing him that they were "extending his time to file an appeal." The Tenth Circuit court was, in essence, asking him to proceed with his appeal! This is unheard of in normal appellate procedure! So he proceeded with the appeal.

Prior to the appeal the case was heard in the court of the people, the Common Law Court, and this court's decision was filed with the appeal to the Tenth Circuit court. (NOTE: Mr. Ensminger first declared quiet title on himself, thereby extricating himself from the "federally privileged or 14th amendment citizen" status, allowing him to have his case heard in the proper venue.)

The Tenth Circuit court affirmed the ruling of the District court that it did not have subject matter jurisdiction to hear a case for higher title to land. They did not, however, leave it at simply affirming the decision. They issued an Order and Judgment which is almost unheard of for an appeals court. The key to understanding this as a victory is as follows.

The Tenth circuit decision, entitled ORDER AND JUDGMENT\*, contains three very important issues.

1. It is a fact, by statute and by case law, that a court of equity does not have jurisdiction to determine legal or highest title to property. It can only determine who has equitable interest. As stated on the second page of the order: Mr.