

1951

N. B. Rogers Helman v. W. C. Patterson, Asa Lloyd Heflin, Melvin C. Bowles, First Doe, Second Doe, Third Doe, and Fourth Doe : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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N. B. ROGERS HELMAN, formerly  
known and being one and the same  
person as N. B. ROGERS,

*Plaintiff and Respondent,*

vs.

W. C. PATERSON, ASA LLOYD  
HEFLIN, MELVIN C. BOWLES,  
FIRST DOE, SECOND DOE,  
THIRD DOE, and FOURTH DOE,

*Defendants and Appellants.*

Case No.

7552

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BRIEF OF RESPONDENT

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FILED

JAN 20 1991

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Clerk, Supreme Court, Utah

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N. B. ROGERS HELMAN, formerly  
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FIRST DOE, SECOND DOE,  
THIRD DOE, and FOURTH DOE,  
*Defendants and Appellants.*

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7552

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## STATEMENT OF FACTS

The statement of facts in the brief of defendant and appellant omits facts having a material bearing on the cause, and particularly in connection with what constitutes the gravamen of the action. The attention of the Court is invited to the fact that after the defendant and appellant, W. C. Paterson, and plaintiff and respon-

dent, N. B. Rogers (Helman), had undertaken to procure mining claims in Colorado (Tr. 5, 22), they procured two groups of mining claims in Utah (Tr. 6). These two latter mentioned groups are referred to in the testimony as the "Eleven claims" and the "Yellow Circle Claims." Such mining claims were to be acquired jointly (i.e. one-half in the name of each of the respondent and appellant (Tr. 5, 7, 9, 33, Ex. 1, 25), and half of the interest in the claims was to be reserved for persons assisting in the financing of the venture, and the other half was to be held by appellant and respondent after certain expenses (Tr. 22, 25, 78) were adjusted, after which and ultimately a corporation to be formed was to take over the ground (Tr. 5, 24, 30, Ex. 3, 4, 6, 10, 11, 12, 16, 19, 20, 22, 23), and those supplying the financing were to take half the stock (Tr. 78). The company to be formed was to be known as the Arcana Development Company, and, after certain expenses, respondent and appellant were to divide the other half of the corporation's stock (Tr. 78). The title to the Yellow Circle group of mining claims, purchased by contract dated June 1, 1948 (Ex. C) was taken in the joint names of respondent and appellant, in accordance with their understanding as to holding titles (Tr. 73, 74, Ex. 29). Later, the appellant Paterson procured from the respondent Rogers a blank signed deed or deeds, ostensibly for the purpose of enabling the appellant Paterson to furnish a deed if a contemplated sale concerning the group of "Eleven" claims was made (Tr. 16, 17, 45, Ex. 20, 21). No sale of the so-called "Eleven" claims

being consummated, appellant filled in the deed signed by respondent Rogers with his own name as grantee, added the description of the "Yellow Circle" claims, and had the deed recorded (Tr. 42, 43, 45, Ex. 29). No consent or permission was procured from the respondent Rogers to so use the deed, which effected the transfer of her half interest in the legal title to the "Yellow Circle Claims" to appellant Paterson (Tr. 17, 18, 67, 76). Learning of the recording of this deed, respondent instituted this action to protect her interest by having the deed set aside or annulled, and having her legal title to a half interest in the "Yellow Circle" group quieted against appellant Paterson, in order to preserve the pre-existing arrangement (Tr. 12, 18, 20, Rec. 37-58). Judgment was rendered in respondent's favor, quieting title to a half-interest in the claims in her favor (Tr. 81-83, Rec. 14-19). From this judgment and decree and the court's denial of a motion to modify the findings, conclusions, and decree (Rec. 20, 21, 10, 8) defendant Paterson appeals on the grounds set forth commencing at page 6 of appellant's brief.

There is testimony that respondent Rogers raised \$40,000.00 approximately to assist in the acquisition of these various claims (Tr. 19, 26), and appellant contends (Tr. 40, 57) that the major portion of the money raised was used on the other properties, leaving him to pay the larger portion of the amounts due on the "Yellow Circle" group's purchase price. On page 6 of appellant's brief, counsel sets out figures for the purpose of showing that payments on the "Yellow Circle" group amounted to,

and were apportionable as there mentioned, and asserts that such testimony was uncontradicted. The latter assumption is erroneous. The given figures were neither contradicted or gone into (1) Because the Court indicated he was not allowing an accounting in the instant action (Tr. 42), (2) Appellant's own counsel asserted in the proceedings that the matter was only a "simple" suit to quiet title (Tr. 12), (3) Because as shown very clearly by the record Exhibit "B", from which some of the figures quoted in appellant's brief are taken, was NEVER ADMITTED (Tr. 27), and the use of Exhibit "G", another statement, was LIMITED as shown in the discussion concerning its admissibility, to the purpose of proving an understanding was had by these parties at a meeting in Kansas City, and NOT FOR ALL PURPOSES, or for the figures therein, as counsel for appellant so blandly assume, and would have the Court believe (Tr. 65, 66). Exhibit "H", another statement, insofar as the record covers the matter, does not appear to have been anywhere offered or received (Tr. 66 et seq) as such. Respondent asks the Court to bear in mind that the figures set out are only as appellant contends them to be, and, that the proffered exhibits from which they were purportedly quoted, are either not in evidence, or the admission of same was for a limited purpose, not concerned with the itemization of the figures appearing. It is also a matter set out in the evidence that any accounting or settlement was to be had as between these litigants in connection with their dealings when the properties were turned over to the corporation, which time, at the trial of this cause below, had apparently

not yet arrived (Tr. 20, 25, 28). This general statement is made to correct impressions that may have arisen from appellant's statement of facts, and, further facts will be mentioned in presentation of the arguments herein.

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## A R G U M E N T

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### RESPONDENT'S POINT I.—NO INCOMPLETE DECREE WAS ENTERED.

#### (a) A WRONGDOER NOT ENTITLED TO AID OF EQUITY COURT.

It is a cardinal doctrine of equity jurisprudence that parties do not come into the equity court as of right, but, only if the court in consideration of all the circumstances will permit. The court may have power to hear or determine certain actions, yet decline to do so where the circumstances justify, as shown in:

*Equity — Section 9, Distinction Between Power and Jurisdiction:*

“There is a clear distinction between the term ‘jurisdiction’ in its strict meaning and as generally used in equity jurisprudence. Technically, jurisdiction is the power to hear and determine the subject matter in controversy between the parties to a suit, and jurisdiction as thus defined does not mean simply jurisdiction of a particular case, but jurisdiction of the class



of cases to which the particular case belongs, or as sometimes stated, power residing in the court to hear and determine an action. *It is common, however, to speak of jurisdiction in equity or the jurisdiction of a court of equity as not relating to the power of the court to hear and determine a cause, but as relating to whether it ought to assume the jurisdiction and hear and decide the cause, or as relating to the cases or occasions when the power to hear and determine will be exercised. THIS DISTINCTION IS IMPORTANT AND SHOULD NOT BE LOST SIGHT OF.*"—30 C.J.S., pages 327-328.

Appellant cites numerous cases wherein relief was enlarged, or where on appeal the appellate courts held the measure of relief (even to an adversary party) was incomplete or insufficient (Pages 8-9, Appellant's Brief). Perusal of such cases indicates that for the most part they are based on the doctrine that he who comes into equity must do equity, and the appellate courts found that the trial courts had not required the party seeking relief in all respects to do equity. For example, in *Stromerson vs. Averill*, 121 P. 2d 826; 126 P. 2d 392; 141 P. 2d 732, 133 P. 2d 617, it was held in various appeals that as incidental to holding an agent taking lands of his principal in his own name (i.e. the agent's) held them for the principal, that contracts, crop contracts, chattel mortgages, and other obligations in the agent's name alone, and on which he was therefor personally bound to third parties, must be, when the principal took over, assumed by the principal, and suitable provision or indemnity made for procuring the agent's release from future liability thereon. *Bacon vs. Wahrhaftig*, 218 P. 2d 144, holds that in a statutory partition

action, that all parties named in the statute must be joined to make a decree, and that it was the duty of the court to so order. *LaJolla Casa Demanana vs. Hopkins*, 219 P. 2d 871, holds that where a seller had reserved the right of use of a house on the property sold, for the duration of the war and had wrongfully held over (as determined in the action), that as incidental to the termination of the rights of user, the court would retain jurisdiction to assess damages. *Floor vs. Johnson*, 199 P. 2d 547, provides another example of granting incidental relief by holding after the cancellation of shares of stock in a corporation, that directors elected on basis of votes excluding the cancelled shares would be seated. *Ludlow vs. Colorado Animal By-Products Co.*, 137 P. 2d 347, and *Kinsman vs. Utah Gas & Coke Co.*, 177 P. 419, hold that incidental relief in the way of damages will be assessed in a cause brought to restrain a nuisance, but where injunctive relief would not be granted due to delays in bringing the suit.

*But, appellant overlooks the fact that in all these cases that the party seeking affirmative relief was not a WRONGDOER himself, or, that it was equitable to require a party who was seeking relief to perform some condition precedent as a condition of relief, not to aid the wrongdoer, but to prevent undue advantage or enrichment of the party seeking relief. IN NO INSTANCE WAS RELIEF PREDICATED ON THE WRONGDOER'S RIGHT TO HAVE THE INTERPOSITION OF THE EQUITY COURT. See:*

*Section 401, Maxim as to Clean Hands,—  
Fraud.*

“Another familiar illustration of the principle may be found in all cases where the plaintiff’s claim is affected by his own fraud \* \* \* The maxim is more frequently invoked in cases upon fraudulent contract.

\* \* \* \*

*“One who wrongfully appropriates property of another for his own use will not receive the aid of a court of equity in any matter with which such reprehensible conduct is connected. A court of equity will not aid one who, standing in a relation of confidence to another commits acts in violation of his trust which are immediately connected with the subject matter of the litigation.”* 2 Pomeroy’s Equity Jurisprudence (5th Edition, Symons) Page 104.

IT IS APPROPRIATE TO REMIND THE COURT, at this point, that the appellant Paterson, who seeks to invoke the aid of an equity court for an accounting, and other relief, is the WRONGDOER. He misused the deed, he put the title in his own name, he filled in the blanks in the deed to cover property which the instrument was not intended to cover. Appellant’s claims for relief do not, therefore, commend themselves to a court of equity, and it was eminently proper for the trial court to limit the issues to the quieting of the title to the half interest (defendant and appellant’s title to the other half of the ground has not been disturbed or affected by these proceedings), and, no incomplete relief exists. While actual fraud on appellant’s part was not found by the court, still a misuse of the deed was the basis of annulling it and quieting title to the half interest of respondent. Even fraud is not the sole ground for denying equitable relief, other misconduct may bar a remedy.

In *Commonwealth Finance Company vs. McHarg*, 1922, 282 Fed. 560, the circuit court of appeals enunciates the whole rule, while applying it in a fraud case, as follows:

Page 569: "To call into action the processes of a court of equity, the *right asserted must appeal to the conscience of the chancellor*. In *DeWeese vs. Reinhard*, (165 U.S. 386, 390, 17 Sup. Ct. 340, 341, 41 Law Ed. 757), it was stated, '*A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, \* \* \* he will be held remediless in a court of equity.*' And, in such case, we think the defendant who asks affirmative relief, is in no better position than is a plaintiff."

Coercion as a ground of wrongdoing has been held to preclude relief, in the case of *Phez vs. Salem Fruit Co.*, 1925, 233 Pac. 547, 133 Ore. 398, where the court says:

Page 556: "(5) This (situation) is shown by testimony upon the trial between plaintiff and the growers. A court of equity should leave the growers and the Northwest Company and its assignee in the same place they were when the company attempted by using and coercing the union to overreach the growers and obtain an unfair contract by the means indicated."

Again, in relation to accountings, in 1 American Jurisprudence, Page 303, Section 56, Accounts, and Accounting, we find the rule:

"\* \* \* One may, by his misconduct be precluded from the right to an accounting in equity

by virtue of the requirement that the complainant must come into Court with clean hands \* \* \*.”

Indeed, in *Hultz vs. Taylor*, 181 Pac. 2d, 515, one of the very cases relied upon by appellant, who was in this instance a wrongdoer, we find this statement:

Page 520: “(3, 4) But in any case wherein the court has equity jurisdiction, the *relief prayed for by the parties is not a controlling factor. The prayer of a petition or a cross-petition is not a part of the statement of the cause of action.* The purpose which the prayer serves is to indicate the relief to which the pleader may think he is entitled. See *Eberhart Lumber Company vs. Lecuyer*, 153 Kan. 386, 389, 110 Pac. 757. Paragraph 2 of the syllabus of the last cited case reads as follows: ‘*A trial court sitting as a court of equity is not obliged to render the specific decree prayed for, but may render a decree in accordance with its own judgment or discretion as to what justice demands in view of the facts pleaded and the evidence adduced.*’ ”

In *Richman vs. Bank of Perris*, 1929, 282 Pac. 2d 801 (California), the court cites with approval at page 807, the case of *Allstead vs. Laumeister*, 16 Cal. App. 59, 116 Pac. 296, 297, which latter case quotes with approval the rule from Pomeroy, already above cited herein as 2 Pomeroy’s Equity Jurisprudence (5th Edition, Symons) Page 104.

The general equitable rule has been recognized in Utah: See *Jones Mining Co. vs. Cardiff Mining & Milling Co.*, 191 Pac. 426, 56 Utah 449 (1920), where the court says at page 434:

“\* \* \* and while I unhesitatingly assert that a court of equity should not permit a wrongdoer to profit by his wrong, \* \* \*”

The court in its sound discretion was not bound to permit an accounting, or to enlarge the issues of the case, and, having the right, as a matter of conscience, to decline to aid appellant Paterson, no complaint for incompleteness of the decree can be made, if appellant wasn't entitled to any decree at all. It is perfectly clear from the evidence that these two parties each had legal title to an undivided half interest in the “Yellow Circle” group. Whatever other equities or rights existed between them, the Court by annulling the deed which the appellant Paterson filled out wrongfully and recorded, and which deed transferred respondent Roger's (Helman's) interest to him in violation of the relationship existing, has merely put them in the same relative position as they were before the wrongful use of the deed. Appellant, who wrongfully caused the changed status, cannot complain if the court reinstates the original status, he has no grounds for cognizance in the forum of equity.

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(b) DELINEATION OF INTEREST UNNECESSARY TO A COMPLETE DECREE.

It may well be that in the absence of predetermined agreement, that a court would adjudge joint purchasers of a common tract to hold title in proportion to their

respective interests, but, where the interests, were by the agreements, understandings, and conduct of the parties such, that each was to hold legal title to a half interest, the trial Court, or any other Court, would have no grounds for substituting a different basis of ownership than that agreed on, anything else would constitute a rewriting of the existing contract and understanding for the parties otherwise than in accordance with their right of contract. No contention is made, or has ever been made by the respondent, insofar as the record shows, that her proper portion of the cost of the Yellow Circle claims should not in due time, and in accordance with the understandings of the parties, be paid, IF SHE ACTUALLY OWES ANY BALANCE. Assuming, without conceding that the law respecting co-owners is correct as set out in appellant's brief, the court is still confronted with the fact that whatever may be the present proportion of respondent's contribution to the purchase price of the "Yellow Circle" it would not be proper to apportion the "Yellow Circle" claims on the basis of contributions made to those claims alone, when, the state of accounts between the parties over the whole period of dealings might make the appellant's proportion smaller, or even non-existent. As mentioned in the statement of facts, the *full* facts and figures concerning the overall amounts of payments on all the properties of these participants, is not before this Court, nor was it before the trial court, and to try to piecemeal the accounting by affording the appellant a lien against the "Yellow Circle" group, when by reason of the situation existing



in the larger scope of the parties' operations the lien might be smaller, or non-existent, due to other offsets would be unfair. Furthermore, whether the cause and court below would be a proper forum to determine all the inter-related questions between the parties is most questionable, since there is realty in Colorado involved, questions relating to the rights of investors involved, rights of the Arcana Development Company, who might all be proper parties, and, the need might exist for evidence and witnesses from Colorado, Kansas, or elsewhere. Note also, that appellant did not seek to interplead any other defendants, nor did he confess his wrongdoing, and seek to have a general accounting, or anything like that—quite the contrary, in the prayer to appellants' answer and cross-complaint, the relief specifically sought was to have *respondent's title declared invalid, and the title to the interest in question quieted in appellant*. Certainly, that wasn't coming in on the theory of doing equity, *quite the contrary!* Lastly, it does not appear from the testimony in the record that any accounting is required in court—for the parties indicated they had the necessary records to make adjustments between themselves, and there was nothing to indicate that the accounting could not and would not be made, when the time set for the same arrived, at the time of turning over the properties to the corporation and adjusting the state of accounts. An inspection of the proffered exhibits, for the purported partial account on the "Yellow Circle" claims, shows that some items are estimates, others are totals, and not itemized, which makes it impractical to deal in ultimate totals without



better support. Since Courts of Equity do not require parties to do useless things, or to spend money in court adducing items of account which could be, to all intents and purposes, determined between them otherwise, the Court below, was manifestly right in leaving them to work the matter out, without trying to impose liens, or delineate interests, or the like.

The question of *res judicata* as hereinafter argued in point II of this brief will be discussed at length therein, and is mentioned at this point to show that it has not been omitted from consideration. Since as argued in subdivision (a) of this point I, the decree was not incomplete for failure to provide for complete relief when appellant was not entitled to any relief, and as in subdivision (b) that no delineation of interest or impressment of a lien was proper, it was not error for the court to, in view of all the circumstances, to refuse to modify, amend, or recast the findings, conclusions, and judgment, particularly since on the basis even of the proposed evidence of appellant, no proper balances could be struck at this time.

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## RESPONDENT'S POINT II: INSTANT DECREE NOT RES JUDICATA TO ACCOUNTING.

Since the record of the trial and the transcript prepared for this appeal clearly shows the fact that an accounting between the parties was not allowed or had

in this action, it would not, as appellant contends, operate to bar him on that point in a subsequent proceeding, if such should ever be necessary, since no such issue was tendered, tried, and passed on in this trial. See:

*Section 181—Matters Raised, but Ignored or Withdrawn in Previous Action.*

“As far as subsequent proceedings under a different cause of action are concerned, the doctrine of res judicata is held not to apply to an issue raised in the previous cause which was not passed on by the court or jury in deciding it. Thus an issue raised by the pleadings which is withdrawn before trial does not operate as res judicata.” \* \* \* 30 American Jurisprudence, Page 927.

*Section 174—Test of Identity of Causes of Action.* In the application of the doctrine of res judicata, if it is doubtful whether a second action is for the same cause of action as the first, the test generally applied is to consider the identity of facts essential to their maintenance, or whether the same facts would sustain both. \* \* \* If, however, the two actions arise upon different sets of facts, or different proofs would be required to sustain the two actions, a judgment in one is no bar to judgment in the other. *It has been said that this method is the best and most correct test,* as to whether a former judgment is a bar in subsequent proceedings between the same parties, and it has even been designated as infallible.” 30 American Jurisprudence, 918.

*Section 180—Judgments—Different Causes of Action.* The rule granting conclusiveness to a judgment in regard to issues of fact which could properly have been determined in the action is limited to cases involving the same cause of action. Where a second cause of action is upon

a different claim, demand, or cause of action the established rule is that the judgment in the first action operates as an estoppel only as to the points or questions ACTUALLY LITIGATED AND DETERMINED, and NOT AS TO MATTERS NOT LITIGATED IN THE FORMER ACTION, EVEN THOUGH SUCH MATTERS MIGHT PROPERLY HAVE BEEN DETERMINED THEREIN.”—30 American Jurisprudence 925.

It has been held that in a quiet title action the Court only:

“\* \* \* determines in such action \* \* \* that the prevailing party has a title superior to, or good as against that established by his adversary. All that we decide, or that we could decide, is that plaintiff has established a title or right \* \* \* superior to, or good as against the title or claim the defendant asserted or could assert.”—Hammond vs. Johnson, 75 Pacific 2d 164, 94 Utah 35 (1938).

So that the ordinary quiet title action respecting this half interest in the “Yellow Circle” group, could not, and would not operate as a bar to any proper accounting between the parties, now or in the future. This is further strengthened by the statement of the rule to be followed as laid down in *Glen Allen Mining Co. vs. Park Galena Mining Co.*, 296 Pacific 232, 77 Utah 362:

Page 234: “No issue was offered between Anderson and Glen Allen Mining Company when

the motion was heard, and Anderson was not served with notice that such a question would be litigated. The trial court recognized these conditions when it determined the motion to vacate and set aside the sale, and refused to determine the question of trust relationship, and limited the judgment to a denial of the motion to set aside the sale. Under these conditions, Anderson ought not to be bound by any judgment upon that question, and it follows as a matter of course that the Glen Allen Mining Company could not be bound (as a taker through Anderson).''

Appellant claims (Appellant's Brief, page 26) that an alleged transfer of respondent's interest has been recorded to his prejudice. Although this matter is *dehors* the record, respondent wishes to point out that such transfer is to a trustee or in connection with the organization of the Arcana Development Company, and can in no-wise adversely affect appellant.

It is submitted that the decree of the trial court as rendered, and the trial proceedings themselves, will not be such as to preclude the appellant with respect to any matter of accounting with these or the other mining claims involved in the dealings between these two parties. It follows, of course, that with no bar to a future accounting, the instant decree does not operate as *res judicata*, and could not have the effects claimed by appellant.

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## RESPONDENT'S POINT III: IMMATERIAL FINDING NOT ERROR.

Respecting appellant's second assignment of error, relating to an objection that the Court's Findings of Fact should not have included a finding that the appellant had agreed to transfer his interest in said mining claims to a corporation to be thereafter organized, in the exact language as set out in page 8 of Appellant's Brief, it is deemed sufficient to refer the Court to Section 1787, Title, Appeal & Error, Page 1192, 5 Corpus Juris Secundum, where the following appears:

“Reversible error cannot be found in the mere fact that a court makes superfluous and unnecessary findings.

“A judgment supported by proper findings is not vitiated by findings on immaterial points or issues, for example, on issues outside the pleadings, or unsupported by evidence, \* \* \*”

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## CONCLUSION

It is therefore respectfully submitted that the decision, findings, judgment, and decree of the trial court is and was correct, proper, and in accordance with law in all respects, that appellant has not sustained the burden of showing any error, nor does any error appear warranting the reversal of, or modification of the judg-

ment, and, that the same should be affirmed, on appeal,  
with costs to the respondent.

Respectfully submitted,

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