

1951

# N. J. Meagher v. Uintah Gas Company et al : Reply Brief of Appellants Ray Phebus, Paul Stock and Joe T. Juhan

Utah Supreme Court

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Harley W. Gustin; Edward F. Richards; Carvel Matisson; Attorneys for Appellants; Oliver W. Steadman; Of Counsel;

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## Recommended Citation

Reply Brief, *Meagher v. Uintah Gas Company*, No. 7723 (Utah Supreme Court, 1951).  
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# IN THE SUPREME COURT of the STATE OF UTAH

N. J. MEAGHER,  
*Plaintiff and Respondent,*  
vs.

UINTAH GAS COMPANY and  
VALLEY FUEL SUPPLY COM-  
PANY,  
*Defendants,*

RAY PHEBUS, ASHLEY VALLEY  
OIL COMPANY, PAUL STOCK  
and JOE T. JUHAN,  
*Defendants and Appellants.*

REPLY BRIEF OF APPELLANTS RAY PHEBUS,  
PAUL STOCK and JOE T. JUHAN

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT IN AND FOR THE COUNTY OF UTAH

Honorable Wm. Stanley Dunford, Judge.

**FILED** MARLEY W. GUSTIN  
EDWARD F. RICHARDS

NOV 27 1951

CARVEL MATTSSON

Attorneys for Appellants

Ray Phebus, Paul Stock and  
Joe T. Juhan.

OLIVER W. STEADMAN  
Of Counsel for Paul Stock.

Clerk, Supreme Court, Utah

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Civil No.  
7723

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REPLY BRIEF OF APPELLANTS RAY PHEBUS,  
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This reply will be addressed, in the main, to the assertion in respondent's brief that our brief in chief "fails to state the whole truth and therefore casts the [case] in an inaccurate factual atmosphere" (p. 49). References herein made, unless otherwise indicated, are to pages of respondent's brief.

I.

Respondent poses the question: "On the subject of superior information, do appellants contend that Meagher knew when he asked for this release that the

property overlay an oil field?" (p. 49-50). Our answer is that there cannot be attributed to Meagher the innocence that the question would imply, and that he had every reason to believe that the property did overlay an oil field. We point to the following:

(a) He acknowledged, by signing the modification agreement, Exhibit A-5, that gas had been discovered in commercial quantities prior to May 21, 1927. As a resident of Vernal he was aware that gas was furnished to its inhabitants from the wells on the property up to a short time prior to November 1941, the execution of the agreement, Exhibit A-17, from Valley Fuel Supply Company to Juhan.

(b) Meagher's letter, Exhibit A-28, to Phebus on November 9, 1944 states that he, Meagher, had been "requested for a lease on the 480 acres of land" and "I have a possibility of getting the area drilled." Prior to November 9, 1944 Meagher studiously avoided any reference to a new lease and to the prospect of getting the property drilled. It was after the Stock release of October 21, 1944 that Meagher became so bold as to make disclosure that he had been approached for an oil lease. The previous correspondence contained no reference to the possibility of drilling. Meagher knew through the medium of the modification agreement, A-5, which he signed as one of the royalty owners, that paragraph 23 thereof gave the lessee the right to duplicate a bona fide offer of others to drill for oil upon the premises.

## II.

Respondent's counsel, in his argument before the

court, conceded that the recitals contained in the release were not true, a frankness not found in his brief. The release was transmitted to Stock with the letter of October 16, 1944 and presumably prepared by Meagher's attorney on that day. We cannot believe it was a mere inadvertence that the release made no reference to the modification agreement of May 21, 1927. We say that Meagher intentionally diverted Stock's attention from the modification agreement and pointed, by specific quoted language, to the book and page in the recorder's office of a portion of the original Sheridan lease that had been expressly abrogated by the modification agreement. We believe this was done purposely and with the intention to spell out a contractual obligation to release when in fact such obligation did not exist. Meagher knew that the portion of the original Sheridan lease quoted in the October 21, 1944 document had been abrogated by the modification agreement of May 21, 1927 because he signed the last mentioned document. Stock was not a party to the modification agreement nor did he sign it.

### III.

The question posed by respondent as stated above in I is answered, also the statement: "We defy counsel to point out any representation made by Meagher to Stock or anyone else which was contrary to fact and known by Meagher to be so." (p. 46). The disclosure to Phebus on November 9, 1944 that Meagher had been solicited for a lease came after the release was sent to Stock for his signature. The omission to advise Stock not only of

the modification agreement but of the solicitation for a lease is a type of non-disclosure indicative of fraud. The clear purport of the Meagher to Stock correspondence was that Stock had no interest. This also was contrary to fact. Furthermore, Meagher represented both by his letters to Stock and by the release that the instrument of October 21, 1944 was for the purpose of clearing the record (Exhibit A-26, our brief p. 50). This was not Meagher's real purpose because he now contends through the instrument a transfer of interest, which he previously stated did not exist. We submit that the present assertion, the previous non-disclosure and the avowed purpose of the document all spell out conduct of "one who is deceitfully scheming to cheat another" (p. 43). The letter written by the attorney daughter of respondent transmitting the release to Stock for signature calls the document a "release" and not a transfer, *and speaks of Stock's interest in the past tense* (Exhibit A-27, our brief p. 52). Everything was done that could be done to lead Stock to believe that he was not transferring a present interest.

#### IV.

Respondent says: "Thus, regardless of whether Stock was under a contractual duty to release or was voluntarily turning back his lessees' rights, the fact remains that he did make the transfer and did thereby cease to have any obligations as a lessee. These facts alone dispose of the issue of consideration." (p. 50). In reply to the theory of consideration we say:

(a) Exhibit A-30 was recorded November 3, 1944. Six days after the recording of the instrument, Meagher, in his letter to Phebus of November 9, 1944, said: "I believe you know I would not ask for surrender of anybody's rights without payment, but in this instance actually no rights exist for anybody through that old lease of 1924." (Exhibit A-28, our brief, p. 53-54). It is undisputed that Meagher paid nothing for the Stock release. His state of mind evidenced on November 9, 1944 applies equally to Stock as well as to Phebus. He was not bargaining for an interest nor did he expect one. But counsel now say that respondent had in mind the undisclosed thought that he was assuming, by the release, a liability and relieving Stock of the same. As to this we point to the previous decision of this court holding:

"The 'Sundance formation' was penetrated by operations under the lease, but no oil in commercial quantities was discovered. No condition arose subsequent to that time that called for further exploration for oil upon the part of the lessee, \* \* \*."

(b) The term "transfer" is wishful thinking of respondent, asserted for the first time after the discovery of oil. The language of the release itself and the correspondence prior thereto is sufficient to demonstrate that the terms "transfer" or "quitclaim" are misnomers and not intended nor bargained for. Respondent has not pointed to any obligation that Stock had and that Meagher assumed. In fact, respondent is effectually



prevented from such assertion by the previous decision of this court. Stock was the possessor of a continuing oil mineral estate. In the former decision of this court it is said:

“Having complied with those provisions the lessee has given consideration for that right. That continuing right is not an unnecessary burden upon the lessor’s property as a subsequent discovery of oil in the locality places him in a position to enforce further exploration for oil and gas by the lessee *at the latter’s risk of losing his continuing rights* (Pars. 6 and 8). If anyone comes along who thinks there are possibilities in the land, if further exploration is conducted, the lessor’s hands are not tied. He may compel the lessee to duplicate the offer of the newly interested party (provided the offer is bona fide) *at the risk of losing his rights* (Par. 23).” (Italics ours).

The argument of a “legal consideration” in the sense that Stock was under a liability, which liability or obligation Meagher assumed, is dissipated by the above.

## V.

On page 32 respondent says:

“*Meagher had already given formal and adequate notice* to all concerned that he claimed interests in the property adverse to the interests claimed by them. What better notice could be given than the pendency of an unfinished quiet title action? The lis pendens filed May 4, 1945, notified not only these appellants but the world



that the property rights in this land were in litigation and until that litigation was concluded no one, much less the litigants, had any basis for assuming that Meagher was willing to accept less than his lawful interest." (Italics ours).

The above statement is calculated, we believe, to have the reader think that Meagher, by a *lis pendens*, gave notice to the world that he was claiming one-half of the oil mineral estate through the medium of the Stock release. There are other similar expressions throughout respondent's brief. The fact is that the *lis pendens* of May 4, 1945, Exhibit A-42, was executed on behalf of Juhan in connection with his answer filed in the case on that day and gave notice to the world that Juhan claimed the so-called Sheridan oil and gas lease of June 4, 1924 as modified by the modification agreement of May 21, 1927. Meagher at the time, through his second amended complaint, claimed that he was the owner in fee of the land unencumbered by any leasehold and this he confirmed on September 1, 1945 by his verified reply (R. 41, Exhibit A-29). The verified reply alleges that a leasehold did not exist, the same having been terminated by the express provisions of the lease and by abandonment. These issues on the first appeal were decided adverse to Meagher. The quoted statement would seem to be a reckless one. *Meagher never filed a lis pendens in this action.*

## VI.

The letter from Meagher to Stock under date of June 18, 1945, Exhibit A-39, is distorted by respondent.

Respondent would have it appear that the release of October 21, 1944, was the subject matter of the letter in connection with the quitclaim and assignment given Chas. Hill under date of April 14, 1945 (Exhibit A-19). The quitclaim and assignment, recorded April 25, 1945, acted as a quitclaim of any interest that Stock might have in the property as well as an assignment of any chose in action. Respondent says, in a strained construction, of the letter of June 18, 1945: "He pointed out that he, Meagher, was now the owner of Stock's former interest in the property." (p. 28). On page 29 counsel say: "We are convinced that no impropriety would be intentionally indulged by any of our opposing counsel. But in discussing this point we must call attention to an inadvertence which involves a gross misstatement of the record. \* \* \* When appellants say that 'respondent made no complaint' they overlook the vigorous complaint addressed to Stock in the letter (A-39) discussed above." On page 82 respondent says: "In June of 1945 Meagher, who had learned of Stock's quitclaim to Hill but did not know the purpose, wrote to Stock. *He pointed out that Stock had already transferred his lease interest to Meagher.*" (Italics ours)

The above quoted portions of respondent's brief and other similar assertions would lead one to believe that Meagher, by his letter to Stock of June 18, 1945, construed the release of October 21, 1944 as a transfer of interest and was calling upon Stock to explain an inconsistency between the release on the one hand and the quitclaim and assignment in favor of Hill on the other hand. The

letter is not susceptible of that construction. In fact it says nothing about the release of October 21, 1944. The letter refers specifically to an assignment by Meagher to Stock and Phebus under date of October 11, 1930 (Exhibit A-40) of one-third of a 2% oil royalty interest. The letter of June 18, 1945, Exhibit A-39, has not been quoted from in whole or in part in either of the two preceding briefs. We quote from the body of the letter as follows:

“Dear Mr. Stock:

When you and Mr. Phebus endeavored to get the Standard Oil Co. of Calif. to drill on the ‘Gas Well’ ranch those of us who held royalty interests on oil produced and marketed assigned one-third of our interests to you and Mr. Phebus, so that you would have fair compensation for your endeavors. As the Standard did nothing it appears you should have reassigned the royalty interests and the abstract of title does not show your re-assignment. Will you be good enough to execute and acknowledge the enclosed instrument for its purpose and send it to me.

“It may be that you prefer to sign one instrument reconveying to each party the one-third interest obtained in 1930; if so, I shall have the one instrument show a respective re-conveyance of what you and Mr. Phebus obtained, which will show the other owners,—Dick, Sheridans, Wyman and Preas. You and Mr. Phebus owe a deed to me for my one-third of 2% of the royalty and a deed to each of the others who contrubuted (contributed). The one deed returning therein to each his rights will be sufficient. It will save me in abstracting the title to the land to have but the one deed.

"I was surprised to find that you gave a quit-claim deed to one Chas. Hill of Denver for your interests in the 480 acres of land, which I own and have owned. That deed, my attorneys tell me, may involve you in this one-third of 2% interest. They suggest that you obtain from Hill a deed for the one-third of 2% of the oil. It can do Hill no other good, but it surprised me that (that) you gave Hill such a deed as you did. Those deeds just mess up an abstract of title and there is no advantage in executing them. Will you kindly tell me the purpose Hill has in obtaining such a deed from you and what consideration, if any, he gave you.

"I cannot believe you intend any unfriendliness towards me; I never was other than friendly with you and for your interests. I will appreciate very much a candid letter from you telling me all the facts and if there is anything you wish me to hold confidential you may depend on my doing so.

"If you will advise me immediately whether or not you will execute a deed re-conveying the interests of those who assigned one-third of their rights I shall have it prepared. You will (will) need to obtain a similar deed from Hill. Please advise me what to prepare.

Very truly yours,

N. J. Meagher."

The foregoing letter is contrary to that which respondent claims. Whether these appellants are guilty or whether it is respondent who is guilty of attempting to cast the case "in an inaccurate factual atmosphere" is perhaps beside the point. The important thing is that respondent on June 18, 1945, having become aware of the conveyance to Hill, and having concluded to speak of it by written communication to Stock, would have

unequivocally called attention to the release of eight months before as a transfer, quitclaim or conveyance if that was his claim. Meagher did not do this. He stated that the quitclaim and assignment to Hill had the effect of conveying Stock's interest in the royalty. Once having dignified the situation, it became Meagher's duty to fully disclose his understanding of the previous document, the release, and concerning which he said nothing. The only answer is that he claimed nothing for the document but was concerned only about his royalty interest. Indeed, for Meagher to have claimed a leasehold interest through the medium of the release would have been inconsistent with his reply subsequently filed in the action on September 1, 1945. The discovery of oil and self-interest prompts respondent to distort the letter.

## VII.

Respondent begs the question on our point 9 pertaining to the one-third of 2% oil royalty issue. As the record will show, the royalty is assignable and expressly made a covenant running with the land. True, as counsel say, it is similar to a landowners royalty in that it is not dependent for its existence upon a lease. The royalty under consideration is payable not in kind but in money, representing a percentage of the oil produced and saved from the property to be paid by the holder of the lease or the purchaser of the oil produced therefrom to the record owner of the royalty. While we have said this before and pointed to the controlling exhibits, we must reiterate the situation because of respondent's conten-

tion that Meagher became “the beneficial owner thereof” (p. 77), even though on October 11, 1930, by Exhibit A-40, the legal title was admittedly transferred to Stock and Phebus (p. 78). It is not disputed that Stock and Phebus assigned the royalty interest to others. There is no trust involved in the situation and, in any event, this court could not declare a trust to exist without first having all of the necessary parties before it. Without specific performance, if Meagher is now entitled to the same based upon the promise of Stock and Phebus to re-convey, the record title will remain undisturbed and a declaration of this court, in the present action, a futile gesture.

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The court has before it, through the recorded documents, a complete chain of title. Our brief in chief, of necessity, dwelt extensively and minutely on those documents. Respondent’s brief, filled with unsupported statements of the character mentioned above, has made it necessary for us to dwell further upon the situation through the medium of this reply brief. We have not cast the case in an inaccurate factual atmosphere. At the risk of belaboring the point we have asserted, as vigorously as we can, the integrity of contract with which this case is primarily involved and which respondent would seek to avoid.

Respectfully submitted,

HARLEY W. GUSTIN  
EDWARD F. RICHARDS  
CARVEL MATTSSON  
Attorneys for Appellants  
Ray Phebus, Paul Stock and  
Joe T. Juhan.  
OLIVER W. STEADMAN  
Of Counsel for Paul Stock.