

1948

Ray Phebus, Joe T. Juhan and Ashley Valley Oil  
Company v. Wm. Stanley Dunford, Judge of the  
District Court, Uintah County, and N. J. Meagher :  
Brief of Respondents

Utah Supreme Court

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Katherine M. Ivers; Herbert Van Dam;

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# IN THE SUPREME COURT of the State of Utah

RAY PHEBUS, JOE T. JUHAN, and  
ASHLEY VALLEY OIL COMPANY,  
a corporation,

*Plaintiffs and  
Petitioners*

vs.

WM. STANLEY DUNFORD, Judge of  
the District Court, Uintah County, and  
N. J. MEAGHER,

*Defendants and  
Respondents.*

Case No.  
7187

RESPONDENTS' BRIEF

FILED

AUG 27 1948

SUPREME COURT, UTAH

KATHERINE M. IVERS  
HERBERT VAN DAM

*Attorneys for Respondents*

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## RESPONDENTS' BRIEF

The sole complaint of the plaintiffs here seems to be that the trial court in its interlocutory order of May 4, 1948, set aside its judgment of April 15, 1946, as to Joe T. Juhan and Ashley Oil Company, and did not include therein Ray Phebus.

It is significant that the petition for writ of mandamus does not allege any prejudice to Ray Phebus, but does allege prejudice to Joe T. Juhan and Ashley Valley Oil Company.

Our position is that no one was prejudiced, unless it can be said that failure to set aside the judgment for \$32.30 costs as against Ray Phebus is sufficient reason for this court to issue a permanent writ. We regard that as trivial, as a tail to tie a kite to, and a matter, moreover, that the trial court would have acted upon immediately if it had been called to that court's attention.

Obviously, what disturbed the plaintiffs here was the injunctive feature of the judgment of April 15, 1946; it is not difficult to surmise that they were formulating plans to go into possession of the real property, the subject of the action in the trial court, for the purpose of conducting drilling operations. They would, of course, have such right if they were the sole owners of the profit a prendre rights under the lease, which the trial court held invalid, and which this court held to be valid; whether they have those rights in entirety, and whether they would have rights of possession for drilling purposes if it is held they have only fractional rights profit a prendre, are questions yet to be decided; and since this court did not decide them we must look in the first instance to the trial court for a determination.

In any view of the case, did Ray Phebus have any rights of possession at the date of the trial court's judgment of April 15, 1946? That judgment, unlike many judgments in quiet title cases did not purport to settle issues as of the date of commencement of the action; it is written in entirety in the present tense.

Plaintiffs in their brief (p. 31) say—

“Phebus quitclaimed to Juhan under date of January 19, 1945, during the pendency of the action. Juhan, in part, claims by, through and under Phebus. If the original judgment is permitted to stand, then Juhan is out of the picture to the extent of the interest quitclaimed to him by Phebus and, regardless of the intention, the language used by this court and the issues raised by the pleading at the trial, a question of title will have been determined. \* \* \*”

If we understand the purport of that statement, it represents at least a novel idea in construction. We cannot understand how a deed can be construed as passing something from the grantor that the grantee does not receive; in other words, how Phebus could be put out of the picture and Juhan not be put in.

There is nothing in the interlocutory order entered by the trial court that even remotely suggests that the judge had in mind a denial to Juhan of the benefits of his deed from Phebus, and Juhan's rights, whatever they are, undoubtedly can be and will be given proper consideration if and when this matter is brought before the court for its determination. The defendant Meagher is not concerned whether a judgment be now entered adjudicating rights as of the date of commencement of the action, or as of the date of the trial court's judgment, and obviously the defendant judge is not concerned.

It is a matter for the plaintiffs here to decide—whether they want a decree as of the date of commence-

ment to the effect that Phebus had the rights, or as of the date of the judgment to the effect that the Phebus rights had then passed to Juhan. Until they present this matter to the trial court they are not hurt.

We find nothing in the decision of this court to indicate that the trial court was not justified in its position that Phebus was out of the picture because of his deed to Juhan; indeed this court in its decision, if it took any position on that subject, took the same position as the trial court seems to have taken. After stating—

“On January 19, 1945, Phebus quitclaimed his interest to Juhan.”

The court proceeds—

“Briefly the above sets out the chain of title of the various parties concerned, leaving as interested parties in the proceeding, plaintiff Meagher, and defendants Ashley Valley Oil Company and Juhan.”

We do not construe these statements as indicating what this court expected the trial court to do when it remanded the case for proceedings to conform to this opinion. We think the court decided one question only—that the lease was valid and still in existence. That question is set at rest and neither defendant here has any intention of ignoring it, or trying to evaporate it.

We think there is much to be done yet in this case, and the plaintiffs here seem to be in agreement. They say (Brief, p. 17)—

“But here we have a situation that requires affirmative action in order to bring about complete restitution on the record. In a suit to quiet

title, where real property is involved, those things that affect the record and constitute clouds on the title become and are the controlling matters, and it is the record title that must be restored and the clouds on the same expunged in order to bring about complete restitution."

The record in this case discloses at least three types of right involved—title to the fee; impacts on that title by the rights of leasees to entry for exploration, development and production; rights to receive royalty, original and overriding. This court paid no attention to the questions concerning who now has what rights nor what impact such rights, when determined, are to have on the plaintiff's (N. J. Meagher) title. We agree that affirmative action in the trial court is necessary; we wonder why the plaintiffs have not instituted such action.

We agree with plaintiffs' position, indicated by the quotation from *Missouri, K. & T. Trust Co. v. Clark*, 60 Neb. 406, 83 N.W. 202, 203 (Brief pp. 20-21)—

"When the judgment of a trial court has been reversed in an error proceeding, the court should retrace its steps to the point when the first material error occurred. It should put the litigants back where they were when the initial mistake was committed."

A new or amended decree as of the date of the former decree, based on appropriate findings of fact and conclusions of law, in our opinion will do just that.

This was a suit to quiet title; in such proceeding the court has jurisdiction to determine all questions affecting the title as to the respective parties. 44 Am. Jur. Quieting Title, Sec. 70 et seq. We quote brief excerpts:



“Sec. 70, p. 56. Generally, the court should and will by its decree, adjust all the equities of all the parties to the action, and determine the status of all controverted claims to or against the property. The general principle that equity, having taken cognizance of a cause of action, will decree such relief as is necessary to completely and finally dispose of the controversy, is ordinarily applicable in the actions here under consideration. \* \* \*”

Again at Sec. 94, p. 79:

“Sec. 94. \* \* \* Generally, the decree should adjust all equities between the parties to the action, and determine the status of all controverted claims to or interests in the property which are shown to exist at the time when the decree is rendered, regardless of character, whether absolute or contingent, present or future. \* \* \*”

Now if the court below had decided, as this court did, that the lease was in existence, it would logically have made its decree settling and adjusting all the questions as above indicated. Our position is that, inasmuch as this court settled only one question, the status of the lease, the court below should take up where it left off and make a complete disposition of the case.

The order made by the court below is certainly subject to the construction that the court had in mind the above principles, and that instead of intending to deny or prejudice the rights of any party, it was expressly designed to safeguard them. At the date of the decree the Phebus rights, whatever they were, had been conveyed by deed to Juhan. That is what the plaintiffs here claim. They do not claim that Phebus is prejudiced by a recog-

dition of that transfer, and certainly Juhan could not be because the order sets aside the decree in so far as it effected his interests. As to Ashley Valley Oil Company, nothing is made to appear that it would have been prejudiced in any way.

The following authorities, taken from the annotations in 28 U.S.C.A., Sec. 877, note numbers as indicated, throw additional light on this subject:

N. 266.— While the rule that an adjudication by an appellate tribunal becomes the law of the case on all subsequent trials is a wholesome one, which should be enforced, yet it should be confined to questions that were actually considered and decided, and not extended to dicta or intimations contained in an opinion which may be thought to foreshadow the views of the court on other questions. *Patillo v. Allen-West Commission Co.* (Ark. 1901) 108 F. 723, 47 C.C.A. 637.

N. 267.— Where a decree dismissing a suit is reversed on appeal, and the case remanded for further action, only the questions which were considered and determined by the appellate court are concluded by its decision. *General Inv. Co. v. Lake Shore & M.S. Ry. Co.* (C.C.A. Ohio, 1920) 269 F. 235 modified (1922) 43 S. Ct. 106, 260 U.S. 261, 67 L. Ed. 244.

Where, on appeal to the Supreme Court in an admiralty case, a question of recoupment was left open by its opinion and the mandate to the District Court, the latter is "at liberty to consider and decide the question of recoupment, entirely unaffected by the mandate, and the action of that court in allowing or denying such recoupment is open to review in the Circuit Court of Appeals

only." The New York (Mich. 1900) 104 F. 561, 44 C.C.A. 38.

N. 268.— When an appellate court definitely describes the decree to be entered in the court below, there is no discretion in the latter court, but its duty is to obey the mandate and enter the decree accordingly, and when so entered it is the decree of the appellate court, and an appeal from it will be dismissed; but if the mandate does not cover the entire case, but leaves something undetermined, and to be inquired into and adjudicated, or if the court below misconstrues the decree of the appellate court, and does not give full effect to its mandate, a new appeal is an appropriate remedy. *Great Northern Ry. Co. v. Western Union Telegraph Co.* (Minn. 1909) 174 F. 321, 98 C.C.A. 193, certiorari denied (1910) 30 S. Ct. 574, 216 U.S. 619, 54 L. Ed. 640.

A judgment of reversal is not necessarily an adjudication of any other than the questions in terms discussed and decided. *Chas. Wolff Packing Co. v. Court of Industrial Relations of Kansas* (1925) 45 S. Ct. 441, 267 U.S. 552, 69 L. Ed. 785, reversing (1924) 227 P. 249, 114 Kan. 487, which modified on rehearing (1923) 219 P. 259, 114 Kan. 304.

On mandate of circuit court of appeals, remanding case to Supreme Court of Porto Rico "for further proceedings not inconsistent with this opinion," held Supreme Court properly reviewed case on its merits; the opinion not disposing of, though incidentally referring to, facts and merits. *Gandia v. Porto Rico Fertilizer Co.* (C.C.A. Porto Rico, 1924) 2 F. (2d) 641.

In suit to cancel oil and gas lease, where Circuit Court of Appeals reversed decree adverse to plaintiff, and ruled that he was entitled to can-

cellation of lease, except as to small acreage about two wells already drilled, held, decree of district court entered on mandate of circuit court of appeals, should have awarded full relief naturally applicable to plaintiff's situation, though not expressly directed, such as injunction against continued occupation or use of leased premises, except as to the two wells and pipe line thereto, and order for payment of rentals then accumulated under tender and for accounting for value of unauthorized use of premises. *White v. Dawson* (C.C.A. Ky. 1927) 18 F. (2d) 471.

N. 269.— A procedendo is a writ from a higher to a lower court, directing that the case be proceeded with. It does not undertake to say what the decision shall be, but merely that there shall be one, and where there is a reversal the case is thereupon taken up in the court below at the point where the erroneous judgment was rendered. *Exchange Mut. Life Ins. Co. v. Warsaw-Wilkinson Co.* (Pa. 1910) 185 F. 487, 107 C.C.A. 587, denying motion to amend mandate (1910) 181 F. 330, 104 C.C.A. 518.

When a decree is reversed, and the mandate does not direct the entry of any particular decree, but only that further proceedings be had not inconsistent with the opinion of the appellate court, the effect is to put the case in the same position in the court below as if no decree had ever been entered; and the court has the same authority to permit amendments of the pleadings to enlarge the issues, and admit further proofs, as it had before the entry of the decree. *Hawkins v. Cleveland, C., C & St. L. Ry. Co.* (Ind. 1900) 99 F. 322 39 C.C.A. 538, denying mandate motion to modify (1898) 89 F. 266, 32 C.C.A. 198.

And in *Fisher v. Hurst* (Jan. 30, 1948), 68 S. Ct.

389, quoting head note 2, the Supreme Court of the United States in a Per Curiam decision, said:

“Whether state of Oklahoma was following or disobeying mandate of United States Supreme Court, as applied by Oklahoma district court, \* \* \* should be determined in the first instance by Oklahoma district court, and not by United States Supreme Court in mandamus proceeding by Negro applicant to compel compliance with United States Supreme Court’s mandate.”

We think the alternative write heretofore issued should be recalled and this proceeding dismissed.

Respectfully submitted,

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