

1953

# Mary F. Linder v. Utah Southern Oil Company : Brief of Appellant

Utah Supreme Court

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## Recommended Citation

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✓  
Case No. 8045

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

\_\_\_\_\_  
<sup>N</sup>  
MARY F. LINDER,  
*Plaintiff and Respondent,*

— vs. —

UTAH SOUTHERN OIL COMPANY,  
a corporation,  
*Defendant and Appellant,*

\_\_\_\_\_  
BRIEF OF APPELLANT  
\_\_\_\_\_

ELLIOTT W. EVANS  
OF EVANS, NESLEN, YEATES & BETTILYON  
*Attorneys for Appellant.*

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# IN THE SUPREME COURT of the STATE OF UTAH

<sup>N</sup>  
MARY F. LINDER,

*Plaintiff and Respondent,*

— vs. —

UTAH SOUTHERN OIL COMPANY,  
a corporation,

*Defendant and Appellant,*

} Case No. 8045

## BRIEF OF APPELLANT

### STATEMENT OF FACTS

Respondent brought action against appellant to recover what she termed dividends of \$4.00 per share on 1,000 shares of capital stock of appellant company. (R. 1). Of the \$4.00 per share, termed by respondent as dividends, \$2.50 per share was in fact a return to stock holders by way of reduction of capital. (R. 2, 3, 6 & 16). For the purpose of this brief appellant will refer to both dividends and return to stockholders by way of reduction of capital as dividends. Respondent defended on the ground that it had paid the dividends to the owners of record as provided by law and the By-Laws of the

appellant and at the time of said payments it had no notice of any claim by respondent in and to any of the stock in question. (R. 2 & 3). There was no dispute on the facts, they having been stipulated to. (R. 5 to 13). There were objections made as to the materiality of certain facts by each of the parties; by the appellant (R. 10 to 12) and by the respondent. (R. 12 & 13). The Court overruled the objections to the admissibility of the facts in both instances. (R. 15). Appellant filed a Motion for Summary Judgement. (R. 4). It was stipulated that notwithstanding no formal Motion for Summary Judgment was filed by the respondent the Court should consider said cause as pending upon Motion of each of the parties for Summary Judgment, the cause to be decided upon the Stipulations of Facts which had been filed. (R. 25). The Court gave judgment in favor of appellant as to the dividends on 200 shares of stock and in favor of respondent as to the dividends on 800 shares of stock. (R. 21, 22 & 23).

The 1,000 shares of stock in question were certificates numbered 829 and 830 for 100 shares each, issued to W. S. Hallinan on December 30, 1925, and certificates numbered 2011 to 2018 for 100 shares each, issued to James H. Dalziel on March 20, 1926. The Hallinan certificates were duly endorsed by him and his signature guaranteed on February 9, 1928. The Dalziel certificates were duly endorsed by him and his signature guaranteed on March 24, 1926. (R. 5, 15 & 16). The judgment in favor of appellant was on the dividends on the Hallinan stock and the judgment in favor of respondent was on the dividends on the Dalziel stock.



The respondent, from June, 1931 to June, 1951, had all 10 stock certificates in her possession. (R. 6, 7 & 17) (Exhibit 1). She never at any time, prior to the payment of the dividends, which were declared on December 18, 1948, December 10, 1949, and September 15, 1950, notified appellant of her interest in said stock and appellant had no notice of her interest therein until after said dividends had been paid. (R. 8 & 21). She sold the stock through a stockbroker in the City of St. Petersburg, Florida, where she then lived, on June 27, 1951. (R. 7 & 17). She received the full proceeds of the sale of the stock. (R. 7 & 17). The stock had a value of approximately \$11,000.00. (R. 11 & 19). The dividends, the subject of the action, were as follows: \$2.50 per share return of capital to stockholders in the form of interest bearing promissory notes authorized by appellant on December 18, 1948, which interest bearing notes were paid by appellant prior to June 10, 1951; \$1.00 per share on December 18, 1948; \$.25 per share on December 10, 1949; and \$.25 per share on September 15, 1950. (R. 6 & 16). The dividends on the Hallinan stock were paid to Hallinan and the dividends on the stock originally issued to Dalziel were paid to William Leary on the basis of new certificates which appellant had issued to him in lieu of certificates numbered 2011 to 2018 originally issued to Dalziel and claimed by Leary to have been lost. (R. 6, 16 & 17). At the time of the payment of the dividends Hallinan and Leary were the stockholders of record on the books and records of appellant. (R. 8, 18 & 21). Respondent demanded of appellant payment of the dividends to her on July 15, 1952, and appellant refused to



pay them and has never paid any dividends to respondent. (R. 7, 8 & 18).

Leary became a stockholder and stock certificates were issued to him under the following circumstances: Palmer & Company was a brokerage firm in New York City which became insolvent and ceased doing business on December 8, 1931. (R. 5 & 16). The remaining assets of Palmer & Company were sold to Leary on December 30, 1936. (R. 5 & 16). On February 1, 1949 Leary made claim to appellant that certificates numbered 2011 to 2018 were part of the assets of Palmer & Company purchased by him. (R. 5, 6 & 16). Leary also represented to appellant that said certificates were lost and applied to appellant for the issuance to him of new certificates in lieu of certificates numbered 2011 to 2018. (R. 6 & 16). James H. Dalziel died some time prior to April 1, 1949 and Agnes E. Dalziel was on April 1, 1949 the duly appointed, qualified and acting administratrix of his estate. She was also his widow and sole and only heir. (R. 12 & 20). Said Agnes E. Dalziel on April 1, 1949 for valuable consideration, by written agreement, acting as administratrix and individually, transferred, assigned and set over to Leary all her right, title and interest of and in said certificates numbered 2011 to 2018 and released any and all claims which she had against appellant by reason of the issuance of said stock certificates to James H. Dalziel. (R. 12 & 20). Leary delivered said written agreement to appellant on April 1, 1949. (R. 12 & 20). Leary also gave appellant a surety bond with the United States Fidelity and Guaranty Company as surety in the sum of \$25,000 to indemnify the appellant against all loss, dam-

age or expense which it might suffer or sustain in the event the old certificates should be presented to appellant. (R. 10 & 18). On May 4, 1949 new certificates were issued by appellant to said Leary in lieu of certificates numbered 2011 to 2018. (R. 6 & 18).

After respondent sold the stock certificates numbered 2011 to 2018 in the City of St. Petersburg, Florida, on June 25, 1951, to-wit, on February 1, 1952, the United States Fidelity and Guaranty Company paid to appellant on the above bond of indemnity the sum of \$11,040 to reimburse appellant for the cost of 800 shares of its stock which it had to purchase on the open market to correct the over issues of 800 shares of its stock which resulted from the issue of the 800 shares of stock to Leary in lieu of stock certificates numbered 2011 to 2018 on May 4, 1949 and the presentation of the original stock certificates numbered 2011 to 2018 to appellant after the sale thereof by respondent in June, 1951. (R. 11 & 19).

The By-Laws of appellant, among other things, provided during all times material to the case as follows:

## ARTICLE XI

### CERTIFICATES OF STOCK

Section 1. The certificates of stock of the corporation shall be in such form or forms as the board of directors shall approve. They shall be numbered consecutively, and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed under the corporate seal by the president or a vice-president and the secretary or an assistant secretary.

Section 2. Transfers of stock shall be made on the books of the corporation only by the person named in the certificate or by attorney, lawfully constituted in writing, and upon surrender and cancellation of the certificate therefor.

Section 3. The board may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of stock. It may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of either or both.

Section 4. The corporation shall be entitled to treat the holder of record of any shares or share of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Utah.

Section 5. Any person claiming that a certificate of stock is lost or destroyed shall make an affidavit or affirmation of that fact and advertize the same in such manner as the board of directors may require, and shall, if the board of directors so requires, give the corporation a bond of indemnity, in form and with one or more sureties satisfactory to the board, in at least double the value of the stock represented by said certificate, whereupon a new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed, but always subject to the approval of the board of directors. (R. 8, 20 & 21).

The appellant had no notice of any interest of respondent in and to any of said stock until on or about July 15, 1952. (R. 8 & 21). Until July 3, 1951, its books and records showed that the owner of stock certificates

numbered 829 and 830 was W. S. Hallinan. (R. 8 & 21). Until May 4, 1949, its books and records showed that the owner of stock certificates numbered 2011 to 2018 was James H. Dalziel. (R. 9 & 21). New stock certificates in lieu of certificates numbered 2011 to 2018 were issued to William Leary by appellant on May 4, 1949. (R. 6 & 20). The dividends, in question on this appeal, were thereafter paid to Leary (R. 6 & 16) and he of course appeared on the books and records as being the owner of the stock after May 4, 1949. The dividends on certificates numbered 829 and 830, on which the lower court concluded respondent was not entitled to and gave judgment for appellant, were not paid to Mary F. Linder the respondent, but were paid to W. S. Hallinan who appeared on the books and records of appellant as the owner thereof. (R. 6 & 17).

At all times pertinent to the cause the following statute was in effect:

Section 16-3-3 (1) Utah Code Annotated 1953. (This was Section 3 (a), Chapter 55, Laws of Utah, 1927, and Section 18-3-3 (1) of Revised Statutes of Utah 1933 and of Utah Code Annotated 1943.)

Registered owner treated as owner in fact:—  
Nothing in this chapter shall be construed as forbidding a corporation:

(1) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner;

STATEMENT OF POINTS UPON WHICH APPELLANT RELIES FOR A REVERSAL OF THE JUDGMENT OF THE COURT BELOW.

## POINT I

The appellant corporation, organized and existing under and by virtue of the laws of the State of Utah, whose By-Laws provide that transfer of stock shall be made on the books of the corporation only by the person named in the certificate or by attorney, lawfully constituted in writing, and upon surrender and cancellation of the certificate and whose By-Laws also provide that it shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Utah and whose By-Laws also provide for the issuance of new certificates to persons claiming that certificates have been lost, which corporation was without notice of the transfer of its stock certificates or knowledge of the rights therein of the holder of said certificates is protected in paying dividends to a stockholder of record against the claims of one who for 20 years, during which time the dividends were paid, had held the stock certificates endorsed by the person to whom they were issued, and had not notified the corporation of her ownership of or interest in said stock certificates or requested that new certificates be issued to her so that she would become a stockholder of record on the books and records of the corporation.

## POINT II

The appellant corporation is protected even though the person to whom the dividends were paid became a stockholder of record when new stock certificates were issued to him after he had claimed that the original stock certificates had been lost, had entered into a written agreement with the original stockholder's widow and sole heir, who was also the administratrix of his estate, by which agreement she transferred, assigned and set over to him all her claims against the corporation, had delivered said written agreement to the corporation and had given the corporation a bond of indemnity to protect it against loss. The corporation

is protected in this situation the same as it is protected when it pays dividends to a stockholder of record who no longer owns the stock and where there is no claim of loss of certificates and no bond given. The claim of loss of certificates and giving of a bond of indemnity to the corporation does not alter the protection which a corporation has in paying dividends to a stockholder of record, when the corporation is without notice of the rights of the holder of the certificates.

### POINT III

Respondent who has never been a stockholder of record is not entitled to recover dividends in an action against appellant, a Utah corporation.

### ARGUMENT POINT I

The appellant corporation, organized and existing under and by virtue of the laws of the State of Utah, whose By-Laws provide that transfer of stock shall be made on the books of the corporation only by the person named in the certificate or by attorney, lawfully constituted in writing, and upon surrender and cancellation of the certificate and whose By-Laws also provide that it shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Utah and whose By-Laws also provide for the issuance of new certificates to persons claiming that certificates have been lost, which corporation was without notice of the transfer of its stock certificates or knowledge of the rights therein of the holder of said certificates is protected in paying dividends to a stockholder of record against the claims of one who for 20 years, during which time the dividends were paid, had held the stock certificates endorsed by the person to whom they were issued, and had not notified the corporation of her ownership of or



interest in said stock certificates or requested that new certificates be issued to her so that she would become a stockholder of record on the books and records of the corporation.

The court below recognized that the above is true as a general statement of the law and gave judgment for appellant as to the payment of dividends on stock certificates numbered 829 and 830 to Hallinan. The respondent in the Court below also recognized this rule, because she did not press her claim for the dividends on the stock certificates numbered 829 and 830, when it became apparent that those dividends had been paid to Hallinan.

The law is clear on this point, and it is not expected that respondent will argue to the contrary but as Point II is based on the soundness of Point I appellant desires to call the Court's attention to a number of authorities which support appellant's theory.

The following statement in Corpus Juris Secundum clearly states the law.

18 C. J. S., Corporations, Page 1120, Section 470.

“\* \* \* Generally, payment of dividends by a corporation to a person not authorized by the one entitled thereto to receive them will not protect it from paying them again to the owner. *The corporation, however, will be protected in the payment of dividends to the persons who appear on its books as the owners of the shares at the time the dividend is made, if the payment is made without notice of the transfer. This result follows, of course, under statutes which permit a corporation to recognize the exclusive right of the persons registered on its books to receive dividends in the absence of notice to it of any transfer.* The cor-



poration, however, must make payment to the transferee where it is given notice of the transfer, and in such case it will not be relieved of liability to a person entitled to a dividend by payment to the registered owner of the shares. It is generally held that knowledge on the part of the officers of a corporation that a transfer had been made, obtained in the ordinary course of business, is notice to the Corporation; but a corporation is not chargeable with notice of a transfer by the mere fact that one of its officers has gained knowledge thereof while not engaged in the business of the company, or in his official capacity; and where the officer of the corporation is himself the transferor, and withholds the fact of the transfer from the corporation, the corporation is not thereby charged with notice." (*Italics added*)

Many cases are cited in support of the above statement and to the same effect are the following:

14 C. J. Corporations, Page 819, Section 1241;

60 A.L.R. Page 708;

12 Fletcher Encyclopedia of the Law of Private Corporations, Permanent Edition, Section 5504, Pages 346 to 350.

Of particular significance is the following citation from the last cited authority:

"In paying dividends to a person who appears on the books as the owner of shares, the corporation is not bound to require him to produce his certificate of stock, and his failure to produce it is not sufficient to put the corporation on inquiry and constitute constructive notice of a transfer of the stock by him. *Nor is the corporation put upon inquiry by the fact that the person appearing on*

*the books as owner has represented that his certificate has been lost or destroyed, given bond of indemnity, and received a new certificate.”* 12 Fletcher Corporations, Page 349. (Italics added.)

The cases of *Brisbane v. Delaware, Lackawanna & Western Railroad Company*, 94 N. Y. 204 and *Cleveland and Mahoning Railroad Co. v. Robbins et al.*, administrators of *Elias Fassett*, 35 Ohio State Reports 483 are cited in support of the above quotation. The facts in the last mentioned case are almost identical with the facts in the case before the court and will again be referred to in the argument under Point II.

It appears to appellant that in the present case respondent whose conduct, in not notifying the appellant of her possession of and claimed ownership of the stock certificates during the 20 years that they were in her possession and not requesting that the stock certificates be transferred to her name so that she would become the stockholder of record as far as the appellant was concerned placed the appellant in the position where it innocently paid the dividends to one who may not have been entitled to receive them as against the respondent.

The courts have long recognized old Maxims and one of these Maxims supports the position of the appellant.

“Where one of two innocent parties must suffer, he through whose agency the loss occurred must be it.”

“Where one of two parties, both guiltless of intentional wrong must suffer a loss, the one whose conduct, act or omission occasions the loss must stand the consequences.”

## POINT II

The appellant corporation is protected even though the person to whom the dividends were paid became a stockholder of record when new stock certificates were issued to him after he had claimed that the original stock certificates had been lost, had entered into a written agreement with the original stockholder's widow and sole heir, who was also the administratrix of his estate, by which agreement she transferred, assigned and set over to him all her claims against the corporation, had delivered said written agreement to the corporation and had given the corporation a bond of indemnity to protect it against loss. The corporation is protected in this situation the same as it is protected when it pays dividends to a stockholder of record who no longer owns the stock and where there is no claim of loss of certificates and no bond given. The claim of loss of certificates and giving of a bond of indemnity to the corporation does not alter the protection which a corporation has in paying dividends to a stockholder of record, when the corporation is without notice of the rights of the holder of the certificates.

Appellant will not at length argue that the giving of a bond to appellant by Leary did not enlarge or extend the liability of appellant. Neither its liability, lack of liability nor protection was changed by the bond. Neither were the rights of respondent enlarged by the bond. The bond was for the protection of the appellant in the event of liability and has nothing to do with the creation of the liability. Appellant in the lower court objected to the admissibility of stipulated facts concerning the furnishing of the bond on the ground that the facts concerning the bond were immaterial. The court ruled

against the appellant. There was no jury in the trial court and if the ruling of the trial court was in error it perhaps is harmless error. Appellant is certain that this Court will in no way be influenced by the fact that a bond has been given. The giving of a bond to protect the appellant in the event of loss is as immaterial as the fact that defendant in an automobile accident case has liability insurance which will protect him in the event that he is found to be liable for the accident.

It was conceded in the trial court below by respondent and it is expected that she will so concede in her argument before this court that if the appellant had paid the dividends to James H. Dalziel or to the administratrix of his estate after his death that appellant would be protected against the demands of respondent for the payment thereof.

Appellant contends that payment of dividends to Leary protected it the same as if it had paid them to Dalziel.

Only one case has been found by appellant on the subject of the effect of paying dividends to the person to whom new stock was issued on the claim that the original stock had been lost when in fact it had not been. That case has all the facts of the present case. It supports the appellant's position. No cases have been found in opposition to it. That case is the case of *Cleveland and Mahoning Railroad Co. v. Robbins, et al.*, administrators of Elias Fassett, 35 Ohio State Reports 483. It was decided by the Supreme Court of Ohio in 1880 and has never been overruled or modified. As pointed out,

hereinbefore under Point I of the argument, this case is cited as authority by Fletcher on Corporations Vol. 12, at page 349. That work was published in 1933 and although the Ohio case is an old one it apparently is still recognized as the law.

The facts in the Ohio case are as follows :

The action was in the nature of a suit in equity, brought against the Cleveland and Mahoning Railroad Company, O. M. Burke, and Joseph Perkins. The object of the action was to obtain the transfer to plaintiffs, upon the books of the railroad company, of forty shares of its stock, the original certificates for which were held by Elias Fassett, the plaintiffs' intestate, at the time of his death, and also to obtain from the company the payment of the dividends that had accrued on the stock. If the transfer of the stock could not be obtained, the plaintiffs prayed that the company be required to account for the value of the stock and the dividends; and in the event that it should be found that the plaintiffs were not entitled to such relief against the company, that the same be decreed to them against Burke and Perkins.

A separate answer was filed by the railroad company. Burke and Perkins answered jointly; but no decree was rendered, either in favor of or against them, nor were they parties to the appeal. There was a finding against Burke and Perkins in favor of the plaintiffs; but there was no judgment or decree on such finding.

Judgment was rendered against the railroad company alone; and petition in error was prosecuted by the company against the plaintiffs below, Robbins and Dunlevy, administrators of Fassett.

The principal question which arose in the case was whether or not the railroad company was liable to the administrators of Fassett, the plaintiff below, on account of the stock; and, if so, the nature and extent of such liability.

The stock certificates contained a statement upon the face of each that the stock was transferable upon the books of the company upon the surrender of the certificate and a by-law of company declared that no new certificate should be issued in place of any certificate previously issued, until such previous certificate had been surrendered and canceled, and such cancellation, with the date thereof plainly written on the face of the certificate so surrendered.

The original certificates in question were issued by the railroad company, on the 9th day of September, 1854, to Voce, Perkins & Co., who appeared on the books of the company as the owners of the stock. In the same year the stock was sold to Elias Fassett by Voce, Perkins & Co., who delivered to him the certificates, with blank powers of attorney, to enable him to have the stock transferred upon the books of the company. The certificates were mislaid by Fassett, and they were not discovered until December, 1871, after his death. In the meantime, on the 8th day of May, 1863, the board of directors of the railroad company, on the application of Voce, Perkins

& Co., issued to Burke or to Burke and Perkins, new certificates of stock, on the supposition that the original certificates had been lost by Voce, Perkins & Co. On the application of the administrators of Fassett, for the transfer of the stock to their names and for an account of the dividends that had been declared on the stock, the company refused to make the transfer, or to account for the dividends, on the ground of the issue of the new certificates.

At the time of the issue of the new certificates Burke and Perkins delivered to the said railroad company a bond of indemnity signed by the said Voce, Perkins & Co., by J. V. Voce in liquidation, in the penalty of \$2,347.33, conditioned that if the said Voce, Perkins & Co. should at all times indemnify and save harmless the said railroad company against any loss, damage, or dividends arising out of the loss of said original certificates, and the issuing of the new ones in the stead thereof, and the return to the said railroad company of the said forty shares of the stock so issued, in case the lost certificates should thereafter be found by the said Voce, Perkins & Co., or be in the hands of any innocent holder claiming title thereto, or, if unable to return the said certificates issued to them, or other stock of said company for like amount, should pay to the said company the full, not exceeding the par value thereof, then said bond to be void, otherwise in full force.

At the time the new certificates were issued Burke and Perkins, executed and delivered to the railroad company their written guarantee, therein reciting that the



Cleveland and Mahoning Railroad Company had on that day, at their request, and upon the delivery therewith of the bond mentioned, issued new stock certificates for forty shares to Burke, they thereby bound themselves, their heirs, executors, and administrators to the said Cleveland and Mahoning Railroad Company in the sum of \$4,000, that the said Voce, Perkins & Co., should well and truly fulfill all the terms and conditions of their said bond of indemnity; and the said Burke and Perkins would pay any and all additional loss or damage that the said company might sustain by reason of the return or delivery of the original stock certificates, over and above what said Voce, Perkins & Co. had stipulated for.

Stock and cash dividends were paid by the railroad company to Burke and Perkins. By the stock dividends which were for 34½% on one occasion and 10% on another occasion the stock was increased in value from \$2,000 to \$2,890 at par and to a value of \$3,368 as the actual value on April 3, 1872, the date when plaintiffs made demand for the transfer of the stock and the railroad company refused. Cash dividends were declared at various times between November 10, 1863 and November 10, 1871, amounting in the aggregate to \$1,841.60.

The case originally was filed and tried in the Court of Common Pleas of Cuyahoga County. It was appealed to the District Court of Cuyahoga County where the Court found the issues in favor of the plaintiffs and against railroad company and gave judgment for the value of the stock on the day demand was made by the plaintiffs that a transfer be made of the stock to them by the company, in the principal sum of \$3,368, for

interest thereon in the sum of \$808.32, and for the amount of the cash dividends and interest thereon from the date of the cash dividends which with the interest amounted to \$2,908.18, making a total of \$7,084.50. Appeal was then taken to the Supreme Court of Ohio to obtain a reversal of the judgment and decree of the District Court.

The Ohio Supreme Court held that the company was liable to replace the stock to which Fassett was entitled or to account for its value but that it was not liable for the dividends paid on the stock, before it had notice of the transfer of the certificates to Fassett.

After giving its decision to the effect that the company was liable for the stock the court said:

“Whether the company is liable for the dividends paid on the stock, before they had notice of the transfer of the certificates to Fassett, depends upon other considerations.

“Voce, Perkins & Co. were the registered owners of the stock, and, by failing to have the stock transferred, Fassett consented that they might vote upon the stock, and, in the absence of notice to the company that he was the holder of the certificates, he took the risk of Voce, Perkins & Co. drawing the dividends. Unlike the transfer of stock, the surrender or production of the certificates was not necessary to draw the dividends. Until the company were notified of the transfer of the certificates to Fassett, they were warranted in paying the dividends to Voce, Perkins & Co., or to their order. And, by paying the dividends to Burke and Perkins, as purchasers under Voce, Perkins & Co., the company are as fully pro-

tected as if the payments had been made to Voce, Perkins & Co., directly." 35 Ohio State Reports at page 502.

"The findings of the court below do not distinguish between the value of the stock and the aggregate value of the stock and dividends. The entire judgment must therefore be reversed; and the cause is remanded to the district court for further proceedings." 35 Ohio State Reports at page 503.

Appellant has been unable to find a case decided by the Utah Supreme Court on the exact question involved in the present case and believes that this is the first time the Utah Court has been called upon to pass upon the question. Appellant suggests that this Court might well follow the Ohio Court. The decision of the Ohio Court appears to be logical and legally sound.

### POINT III

**Respondent who has never been a stockholder of record is not entitled to recover dividends in an action against appellant, a Utah corporation.**

The following Utah Statute bears on the subject:

Utah Code Annotated, 1953. Section 16-2-34. (This was Section 878 of Compiled Laws of Utah, 1917, Section 18-2-33 of Revised Statutes of Utah, 1933, and Utah Code Annotated, 1943.) "Stock—Deemed personal property — Rights of record holders. — Stock shall be deemed personal property. For the purpose of voting and of receiving dividends and of levying and collecting assessments and for other purposes wherein the corporation is otherwise interested the stockholder of record as shown by its books shall be treated and

considered as the holder in fact, and the transferee shall have no rights or claims as against the corporation until transfer thereof is made upon the books of the corporation or a new certificate is issued." (Italics added.)

The respondent Mary F. Lindner never was a stockholder of record on the books of the appellant corporation. The stock which she held and claimed to be the owner of was registered on the books of the corporation in the name of James H. Dalziel until new stock was issued to William Leary. It was endorsed by James H. Dalziel and his signature guaranteed. Upon its sale at St. Petersburg, Florida, by the stockbroker there on June 27, 1951, she did not become a stockholder of record. The stock was never in her name. She never notified the company of her ownership and never requested the company to transfer the stock to her on the records of the company.

Under these circumstances it appears clear to appellant that the respondent, by reason of the above statute, cannot recover on her action against the appellant for dividends.

## CONCLUSION

Appellant wants to emphasize that this action is not one between stockholders to determine which one is entitled to dividends. It is on the other hand an action by one who claims to be the owner of stock certificates and who had possession of the certificates at the time dividends were declared against the corporation which declared the dividends and <sup>which</sup> ~~who~~ paid them to some one

else, other than the holder of the original certificate, to whom new stock certificates had been issued by the company upon a claim that the original stock certificates had been lost and that the person making that claim was the owner thereof, and the company had no notice of the interest in the original certificates of the person who held them.

It may well be that in an action between Mary F. Lindner and William Leary that Mary F. Lindner, if she was in fact the owner of the original certificates, might recover the dividends paid by the Utah Southern Oil Company to William Leary. That however is not the problem now before the Court.

The appellant respectfully submits that the Court below committed error in concluding that the respondent was entitled to recover from the appellant for the dividends on stock certificates numbered 2011 to 2018 and in giving judgment therefor and that it should have come to the same conclusion on certificates numbered 2011 to 2018 as it did on certificates numbered 829 and 830, that there could be no recovery from the appellant corporation, and that this court should reverse the lower court's judgment and award judgment to the appellant that respondent recover nothing from appellant and that appellant recover its costs on this appeal.

Respectfully submitted,

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