

1956

N. J. Meagher, Jr. et al v. Equity Oil Company et al : Plaintiffs' Reply to the Answering Brief Filed by Weber Oil Company

Utah Supreme Court

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No. 8483

In the Supreme Court

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OF THE

State of Utah

N. J. MEAGHER, JR., et al.,

Plaintiffs,

vs.

EQUITY OIL COMPANY, a corporation, et al.,

Defendants.

PLAINTIFFS' REPLY TO THE ANSWERING BRIEF
FILED BY WEBER OIL COMPANY.

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No. 8483

In the Supreme Court

OF THE

State of Utah

N. J. MEAGHER, JR., et al.,

Plaintiffs,

VS.

EQUITY OIL COMPANY, a corporation, et al.,

Defendants.

PLAINTIFFS' REPLY TO THE ANSWERING BRIEF FILED BY WEBER OIL COMPANY.

1. INTRODUCTION.

A. Before replying to the Weber Brief, we desire to define a few phrases which will be used herein.

(1) Mention will be made of the "Dunford Decree," by which we mean the decree entered by Judge Dunford upon the second trial of the quiet title suit. The so-called "Dunford Decree" was affirmed by this Court. The Dunford Decree is set forth as Appendix B in the Meagher Opening Brief. The Findings of Fact and Conclusions

of Law, upon which the Dunford Decree is based, are set forth as Appendix A thereof. The opinion of this Court affirming the Dunford Decree is Appendix C.

(2) When interests in the lease are referred to, we are speaking of the *lessee's rights*, as to oil, under the lease. As used herein, the terms "lessee's rights" and "interest in the lease" refer to what are sometimes called "working interests" or "operating rights." Since the owners of royalties are entitled to $18\frac{1}{2}\%$ of the production, it follows that ~~$80\frac{1}{2}\%$~~ ^{$81\frac{1}{2}\%$} of the production is available for the owners of the working interests. Thus when we say that Meagher acquired the former Stock Half of the lease from Stock, we mean, in terms of production, that Meagher is entitled to $\frac{1}{2}$ of ~~$80\frac{1}{2}\%$~~ ^{$81\frac{1}{2}\%$} , i.e., 40.75% of production. Similarly, when we refer to the Phebus Half of the lease we are speaking of the right of its owners to 40.75% of production. Doubtless this Court understands our meaning in using these terms, but due to the remarkable arithmetical presentation contained in the Weber Brief, we wish to define these terms.

B. Turning to the affirmative arguments presented by Weber, it is revealing to note that the heart of the Weber argument is the premise that under the Dunford Decree, as affirmed by this Court, the Meaghers were not awarded one-half of the lease but only obtained one-quarter. They argue that the Dunford Decree did not award the entire former Stock Half of the lease to the Meaghers, but only one-half of the former Stock Half. In terms of production, they argue that the Meaghers did not

become entitled to 40.75% of production, but only $\frac{1}{2}$ of 40.75%. They argue that Stock and Juhan were awarded the other half of the former Stock Half. Then they urge that since, by the Dunford Decree, the Meaghers got half of the Stock Half, and Stock and Juhan got one-quarter of the whole, the remaining half of the entire lease, i.e., the Phebus Half, belongs to Weber.

This entire argument rests upon Weber's construction of the Dunford Decree. Thus the fundamental issue is, what did the Dunford Decree award to the Meaghers? The Meaghers contend the Dunford Decree and the decision of this Court affirming it make it crystal clear that Stock transferred everything he had to Meagher. Since Stock's interest at the time of his transfer to Meagher is conceded by all and was held by this Court to have been one-half of the lease, we submit that there is no basis whatsoever to support the Weber contention. Once this point is determined, Weber's argument is revealed as a mere effort to create arithmetical confusion in the hope of salvaging something from a lost cause.

2. CONCERNING WEBER'S STATEMENT OF FACTS.

A. In the second paragraph of Weber's Brief, the following sentence appears:

“Weber Oil Company admittedly owns the Phebus Half.”

The same assumption is made throughout the Brief. It is not a fact. Perhaps Stock and Juhan admit that Weber

owns half of the working interest. But the Meaghers do not. It is true that the Meaghers admit they do not claim an interest in the Phebus Half. However, to the extent the total claims of all defendants exceed one-half of the lease, the Meaghers do and consistently have resisted such claims. Although the Meaghers do not claim to own the Phebus Half, they certainly do claim to own all of the former Stock Half. They are indifferent with respect to the ownership of the Phebus Half. This is a far cry from an admission by the Meaghers that Weber owns the Phebus Half.

B. Weber's statement of facts (p. 3) states:

“There is no appeal or cross appeal taken from the ruling dated October 14, 1955.”

This is misleading. The ruling of October 14, 1955 was nothing but a memorandum decision filed by the trial judge after considering the arguments and briefs of the parties with respect to the motions for summary judgment. After the ruling of October 14th, the Meaghers *and Weber* filed proposed forms of decree to formalize the ruling. This procedure has been consistently followed throughout the 12 years of this litigation. In nearly every instance, after a ruling was announced by the court, the parties have proposed an order or decree to formally finalize it. The same procedure was adopted here after the ruling of October 14th. The fact that the formal Interlocutory Judgment and Decree, based on that ruling, was not entered until December 13, 1955, is merely because none of the parties were satisfied with the proposed

decree submitted by the others. Each filed written objections to the proposals of its adversaries, and it took from October 14th to December 13th to settle the form of the decree.

C. Weber's statement of facts (p. 5) states:

“The court in its rulings on motions dated October 14, 1955 (R. 213-215 at page 214) concludes that Equity Oil Company appears *only* as a ‘stakeholder.’ ”

If Weber means that the lower court has determined that Equity appears in the case only as a stakeholder, we must dispute Weber's effort to gain something for its parent company. It is the Meagher position that while the lower court has recognized that Equity *asserts* that it is only a stakeholder, there has been no ruling by the lower court that such is the ultimate and final status of Equity.

As stated above, we have asked this Court to modify the Interlocutory Decree by ruling that Equity is a real party in interest and a principal with respect to the activities of the defendants and is not limited in its status to that of mere stakeholder. Alternatively, if this Court deems the issue to be beyond the scope of this appeal, we have asked it to so declare in such manner as will not preclude plaintiffs from raising the issue in the course of the further proceedings below.

D. The Weber Brief correctly states that a quitclaim deed from the Senior Meaghers to their children, dated May 10, 1954, was given shortly before this action was

commenced. However, it should also be noted that under a prior quitclaim deed the Senior Meaghers transferred the same interest to their children on January 27, 1948 (Exhibit A-22 in District Court No. 2238). The second quitclaim merely confirms the former. Thus the fact is that the transfer to the Meagher children goes back to 1948.

3. CONCERNING WEBER'S POINT 1, NAMELY, THAT "WEBER OIL COMPANY SHOULD BE DISMISSED OUT OF THE ACTION WITH A SUMMARY JUDGMENT IN ITS FAVOR AS TO THE TITLE THAT IT ADMITTEDLY OWNS."

A. First, we note that no argument at all is presented for dismissing Weber out of the action. Weber is one of the owners of the lease. Through its agent Equity, it has operated the property. Weber's basic obligation to account to the Meaghers has been recognized by the decree against Weber's agent, but there has been no attempt at this stage of the litigation to finally and precisely adjudicate Weber's ultimate obligations. Thus there is no reason whatsoever to dismiss Weber "out of the action."

B. Second, contrary to Weber's assertion, the Interlocutory Decree does recognize that Weber is entitled to an interest in the lease. It recites that Stock transferred his half to Meagher; then it recites that Juhan acquired the Phebus Half; then it recites that the various defendants (Juhan, Stock, Equity and Weber) have made transfers of the Phebus Half between themselves; then it recites that those transfers are valid against the Meaghers so far as they relate to the Phebus

Half only. Finally, in the order which follows these recitals, the Interlocutory Decree adjudicates (1) that the Meaghers own half of the lease, and (2) that the defendants (including Weber) own the other half of the lease.

Thus the Interlocutory Decree does grant Weber's motion for summary judgment with respect to Weber's interest in the lease to the extent that Weber has an interest.

C. The argument under Weber's Point 1 goes beyond the above two matters. It asserts that Weber "admittedly" owns half of the lease. This is not true. But on this false assertion the Weber argument proceeds on the theory that Weber should now be awarded a one-half interest in the lease. Since the Dunford Decree awarded Stock and Juhan a one-quarter interest, the purpose of the Weber contention is to reduce the Meagher interest from one-half to a quarter.

In subdivision A of Section 2 of this brief, we have noted that regardless of what the defendants may "admit" between themselves, the Meaghers certainly do not and never have admitted that Weber owns one-half of the lease. The Meaghers do admit that they claim no interest in the Phebus Half. But the Meaghers do not admit that Weber owns it. Of course, such an admission, even if made, would give Weber no title. From the fact that the Meaghers assert no interest in the Phebus Half, it does not follow that they concede that Weber owns it.

D. This section of the Weber Brief seeks to charge the Meaghers with some default for failure to appeal from

that portion of the Dunford Decree which awards one-quarter of the lease to Stock and Juhan. But whether the Dunford Decree does or does not correctly delineate the quantum of the Stock-Juhan interest in the Phebus half is of no concern to the Meaghers for the reasons stated above. The importance of the Dunford Decree to the Meaghers lies in its clear award of a one-half interest in the entire lease to the Meaghers.

E. The Weber Brief also seeks to reach its astounding arithmetical *non sequitur* by urging that only the Stock Half of the lease was involved in the Dunford quiet title suit. The argument suggests that if only the Stock Half was involved in that suit the award of one-half to the Meaghers would be one-half of the Stock Half, and so, one-quarter of the whole. The answer to this is that the entire Sheridan Lease was the subject matter of the quiet title suit.

Juhan himself brought the lease into that litigation by his Answer. This pleading sets up the entire lease, claims ownership of all of it, and prays adjudication accordingly. The entire lease was before the court. The Meaghers claimed only the half they obtained from Stock. Juhan and the parties he represented claimed the entire lease. Juhan and Stock failed in their efforts to wrest the Stock Half from the Meaghers. Now they argue that only the Stock Half was in litigation.

The fallacy of Weber's premise is disclosed by the Dunford Decree and the decision of this Court affirming it. The Dunford Decree in awarding half of the lease

to Meagher and one-quarter to Stock and Juhan, certainly could not have done so unless more than the Stock Half was before the court.

For Weber to now seek an award of one-half of the lease is to defy the Dunford Decree unless Weber proves that it obtained an additional interest, either from Stock or Juhan, or from the Meaghers. There is neither proof nor contention that Weber ever obtained any interest through the Meaghers. Thus whatever Weber has must have come from Stock or Juhan. It is therefore necessarily limited to a share in the Phebus Half.

Nothing would please the defendants more than a series of judicial decrees which would award 50% to Meagher, 25% to Stock and Juhan and 50% to Weber (a total of 125%). With such confusion they well might exhaust the oil before the Meaghers could clarify the mess. We are confident that this Court will not be misled into such an “overissue.”

F. Since the complete answer to Weber’s Point 1 is contained in the Dunford Decree and the decision of this Court affirming it, we shall set forth a few of the pertinent clauses from the Dunford Findings, Conclusions and Decree and from this Court’s Opinion (emphasis added):

Findings:

“35. On October 21, 1944, by document A30, defendant Stock transferred to plaintiff Meagher all of his right, title and interest in the lease as modified, *by which transfer* Meagher acquired an undivided

one half interest in the lessee's rights with respect to oil in the 440 acre parcel."

Conclusions:

"B. With respect to the 440-acre parcel: . . .

"4. Meagher owns an undivided one-half interest in the lessee's rights with respect to oil under the lease A1 as modified. . . .

"5. Defendant *Juhan and assigns*, whose respective interests are hereafter set forth, own all of the said lessee's rights with respect to gas and an undivided one-half of the said lessee's rights with respect to oil. . . .

"12. The *aforesaid* interests of Juhan and his assigns in said lessee's rights referred to in Conclusion B5 above are owned as follows: . . .

"(b) Juhan owns an undivided three-sixteenths with respect to oil. . . .

"(d) Stock owns an undivided one-sixteenth with respect to oil. . . .

"(f) Weber Oil Company owns an undivided one-fourth with respect to oil.

"13. The conclusions herein are not res judicata with respect to Weber Oil Company, but transfers to it are noted to delineate interests owned by those who are parties to this action. . . ."

Decree:

"2. Plaintiff, N. J. Meagher, is the owner of all rights, titles and interests in and to that certain real property . . .

“Subject to: . . .

“(3) An oil and gas lease dated June 4, 1924, . . . as modified by an agreement dated May 21, 1927, . . .

“4. The interests of the parties hereto in and to the aforesaid oil and gas lease are decreed to be as follows:

“Plaintiff N. J. Meagher owns an undivided one-half interest in the lessee’s rights with respect to oil.

“Defendant Joe T. Juhan owns . . . an undivided three-sixteenths interest in the lessee’s rights with respect to oil.

“Defendant Paul Stock owns . . . an undivided one-sixteenth interest in the lessee’s rights with respect to oil.”

Supreme Court Opinion:

“[1] Since our former decision, three claims were allowed to be brought into the case: . . . 2) Stock’s, by counterclaim, to assert a one-half interest in operating rights in 440 acres, in opposition to Meagher’s identical claim; and 3) Meagher’s, by amended reply, to claim ownership of such interest by transfer from Stock. Working rights in the 440 spring from a 1924 oil and gas lease, modified in 1927. By mesne conveyance, *Stock and Phebus each became owner of a half interest* therein. Meagher claims nothing through Phebus, but claims a one-half interest through Stock’s ‘release’, principal subject of this suit . . .

“The lower court, on the evidence, held *this instrument transferred Stock’s interest to Meagher. We affirm* such holding.”

The entire structure of the Weber Brief is predicated upon the premise that the Dunford Decree and its affirmance did not award Stock's interest to Meagher but only awarded him one-half thereof. We submit that this construction of the Dunford Decree is so fantastic that it is frivolous.

4. CONCERNING WEBER'S POINT 2, NAMELY, THAT "THE INTERLOCUTORY JUDGMENT AND DECREE OF DECEMBER 13, 1955, IS VOID AS TO WEBER OIL COMPANY."

In arguing this point Weber contends that the ruling of October 14, 1955 constituted a final judgment. The argument continues that time for appeal commenced on October 14th and not on December 13th, which is the date the Interlocutory Judgment and Decree was entered to formalize said ruling.

A. The Weber argument refers to Rule 56 which sets forth summary judgment procedure. The Weber Brief says:

"No findings are required and the judgment so entered is final, except as provided in subdivision (d) of the rule."

How can it be said that "no findings are required" when the express instructions of the court contained in Rule 56(d) directs the court to specify the facts which appear without substantial controversy?* The ruling of

*In discussing the court's duty under Rule 56(d), Vol. 6 Moore's Federal Practice at p. 2306 states that this rule puts a compulsory duty upon the trial court to enter an order specifying the facts which appear without substantial controversy.

October 14th does not purport to set forth such facts. It merely announces the conclusions of the trial judge as does any memorandum of decision. Thereafter, if it is a case which requires recitals or findings or other formalization, it is established practice for the parties to present the documents they propose for this purpose. If the Meaghers had not done so, we would now be confronted with a proper contention by Weber that the ruling is defective because it does not specify the facts which appear without substantial controversy. The specification of such facts in a summary proceeding is tantamount to the findings of fact in an ordinary proceeding. Until these specifications are set forth, the appellate court is without means of determining whether summary proceedings were proper. The very concept of summary proceedings is that the conclusions made therein are based upon uncontroverted facts, and for that reason can be summarily made.

B. There is substantial authority to guide the Court in determining whether a particular judicial pronouncement constitutes a judgment or a mere memorandum of decision which will be formally finalized at a later time.

The rule is that the Court's prevailing practice is determinative of this question.

Commissioner of Internal Revenue v. Bedford
(1945) 325 U.S. 283, 89 L.Ed. 1611;
In re Forstner Chain Corporation (C.A.1st 1949)
177 F.2d 572;

Peoples Bank v. Fed. Reserve Bank of San Francisco (C.A.9th 1945) 149 F.2d 850;

Wright v. Gibson, et al. (C.A.9th 1942) 128 F.2d 865.

In the *Forstner* case, *supra*, the court said:

“An opinion is not itself a judgment, even though it contains conclusions of fact or of law, and foreshadows how the judge intends to dispose of the case. Not infrequently, however, there is tacked on at the end of an opinion a sentence in mandatory language such as: ‘The complaint is dismissed.’ In the understanding and practice of the particular court, this concluding sentence may be the final judgment, the concluding judicial act or pronouncement disposing of the case, to be entered by the clerk forthwith. But not necessarily so. * * * If it is the practice of the court to pronounce judgment in a more formal manner, in a separate document entitled ‘Judgment,’ then the concluding sentence at the end of the opinion amounts to no more than a direction to the clerk for the preparation of the final judgment on behalf of the court; the formal judgment will then be signed or initialed by the judge or issued in the name of the court under the attestation of the clerk (whatever is the local practice), and not until then will the clerk make the entry of the judgment in the civil docket in accordance with Rule 79(a).”

In the above case the court concluded that the prevailing practice of the court did not contemplate entry of a more formal document. However, in the *Bedford* case, *supra*, the Supreme Court of the United States held that a ruling

of the Second Circuit which concluded with the phrase "The order of the Tax Court is reversed" did not constitute a judgment, since the prevailing practice of the Second Circuit was to finalize such rulings in formal documents. The Supreme Court stated:

"The Rules would have to be far less artistic than they are to warrant us in holding that the Circuit Court of Appeals has consistently misinterpreted some of its own Rules. Whether the announcement of an opinion and its entry in the docket amounts to a judgment for purposes of appeal or whether that must await some later formal act, ought not to be decided on nice-spun argumentation in disregard of the judicial habits of the court whose judgment is called into question, of the bar practicing before it, of the clerk who embodies its procedural traditions, as well as in conflict with the assumption of the reviewing court."

Thus to determine whether the October 14th ruling constitutes a judgment, the prevailing practice of the court and of the bar must be examined.

In the instant case the practice is clear. The record discloses that throughout the many years of this litigation substantially all of the rulings rendered by the trial judge have been subsequently finalized by formal order proposed by one or both of the parties. This has been done on at least two occasions by Weber itself. We refer to a ruling of Judge Tuckett following the hearing on Meaghers' request for a temporary injunction, and also to another ruling of Judge Tuckett with respect to a motion to dismiss various portions of the complaint. In the latter

instance, the Judge's memorandum of decision was also entitled "Rulings on Motions" and was dated December 15, 1954. The formal order finalizing the ruling was presented by Mr. Gustin, as counsel for Weber and Equity, and was signed on December 21, 1954. In the case of the ruling on the motion for temporary injunction, Judge Tuckett prepared and filed a minute entry setting forth a memorandum of his decision on May 20, 1954. It was not until September 23, 1954 that the order proposed by Mr. Gustin, formally finalizing this pronouncement of the court, was entered.

With respect to the October 14, 1955 ruling, it is obvious that Weber must have viewed it as a mere memorandum because it presented its form of judgment with respect to the matter after the ruling was entered.

Examination of the correspondence between Judge Tuckett and counsel immediately after the ruling of October 14th was entered proves beyond any question that everyone recognized the practice of formalizing rulings. This correspondence begins with the following letter from plaintiffs' counsel to Judge Tuckett (a copy of this letter was sent to each counsel for defendants):

“The Honorable R. L. Tuckett October 20, 1955.
 Judge of the District Court
 Vernal, Utah

Meagher v. Equity
 No. 3228—Civil

Dear Judge Tuckett:

It goes without saying that we were pleased to receive a copy of your decision expressed in the ‘Ruling on Motions’ dated October 14th.

We are preparing and will shortly submit to you formal documents *to finalize the decision*.*

Yours very truly,
 H. Van Dam
 Gilbert C. Wheat”

Then, on October 22, 1955, Mr. Gustin wrote the following letter to all counsel of record (a copy was sent to Judge Tuckett):

“Mr. Herbert Van Dam October 22, 1955
 Mr. Gilbert C. Wheat
 Mr. Burton W. Musser
 Mr. Richard Downing
 Mr. Oliver W. Steadman

Re: Meagher et al. v.
 Equity Oil Company et al.

Gentlemen:

We have this day handed to Judge Tuckett a form of judgment of which the enclosure is a copy. Judge Tuckett has requested us to inform all counsel that

*Emphasis added.

*objections to the enclosure should be made within ten days from the date hereof.**

Very truly yours,

Gustin, Richards & Mattsson

By Harley W. Gustin''

Three days later, counsel for plaintiffs wrote the following letter to Judge Tuckett (a copy of this letter and of the proposed decree mentioned therein was sent to each of the counsel for the defendants):

“Hon. R. L. Tuckett
District Court Judge
Provo, Utah

October 25, 1955

Re: Meagher et al v.

Equity Oil Company et al

Dear Judge Tuckett:

We enclose original and copy of form of interlocutory judgment which we deem appropriate in this case. We assume you will file the original with the court Clerk, and keep a copy for your personal use.

With Mr. Gustin's letter of October 22, 1955, carbon copy of which was sent to you, we received copies of the form of judgment left with you on that date by him, and we noted your request that objections to the proposed judgment be made within ten days from the date of the letter. We shall file our objections within the time stated.

And may we suggest that counsel for defendants be allowed ten days from this date to file objections to our proposed form of judgment, and that your

*Emphasis added.

*Honor set a date for hearing at which the form of judgment can be settled.**

Very truly yours,
 Gilbert C. Wheat
 Herbert Van Dam''

Thereafter written objections to all proposed decrees submitted by adverse counsel were filed in behalf of all parties.

The foregoing is proof positive of the fact that all concerned considered the October 14th ruling to be a mere memorandum of decision.

The letters quoted above do not appear in the record on appeal since plaintiffs had no idea that the defendants would repudiate the procedure which they themselves adopted. If any point is made of the fact that we have thus exceeded the record, we request that this brief be deemed a motion to augment the record on appeal by the quoted correspondence. (Rule 75(h).)

5. CONCERNING WEBER'S POINT 3, WHICH RELATES TO THE SCOPE OF APPROPRIATE ACTION BY THIS COURT.

The manner in which Weber argues its Point 3 points up the necessity for the Meaghers to urge this Court to make it clear, when it writes its opinion, that certain issues are not determined by the Interlocutory Decree. Alternatively, if this Court considers that those issues

*Emphasis added.

could and should have been determined by the Interlocutory Decree, the Meaghers request appropriate modification of the decree.

The issues to which we refer are (1) the ultimate responsibility of Weber, Stock and Juhan, and (2) the status of Equity Oil Company.

The Meagher Opening Brief points out that the Interlocutory Decree acts only upon Equity. If it is deemed a determination that the same relief cannot be afforded to the Meaghers against Weber, Stock and Juhan, who are Equity's admitted principals, then the Interlocutory Decree should be modified to correct such error. However if this Court considers that the Interlocutory Decree merely defers any award which will ultimately be made against Weber, Stock and Juhan, then the Meaghers respectfully ask this Court, when it renders its decision, to make that interpretation clear, so that the Meaghers will not be confronted with the contention that the failure of the Interlocutory Decree to act upon Weber, Stock and Juhan precludes the lower court from doing so in further proceedings.

The same applies to the status of Equity Oil Company. To prove that our apprehensions with respect to this issue are well taken, note the following statement which appears on p. 20 of Weber's Brief:

“Admittedly the rulings of October 14, 1955, are interlocutory as to Equity Oil Company in its status of stakeholder and as to it there is no appeal until a final judgment.”

This statement sounds like a concession that the final status of Equity Oil Company remains to be determined. But the very next point of Weber's Brief argues that the Interlocutory Decree does hold that the status of Equity Oil Company is merely that of stakeholder.

In Weber's Brief the Meaghers were criticized for pointing out, in their Appendices, items in the record which prove Equity to be something more than a mere stakeholder. We presume Weber refers to the uncontroverted evidence that Dougan agreed to finance the litigation against Meagher as far back as 1945. We also presume they refer to the several written declarations of trust showing the joint association between all of the defendants in their efforts to oust the Meaghers. We also presume they refer to the fact that Equity dealt with the property as an owner even after it had assigned all of its interest therein to Weber.

But after criticizing the Meaghers for bringing this Court's attention to these portions of the record, we find this statement on p. 22 of Weber's Brief:

"Plaintiffs do not point to anything in the record that would relieve them from the solemn pronouncement of the stakeholder status of Equity Oil Company."

If we understand this statement they mean that the Interlocutory Decree holds that Equity is a stakeholder and nothing else. The Meaghers do not agree with this interpretation of the Interlocutory Decree. We consider that the Interlocutory Decree merely holds that Equity

is surely a stakeholder and may be something more. If we are in error in so interpreting the Interlocutory Decree, we ask this Court to modify the Interlocutory Decree on this point and to hold, on the undisputed evidence which is before it, that Equity is more than a stakeholder. On the other hand, if we are correct that the Interlocutory Decree holds that Equity is a stakeholder and also may be something more, we ask this Court to make this point clear.

On p. 21 of Weber's Brief, in its reference to our request that this Court make clear the meaning of the Interlocutory Decree, either by modification or by interpretation, the Weber Brief unwittingly bares its true philosophy of the function of this Court. They say "we submit that such is not the function of the appellate court." In other words, in Weber's view, this Court must hear the appeals with its head in the sand. It knows that additional litigation is inevitable, but, according to Weber, it must do nothing to assist and guide the lower court. We do not agree with Weber that it is beyond the function of this Court to clarify the issues, instruct and guide the lower court, and in all other respects facilitate the efficient administration of the case.

6. CONCERNING WEBER'S POINT 4, NAMELY, THE CONTENTION THAT "THE INTERLOCUTORY JUDGMENT AND DECREE WAS AN IMPOSITION UPON THE TRIAL COURT."

A. In discussing Weber's Point 4, the Weber Brief criticizes the Interlocutory Decree, saying that it pre-

sumes to be a determination of disputed matters of fact. What facts were disputed? Weber specifies none. There were none. Each fact recited in the Interlocutory Decree is supported by documentary evidence which was before Judge Tuckett and as to which no denial or dispute has been offered. In making this statement we recognize that it was necessary for Judge Tuckett to interpret the Dunford Decree and the decision of this Court affirming that decree. If the Dunford Decree, as affirmed, does not mean that the Meaghers own the former Stock Half in the Sheridan Lease, then of course the legal premise upon which the Interlocutory Decree is based is faulty. Elsewhere in this brief we answer the contentions of Weber concerning the meaning of the Dunford Decree. But the Interlocutory Decree involves no controverted fact.

For instance, paragraph numbered 1 of the decree, immediately following the recitals, states that the Dunford Decree adjudicated that the Meagher children own half the lease as against Juhan and Stock. Then paragraph numbered 2 of the Interlocutory Decree holds that the Dunford Decree concludes and is binding upon Weber so far as concerns any claim of Weber with respect to the Meaghers' half interest in the lease. These legal conclusions contained in the Interlocutory Decree are disputed by Weber in this appeal. However, the mere fact that Weber does not agree with Judge Tuckett's interpretation of the Dunford Decree does not mean that the facts, upon which he based those legal conclusions, were disputed.

B. The Weber Brief says that the Meaghers “complain of their own handiwork” because the Interlocutory Decree is in the form proposed by the Meaghers. The answer to this is that the Meaghers understood the memorandum decision as being directed only to Equity Oil Company. Accordingly, we prepared the Interlocutory Decree in conformity therewith. We have previously pointed out that if Judge Tuckett thereby intended to eliminate Weber, Stock and Juhan as parties who are responsible to account to the Meaghers for their operations, the Interlocutory Decree is in error and should be modified. However, if Judge Tuckett merely intended to defer determination of the responsibility of Weber, Stock and Juhan, then no error has been committed. In any event the Meaghers earnestly request this Court to state the true interpretation of the Interlocutory Decree for the lower court’s guidance in the subsequent proceedings.

C. Weber complains that the Interlocutory Decree fails to recognize Weber’s rights under its motion for summary judgment. We submit that this is not the case. The Interlocutory Decree points out that the various assignments between the defendants are ineffective insofar as they purport to involve the former Stock Half. But the recitals also point out that these transfers of interest between the defendants are valid *against the Meaghers* so far as they relate only to the former Phebus Half interest. The conclusion required by these recitals is stated in paragraph numbered 3 of the Interlocutory Decree which states that defendants Weber, Juhan and

Stock own the remaining half interest in the lease as against any and all adverse claims of the Meaghers. Thus the Interlocutory Decree does recognize Weber's interest.

D. The Weber Brief on p. 23 states that the recitals in the Interlocutory Decree depart from the findings of the Supreme Court as stated in its opinion affirming the Dunford Decree. Weber quotes a sentence from that opinion which states that Juhan has transferred his interest to Equity and it to Weber, and also states that neither Equity nor Weber were litigants in that action. Then the Weber Brief points out that the Interlocutory Decree in the instant action recites that Juhan assigned portions of whatever interest he had to Paul Stock and to Equity Oil Company.

Weber urges that this Court made a finding, which modified the Dunford Decree to the effect that Juhan assigned *all* of his interest to Equity and it to Weber. It is then argued that the Interlocutory Decree is inconsistent in finding that a portion of Juhan's interest went to Stock, or remained in Juhan.

The Meaghers believe that the sentence from the opinion of this Court to which the Weber Brief refers was not intended as an award to anyone but merely notes that persons who were not parties to that action, namely, Equity and Weber, may have interests in the lease. The Meaghers do not believe that this Court intended by that statement to deprive Juhan and Stock of the interests which were awarded to them (out of the Phebus Half) by the Dunford Decree. Furthermore, the "all-for-one,

one-for-all'' agreement was not in the record when this Court considered the Dunford Decree. But none of this has any bearing on the Meaghers. If it were not for the "one-for-all, all-for-one" agreement, defendants Juhan and Stock would have been the aggrieved parties if this Court on the former appeal had intended to hold that all interests in the lease, excepting the half Meagher obtained from Stock, were to be awarded to Weber or to Equity. We do not think that such was the intention of this Court. But even if it had been it would not affect the Meaghers because there is no suggestion in the opinion of this Court that the Meaghers did not receive the entire former Stock Half. Therefore, any reference to what Juhan may have done with respect to what remained must necessarily relate to dealings with the former Phebus Half.

Again we come to the only real question presented by the Weber Brief, namely, did the Dunford Decree, as affirmed by this Court, hold that the Meaghers obtained the former Stock Half, or can it be warped into the construction that all the Meaghers got from Stock was half of the former Stock Half? The mere statement of this question contains its own answer. There has never been any basis for the contention, and the contention has never been asserted, that Stock transferred less than all he had to Meagher. There has never been any contention that Stock owned less than a half when he made the transfer to Meagher. Therefore Meagher acquired one-half. There has never been any contention that any of the defendants acquired any interest thereafter from the Meaghers. There-

fore, even if the effect of the sentence from the opinion of this Court, quoted on p. 23 of Weber's Brief, is to divest Juhan of all interest and to transfer all of Juhan's interest to Weber via Equity, it merely means that Juhan and Stock are without any interest. It can have no bearing on the hard-fought and finally adjudicated fact that the Meaghers obtained the Stock Half. Normally, this entire line of argument could not be asserted by Weber without creating conflict between it on the one hand and Stock and Juhan on the other. However, the record in the instant case discloses that each of the defendants is free to assert extravagant claims in his own behalf even if they conflict with claims of the other defendants. They are free to do so simply because they have an agreement that whatever any of them gets will inure to the benefit of the others.

E. Section D under Point 4 of the Weber Brief asks why the Interlocutory Decree runs only in favor of the Meagher children and does not include the Senior Meaghers.

N. J. Meagher, Sr. and his wife divested themselves of all interests in the lease by quitclaim to their children on January 27, 1948. They retained only a royalty interest which is not involved in this appeal. (Exhibit A-22 in District Court No. 2238.) This conveyance to the children was made during the pendency of the quiet title litigation and prior to the decision of Judge Dunford in the second trial thereof. In fact, this transfer to the children was made and recorded before any drilling operations were conducted on the property.

Having commenced the quiet title litigation in his own name, since he was the owner of the property when the complaint was filed in 1944, and having transferred the property pending the litigation, the suit was carried on in the name of N. J. Meagher, Sr. But it was made clear in the record that he continued the litigation in his own name in behalf of the true owners, his children. Defendants in the quiet title suit made quite a fuss over this situation, but the issue was resolved in favor of the Meaghers.

Having obtained a judgment for the benefit of the children, but having been unable to collect the fruits thereof from the defendants, the Senior Meaghers have been confronted with the problem of how long they should continue to act as trustees for their children. When the instant case for an accounting was commenced, the Meagher family was advised that the Senior Meaghers need not participate. Accordingly, the complaint, as filed in the instant accounting suit, named only the four children as parties plaintiff. Thereafter during one of the hearings before Judge Tuckett all defendants vociferously insisted that the Senior Meaghers were proper and necessary parties plaintiff. Plaintiffs considered this to be a tempest in a teapot, but consented that the Senior Meaghers be brought into the case if the defendants wanted them to be parties. Accordingly, it was so ordered.

In view of the insistence by the defendants that the Senior Meaghers be made parties plaintiff, it is true that the complaint now appears as though the Senior Meaghers

asserted some rights in the premises as distinguished from the rights of their children. Actually, such is not the case, and, since the children are now the full and beneficial owners of the interest Meagher Sr. acquired from Stock, there is no reason for the defendants to account to the Senior Meaghers or to make any payments to them. When Mr. Meagher's deposition was taken, he did say that he thought he personally was entitled to an accounting in this action. Under the circumstances we believe Mr. Meagher gave the correct answer in that, to the extent he is a party to the action, and to the extent he had been or still is a trustee for his children, he might be entitled to an accounting. Actually, we see no reason why the defendants should be required to make any payments to the Senior Meaghers or why they should be required to give an accounting to them. The Interlocutory Decree does not require the defendants to account or make payments to the Senior Meaghers, but requires them to account and pay to the children.

We cannot understand why Weber seems insistent with respect to this matter. Certainly, if they wish to make an accounting to the Senior Meaghers, their documents will be accepted, and if they wish to make any payments to the Senior Meaghers, they will receive a receipt therefor. However, whatever dealings they may see fit to have with the Senior Meaghers will be only for the account and benefit of the children.

F. In this portion of Weber's Brief some point is sought to be made based on the law that a quitclaim deed

does not pass an after-acquired title. Certainly, if the Senior Meaghers quitclaimed this property to their children in 1948 and acquired their only title thereto at some later date, it is true that the quitclaim, *per se*, would pass nothing. But the title which the Senior Meaghers obtained from Stock was obtained by transfer in October, 1944, and therefore any quitclaim executed by them in 1948 to the same property would of course pass their title. The mere fact that their title was not *finally adjudicated* until after 1948 has no bearing upon the fact that it was acquired in 1944.

G. The Weber Brief then suggests the legal proposition that under an oil and gas lease the right of the lessees may be a mere license to explore. The Meaghers do not accept or reject this principle. We consider it to be immaterial. Whatever the rights of a lessee may be, the Meaghers, through Stock, acquired half of those rights. The defendants, through Phebus, acquired the other half. As to those rights, they were cotenants and if some of them develop the property, their obligation to account to the others is beyond dispute. Does Weber argue that a cotenant of an oil lease can develop the property to the exclusion of other cotenants? If so, we have yet to see the decision so holding, and certainly none is cited in Weber's Brief.

H. In Section E of Weber's Point 4, the following statement appears:

“This begs the question because it has heretofore been adjudicated and it is admitted in these pro-

ceedings that Weber has the Phebus Half of the Sheridan Lease.”

We have stated and reiterated that although we think we know who owns the Phebus Half of the Sheridan Lease, the Meaghers are not interested therein. If Weber is the owner we invite counsel for Stock and Juhan to admit it. The Meaghers merely state and have consistently stated that their title stems from the former Stock Half and they own all of it.

I. In this section of the Weber Brief, with no apparent relevancy, they urge the admitted fact that Equity Oil Company openly and notoriously entered upon the property, drilled for and discovered oil. This is true. We have asserted in the prior proceedings and repeat here that so long as any of the defendants had any interest in this oil lease it was free to enter upon the property openly and notoriously, and it was free to drill and produce oil therefrom. Then the Weber Brief repeats a point strenuously urged in the prior proceedings, namely, that the Meaghers did not protest this activity of Equity. To this we answer that if the Meaghers had protested it would have availed them nothing because one cotenant can enter, drill and produce with or without the consent of his cotenant, and no cotenant can prevent such action.* Therefore any protest would have been a useless act. It

**Prairie Oil & Gas Co. v. Allen* (C.C.A. 8th) 2 Fed. (2d) 566;
Davis v. Byrd, 185 S.W.2d 866;
Allies Oil Co. v. Ayers, 152 La. 19, 92 So. 720;
Buchanan v. Jencks, 38 R.I. 443, 96 Atl. 307.

is also a fact, though equally immaterial, that none of the defendants invited the Meaghers to participate in their production operations. The reason for this is clear—they had already determined to resist the claims of the Meaghers and were, at that time, resisting them actively in the quiet title suit.

7. CONCERNING WEBER'S POINT 5, NAMELY, THAT "THE FOURTH COUNT FAILS TO STATE A CLAIM AS AGAINST ANY OF THE DEFENDANTS."

The Weber Brief, in nine lines, argues that the Fourth Count of plaintiffs' Complaint does not state a cause of action because of its novelty and asserts that no legal authority is cited. Weber ignores the theory of action underlying plaintiffs' Fourth Count, namely, that a fiduciary who violates his trust must restore the beneficiaries' loss, and secondly, that one may recover damages incurred by reason of an intentional and wrongful interference with his property by another. Wherein is such theory of action novel?

In Meaghers' Opening Brief we argued, citing judicial decisions, that taxes are proper items to be taken into account in determining damages. We recognize that none of the cited cases constitutes binding authority in Utah, but surely the decisions of other states are judicial authority worthy of consideration.

The Supreme Court of Maine, in *Sidelinker v. York Shore Water Co.* (1918) 117 Me. 528, 108 Atl. 122 (cited

in our Opening Brief), clearly supports our claim that enhanced taxes resulting from the wrongful act of another are recoverable as an item of damages. In that case plaintiff owned valuable timber properties which he was planning to log. Defendant improperly interfered with his possession and, for several years, prevented the contemplated logging operations. The *only* item of damage which plaintiff was allowed to recover was the enhanced property taxes which he was compelled to pay during the years his logging operations were interrupted by defendant's wrongful act. The court recognized that if plaintiff had logged his property as planned, such operations would have resulted in reducing the value of the property; consequently, the annual property taxes would have been lower. Having been prevented from engaging in the activities which would have reduced his annual property taxes, plaintiff had been damaged. Therefore the court held that defendant was required to reimburse plaintiff in the amount of these enhanced taxes.

The *Sidelinker* case, *supra*, actually applied a broader principle of law than is required in this case since no fiduciary relationship was therein involved. As we pointed out in our Opening Brief, this case does not involve a question of whether all debtors failing to pay their debts on time would be answerable to their creditors for enhanced taxes. Weber appears to urge that this is the contention of plaintiffs. We pointed out that these parties are cotenants, and as such stand in a relationship of trust and confidence with reference to one

another. It cannot be doubted that fiduciaries must respond for damages caused by breach of trust.

The instant case may involve a difficult burden of proof for the Meaghers. If they do not surmount it, the lower court will deny the claim. But this count is still at the pleading stage. The Meaghers merely ask the opportunity to prove their claim. They should not be deprived of their day in court just because the issue presents difficult problems of proof.

8. CONCLUSION.

The Weber Brief, when analyzed boils down to a single contention. It seeks to interpret the Dunford Decree and its affirmance as awarding to the Meaghers one-quarter of the lease rather than one-half. If that is what the Dunford Decree says and if that is what this Court affirmed, Weber should prevail. The reasoning by which the Weber Brief reaches its astonishing conclusion is so confusing that we fear our efforts to analyze it may augment that confusion. That, of course, is Weber's only hope. Perhaps if one can litigate long enough, sooner or later some Judge or Court will fall into error which can be capitalized.

Let us examine a few of the points which surely would have been raised by Weber if their position had any merit. Do they attack Judge Tuckett's holding that Weber is bound by the prior adjudication? They do

not. They do not deny that Weber is a mere successor in interest to and in privity with Stock and Juhan in the quiet title litigation. Do they claim they are entitled to any interest in the Stock Half of the lease obtained by them before Meagher acquired it? They do not. Do they claim they are entitled to any interest in the Stock Half of the lease obtained by them as bona fide purchasers for value after Meagher acquired it? They do not. Do they claim they acquired any interest in the Stock Half of the lease from the Meaghers? They do not. Those are the only possible ways in which Weber could have obtained any interest in the Stock Half of this lease. Not one of those contentions has been asserted. Weber is relegated to the frivolous contention that when Judge Dunford expressly awarded a one-half interest in the lease to Meagher, he was only awarding a one-quarter interest. They are forced to the contention that when this Court affirmed the Dunford Decree it did not know what it was doing. The Meaghers confidently rest their case on the ability of this Court to construe the Dunford Decree and its own opinion affirming it.

Dated: April 27, 1956.

Respectfully submitted,

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