

1956

N. J. Meagher, Jr. et al v. Equity Oil Company et al : Plaintiffs' Opening Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Herbert Van Dam; Gilbert C. Wheat; Attorneys for Plaintiffs;

Recommended Citation

Brief of Appellant, *Meagher v. Equity Oil Co.*, No. 8483 (Utah Supreme Court, 1956).
https://digitalcommons.law.byu.edu/uofu_sc1/2550

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

RECEIVED

MAY 5 1956

LAW LIBRARY
U. of U.

No. 8483

In the Supreme Court

OF THE
State of Utah

Clerk, Supreme Court

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

Plaintiffs,

VS.

EQUITY OIL COMPANY, a corporation, et al.,

Defendants.

PLAINTIFFS' OPENING BRIEF.

HERBERT VAN DAM,

Felt Building, Salt Lake City 1, Utah

GILBERT C. WHEAT,

311 California Street, San Francisco 4, California,

Attorneys for Plaintiffs.

Table of Contents

	Page
A. Introduction	1
B. Status of the Appeals.....	3
C. Statement of Facts.....	3
1. History of the Litigation.....	3
2. The Factual Background.....	6
D. Statement of Plaintiffs' Affirmative Points on Appeal..	15
E. Argument	16
1. The Order of December 13, 1955 Was Inadvertently Signed and Should Be Reversed, or, the Order of December 15, 1955, Which Vacates It, Should Be Confirmed	16
2. The Interlocutory Decree Should Direct Accounting and Payment from Defendants Weber Oil Company, Stock and Juhan, as Well as from Defendant Equity Oil Company.....	21
3. Equity Oil Company Is Not Only a Stakeholder in This Proceeding, But Also Is a Principal and Is Subject to the Same Obligations and Responsibilities to Plaintiffs as Are the Other Defendants.....	22
4. The Order of the District Court Dismissing the Fourth Count of Plaintiffs' Complaint Should Be Reversed	27
F. Conclusion	32

Index of Authorities Cited

Cases	Pages
Aarn v. Pucinelli (1953) 121 Cal. App. 2d 675, 264 P.2d 152	31
Alengi v. Hartford Acc. & Ind. Co. (1936) 183 La. 847, 167 So. 130	29
Baynard v. Harity, 1 Houst (Del.) 200.....	30
Birmingham Trust & Savings Company v. Ansley (1937) 234 Ala. 674, 176 So. 465.....	31
Farrel v. Comm. (1943) 134 F.2d 193.....	28
Hecla Powder Co. v. Signa Iron Co. (1899) 157 N.Y. 437, 52 N.E. 650.....	30
Ludey v. Pure Oil Co. (1932) 157 Okla. 1, 11 P.2d 102.....	31
Main Realty Co. v. Blackstone Valley Gas & E. Co. (1937) 59 R.I. 29, 193 A. 879.....	29
McBride v. McBride (1936) 262 Ky. 452, 90 S.W.2d 741...	31
N. J. Meagher v. Uintah Gas Co., et al., District Court No. 2238, Supreme Court No. 6972 (October 27, 1947) 185 P. 2d 747	4
N. J. Meagher v. Uintah Gas Co., et al., District Court No. 2238, Supreme Court No. 7723 (February 11, 1953) 255 P.2d 989, rehearing denied January 19, 1954.....	5, 6
Mills v. Hart (1898) 24 Colo. 505, 52 P. 680.....	31
North American Oil Consolidated v. Burnet (1932) 286 U.S. 417, 76 L. ed. 1197.....	28
Ray Phebus, et al. v. Honorable William Stanley Dunford, Supreme Court No. 7187 (November 8, 1948) 198 P.2d 973	4
Sidelinker v. York Shore Water Co. (1918) 117 Me. 528, 108 Atl. 122	30
Southern Pac. Co. v. Guthrie (1949) 180 F.2d 295.....	29
Stetitz v. Gifford, 280 N.Y. 15, 19 N.E.2d 661.....	29

INDEX OF AUTHORITIES CITED

iii

	Pages
Strimple v. Parker Pen Co. (1922) 177 Wis. 111, 187 N.W. 1001	29
Surrat v. State (1934) 167 Md. 357, 173 Atl. 573.....	31
The Dimitrios Chandris (1942) 42 F.Supp. 829.....	29, 30
Watts Co. v. American Bond & Mtge. Co. (1929) 267 Mass. 541, 166 N.E. 713.....	29

Texts

54 Am. Jur. Trusts, Section 300.....	31
4 Bogert, The Law of Trusts & Trustees, page 415.....	31
25 C.J.S. Damages, Section 23	29, 30
25 C.J.S. Damages, Sections 42-44.....	29
Restatement of Agency, Section 401, Comment (e).....	30
Restatement of Trusts, Section 205.....	31
Restatement of Trusts, Section 205, Comment (e).....	31
Restatement of Torts, Section 912, Comment (f).....	29
2 Scott, Trusts (1939 Ed.), page 1078.....	31
Sedgwick: Damages (9th Ed.), Volume 1, page 269.....	30
2 Thompson, Real Property (1924 Ed.) Section 1784.....	31

Rules

U.R.C.P., Rule 60.....	18
------------------------	----

Civil 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' OPENING BRIEF.

A. INTRODUCTION.

In the interest of clarity, the parties are designated herein as "plaintiffs" and "defendants" since all but Equity Oil Company appear before this Court both as appellants and respondents.

The essential facts have been established by documents. In view of the bulk of the record, plaintiffs attach Appendices to this Brief which set forth a substantial portion of the most important testimony and exhibits.

This Brief will present plaintiffs' requests for affirmative relief and will not anticipate defendants' requests for affirmative relief.

Since October of 1944, plaintiffs have owned an undivided half of the working interest, as to oil, in the so-called "Sheridan Lease." This was established by a previous quiet title suit initiated in 1944 by N. J. Meagher in his own behalf and carried to conclusion by him in behalf of his assigns, his children, who are plaintiffs here. In that quiet title suit, the District Court, in 1951, declared plaintiffs' ownership in the lease, as aforesaid. In 1953, this Court affirmed that decision. Stock and Juhan filed a Petition for Rehearing. Burton W. Musser made a presentation as *amicus curiae*. In 1954 the Petition for Rehearing was denied. In 1948, while the quiet title suit was still pending, plaintiffs' co-lessees, the defendants here, with full knowledge of plaintiffs' claims and suit, drilled on the property and discovered oil. Defendants have been marketing oil from the lease in very substantial quantities ever since. Notwithstanding the title adjudication in 1951 and its affirmance, defendants have failed to account to plaintiffs for their operations and have paid nothing to plaintiffs. Thus this suit for an accounting was forced upon plaintiffs. Their rights are so obvious that they were declared by summary proceedings in this case. Defendants appeal from that summary interlocutory decree. Deeming it necessary to request relief in view of defendants' appeals, plaintiffs ask this Court for affirmative relief on issues which are essentially procedural.

B. STATUS OF THE APPEALS.

By appeals and cross-appeals, the various parties present the following matters to this Court:

1. Defendant Weber Oil Company appeals from the Interlocutory Judgment and Decree of December 13, 1955. (Appendix D.)

2. Defendants Stock and Juhan appeal from the Interlocutory Judgment and Decree of December 13, 1955.

3. Defendants Stock and Juhan appeal from an order of December 15, 1955 (Appendix F), which vacates an inadvertent order signed December 13, 1955 (Appendix E).

4. Plaintiffs (a) appeal from the inadvertent order of December 13, 1955; (b) request a ruling that defendants Weber Oil Company, Stock and Juhan are subject to the same obligations to account and pay as are imposed upon their agent Equity Oil Company under the Interlocutory Judgment and Decree; (c) request a ruling that Equity Oil Company is not only a stakeholder in this matter but is also a real party in interest and as such is subject to the same obligations and responsibilities as the other defendants, and (d) seek reversal of the lower court's order dismissing the Fourth Count of plaintiffs' Complaint.

C. STATEMENT OF FACTS.

1. History of the litigation.

These appeals bring this controversy to this Court for the fourth time.

In 1944, N. J. Meagher commenced an action to quiet title to all rights and interests in a certain parcel of land owned by him in Uintah County. Defendant Juhan appeared in that action and asserted that an oil and gas lease, hereinafter termed "Sheridan Lease," was outstanding and valid. Juhan's answer set forth the Sheridan Lease, asserted that Juhan owned all interests therein and prayed for a decree to that effect. N. J. Meagher maintained that the Sheridan Lease had been abandoned. The trial court held that the lease had been abandoned and therefore did not determine the ownership of interests in the lease. This Court, however, held that the Sheridan Lease was valid and remanded the case for further proceedings which, of course, required determination of the ownership of interests in the lease.¹

Next, the case reached this Court in a mandamus proceeding.²

In that proceeding, this Court corrected procedural error by the District Court, which consisted of entertaining a motion to set aside the former decision of the lower court. This Court pointed out that its own decision set aside the lower court's decision without need for further action by the lower court. In its Opinion on the mandamus matter, this Court spelled out the scope of the lower court's power to take further action as follows:

¹*N. J. Meagher v. Uintah Gas Co., et al.*, District Court. No. 2238, Supreme Court No. 6972 (October 27, 1947) 185 P.2d 747.

²*Ray Phebus, et al. v. Honorable William Stanley Dunford*, Supreme Court No. 7187 (November 8, 1948) 198 P.2d 973.

“The lower court’s former decision, in its entirety, having been set aside, that court should proceed to a determination of the case the same as if no such previous decision by it had been rendered. The only restriction imposed upon it in accomplishing a final determination of the case lies in the issues decided upon the appeal to this Supreme Court (see citation). Those issues may not be acted upon or decided contrary to the way they were decided by this Court. Other than that restriction, the lower court may act in this case as it may act in any case at a time prior to its final determination of the facts and law of the case.”

The third occasion for this Court to act involved an appeal from the decision of the lower court after the second trial below. In that second trial, the lower court examined all claims of the parties to interests in the Sheridan Lease and held that Stock had transferred his interest to Meagher in 1944. This determination was affirmed by this Court.³

Despite this determination, defendants Stock and Juhan, who had been formal active parties to the quiet title suit, refused to account to plaintiffs. Their admitted agent, defendant Equity Oil Company, and their associate, defendant Weber Oil Company, who were not formal parties to the previous litigation, likewise refused to account or pay and refused to recognize plaintiffs’ title as decided by

³*N. J. Meagher v. Uintah Gas Co., et al.*, District Court No. 2238, Supreme Court No. 7723 (February 11, 1953) 255 P.2d 989. Rehearing denied January 19, 1954. The opinion is reproduced in Appendix C.

this Court. Consequently, the instant suit was commenced to declare plaintiffs' rights as against defendants Equity Oil Company and Weber Oil Company, and to obtain an accounting and payment from all defendants.

2. The factual background.

The titles of the respective parties may be briefly traced as follows: As of October 21, 1944, N. J. Meagher was the owner of the lands involved in this litigation subject to the Sheridan Lease. The lease, as to oil only, was then owned one-half by defendant Paul Stock and one-half by one Ray Phebus.⁴ Hereinafter, for convenience, these interests in the lease will be termed the "Stock Half" and the "Phebus Half."

On October 21, 1944, N. J. Meagher acquired the Stock Half by transfer from defendant Stock.⁵

Meagher retained the Stock Half, acquired as aforesaid, until January 27, 1948. On that date N. J. Meagher, joined by his wife Katherine T. Meagher, transferred to their four children (the remaining plaintiffs herein) all of their interest in the lease and the lands affected thereby,

⁴This has been conceded by all parties since the first appeal of the quiet title suit.

⁵This was determined in the second trial of the quiet title suit in which the validity of the transfer was attacked by Stock and Juhan on all possible grounds. The District Court's judgment, so far as this determination is concerned, was affirmed by this Court in the second appeal. *N. J. Meagher v. Uintah Gas Co., et al.*, Supreme Court No. 7723, 255 P.2d 989. Appendix C.

excepting only a royalty interest which is not involved in this appeal.⁶

The senior Meaghers reaffirmed this transfer to their children by quitclaim deed dated May 10, 1954.⁷

The foregoing are the only valid transfers affecting the Stock Half.

The Phebus Half of the Sheridan Lease was acquired on January 19, 1945, by defendant Juhan.⁸ However, Juhan also sought to acquire the Stock Half. In April of 1945, Juhan sent his agent Chas. S. Hill to Stock with a plan to defeat Meagher's claims.⁹ Pursuant to this plan, on April 14, 1945, Stock executed a quitclaim to Hill notwithstanding the prior recorded transfer which Stock had executed in Meagher's favor six months before.¹⁰ This quitclaim of April 14, 1945 was abortive and a nullity because the Stock Half had been transferred to Meagher in October 1944, the transfer had been recorded on November 3, 1944,¹¹ and both Stock and Hill had actual knowledge of it.¹² The only effect of this abortive document was to cloud Meagher's title and cause confusion. This confusion results from the fact that after

⁶Exhibit A-22 in District Court No. 2238. The record and exhibits in the prior quiet title suit (District Court No. 2238) are part of the Record on Appeal here.

⁷Exhibit P-7 in District Court No. 3228, the instant case.

⁸Exhibit A-18 in District Court. No. 2238.

⁹Testimony of Stock in second trial of quiet title case. Appendix M.

¹⁰Exhibit A-19 in District Court No. 2238.

¹¹Exhibit A-30 in District Court No. 2238.

¹²Appendix M.

Hill obtained the abortive quitclaim from Stock, he and his assigns, the defendants here, executed a series of transfers which treated the Stock-to-Hill transfer as though it were valid.

The first of these was a quitclaim from Hill to Juhan.¹³ Then, without distinguishing between his valid interest in the Phebus Half and the false interest he had obtained in the Stock Half from Hill, Juhan transferred an interest in the lease to Equity Oil Company on January 11, 1946.¹⁴ Immediately thereafter and on January 18, 1946, Equity Oil Company caused Weber Oil Company to be incorporated. Then, on December 30, 1947, Equity Oil Company transferred all of its interest to its wholly-owned subsidiary Weber Oil Company. This transfer also fails to distinguish between the valid Phebus Half and the false interest in the Stock Half.¹⁵ This false chain of title is the only basis Weber Oil Company has for any claim to any interest in the Stock Half. To assert this chain of title is frivolous.

From the foregoing it will be seen that after October 1944, Stock ceased to have any interest in the lease. However, nearly four years later, on July 12, 1948, Stock returned to the chain of title by acquisition of an interest from Juhan.¹⁶ Necessarily, such interest was limited to

¹³Exhibit A-20 in District Court No. 2238.

¹⁴Exhibit A-21 in District Court No. 2238.

¹⁵Exhibit A-24 in District Court No. 2238.

¹⁶Exhibit A-23 in District Court No. 2238.

the Phebus Half of the lease and Stock became one of the co-lessees for the first time since October of 1944.¹⁷

The above described confusion in the record title does not disturb the defendants as between themselves. An agreement dated April 9, 1951, signed by all defendants, sets forth that regardless of the outcome of the litigation with Meagher, they shall each divide whatever interest is ultimately obtained by any of them in the following proportions: 50 percent to Weber Oil Company, 25 percent to Stock and 25 percent to Juhan.¹⁸ It is important to bear this one-for-all, all-for-one agreement in mind. It explains why none of the defendants oppose the claims of any of the other defendants even though their claims conflict and overlap. The point is that whatever any defendant gets, they all share.

As of September 1948, encouraged by the decision of this Court, which validated their claim to the Phebus Half by holding the Sheridan Lease to be valid, defendants agreed among themselves to continue to oppose Meagher's claims and in the meantime to drill upon the property.¹⁹ Thus, as owners of the Phebus Half of the lease and with an opportunity to obtain the other half, depending upon

¹⁷Stock's testimony in the first trial of the quiet title suit concedes that his purchase from Juhan in 1948 was designed to give him an interest in the Phebus Half of the lease regardless of the outcome of the litigation with Meagher. Appendix N.

¹⁸Exhibit P-13 in District Court No. 3228, the instant case. Appendix L.

¹⁹The various agreements between the defendants to band together in the litigation against Meagher are discussed in detail in Section E.3 of this Brief.

the outcome of the pending litigation with Meagher, defendants appointed Equity Oil Company their operating agent to drill, produce and market the production from the lease. Equity Oil Company then entered upon the property and in September of 1948 discovered oil.

In the second trial of the quiet title suit, affirmed by this Court as aforesaid, it was determined that plaintiff N. J. Meagher and through him his assigns, his four children, did, by the assignment of October 21, 1944 from Stock, acquire the original Stock Half in the Sheridan Lease.²⁰ In spite of the fact that the title of the Meaghers was now established beyond a reasonable doubt, Equity Oil Company and Weber Oil Company refused to recognize it on the superficial ground that they had not been formal parties to the prior litigation. Juhan and Stock continued to refuse to recognize the title of the Meaghers for no plausible reason whatsoever. Therefore, plaintiffs were forced to bring the instant action to bring the defendants to account. In this suit plaintiffs allege ownership of their half of the Sheridan Lease; seek adjudication that their interest is valid as against Equity Oil Company and Weber Oil Company; request accounting and payment from all defendants, and pray for interest and damages resulting from the wrongful withholding. All defendants finally answered, again challenging plaintiffs' ownership of the Stock Half.

²⁰The Findings of Fact and Conclusions of Law of the District Court in the Second Trial are set forth in Appendix A. The decree in said case is set forth in Appendix B.

In an effort to narrow the issues and to eliminate title questions about which there is no substantial controversy, plaintiffs moved the District Court for an interlocutory summary judgment. The District Court granted this motion and found that the former litigation was res adjudicata against Stock and Juhan. It also found that, although Weber had not been a formal party to the quiet title litigation, it was bound by the judgment therein because Weber Oil Company is a mere successor in interest to and in privity with Stock and Juhan. The District Court also found that Equity Oil Company asserts no title to the lease and, therefore, is not involved in any controversy over title.²¹

It is noteworthy that defendants Equity Oil Company and Weber Oil Company have never asserted that they, or either of them, ever acquired any interest in the Stock Half of the lease as bona fide purchasers for value without notice of the outstanding Meagher claims.

Thus, the prior litigation determined that as against Juhan and Stock, the four Meagher children, as assignees of their parents, acquired the original Stock Half. In this suit the lower court has found and decreed that the title of the Meaghers is valid as against Equity Oil Company and Weber Oil Company.

Accordingly, the Interlocutory Judgment and Decree directs Equity Oil Company, as agent of Weber, Stock and Juhan, to render an accounting to plaintiffs and then to

²¹Interlocutory Judgment and Decree. Appendix D.

pay the amount due plaintiffs as reflected by said account. The Court also authorized Equity Oil Company to make this payment from certain funds impounded by it. All remaining issues, such as the deductibility of expenses, the propriety of particular expenses, interest and damages, were left undecided for further proceedings. Since the Interlocutory Judgment and Decree does not dispose of all issues, it is expressly labeled as interlocutory and the lower court reserves jurisdiction to determine the remaining issues.

The foregoing explains why the Interlocutory Decree summarily disposes of the minor title issues and directs an accounting. Now we shall summarize the circumstances which gave rise to the procedural problems which are presented to this Court. On December 13, 1955, the date of entry of the Interlocutory Judgment and Decree, the District Court, as explained by the Judge himself, mistakenly signed an Order directing Equity Oil Company to pay one-half of the impounded funds to Stock and Juhan. This requires a brief explanation of the impounded funds.

During the pendency of the prior suit, which related solely to title problems and did not seek an accounting, the parties entered into an agreement under which Equity Oil Company impounds half of the proceeds of production, after royalties, less the expenses claimed by Equity Oil Company to be chargeable to the half of the working interest which is claimed by plaintiffs. In other words, subject to dispute over the account, this agree-

ment provides for impounding an amount designed to represent plaintiffs' minimum share on the basis of plaintiffs' title claims. This agreement was made to avoid filing an accounting suit while issues of title remained undecided. It will be noted that only plaintiffs' share is impounded, and the defendants are free to receive their respective shares as the production is marketed.²²

Upon commencing this action, plaintiffs considered that the impounding agreement was no longer binding upon defendants. Fearing distribution of proceeds to non-resident parties,²³ plaintiffs sought an injunction which would restrain defendants from distributing the proceeds until further order of the court. At the hearing on the injunction, defendants offered to have Equity Oil Company continue to impound the plaintiffs' share of the proceeds as in the past. This offer was accepted by plaintiffs in lieu of injunction and was approved by order of the District Court.²⁴ Thus, plaintiffs' minimum share

²²The interest of the plaintiffs in the proceeds is frequently described in the record in terms of gross production. The outstanding royalties, which total $18\frac{1}{2}$ percent, are expense free, and owners thereof are entitled to $18\frac{1}{2}$ percent of the proceeds of production. Thus, the owners of the total working interest are entitled to $80\frac{1}{2}$ percent of production, and plaintiffs are entitled to 40.75 percent of production. Then, if defendants meet the equitable conditions precedent, they may charge plaintiffs with one half of the operating expense.

²³Weber Oil Company is a Colorado corporation. Juhan is a resident of Colorado. Stock is a resident of Wyoming.

²⁴Minute Entry dated May 20, 1954, and formalized by order dated September 23, 1954, R. pp. 123-125.

of the proceeds has been impounded during the course of this suit and is still being impounded while defendants continue to receive their shares.

The Order dated December 13, 1955, directed Equity Oil Company to pay half of the impounded funds to Stock and Juhan.²⁵ On that day the District Judge telephoned Herbert Van Dam, one of counsel for plaintiffs. They discussed the Interlocutory Judgment and Decree and the Order of December 13th. Mr. Van Dam then reminded the judge that any order requiring payment of any portion of the impounded fund to Stock and Juhan would conflict with the Interlocutory Judgment and Decree because the impounded fund contained only plaintiffs' share of the proceeds of oil. The District Judge advised Mr. Van Dam that he had no intention of entering an order which would impair plaintiffs' rights under the Interlocutory Judgment and Decree and said he would withhold said order. The District Judge directed Mr. Van Dam to advise counsel for defendants of his intentions in the matter. This was done.²⁶

Thereafter, the District Judge entered an order dated December 15, 1955, which expressly states that the order of December 13, 1955, was entered by mistake and is vacated as being in conflict with the Interlocutory Judgment and Decree.²⁷

²⁵Order of December 13, 1955. Appendix E. R. p. 242.

²⁶Affidavit of Herbert Van Dam. Appendix G.

²⁷Order of December 15, 1955. Appendix F. R. p. 246.

Promptly thereafter plaintiffs noticed a motion for an order clarifying the record with respect to the inadvertent order of December 13, 1955. This was done to afford all parties a hearing with respect to the circumstances under which the orders of December 13th and of December 15th were entered. After this motion was filed and before hearing thereon, defendants Stock and Juhan, through their counsel Burton W. Musser, filed an application to disqualify the District Judge.

Thereafter defendants Equity Oil Company, by Harley W. Gustin, counsel, noticed a motion for an order authorizing deposit of the impounded funds into Court.

Following this, defendants Stock and Juhan noticed a motion to strike plaintiffs' motion to clarify the record and to strike the Court's order of December 15, 1955, which vacates the order of December 13, 1955.

In view of the application to disqualify the District Judge and the taking of these appeals, no further hearings have been held with respect to the pending motions.

The foregoing merely summarizes the factual background. Additional facts will be set forth in discussing the details of specific points.

D. STATEMENT OF PLAINTIFFS' AFFIRMATIVE POINTS ON APPEAL.

1. The order of December 13, 1955, was inadvertently signed and should be reversed or, in the alternative, the

order of December 15, 1955, which vacates it, should be confirmed.

2. The Interlocutory Judgment and Decree should direct defendants Weber Oil Company, Stock and Juhan to account and pay to the same extent that it so directs their agent, defendant Equity Oil Company, or, in the alternative, it should be made clear that plaintiffs have not been precluded, by the Interlocutory Judgment and Decree, from ultimately obtaining such a judgment against defendants Weber Oil Company, Stock and Juhan.

3. Equity Oil Company is not only a stakeholder in this proceeding, but is also a true party in interest and as such is subject to the same obligations and responsibilities to plaintiffs as are the other defendants.

4. The order dismissing the Fourth Count of the Complaint should be reversed.

E. ARGUMENT.

1. **THE ORDER OF DECEMBER 13, 1955 WAS INADVERTENTLY SIGNED AND SHOULD BE REVERSED, OR, THE ORDER OF DECEMBER 15, 1955, WHICH VACATES IT, SHOULD BE CONFIRMED.**
- a. **The circumstances surrounding the entry of the inadvertent order of December 13th appear in the record before this Court and warrant reversal.²⁸**

The Interlocutory Judgment and Decree was entered on December 13, 1955. On that day the District Judge

²⁸See Appendix D for Interlocutory Judgment and Decree, Appendix E for Order of December 13, 1955, and Appendix F for Order of December 15, 1955.

telephoned Herbert Van Dam, one of counsel for plaintiffs, and advised him that he had decided to sign the Interlocutory Judgment and Decree. The Judge stated that Mr. Musser had presented an order on behalf of Stock and Juhan. No copy of this order had been served on Mr. Van Dam or anyone representing plaintiffs. Mr. Van Dam asked the Judge if the order affected the interests of the plaintiffs under the Interlocutory Judgment and Decree, and the Judge said that it did not. Mr. Van Dam replied that the plaintiffs are not concerned with the division between the respective defendants of their share of the proceeds and would therefore not be concerned with such an order. A few minutes later Mr. Van Dam telephoned the Judge and asked him to advise him of the precise contents of the order Mr. Musser had presented. The Judge did so. Mr. Van Dam then pointed out to the Judge that such an order would concern the plaintiffs because the impounded funds do not include all of the oil proceeds but impound only the plaintiffs' half. The Judge said he had no intention of awarding the defendants anything to which the plaintiffs are entitled under the Interlocutory Judgment and Decree. He also said he would withhold the order and give Mr. Musser a hearing on the matter if he desired. The Judge instructed Mr. Van Dam to advise counsel with respect to the situation, and Mr. Van Dam did so.

On December 15, 1955, the Judge telephoned to Mr. Van Dam and advised that he had signed a formal order vacating the order of December 13, 1955. In due course

the Judge caused copies of the order of December 15, 1955 to be mailed to all counsel.²⁹

The vacating order of December 15th confirms the foregoing and assigns as one of the reasons for vacating the order of December 13th the fact that it conflicts with the Interlocutory Judgment and Decree. Thus we have the Judge's own statement that he had no intention of entering any order in conflict with the Interlocutory Judgment and Decree.

Plaintiffs therefore submit that even if the order of December 15th, which vacates the order of December 13th, is invalid for any reason, the facts now before this Court warrant reversal of the order of December 13th.³⁰

- b. **The motion upon which the order of December 13th was based had not been submitted when the order of December 13th was entered.**

It will be noted that the order of December 15th, vacating the order of December 13th, recites that there is no issue of law or of fact presented by the pleading on file upon which that order could be based.

To understand this situation, the status of the proceedings below must be known. The motions for summary judgment were argued at a hearing held in May of 1955. By memorandum decision entitled "Ruling on Motions,"

²⁹The foregoing facts are set forth in the Affidavit of Herbert Van Dam, a copy of which is attached to the Answer and Objections to Petition for Intermediate Appeal, which answer and objections were filed in this Court on or about January 7, 1956, by Mr. Musser. The Affidavit is set forth in Appendix G.

³⁰Rule 60, U.R.C.P.

dated October 14, 1955, the District Judge noted his decision to direct Equity Oil Company to render an accounting and to pay plaintiffs half of the proceeds, less royalties, after deducting operating expenses claimed to be chargeable to the plaintiffs. After this memorandum decision was entered, plaintiffs promptly proposed a form of Interlocutory Judgment and Decree to formalize the decision. Defendants Weber Oil Company and Equity Oil Company likewise submitted a proposed form of judgment for the Court's consideration. Plaintiffs filed objections to the form of judgment proposed by the corporate defendants. The corporate defendants filed objections to the form proposed by plaintiffs. Defendants Stock and Juhan *proposed no form of decree*, but did file objections to the form submitted by plaintiffs and incorporated in said objections a motion to require Equity Oil Company to pay over to Stock and Juhan half of the impounded funds.

Obviously, this motion, which was included in said objections, was beyond the scope of the matter then pending before the Court, namely, the formalization of the decision the Court had already announced.

Plaintiffs recognize the right of defendants Stock and Juhan to file such motions as they may see fit, but the immediate problem before the Court was to state in a formal manner the decision it had made with respect to the motions for summary judgment.

After the proposed forms of judgment had been delivered to the Judge and the parties had filed written

objections, as aforesaid, Mr. Musser, by letter to the District Judge dated November 19, 1955, said that he was willing to submit his objections and motion for the Court's decision without further argument. At this time Mr. Gustin advised counsel for plaintiffs that he was willing to submit the matter without oral argument. Accordingly, by letter dated November 21, 1955, Gilbert C. Wheat, one of counsel for plaintiffs, wrote to the District Judge as follows:

“Dear Judge Tuckett:

“Mr. Van Dam has advised me that Mr. Gustin, in behalf of defendants Equity Oil Company and Weber Oil Company, and Mr. Musser, in behalf of defendants Paul Stock and Joe T. Juhan, have suggested that the form of Interlocutory Judgment and Decree be submitted without oral argument.

“If you consider that the matter has been adequately presented in the various proposals for decree and objections which are before you now, we are agreeable to having the matter stand as submitted.”

Obviously, plaintiffs were only submitting the matter relating to the form of Judgment and Decree which would formalize the Judge's announced decision. There was no intention or suggestion on the part of plaintiffs to submit without argument any motion of Mr. Musser's. Thus, an additional reason for reversing the inadvertent order of December 13, 1955 exists in the fact that it was predicated upon a motion which, while tendered to the Court, had not been set for hearing, had not been argued, and had not been submitted.

Plaintiffs wish to point out that their appeal from the order of December 13th is taken in excess of caution. As the record stands below, it is perfectly clear that the order of December 13th was inadvertently made and was vacated by the order of December 15th. However, Stock and Juhan have appealed from the order of December 15th and if, for any reason, it should be held that the order of December 15th is voidable, plaintiffs desire to express and maintain their objections to the inadvertent order of December 13th. Since clarification of the record by the Court below was rendered impossible by Mr. Musser's application to disqualify the District Judge, and since these appeals have intervened, plaintiffs now ask this Court to clarify the record either by reversing the inadvertent order of December 13th, or by affirming the order of December 15th, which expressly vacates the order of December 13th.

2. THE INTERLOCUTORY DECREE SHOULD DIRECT ACCOUNTING AND PAYMENT FROM DEFENDANTS WEBER OIL COMPANY, STOCK AND JUHAN, AS WELL AS FROM DEFENDANT EQUITY OIL COMPANY.

The Interlocutory Judgment and Decree directed only Equity Oil Company to account and pay. Since the Interlocutory Judgment and Decree reserves jurisdiction of the issues not specifically decided therein, the trial Judge may properly have deferred declaration of judgment against the other defendants and limited its present directions to Equity Oil Company who is the operator and the party in direct control of the impounded funds. How-

ever, plaintiffs should not hereafter be confronted with a contention that the failure to direct Stock, Juhan and Weber to account and pay is a determination that no such accounting or payment is due from them.

Citation is unnecessary to establish that a principal is responsible for the acts of his agent performed in the course of his employment. The court found, it has been conceded, and it can never be disputed, that whatever else may be the status of Equity Oil Company, it is the agent of Stock, Juhan and Weber Oil Company with respect to their operations on the Sheridan Lease. No reason can be offered why these principals are under a lesser duty than their agent to account and pay. We submit that the Interlocutory Judgment and Decree should be modified to so provide, or, in the alternative, this Court should make clear that the lower court is not precluded from making such provision when rendering its further orders and decrees in this matter.

3. EQUITY OIL COMPANY IS NOT ONLY A STAKEHOLDER IN THIS PROCEEDING BUT ALSO IS A PRINCIPAL AND IS SUBJECT TO THE SAME OBLIGATIONS AND RESPONSIBILITIES TO PLAINTIFFS AS ARE THE OTHER DEFENDANTS.

Again, because of the interlocutory nature of the Interlocutory Judgment and Decree, plaintiffs are at a disadvantage in analyzing its final effect upon their rights.

As the admitted agent of Weber, Stock and Juhan, Equity is properly directed by the Interlocutory Judgment and Decree to account and pay. This is reasonable,

since Equity conducts all operations, markets the oil, collects the proceeds, impounds the plaintiffs' share and distributes the remainder to the other defendants. However, in this action, plaintiffs will ultimately seek interest and damages from the defendants resulting from the wrongful withholding of their share, and will urge that Equity is not a mere stakeholder or mere agent in the premises. Plaintiffs, on the record here, have proved that Equity is a real party in interest and a principal. The damage which has been occasioned plaintiffs has been done jointly by all defendants, and Equity, as a member of their joint venture, is responsible along with the others.

Possibly this Court will deem this issue to be beyond the scope of this appeal. If so, plaintiffs request a clear declaration to that effect to avoid further controversy.

However, if this Court sees fit to now determine the true status of Equity in this matter, the following facts are conclusive: The Court will recall that in January 1946 Chas. S. Hill purported to quitclaim to his principal, Juhan, the interest he sought to acquire under the abortive document obtained from Stock in 1945. At the same time, Juhan executed an unrecorded declaration of trust in Hill's favor under which Juhan was to receive 7/8ths and Hill the remaining 1/8th of whatever Juhan could obtain in the litigation with Meagher.³¹ This declaration

³¹Appendix I. The contingent 1/8th interest to Hill under this declaration of trust was to enable him to satisfy his identical obligation to Stock under a similar unrecorded declaration of trust given to Stock by Hill at the time he received the abortive quitclaim from Stock. Appendix H.

of trust spells out the Juhan-Equity-Stock plan to litigate with Meagher. It states that J. L. Dougan has agreed to *finance all necessary litigation* in exchange for an interest in whatever is recovered. It expressly states that Stock shall get nothing unless his interest is sustained in court as against the claims of Meagher. Meagher is specifically named in this document as the person whose claims stand in the way. This declaration provides that out of any recovery Dougan shall be the first to recoup expenditures.

Thus, from these *unrecorded* documents we learn that *by June of 1946* Juhan, Stock and Dougan knew about the Meagher suit and claims; were banded together to defeat them and had arranged for the litigation to be financed by J. L. Dougan. By this time the Meagher quiet title suit had been commenced and was pending; lis pendens therein had been filed, and the Stock-to-Meagher transfer of October 21, 1944 had been recorded.³²

It may be asked what this has to do with Equity Oil Company. The answer is that J. L. Dougan was then and at all times has continued to be the president, a director and the principal executive officer of Equity Oil Company. Further, on January 11, 1946, one week after the last declaration of trust described above, Juhan transferred an interest in the Sheridan Lease to Equity Oil Company. At that time Weber Oil Company did not even exist. But one week later, on January 18, 1946,

³²The Stock-to-Meagher transfer was dated October 21, 1944 and was recorded on November 3, 1944. Exhibit A-30 in District Court No. 2238.

Equity caused Weber to be formed. Weber remains the wholly-owned subsidiary of Equity. The same J. L. Dougan became and remains the president, a director and principal executive officer of Weber Oil Company.³³

These transactions between the defendants occurred before the decision was rendered in the first trial of Meagher's quiet title suit. These transactions preceded drilling operations by more than two years. Harley W. Gustin was then counsel of record for Juhan in the pending quiet title suit. In May of 1945 a lis pendens was filed by Juhan with respect to the quiet title suit and his signature was acknowledged by Harley W. Gustin. When Stock appeared in the quiet title suit, Harley W. Gustin acted as his counsel. During the years 1947-1951, inclusive, Harley W. Gustin was a director of Equity Oil Company.³⁴ Thus, it will be seen that by 1946 Equity Oil Company and its creature, Weber Oil Company, had joined with Juhan and Stock for the express purpose of litigating with Meagher to wrest from him whatever title they could to the Sheridan Lease. Equity was in the deal from the beginning and the creation of Weber was part of the general plan.

It will be noted that in 1946, when these deals were negotiated, Stock's only remaining interest in the lease

³³Uncontroverted statements contained in Items 23 and 26 of Affidavit of N. J. Meagher in support of Motion for Summary Judgment. R. pp. 165-186. Testimony of Juhan reported in Transcript of first trial in quiet title suit (January 8-9, 1946) pages 93-94.

³⁴Uncontroverted statements contained in Affidavit of N. J. Meagher, Jr. dated May 10, 1954, p. 4. R. pp. 20-30.

was the hope that Chas. S. Hill and his assigns, Juhan, Equity and Weber, could in some manner defeat the transfer Stock had given to Meagher in 1944. If this group had been successful, Stock, as matters stood in 1946, would have been entitled to 1/8th of the recovery. However, in 1948, Stock decided to buy into the Phebus Half, and entered into an agreement with Juhan for this purpose.³⁵ In the transaction between Juhan and Stock in 1948 it was agreed that Juhan would undertake the expense of going forward with the litigation with Meagher. It was also agreed that the Juhan-Stock-Equity interests should be pooled and become the subject of what the parties themselves call "a joint venture agreement."

On the same day, namely, July 9, 1948, Equity (acting by J. L. Dougan), Stock and Juhan signed the joint venture agreement contemplated as above.³⁶ This joint venture agreement contemplates drilling and provides for continuation of the pending litigation with Meagher.

The identity of Equity and Weber is dramatically illustrated by this joint venture agreement of July 9, 1948. Under that agreement Equity agrees to bear a portion of the expenses and is to receive a portion of the benefits. But why is Equity acting at this stage of the transaction? At that time Equity had no interest in the property because it had transferred its entire interest to Weber on December 30, 1947!³⁷ Thus we find Equity, months after

³⁵Exhibit A-51 in District Court No. 2238. Appendix J. Testimony of Stock. Appendix N.

³⁶Exhibit A-52 in District Court No. 2238. Appendix K.

³⁷Exhibit A-24 in District Court No. 2238.

divesting itself in favor of Weber, still dealing with the property as an owner.

The legal result is clear. The relationship between Equity and Weber is so close that the dealings and interests of either one in this transaction are the dealings and interests of the other. By the same token, the obligations and responsibilities of either must also be the obligations and responsibilities of the other. Thus, any judgment in favor of plaintiffs in this case against either corporate defendant should run against the other. It would be a travesty to permit Equity to retain the control and benefits and at the same time escape responsibility by the mere formation of a subsidiary during the pendency of the critical litigation.

4. THE ORDER DISMISSING THE FOURTH COUNT OF PLAINTIFFS' COMPLAINT SHOULD BE REVERSED.

Upon motion of all defendants to dismiss nearly every allegation and count of the complaint, the District Judge, by order dated December 21, 1954, granted said motion as to the Fourth Count of the complaint. The Court did not specify the reasons for the ruling.

The Fourth Count of the complaint alleges, inter alia: (1) plaintiffs' ownership; (2) defendants' operations; (3) defendants' conspiracy to oust plaintiffs of their rights; (4) defendants' wilful intent, with knowledge of plaintiffs' rights, to wrongfully appropriate plaintiffs' share; (5) defendants' fiduciary status with respect to plaintiffs and the violation of their fiduciary obligations;

(6) defendants' conversion of plaintiffs' share; (7) defendants' adverse claims and the invalidity thereof; (8) defendants' refusal to account and pay notwithstanding demands; (9) plaintiffs' damages.

With respect to damages, it is alleged that by virtue of the wrongful withholding, plaintiffs have been unable to pay income taxes upon their share for the tax years in which the income should have been received and taxes paid thereon; that when the plaintiffs do receive their share they will be required to pay income taxes thereon in the year of receipt and they will not be able to apportion the revenue back over the prior years. Plaintiffs will, therefore, be required to pay a substantially greater amount in taxes than would have been payable had their share been paid to them from time to time as it accrued and became due. While this damage cannot be calculated until a detailed account is rendered, it will then be susceptible of precise calculation. The foreseeability of such damage is self-evident since defendants must know the inevitable result of their wrongful withholding under the tax laws.

The only tax law involved is the established doctrine that income tax on disputed funds is payable in the year when actually received and cannot be apportioned back by the recipient over the years the funds should have been received.³⁸

³⁸*North American Oil Consolidated v. Burnet* (1932) 286 U.S. 417, 76 L. ed. 1197;
Farrel v. Comm. (1943) 134 F.2d 193.

For present purposes it must be assumed that the allegations of the complaint are true. Thus the only controversy respecting the Fourth Count centers on the allegations of damages. Surely no one doubts that the wilful and wrongful withholding of the funds of another constitutes an actionable wrong requiring the wrongdoer to respond in damages. The controversy, therefore, is narrowed, to-wit: What are the limits on such damages?

All losses, which are reasonably foreseeable, which are the natural consequences of a wrongful act and which can be precisely calculated, are recoverable as damages.³⁹

It is well established that loss of profits is a proper element of damages.⁴⁰ In computing lost profits, account must not only be taken of what would have been received but also of increased expenses to which the innocent party has been put. The recovery may be reduced to the extent of taxes he saves since such taxes would properly reduce his profit.⁴¹ By the same token the recovery must be in-

³⁹*Stetitz v. Gifford*, 280 N.Y. 15, 19 N.E.2d 661;
The Dimitrios Chandris (1942) 42 F.Supp. 829;
 25 C.J.S. Damages §23.

⁴⁰*Main Realty Co. v. Blackstone Valley Gas & E. Co.* (1937) 59 R.I. 29, 193 A. 879;
Alengi v. Hartford Acc. & Ind. Co. (1936) 183 La. 847, 167 So. 130;
Watts Co. v. American Bond & Mtge. Co. (1929) 267 Mass. 541, 166 N.E. 713;
Strimple v. Parker Pen Co. (1922) 177 Wis. 111, 187 N.W. 1001;
 Restatement of Torts §912, Comment (f);
 25 C.J.S. Damages §§42-44.

⁴¹*Southern Pac. Co. v. Guthrie* (1949) 180 F.2d 295.

creased by the *excess taxes* incurred as the result of the wrongful act since such would *improperly* reduce his profit.⁴²

Defendants have suggested that they are not required to respond for this tax loss since it results from operation of law. This contention begs the issue. The question is, did their wrongful act inflict an expense upon plaintiffs which they would not have incurred except for the wrongful act. The fact that the expense is incurred as a result of the application of some law is immaterial.⁴³

The law of Utah provides for punitive damages where parties willfully seek to oust their co-tenants from their rights to mineral properties. However, plaintiffs here do not seek punitive damage but merely ask to be compensated for actual pecuniary loss under circumstances which might well warrant punitive damages.

It may not be urged that the rule of damages for which plaintiffs contend would require any debtor to pay his creditor's enhanced taxes merely because a debt is not paid on time. The relationship here is not that of simple debtor and creditor. These parties are co-tenants and as

⁴²*Sidelinker v. York Shore Water Co.* (1918) 117 Me. 528, 108 Atl. 122.

⁴³*The Dimitrios Chandris*, supra, note 39.

Hecla Powder Co. v. Signa Iron Co. (1899) 157 N.Y. 437, 52 N.E. 650;

Baynard v. Harity, 1 Houst (Del.) 200;

Sedgwick: Damages (9th Ed.), Vol. 1, p. 269;

Restatement of Agency, §401, Comment (c).

such stand in a relation of trust and confidence to each other with reference to the joint or common property.⁴⁴

Any fiduciary must respond for all damages caused by his breach of trust. This is particularly true when the breach is wilful.⁴⁵

Such fiduciary is liable for depreciation of property, diminution of income and other loss even if unexpected.⁴⁶

By the wilful withholding here, defendants intentionally brought about an increase in the tax obligations of plaintiffs. We do not seek to impose the tax costs which plaintiffs would have been required to pay if they had received their share of the revenue when due. Plaintiffs seek only the additional taxes which they must pay when this accumulated income is received in a lump sum. This increase can be computed with absolute precision. It is foreseeable beyond any doubt.

The Courts will not permit a person to wilfully inflict pecuniary damage on another. When, as here, the offend-

⁴⁴2 Thompson, *Real Property* (1924 Ed.) §1784;
Aarn v. Pucinelli (1953) 121 Cal. App. 2d 675, 264 P.2d 152,
 154;

Ludey v. Pure Oil Co. (1932) 157 Okla. 1, 11 P.2d 102, 104;
Mills v. Hart (1898) 24 Colo. 505, 52 P. 680, 681.

⁴⁵Restatement of Trusts, § 205;
 4 Bogert, *The Law of Trusts & Trustees*, p. 415;
 2 Scott, *Trusts* (1939 Ed.), p. 1078.

⁴⁶*Surrat v. State* (1934) 167 Md. 357, 173 Atl. 573;
McBride v. McBride (1936) 262 Ky. 452, 90 S.W.2d 741, 742;
Birmingham Trust & Savings Company v. Ansley (1937) 234
 Ala. 674, 176 So. 465;
 54 Am. Jur. *Trusts*, § 300;
 Restatement of Trusts, § 205, Comment (e).

ers also stand in a fiduciary capacity towards the injured party, the foregoing principles apply a fortiori. The pleadings of the Fourth Count disclose that this case falls within the above principles. Whether plaintiffs will be able to sustain their burden of proof is not now in issue. The point is that the plaintiffs should not be foreclosed from proving these facts if they are true.

F. CONCLUSION.

In conclusion let us analyze the situation several years ago when this Court affirmed the lower court's decision which awarded the Stock Half to the Meaghers.

What should Stock and Juhan have done then? At that time their agent, Equity, was marketing the oil and withholding plaintiffs' share. Stock and Juhan had had their day in court. This Court had decided the title issue against them. Their obligation was clear. They should have instructed their agent to account and pay. What did Stock and Juhan do? They refused to account. They refused to pay. They even had the effrontery to file an affidavit signed by each of them in which each of these defendants swears:

“That he has no control over the moneys so impounded; your affiant denies that he has refused to account to plaintiffs, and in that connection states that your affiant is not now and never has been the operator of the property and is not in a position to

make any accounting to the plaintiffs or any of them.”⁴⁷

This is a remarkable statement to make under oath by two of the owners of an interest in an oil lease who have appointed an agent to drill and operate the property.

The foregoing affidavit also contains the following statement:

“He further denies that any decision of the Supreme Court of the State of Utah is conclusive of or strongly persuasive that the plaintiffs’ rights in the Sheridan Lease are what the plaintiffs contend them to be, namely, an undivided one-half interest in the working interest under the Sheridan Lease.”

How could Stock and Juhan make this statement in May of 1954, following the decision of this Court which not only holds that the plaintiffs acquired the original Stock Half of the Sheridan Lease, but so held after years of litigation between plaintiffs *and these affiants*. In brief, Stock and Juhan forced plaintiffs to institute another suit. In this suit Burton W. Musser (the former amicus curiae in the quiet title suit) appears as counsel for Stock and Juhan. Harley W. Gustin, who had represented them for ten years, no longer appears for them. (He now represents the corporate defendants.) Under the guidance of this former friend of this Court,

⁴⁷Affidavit of Stock and Juhan dated May 19, 1954 in opposition to the temporary restraining order and application for preliminary injunction. R. pp. 68-71.

Mr. Musser, what did Stock and Juhan do? They sought to retry all the issues which had already been decided against them by the highest court of this State! After wading through numerous dilatory motions, the lower court finally disposed of their contentions by summary judgment.

What should Equity Oil Company have done after the last pronouncement of this Court? It had divested itself of legal title to the lease. Did it then seek to prove its neutrality by asking leave to deposit the funds in Court? It did not. On the contrary, it joined Weber Oil Company in its effort to resist the claims of plaintiffs.⁴⁸

What did Weber Oil Company do after this Court pronounced that the Meaghers had obtained the original Stock Half as against Stock and Juhan? Superficially, Weber had a reasonable legal position. It had not been a formal party to the quiet title suit even though that suit was conducted for its use and benefit. If Weber had any valid claims to the Stock Half of the lease, it was *prima facie* free to assert them. But what claims did it have? Weber's only possible claim to an interest in the Stock Half is traceable only to the abortive quitclaim obtained by Chas. S. Hill from Stock after Stock had

⁴⁸Counter Affidavit and Answer of Equity Oil Company on order to show cause, signed by J. L. Dougan and dated May 19, 1954. R. pp. 66-67.

Counter Affidavit and Answer of Weber Oil Company, signed by J. L. Dougan, dated May 19, 1954. R. pp. 57-65.

Joint Affidavit of Corporate Defendants on Motion for Summary Judgment, dated May 19, 1955. R. pp. 207-212.

transferred all he had to Meagher. That is the only source of title which Weber can assert against the Meaghers. Was Weber a bona fide purchaser for value without notice? If it had been, it might have acquired something which it could maintain against the Meaghers. But such a contention was so obviously contrary to fact that it *has never been urged*. Weber was a mere creature created for Equity's convenience after the quiet title litigation had commenced. The transfer from Stock to Meagher was recorded before Weber ever came into existence. Counsel for Weber and for Equity in the instant suit is none other than Harley W. Gustin, the attorney who had represented Stock and Juhan during the ten years of litigation which preceded this suit. In fact, Mr. Gustin was one of the incorporators of Weber.

Under these circumstances, for Weber to refuse to recognize the Meaghers' title leads to only one conclusion. Weber is still motivated by the malice engendered years ago when Juhan, Stock, Phebus, Chas. S. Hill, and Dougan formulated their original scheme to oust the Meaghers from their claims. Proof of this intent is found in Weber's willingness to reach its wrongful objective by ignoring the rulings of the Supreme Court of the State of Utah.

Plaintiffs have sought to present this Brief without resort to emotional outbursts and name calling. However, after twelve years of litigation and more than seven years of withholding, plaintiffs cannot resist asking this Court to look into the machinations of these defendants by

which they have deprived plaintiffs of their rights. Plaintiffs appeal to this Court to put an end to the legal maneuvering which has produced results so foreign to the objectives of American justice.

To this end plaintiffs respectfully request this Court to enter its decree:

1. Affirming the Interlocutory Judgment and Decree.
2. Reversing the inadvertent order of December 13, 1955, or, in the alternative, confirming the order of December 15, 1955, which vacates said order of December 13th.
3. Adjudicating that defendants Equity Oil Company, Weber Oil Company, Stock and Juhan shall be jointly and severally bound by the Interlocutory Judgment and Decree, or, in the alternative, declaring that said Interlocutory Judgment and Decree does not in any way diminish the obligations and responsibilities of Weber Oil Company, Stock and Juhan as the same may be determined in further proceedings below.
4. Adjudicating that defendant Equity Oil Company is responsible to plaintiffs jointly and severally with defendants Weber Oil Company, Stock and Juhan and to the same extent defendants Weber, Stock and Juhan are so obliged.
5. Reversing the order which dismissed the Fourth Count of plaintiffs' Complaint.
6. Directing the District Court to conduct such further proceedings as may be necessary to determine all issues

not expressly and specifically determined by the Interlocutory Judgment and Decree.

Dated, San Francisco, California,
March 3, 1956.

Respectfully submitted,
HERBERT VAN DAM,
GILBERT C. WHEAT,
Attorneys for Plaintiffs.

(Appendices Follow.)

Appendices.

Index of Appendices

- A. Findings of Fact and Conclusions of Law in Second Trial of the Quiet Title Suit.
- B. Decree in the Second Trial of the Quiet Title Suit.
- C. Opinion of Utah Supreme Court Affirming Decree in Second Trial of Quiet Title Suit.
- D. Interlocutory Judgment and Decree of December 13, 1955, in the Instant Case.
- E. The Inadvertent Order of December 13, 1955, in the Instant Case.
- F. The Order of December 15, 1955, in the Instant Case Vacating the Order of December 13, 1955.
- G. Affidavit of Herbert Van Dam Dated January 3, 1956.
- H. Declaration of Trust Dated April 14, 1945, Executed by Chas. S. Hill in Favor of Paul Stock.
- I. Declaration of Trust Dated January 5, 1946, Executed by Joe T. Juhan in Favor of Chas. S. Hill.
- J. Letter Agreement Dated July 9, 1948, Between Joe T. Juhan and Paul Stock.
- K. Joint Venture Agreement Dated July 9, 1948, Between Equity Oil Company, Joe T. Juhan and Paul Stock.
- L. Defendants' "One-For-All, All-For-One" Agreement of April 9, 1951.
- M. Testimony of Paul Stock re Status of Chas. S. Hill.
- N. Testimony of Paul Stock re His Acquisition of an Interest in the Phebus Half in 1948.

Appendix A

THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE SECOND TRIAL OF THE QUIET TITLE SUIT.

These Findings and Conclusions were rendered by Judge Dunford on June 4, 1951. They are here set forth in full. The Decree which implements them was affirmed by this Court in the second appeal.

No. 2238—Civil

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause having been tried, briefed and submitted, the following are the Findings of Fact and Conclusions of Law upon which the Judgment and Decree of this Court are predicated.

Parties, persons and companies, after identification herein, are thereafter referred to for convenience by surname or single descriptive name only.

The letter and number references to documents employed herein correspond to their identification as exhibits admitted in evidence.

FINDINGS OF FACT

1. On and prior to June 24, 1924, James Wash Sheridan, Iva H. Sheridan, his wife, and Francis Hamilton Sheridan were the owners in fee simple of the lands in-

volved in this action, which lands contain 480 acres and are described as follows:

Section 15:

Northeast Quarter of Southeast Quarter and Southeast Quarter of Southeast Quarter;

Section 22:

East Half of Northeast Quarter and Northeast Quarter of Southeast Quarter;

Section 23:

Northwest Quarter of Northwest Quarter, South Half of Northwest Quarter, North Half of Southwest Quarter, Southwest Quarter of Northeast Quarter, and Northwest Quarter of Southeast Quarter;

All in Township 5 South, Range 22 East, Salt Lake Meridian, State of Utah, containing 480 acres, more or less; subject to a right of way granted to the State of Utah for construction of U. S. Highway 40.

2. On June 24, 1924, James Wash Sheridan, Iva H. Sheridan, his wife, and Francis Hamilton Sheridan executed document A1, an oil and gas lease of the 480 acres involved in this action, together with other lands not so involved, to R. C. Hill, reserving to lessors landowner's royalty consisting of 12½% of the proceeds of all oil and gas produced and sold.

3. On October 30, 1924, R. C. Hill, by document A2, entitled "Assignment of Leases", assigned to Utah Oil Refining Company a number of oil leases and drilling permits including (among other lands which are not involved

in this action), the interest of Hill as lessee in a 440 acre portion of the lease A1, which 440 acres are referred to herein as "the 440 acre parcel". The assignment A2 transferred to Utah the lessee's rights in the 440 acre parcel under the lease A1, which rights include the exclusive right to explore and drill for, develop, produce and market oil and gas from the 440 acre parcel and, upon completion of a test well, the right to surrender all or any portion of the lands and thereby be relieved of all further obligations in respect thereto.

In the assignment A2, Utah agreed, subject to its right to surrender, to perform the obligations of the lessee, to pay Hill \$12,500 as bonus, to pay Hill an overriding royalty of six per cent (6%) of oil and gas, to protect the outstanding landowner's royalties (totaling 12½%), either by payment through Hill or by such other method as might be necessary to assure Utah that all landowner's royalties would be paid to the persons entitled thereto, and, in the event of surrender, to do so in such manner as to allow Hill sixty days to comply with any drilling requirements incumbent upon him to prevent forfeiture of the rights of Hill under the lease A1.

Assignment A2 preserves to Hill a right of entry on the premises for the purpose of inspecting the same and the operations of Utah, and provides for termination in the event of failure on the part of Utah to remedy defaults after notice. It also contains provisions for the sale to Utah of oil and gas attributable to the landowner's and overriding royalties, requires the maintenance of produc-

tion records and well logs, and for inspection thereof by Hill, and provides for allocation of taxes levied against production based upon the proportionate interests of the parties.

4. A forty-acre parcel which is included in the lease A1 and is involved in this action was referred to as "the North Forty" throughout the trial and will be so designated herein. The North Forty is particularly described thus:

Northeast Quarter of Southeast Quarter, Section 15,
Township 5 South, Range 22 East, Salt Lake Meridian,
State of Utah.

5. The assignment A2 from Hill to Utah pertains only to the 440 acre parcel and does not transfer any interest in the North Forty.

6. On November 10, 1924, by assignment A3, Hill assigned to defendant Ashley Valley Oil Company all of his interest in his assignment agreement A2 with Utah, thereby transferring to Ashley the 6% overriding royalty created in Hill's favor by assignment A2, as well as the collateral rights obtained by Hill thereunder.

7. The assignment A3 from R. C. Hill to Ashley Valley Oil Company pertains only to the 440 acre parcel and does not transfer any interest in the North Forty.

8. On November 14, 1924, James Wash Sheridan and Iva H. Sheridan, his wife, and Francis Hamilton Sheridan conveyed by deed A4 the entire 480 acres in litigation,

subject to the lease A1, to M. P. Smith, together with all oil or gas which might be produced therefrom.

9. On May 21, 1927, M. P. Smith and Ashley Valley Oil Company entered into an agreement A5 purporting to modify the terms of the lease A1 with respect to the 440 acre parcel only.

10. M. P. Smith, who, by deed A4, had acquired the landowner's royalty along with the fee in the lands subject to the lease, had, prior to the execution of the modification agreement A5, assigned the landowner's royalty interests to various parties. These owners of landowner's royalties consented to the modification agreement A5.

11. At the time of execution of the modification agreement A5, Ashley Valley Oil Company had no interest in the North Forty, and the modification agreement A5 specifies that the only interest Ashley then had in the 480 acres in litigation was limited to the 440 acre parcel.

12. At the time of execution of the modification agreement A5, R. C. Hill was the owner of the lessee's rights under the lease A1 so far as concerns the North Forty, and Hill was not a party to the modification agreement A5.

13. At the time of execution of the modification agreement A5, Utah Oil Refining Company, the assignee under assignment A2 of the lessee's rights in the 440 acre parcel, was not a party to the modification agreement A5.

14. The modification agreement A5 does not transfer or affect any reversionary interests of the lessor.

15. The modification agreement A5 was part of the lease A1, and was not a new or unrelated document.

16. Prior to the execution of the modification agreement A5, the test well contemplated in assignment A2 was drilled and completed, and gas in paying quantities was discovered.

17. On June 9, 1927, Ashley and Utah executed an agreement A6 whereby Utah ratified and approved the modification agreement A5.

The agreement A6 conferred upon Utah all of the rights of the lessee under the modification agreement A5, and Utah undertook to perform the obligations of the lessee thereunder.

The lands affected by the agreement A6 are expressly limited to the 440 acre parcel.

18. At the time the agreement A6 was executed, Ashley had no interest in the North Forty.

19. At the time of execution of the agreement A6, Hill was the owner of the lessee's rights under the lease A1 so far as concerns the North Forty, and Hill was not a party to the agreement A6.

20. Neither the modification agreement A5 nor the agreement A6, whereby Utah approved and adopted A5, modified the lease A1 so far as concerns the North Forty.

21. It was not the intention of the parties, in executing the modification agreement A5 or the agreement A6, to subject the North Forty to the terms of the modification

agreement A5 in the event Ashley should subsequently acquire the lessee's rights in the North Forty.

22. On December 19, 1927, M. P. Smith and Ellen M. Smith, his wife, by deed A7, conveyed an undivided four-fifths interest in the 480 acres of land in litigation to plaintiff N. J. Meagher, subject to the lease as modified and subject to the outstanding landowner's royalties which had theretofore been transferred to others by M. P. Smith.

The conveyance A7 does not save, reserve or except any reversionary or lessor's rights owned by the grantors by virtue of the lease as modified, and an undivided four-fifths of said reversionary rights were by A7 conveyed to plaintiff Meagher.

23. On December 19, 1927, M. P. Smith and Ellen M. Smith, his wife, by deed A8, conveyed an undivided one-fifth interest in the 480 acres of land in litigation to T. G. Alexander, subject to the lease as modified and subject to the landowner's royalties theretofore assigned to others by M. P. Smith.

The conveyance A8 does not save, reserve or except any reversionary or lessor's rights owned by the grantors by virtue of the lease as modified, and an undivided one-fifth of said reversionary rights were by A8 conveyed to T. G. Alexander.

24. On May 28, 1931, T. G. Alexander and Cora M. Alexander, his wife, conveyed, by deed A10, to plaintiff Meagher an undivided one-fifth interest in the 480 acres in litigation.

This conveyance A10 confirms a prior deed to Meagher from Alexander, namely A9, which pre-dated the conveyance A8, under which Alexander acquired his interest from M. P. Smith.

The conveyances A10 and A9 do not save, reserve or except any reversionary or lessors' rights owned by the grantors by virtue of the lease as modified, and an undivided one-fifth of said reversionary rights were, by A10 and A9, conveyed to plaintiff Meagher.

25. On October 30, 1930, Edward Watson, successor to Hill, assigned to Ashley, by document A16, all of his right, title and interest in the North Forty, together with other lands located on the Ashley Valley structure in which Hill or his successor, Edward Watson, had an interest.

26. The parties concede the right of Edward H. Watson to execute the assignment A16 as successor in interest of R. C. Hill.

27. The parties have stipulated that plaintiff Meagher owns the North Forty free of all claims of defendants if the lease A1 so far as concerns the North Forty was not modified and if plaintiff Meagher obtained from M. P. Smith or his successors the reversionary or lessor's rights in the lands in litigation as distinguished from the mere surface rights. The lease A1, so far as concerns the North Forty, has not been modified, and Meagher did obtain from M. P. Smith or his successors the reversionary or lessor's rights in the lands in litigation.

28. On April 24, 1929, by assignment A11, Utah assigned to defendant Ray Phebus and defendant Paul Stock the lessee's rights in the lease as modified, together with certain equipment, casing, tools, and material, and Stock and Phebus agreed to perform the obligations of the lessee and of Utah with respect to said lease. Said assignment, A11, relates only to the 440 acre parcel.

29. On May 29, 1929, Stock and Phebus, by assignment A15, assigned to defendant Valley Fuel Supply Company the lessee's rights to gas only in the 440 acre parcel.

30. On April 30, 1931, Stock and Phebus, by assignment A12, assigned to Standard Oil Company of California the lessee's rights as to oil and gas in the 440 acre parcel, together with other properties not involved in this litigation.

Assignment A12 recites that landowner's royalty of $12\frac{1}{2}\%$ and overriding royalty of 6% are payable with respect to the 440 acre parcel, and defendants Stock and Phebus agreed therein to secure assignments totaling 6% from the total outstanding royalties of $18\frac{1}{2}\%$, and to cause said 6% of royalties to be assigned to Standard Oil Company of California, thereby reducing the royalties payable by Standard Oil Company of California to a total of $12\frac{1}{2}\%$.

31. On December 31, 1931, by assignment A13, Standard Oil Company of California assigned its rights under A12 to its subsidiary, The California Company.

32. On March 21, 1934, by assignment A14, The California Company assigned to Stock and Phebus all of its right, title and interest in the 440 acre parcel, and Stock and Phebus accepted said assignment as full performance by Standard Oil Company of California and by The California Company of their obligations with respect to said 440 acre parcel.

Assignment A14 recites that The California Company has elected not to commence the drilling of a test well on the Ashley Valley structure.

33. On November 7, 1941, by document A17, Valley Fuel Supply Company assigned to defendant Joe T. Juhan the lessee's rights with respect to gas only in the 440 acre parcel.

34. The proof is insufficient to establish that Meagher has any interest in the lessee's rights to gas in the 440 acre parcel.

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.

36. No action, lack of action, or change of position by any defendant was induced by, or undertaken in reliance upon, any action, inaction, or representation, express or implied, attributable to Meagher; nor did any defendant

take, or refrain from taking, any action due to any misconception of fact or of law.

37. As a result of the operations of Equity Oil Company pursuant to agreements with Juhan, Stock and Weber Oil Company, a wholly-owned subsidiary of Equity Oil Company, oil was discovered on the lands involved in this action on September 18, 1948.

Neither said drilling operations nor any expenditures incurred in connection therewith were induced by, or were undertaken in reliance upon, any representation, express or implied, attributable to Meagher. Stock and all other parties to this action dealt with the property subject to the exigencies of this litigation and with full knowledge that Meagher asserted interests substantially in conflict with the claims of each defendant.

38. Meagher did not defraud or deceive Stock by previously asserting that the lease was cancelled and that Stock had no interest therein, although Meagher now claims an interest in the lessee's rights and contends that he acquired an interest in the lessee's rights from Stock. The aforesaid erroneous assertion by Meagher was not made with the intent to deceive or mislead Stock, and did not deceive or mislead Stock, nor did Stock rely thereon. No facts have been proved upon which any fraudulent or deceitful conduct can be attributed to Meagher with respect to Stock or any other party to this action.

39. The recitals in A30, the Stock-to-Meagher transfer, to the effect that Meagher was then the owner of all les-

see's rights under the lease by virtue of its cancellation through termination of production of oil and gas have been determined to be incorrect by the decision of the Supreme Court heretofore rendered in this action.

The recitals in A30 are attributable to Meagher, but none were made with the intent to deceive or mislead Stock, and said recitals did not deceive or mislead Stock, and were not relied upon by Stock.

40. The Stock-to-Meagher transfer, A30, was executed on October 21, 1944. Within six months thereafter, Stock dealt with Juhan or his representative in contemplation of litigation with Meagher which would require the repudiation of the transfer A30. Four years and ten months elapsed after execution of A30 and approximately one year elapsed after the discovery of oil before Stock communicated to Meagher an intention to seek rescission of the transfer A30. Stock's intention in this respect was first communicated to Meagher by the voluntary filing of Stock's answer and counterclaim in this action on August 17, 1949, notwithstanding service upon Stock had not been perfected and this action had then been pending for more than four years.

41. There has been no undue or substantial delay in the assertion of his claim or in the prosecution of this litigation by Meagher.

42. In consideration of the transfer A30 from Stock to Meagher, Meagher relinquished his right to require Stock to perform the obligations of the lessee which Stock

was bound to perform previous to Meagher's acceptance of said transfer.

43. Meagher has disclaimed any right to reduce or extinguish the overriding royalty interests and collateral rights in the lease owned by Ashley Valley Oil Company or its assigns, and it therefore is not necessary to determine whether document A30 constituted an assignment or surrender of Stock's interests in the lessee's rights, since in either event, as between Stock and Meagher, it was a transfer to Meagher of all interest in the lessee's rights owned by Stock.

44. On January 27, 1948, N. J. Meagher and Katherine T. Meagher, his wife, conveyed to N. J. Meagher, Jr., Mary Alice Arentz, Katherine C. Ivers and Margaret Frances Meagher, their children, by document A22, an undivided one-fourth interest to each grantee of all right, title, and interest of grantors in and to the lands in litigation, reserving and excepting to N. J. Meagher his interest in landowner's royalties pertaining to said lands.

45. The grantees from Meagher under the deed A22 have elected to continue this litigation in the name of N. J. Meagher and have not sought to be substituted as parties herein.

46. All answering defendants seek to have their respective interests in the property in issue determined in this action.

47. On January 19, 1945, Ray Phebus and Ella Phebus, his wife, assigned to Juhan, by document A18, all of

their right, title and interest in the lands in litigation, by which assignment Juhan acquired an undivided one-half interest in the lessee's rights with respect to oil in the 440 acre parcel.

48. On January 11, 1946, Juhan assigned to Equity Oil Company, by document A21, an undivided one-half of his right, title and interest in and to the lands in litigation, by which assignment Equity acquired an undivided one-half interest as to gas and an undivided one-quarter interest as to oil in the lessee's rights in the 440 acre parcel.

49. On December 30, 1947, Equity Oil Company assigned to Weber Oil Company, by document A24, all of its right, title and interest in and to the lands in litigation, by which assignment Weber acquired an undivided one-half interest as to gas and an undivided one-quarter interest as to oil in the lessee's rights in the 440 acre parcel.

50. On July 12, 1948, Juhan quitclaimed to Stock, by document A23, an undivided one-fourth of all of his right, title and interest in the lands in litigation by which assignment Stock acquired an undivided one-eighth interest as to gas and an undivided one-sixteenth interest as to oil in the lessee's rights in the 440 acre parcel.

51. On December 30, 1948, by document A25, an agreement was entered into between Equity Oil Company, Weber Oil Company, Juhan and Stock providing for the

operation by Equity for the benefit of the contracting parties of their respective interests in the lease.

52. On February 3, 1925, M. P. Smith and Ellen M. Smith, his wife, assigned to Meagher, by document A46, a landowner's royalty of 1% of oil and gas produced from the lands in litigation.

53. On November 19, 1927, T. G. Alexander was the owner of landowner's royalty of 1% of oil and gas produced from the lands in litigation. On November 19, 1927, T. G. Alexander and Cora M. Alexander, his wife, assigned said landowner's royalty to Meagher by document A55.

54. On October 11, 1930, by assignment A40, Meagher assigned to Stock and Phebus an undivided one-third of his 2% landowner's royalty with respect to oil only. Said assignment was made pursuant to a plan to reduce the total outstanding royalties of 18½% (both landowner's and overriding) to a total of 12½% in order to facilitate negotiations being conducted by Stock and Phebus with Standard Oil Company of California looking toward the development of a test well on the lands in question. This plan is also set forth in the assignment A12 from Stock and Phebus to Standard Oil Company.

Assignment A40 provides that if the negotiations result in the drilling by Standard Oil Company of California or one of its subsidiaries of a test well on the Ashley Valley structure to the Pennsylvanian formation or such lesser depth as shall produce oil in commercial quantities, then the assignment shall be of full force and effect, but

that if the Standard Oil Company of California or one of its subsidiaries does not drill the test well upon the Ashley Valley structure as contemplated, then defendants Stock and Phebus shall reconvey the royalty interest assigned to plaintiff Meagher.

The test well on the Ashley Valley structure was to be commenced within six months after completion of another test well to be drilled on the Rangely structure in Northwestern Colorado, which well on the Rangely structure was to be commenced as soon after the date of the assignment as weather conditions would permit, and not later than the summer of 1931.

55. On October 11, 1930, Ashley Valley Oil Company assigned to Stock and Phebus as part of document A40 an undivided one-third of its 6% overriding royalty interest in oil. Ashley has disclaimed any right to the interest so assigned.

56. The record does not disclose whether Standard Oil Company of California or any subsidiary thereof commenced a test well on the Rangely structure by the summer of 1931, but if such well was commenced by the summer of 1931 and drilled to completion with diligence as required, neither Standard Oil Company of California nor any subsidiary thereof commenced a test well on the Ashley Valley structure within the six months period required by assignment A40.

57. Neither Standard Oil Company of California nor any subsidiary of that company commenced any test well on the Ashley Valley structure, and, on the contrary, on

March 21, 1934, reassigned to Stock and Phebus all interest in the lease by document A14.

58. The drilling which produced oil on September 18, 1948, does not comply with the conditions specified in assignment A40 which would permit Stock and Phebus to retain the one-third of 2% landowner's royalty assigned to Stock and Phebus by Meagher under assignment A40.

59. The conditions specified in assignment A40 which would permit Stock and Phebus to retain the one-third interest in Meagher's landowner's royalty of 2% in oil have not occurred, and the conditions specified in assignment A40 which require Stock and Phebus to reconvey to Meagher the one-third of 2% landowner's royalty in oil assigned to Stock and Phebus by A40 have occurred.

CONCLUSIONS OF LAW

A. With respect to the North Forty:

1. The State of Utah owns a right of way for road purposes granted for the construction of U. S. Highway 40.

2. Persons not parties to this action own landowner's royalties consisting of 10½% of the oil and gas produced and sold.

3. Plaintiff Meagher owns all other rights, titles and interests.

B. With respect to the 440-acre parcel:

1. The State of Utah owns a right of way for road purposes granted for the construction of U. S. Highway 40.

2. Persons not parties to this action own landowner's royalties consisting of 10½% of the oil and gas produced and sold.

3. Plaintiff Meagher owns landowner's royalties consisting of 2% of the oil and gas produced and sold.

4. Meagher owns an undivided one-half interest in the lessee's rights with respect to oil under the lease A1 as modified. Said lessee's rights consist of the rights obtained by Utah Oil Refining Company under the assignment A2 as modified by the agreements A5 and A6, and include the exclusive right to drill for and produce oil and gas.

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.

6. Juhan owns an undivided one-half of the 2% overriding royalty in oil which was assigned by Ashley Valley Oil Company to defendants Stock and Phebus by assignment A40.

7. Defendant Stock owns an undivided one-half of the 2% overriding royalty in oil which was assigned by Ashley Valley Oil Company to defendant Stock and Phebus by assignment A40.

8. Defendant Ashley Valley Oil Company owns a 4% overriding royalty as to oil and a 6% overriding royalty as to gas, same being a portion of the overriding royalty acquired by Ashley by assignment A3 from R. C. Hill.

9. Ashley owns the collateral rights set forth in favor of R. C. Hill in assignment A2, which were transferred to Ashley by assignment A3, as modified by agreement A5.

10. Ashley owns the collateral rights set forth in favor of Ashley in the modification agreement A5 and in the agreement A6 between Utah and Ashley.

11. Meagher owns all other rights, titles, and interests.

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

(a) Juhan owns an undivided three-eighths with respect to gas.

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

(c) Stock owns an undivided one-eighth with respect to gas.

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

(e) Weber Oil Company owns an undivided one-half with respect to gas.

(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.

14. The granting clause contained in document A30, the transfer from Stock to Meagher, is sufficient to transfer to Meagher all of the said lessee's rights then owned by Stock.

15. Meagher is neither estopped nor barred by laches from asserting the interests to which he is entitled as herein set forth.

16. Neither Stock nor any other defendant is entitled to rescind the transfer from Stock to Meagher, document A30, on any basis, and Stock is barred by laches from seeking rescission thereof.

17. Expressed in proceeds of sales of oil and gas, the interests of the parties under the lease A1 as modified or by virtue of landowner's royalties are as follows:

(a) From proceeds of gas sales:

(1) Pay 10½% to landowner's royalty holders who are not parties to this action.

(2) Pay 2% to Meagher, as an owner of landowner's royalty.

(3) Pay 6% to Ashley as owner of overriding royalties.

(4) Pay an amount equal to the expenses attributable to production to the persons incurring the same.

(5) Pay one-half of the remainder to Weber Oil Company as a co-owner of the lessee's rights.

(6) Pay three-eighths of the above remainder to Juhan as a co-owner of the lessee's rights.

(7) Pay one-eighth of the above remainder to Stock as a co-owner of the lessee's rights.

(b) From proceeds of oil sales:

(1) Pay $10\frac{1}{2}\%$ to landowner's royalty holders who are not parties to this action.

(2) Pay 2% to Meagher, as an owner of landowner's royalty.

(3) Pay 4% to Ashley as an owner of overriding royalty.

(4) Pay 1% to Stock as an owner of overriding royalty.

(5) Pay 1% to Juhan as an owner of overriding royalty.

(6) Pay an amount equal to the expenses attributable to production to the persons incurring the same.

(7) Pay one-half of the remainder to Meagher as a co-owner of the lessee's rights.

(8) Pay one-fourth of the above remainder to Weber Oil Company as a co-owner of the lessee's rights.

(9) Pay three-sixteenths of the above remainder to Juhan as a co-owner of the lessee's rights.

(10) Pay one-sixteenth of the above remainder to Stock as a co-owner of the lessee's rights.

- C. Defendant Valley Fuel Supply Company has no right, title or interest in the lands in litigation.
- D. Defendant Uintah Gas Company has no right, title or interest in the lands in litigation.
- E. Defendant Ray Phebus has no right, title or interest in the lands in litigation.
- F. Costs shall not be awarded to or against any party.

Dated at Provo, Utah County, Utah, this 4th day of June, 1951.

By the Court,
/s/ Wm. Stanley Dunford
Judge

Appendix B

THE DECREE IN THE SECOND TRIAL OF THE QUIET TITLE SUIT.

This Decree was affirmed by this Court, so far as concerns any issue presented on these appeals, in the second appeal to this Court of the quiet title suit. The Decree is set forth herein in full.

JUDGMENT AND DECREE No. 2238

This cause came on for further trial pursuant to the remittitur of the Supreme Court of the State of Utah remanding the case to this Court for further proceedings in conformity with the decision of the Supreme Court rendered in *N. J. Meagher v. Uintah Gas Company et al.*, 112 Utah 149.

Said further proceedings came on regularly for trial on the 26th day of June, 1950, before the Honorable Wm. Stanley Dunford, Judge of the above entitled Court.

Appearances: Herbert Van Dam, Esq., and Gilbert C. Wheat, Esq., on behalf of Plaintiff, N. J. Meagher.

Athol Rawlins, Esq., on behalf of defendant Ashley Valley Oil Company.

Harley W. Gustin, Esq., Edward F. Richards, Esq., Oliver W. Steadman, Esq., and Carvel Mattsson, Esq., on behalf of defendants Joe T. Juhan, Ray Phebus, and Paul Stock.

Evidence, both oral and documentary, was introduced and admitted, briefs were thereafter filed and considered, and the cause was submitted for decision.

The Court having heretofore caused to be filed its Findings of Fact and Conclusions of Law, and being fully advised in the premises.

NOW, THEREFORE, by reason of the law and the Findings of Fact aforesaid, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff N. J. Meagher is the owner of all rights, titles and interests in and to that certain real property situated in Township 5 South, Range 22 East, Salt Lake Meridian, County of Uintah, State of Utah, being:

Section 15:

Northeast Quarter of Southeast Quarter,

Subject to:

(1) A right-of-way for road purposes granted to the State of Utah for the construction of U. S. Highway 40;

(2) Landowner's royalty interests aggregating 10½% of the proceeds derived from oil and gas produced from said land, which royalty interests have been granted by previous owners of said land to various persons who are not parties to this action.

2. Plaintiff, N. J. Meagher, is the owner of all rights, titles and interests in and to that certain real property situated in Township 5 South, Range 22 East, Salt Lake Meridian, County of Uintah, State of Utah, being:

Section 15:

Southeast Quarter of Southeast Quarter;

Section 22:

East Half of Northeast Quarter and Northeast Quarter of Southeast Quarter;

Section 23:

Northwest Quarter of Northwest Quarter, South Half of Northwest Quarter, North Half of Southwest Quarter, Southwest Quarter of Northeast Quarter, and Northwest Quarter of Southeast Quarter.

Subject to:

(1) A right-of-way for road purposes granted to the State of Utah for the construction of U. S. Highway 40.

(2) Landowner's royalty interests aggregating 12½% of the proceeds derived from oil and gas produced from said land, granted by previous owners of said land to various *perons*: and

(3) An oil and gas lease dated June 4, 1924, between James Wash Sheridan, Iva H. Sheridan, his wife, and Francis Hamilton Sheridan, as lessors, to R. C. Hill, as lessee, as recorded in the office of the County Recorder of Uintah County, State of Utah, on July 25, 1924, at pages 313-318 of Book 3, Miscellaneous Records, as modified by an agreement dated May 21, 1927, between M. P. Smith and Ellen M. Smith, his wife, as first parties, and Ashley Valley Oil Company, a corporation, as second party, recorded in the

office of the County Recorder of Uintah County, State of Utah, on June 27, 1927, at pages 543-556 of Book 3, Miscellaneous Records.

3. Plaintiff N. J. Meagher is the owner of landowner's royalty of 2% of the proceeds derived from oil and gas produced from the lands described in paragraph 2 above, said royalty being a portion of the total outstanding landowner's royalty of 12½% hereinabove described in paragraph 2.

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-eighths interest in the lessee's rights with respect to gas and an undivided three-sixteenths interest in the lessee's rights with respect to oil.

Defendant Paul Stock owns an undivided one-eighth interest in the lessee's rights with respect to gas and an undivided one-sixteenth interest in the lessee's rights with respect to oil.

Defendant Joe T. Juhan owns an overriding royalty of 1% of the proceeds of oil produced under said oil and gas lease.

Defendant Paul Stock owns an overriding royalty of 1% of the proceeds of oil produced under said oil and gas lease.

Defendant Ashley Valley Oil Company owns:

(1) An overriding royalty of 4% of the proceeds of oil produced under said oil and gas lease;

(2) An overriding royalty of 6% of the proceeds of gas produced under said oil and gas lease.

(3) The collateral rights set forth in favor of R. C. Hill in the assignment dated October 30, 1924, from R. C. Hill to Utah Oil Refining Company, recorded in the office of the County Recorder of Uintah County, State of Utah, on November 5, 1924, at pages 365-377 of Book 3 of Miscellaneous Records, as modified by the above described agreement dated May 21, 1927, between M. P. Smith and Ellen M. Smith, his wife, and Ashley Valley Oil Company.

(4) The collateral rights set forth in favor of Ashley Valley Oil Company in the above described agreement dated May 21, 1927, between M. P. Smith and Ellen M. Smith, his wife, and Ashley Valley Oil Company, and as set forth in the agreement dated June 9, 1927, between Ashley Valley Oil Company, as party of the first part, and Utah Oil Refining Company, as party of the second part, recorded in the office of the County Recorder of Uintah County, State of Utah, on December 19, 1929, at pages 108-113 of Book 4 of Miscellaneous Records.

5. Defendant Valley Fuel Supply Company has no right, title or interest in the lands in litigation.

6. Defendant Uintah Gas Company has no right, title, or interest in the lands in litigation.

7. Defendant Ray Phebus has no right, title or interest in the lands in litigation.

8. Cost shall not be awarded to or against any party.

Dated at Provo, Utah County, Utah, this 4th day of June, 1951

By THE COURT:
Wm. Stanley Dunford
JUDGE

Appendix C

OPINION OF UTAH SUPREME COURT AFFIRMING DECREE IN SECOND TRIAL OF QUIET TITLE SUIT.

The Opinion in Supreme Court case No. 7733 is herein-after set forth, excluding only the footnotes.

MEAGHER v. UINTAH GAS CO. et al.

No. 7723.

Supreme Court of Utah.

Feb. 11, 1953.

OPINION

HENRIOD, Justice.

Again this case is here on appeal after we reversed a quiet title decision wherein a modified oil and gas lease was adjudged terminated. 1947, 112 Utah 149, 185 P.2d 747. We held the lease still in force, remanding the case for further proceedings. We affirm the lower court in this present appeal, except that portion awarding operating rights in the North 40, which we order awarded to defendant Ashley Valley Oil, and except that portion awarding a 2% (oil, not gas) royalty to Meagher, which we order reduced to $1\frac{1}{3}\%$, remanding with instructions to modify the conclusions of law and judgment to conform to this decision, each party to bear its own costs on appeal.

Our former opinion outlined the facts prior thereto, and we refer to them. Since then, fee owner Meagher, by

quitclaim delivered and recorded during pendency of mandamus proceedings designed to clarify the remanding portion of our former decision, has transferred his interest, reserving a royalty. Defendant Juhan has transferred his interest in the operating rights to Equity Oil, and it to Weber Oil, neither litigants here. Both companies joined in a working agreement with Stock and Juhan to drill. As a result oil was discovered in September 1948, producing \$672,000 gross to trial time.

[1] Since our former decision, three claims were allowed to be brought into the case: 1) Meagher's, by amendment, to assert an oil royalty assigned in 1930 to Stock and Phebus, calling for reconveyance on condition broken; 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, which, eliminating non-essentials, reads:

"Whereas, a certain oil and gas lease dated the 4th day of June, 1924, given by James Wash Sheridan * * * to R. C. Hill, lessee * * * was recorded on the 25th day of July, 1924 * * * and

"Whereas the lessee and his assigns agreed that upon failure to fulfill the terms of the lease, 'The

lessee hereby agrees to relinquish, cancel and surrender the same to the lessors and to clear the record title of said lands from the lien or burden of said lease by making, executing, acknowledging and delivering a proper conveyance or release thereof and causing the same to be recorded' * * *

“Whereas, Paul Stock derived his interests by virtue of an assignment of the rights under this original lease;

“Whereas, the said lease and all rights thereto or incidental thereto are now owned by N. J. Meagher by virtue of cancellation of the lease by termination of production of oil and gas in accordance with the terms of the lease;

“Now, therefore, know all men by these presents, that Paul Stock does hereby cancel, release, relinquish and surrender to N. J. Meagher, his heirs and assigns, all of his right, title and interest in and to the said oil and gas lease, and all of his right, title and interest in and to the said oil and gas lease in so far as it conveys the lands above described.

/signed/ Paul Stock.”

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

Appellants Stock, Phebus and Juhan claim error 1) in allowing Meagher to amend his reply to assert title acquired from Stock four days after action brought; 2) in holding Meagher the real party in interest; 3) in adjudging Meagher free from laches and 4) fraud; 5) in con-

cluding the Release was supported by consideration; 6) in negating mistake justifying rescission; 7) in failing to hold the Release abortive as a surrender or 8) a transfer; and 9) in allowing Meagher to litigate $\frac{2}{3}$ of 1% royalty interest in this action. We agree only as to 9).

Appellant Ashley Valley asserts error in awarding operating rights in 40 acres (North 40) to Meagher instead of to Ashley Valley, with which contention we agree.

[2] Mindful of principles heretofore enunciated that the trial court's findings will not be disturbed unless manifestly against the weight of the evidence, appellants' objections are met in the order named.

[3-6] 1. Meagher, by amendment, properly was permitted to attack Stock's alleged interest by pleading title acquired four days after commencement of the action. This action and most of the pleadings were filed before we adopted the new rules. Without discussing what impact, if any, the rules would have, had the action been brought after their adoption, we can say generally that an entirely new and different cause may not be pleaded by reply. Nor could a plaintiff in a quiet title action assert title acquired after its commencement. But there are exceptions. Such title acquired after action begun, but before defendant pleads adversely, may be pleaded and proved in derogation of the defendant's adverse claim. We cannot view Meagher's claim of one-half interest alleged in his amended reply as a new or different cause. After reversal by this court, he conceded only half own-

ership in the originally pleaded whole. Meagher's action persists on the same theory,—one to quiet title. One may allege a greater and prove a lesser title, as is held generally and by this court, and we see no reason to disturb the rule because the lesser is pleaded by reply. Appellants' authorities seem confined to cases of clear departure, and not, as here, to cases where the theory persists but the quantum of estate is reduced by amendment.

[7] 2. We think Meagher's transfer of interest during pendency of the action does not deny him a continued role as plaintiff, nor does that role do violence to former Title 104-3-19, U.C.A.1943, or Rule 25(c), U.R.C.P., both of which allow prosecution of an action in the name of either grantor or grantee.

[8] 3. Appellants' claim of laches by Meagher is not borne out in the record. Over the years Meagher pursued and acquired the fee, a landowner's royalty and the Release from Stock. He named Stock defendant, wrote him requesting a release to clear the record, and received the same 4 days after action filed, promptly recording it. He pursued his action against Stock no further, but complained to him by letter about a recorded quitclaim to the same property given to another. Stock never answered this correspondence, asserted no claim, nor did his grantee, until nearly 5 years after Meagher brought action, 2 years after we validated the lease, and nearly 1 year after oil discovery. When he did appear by voluntary counterclaim, Meagher promptly resisted, pleaded title through Stock and without unreasonable delay pressed

for trial. Under such circumstances we cannot say the trial court erred in exonerating Meagher from suspicion of laches.

[9, 10] 4. As to the claim that Meagher was fraudulent by inserting recitals of forfeiture in the Release which he prepared for Stock's signature, and in correspondence with the latter, the simple answer lies in the facts that Stock admitted he had merely glanced at the Release and accompanying letter, thought he was signing a royalty transfer, and obviously was indifferent to and uninfluenced by such recitals and statements. All this predated our validation of the lease after lessee's 15 years of inactivity, all of which not unreasonably may have led a person to believe apparently as did Meagher, the trial court, and a dissenting Justice of this court, that forfeiture by abandonment had occurred, justifying the recitals. The fact that Stock did not rely on the recitals mentioned precludes rescission for fraud, since actionable fraud will not lie where one is induced to change his position, not because of any practiced deceit, but because of his own mistake. The record further seems to reflect that Stock was an oil man with a wealth of experience in oil matters involving large sums, an unlikely target for deception. His testimony at the trial contradicted his pleading that he relied on such recitals, since he stated he believed he was transferring oil royalties and that to date he had not read the counterclaim filed on his behalf.

[11] 5. The Release was supported by sufficient consideration. Meagher's acceptance and recordation thereof

relieved Stock of leasehold obligations, including a duty to match any offer of development by others, and the duty to drill if neighbors struck oil. Such relief from obligation will support a transfer.

[12] 6. That the Release was given by mistake warranting rescission could have merit if the record disclosed clear and convincing evidence of the mistake which Stock pleaded in his complaint, and a diligence on his part promptly to rectify it. The record does not show clearly such mistake, and a five-year lapse in taking affirmative action to rectify hardly seems the type to satisfy the rule. Stock's admitted mistake was a belief he signed an oil royalty transfer, not a belief that he signed an instrument to clear the record because of forfeiture. On such facts, it does not seem unreasonable that the trial court concluded there was no mistake warranting rescission.

7. Since we concluded that Stock's interest passed, we need not discuss the Release as a surrender.

[13,14] 8. Since Stock did not heed the recitals in the Release, they did not induce him to sign. Therefore, the authorities cited reflecting that intention to convey or not to convey may be interpreted by examining recitals in an instrument are inapropos. Hence we examine the words in the grant clause. We find the following:

“Paul Stock does hereby *cancel, release, relinquish and surrender* to N. J. Meagher, *his heirs and assigns, all of his right, title and interest* in and to the said oil and gas lease, *and all of his right, title and interest*

in and to the said oil and gas lease *in so far as it conveys the lands* above described.”

Our statute requires no word of art to quitclaim, and in kindred cases a transfer was held intended and effected. Care must be indulged in construing an instrument to pass title. Each case stands on its own words, combinations thereof, recitals, and other attendant facts, having in mind the rule that generally the instrument is construed in favor of a grantee. We see no error in finding a transfer of interest upon the particular facts of this case. If none resulted this court fell into error in its former opinion when it assumed such transfer, saying: “On Oct. 21, 1944, Stock released his interest in the lease to the plaintiff Meagher.”

[15] 9. We believe the $\frac{2}{3}$ of 1% (oil, not gas) royalty interest claimed by Meagher properly not determinable here. In 1930 he assigned such interest to Stock and Phebus, to be reconveyed on condition broken. 20 years later, 16 years after the right to have it returned, 6 years after commencing his action, and after oil was discovered, Meagher asserted his claim. During the 20 years there were many transfers of interest, some to persons not joined. Many questions may be posed as to intervening rights, right to specific performance or damages in a quiet title action, the matter of limitation of actions, rights of bona fide purchasers, estoppel, laches, etc., none of which we decide, but some of which well might vitally interest persons not joined. Should we decide any of

these, we would look somewhat askance at, and with much less sympathy toward Meagher's claim of laches by Stock, than we would Stock's claim of laches by Meagher, after 20 years silence and an apparent indifference toward the $\frac{2}{3}$ of 1% oil royalty that now looms large with discovery of oil. To hold Meagher the owner of the disputed percentage would require persons not parties to assume the burden and expense of asserting any rights they might have therein. We believe Meagher should shoulder that burden in a different proceeding if he is disposed to feel his claim meritorious.

[16] As to the North 40: In June, 1924, 480 acres, including the North 40, were leased to Hill for 3 years. In October 1924, Hill assigned the operating rights in 440 to Utah Oil, reserving 40 and an overriding royalty. Hill apparently did nothing during the term, but transferees of rights in the 440 did sufficient to induce this court to conclude that operating rights were in good standing in the 440 in 1947. In November, 1927, Hill assigned the Utah Oil agreement to Ashley Valley. That company thereby not only acquired Hill's rights (other than operating rights) in the lease and the override, but assumed the burdens of the modified lease as to 440 acres. At the end of the 3-year term of the original lease, one Smith was fee owner of the entire 480 acres. However, prior thereto, on May 27, 1927, one week before expiration of the term, Smith signed a modification agreement with Ashley Valley, under the terms of which the entire 480 acres, "the lands the subject of this agreement," were

included "insofar as they [the parties] have the power so to do". Utah Oil acquiesced by separate agreement with Ashley a few days later as to 440 acres. Hill signed neither and was bound by neither, but Smith bound himself to the terms, encumbered the fee therewith, and definitely obligated himself to include the North 40 if he had the "legal right and power so to do". We take it that a fair interpretation of such language requires the conclusion that if there were a reverter the next week when the term expired, he not only intended, but legally and equitably bound himself to recognize inclusion of North 40 rights in "the lands the subject of this agreement". No other logical conclusion can be indulged, since the parties to the agreement, and consenting holders of landowner's royalties, of which Meagher was one, knew that rights in the North 40 were outstanding in Hill, inescapably leading to the conclusion that those agreeing and consenting, including Meagher, intended the inclusion of the North 40 as to lessee's and override rights. The terms of the agreement would bind Smith's privies having knowledge thereof. Meagher not only was in privity with Smith, had knowledge of the terms, signed a rider consenting to its terms, but took the position, as stated in his brief, that being owner of a landowner's royalty, he was part owner in the property itself,—which, if true, should bind Meagher to its terms no less than landowner Smith. Under such circumstances it is difficult to understand how Meagher would not be duty bound to abide by what appears to have been an intention on his part

to include the North 40 in the agreement when and if the parties, and himself, had the "right and power" to do it. Meagher had the "right and power" at any time after he became fee owner, and it hardly lies in his mouth to denounce what appears to have been his own solemn intention and consent.

It is significant that the modification agreement was signed one week before expiration of the original lease, which seems to point up an intention on the part of all consenting, to include the North 40 in the event Hill failed to comply. Hence, assuming a reverter, Smith and Meagher must be considered to have intended and agreed to include the North 40. Assuming no reverter, and that the work on the 440 acres kept rights in the North 40 alive, a matter discussed later, Ashley Valley obtained operating rights therein by virtue of Hill's transfer in October 1930. Further evidence that Meagher intended the North 40 to be included in the agreement is found in his own reply, filed 18 years later, when he admitted that Smith and Ashley Valley "with the consent of the royalty owners, entered into a modification agreement *whereby the lease of June 4, 1924 * * * was modified,*" although Meagher qualified the quoted significant language in later pleadings.

[17] One other matter bears discussion. The parties stipulated that if the North 40 were not included in the modification agreement, operating rights reverted to Meagher as Smith's grantee, otherwise they belonged to Ashley Valley. We are bound by this stipulation, but

disagree with the reason upon which apparently it was based. It appears that an assumption was indulged that Hill, having transferred operating rights in 440 acres, nevertheless personally was bound to comply with all of the terms of the original lease on the North 40 which he reserved. Whether correct in believing such an assumption was indulged, we do say this: That *if* operations on the 440 acres satisfied the terms of the original lease of June 4, 1924, we are of the opinion that the lease was in good standing as to the North 40, the operations mentioned having inured to the benefit thereof as though conducted thereon,—thus preventing forfeiture and reverter. Such conclusion is sanctioned in a line of well reasoned decisions. We believe the rule consonant with practicality and common sense in an industry newly born in Utah, involving large expenditures,—where transfers of partial interests may be important in attracting necessary risk capital, not only to protect the whole tract, but to protect a lessee's retained interest until such time as he better may be able to develop it. There is something of an analogy, technically debatable, in annual labor cases relating to mining claims, where work performed on one claim which benefits others may be credited to such other claims.

The rule expressed is as it should be, since the lessor seldom can be harmed if the work is accomplished anywhere on the leased premises, and the lessee, who may be one of hundreds of small undercapitalized investors in an infant industry, may take advantage of partial

transfer to attract risk capital, retaining a portion of the tract unto himself, without facing the choice of risking all by expensive individual effort and expenditure, or losing all on the altar of the same risk capital.

McDONOUGH and WADE, JJ., concur.

WOLFE, Chief Justice (concurring in part—dissenting in part).

I am prepared to agree that operating rights in the North 40 should be awarded to the Ashley Valley Oil Company; and also in the awarding of $1\frac{1}{3}\%$ royalty in oil, not gas, to Meagher instead of the 2% awarded by the lower court.

I am not prepared to hold that the so-called Release (Exhibit A-30) signed by Stock on October 21, 1944 was intended to be a conveyance of Paul Stock's interest in the lease of June 4, 1924 as the same was modified by the Modification Agreement of May 21, 1927, nor that it was anything but a "Release" of Stock's interest in the lease of 1924.

I concur in the holding that the two-thirds royalty interest of Meagher cannot be adjudicated in this action.

I concur as to the conclusion that no error was committed by the lower court allowing Meagher to amend so as to attack Stock's alleged interest by pleading title acquired four days after commencement of this action because issues had not then been joined and that no new cause of action was introduced by permitting Meagher to

amend his reply. Also that Meagher could continue as plaintiff after he had assigned his interests to his children.

I agree that the charge that Meagher was guilty of laches in pursuing the present action and that the charges of fraud by Meagher have not been sustained by the evidence and that technically there is a consideration for the so-called Release, whatever may be its extent and nature, but am not prepared to hold that it was intended to be nor was an instrument of conveyance, or if so that it conveyed Stock's interest in the lease of June 4, 1924 modified by the Modification Agreement of May 21, 1927, there being doubt that Stock acquiesced or agreed with such modification.

CROCKETT, J., concurs in the result.

Appendix D

THE INTERLOCUTORY JUDGMENT AND DECREE ENTERED DECEMBER 13, 1955 IN THE INSTANT CASE.

This decree is hereinafter set forth in full.

No. 3228—Civil

INTERLOCUTORY JUDGMENT AND DECREE

The above entitled cause came on for hearing on motions for summary judgment presented by plaintiffs against all appearing defendants and by defendant Weber Oil Company against plaintiffs, and also upon motions to strike filed by all said defendants directed to plaintiffs' motion for summary judgment and the affidavit of N. J. Meagher in support thereof. All parties were represented at said hearing by their respective counsel of record.

Appearances: Gilbert C. Wheat, Esq. and Herbert Van Dam, Esq. on behalf of plaintiffs.

Harley W. Gustin, Esq. on behalf of defendants Equity Oil Company and Weber Oil Company.

Burton W. Musser, Esq., Richard Downing, Esq. and Oliver W. Steadman, Esq. on behalf of defendants Joe T. Juhan and Paul Stock.

The Court has considered said motions, the affidavits in support thereof, the records and files in the within action, the documentary evidence admitted at the hearing, and the briefs. The Court has rendered its memorandum

of decision entitled "Ruling on motions" dated October 14, 1955.

With respect to the motions to strike, the Court has considered only the matters set forth in the documents involved which it deems material and pertinent to the determination of the issues before the Court without ruling upon the motions to strike or their numerous subsections.

With respect to the motions for summary judgment, the following facts are substantially uncontroverted, and the following principles of law are applicable thereto:

This action relates to the rights and interests of the parties as to oil only in and under an oil and gas lease dated June 4, 1924, executed by James Wash Sheridan and Wife, as Lessors, and R. C. Hill, as Lessee, and recorded in the office of the Uintah County Recorder on July 25, 1924, in Book 3, pp. 313-318, Miscellaneous Records, and a modification thereof by agreement dated May 21, 1927, between M. P. Smith and wife and Ashley Valley Oil Company, recorded in said office on June 27, 1927, in Book 3, pp. 543-556, Miscellaneous Records, insofar as said lease, as so modified, pertains to that 440-acre parcel of land situated in Township 5 South, Range 22 East, Salt Lake Meridian, County of Uintah, State of Utah, which is particularly described as follows:

Section 15:

SE $\frac{1}{4}$ of SE $\frac{1}{4}$;

Section 22:

E $\frac{1}{2}$ of NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of SE $\frac{1}{4}$;

Section 23:

NW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$,
SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$.

Said lease, as modified, so far as concerns said lands, is hereinafter termed "Sheridan Lease."

Prior to October 21, 1944, defendant Paul Stock owned an undivided half interest in the lessee's rights as to oil under said lease. One Ray Phebus was the owner of the remaining half interest.

By instrument dated October 21, 1944, recorded November 3, 1944, defendant Paul Stock transferred his said half interest in the Sheridan Lease to plaintiff N. J. Meagher.

Defendant Joe T. Juhan acquired the remaining half interest in the Sheridan Lease which was formerly owned by said Ray Phebus, and plaintiffs assert no claim to said half interest.

In 1944, a quiet title suit was instituted in this Court by plaintiff N. J. Meagher (action Civil No. 2238), in which action the ownership of interests in said lease was put in issue. During the pendency of said litigation, plaintiffs N. J. Meagher and Katherine T. Meagher, his wife, transferred all of their interest in the lessee's rights in the Sheridan Lease to the remaining plaintiffs herein. In said litigation it was finally adjudicated that it was proper and permissible for said N. J. Meagher to continue said litigation in his name in behalf of said transferees.

In said action, it was finally adjudicated that N. J. Meagher had acquired, by the document of October 21, 1944, from defendant Paul Stock, the undivided one-half interest in the Sheridan Lease as to oil which had been owned by said Stock, as aforesaid.

Defendants Paul Stock and Joe T. Juhan appeared generally in said action, Civil 2238, and contended that the aforesaid document, executed by defendant Paul Stock in favor of plaintiff N. J. Meagher, was not effective to transfer Stock's half interest in the lease for numerous reasons, including mistake of law and fact, fraud and failure of consideration, and said Stock and Juhan also asserted that plaintiff N. J. Meagher was estopped from asserting any rights under said document and was guilty of laches in respect thereto. These issues were tried and finally determined adversely to the contentions of said Stock and Juhan in said litigation, Civil 2238.

During the pendency of the aforesaid litigation, Civil 2238, defendant Joe T. Juhan assigned portions of whatever interest he may have had in the Sheridan Lease to defendant Paul Stock and to defendant Equity Oil Company, both of whom had actual and constructive notice of the prior transfer from defendant Paul Stock to plaintiff N. J. Meagher. Defendant Equity Oil Company thereafter assigned its entire interest to its wholly-owned subsidiary, defendant Weber Oil Company.

Certain assignments and agreements between the various defendants appear to transfer interests in the half of the lease originally owned by defendant Paul Stock, as

well as to transfer interests in the half of the lease originally owned by Ray Phebus. To the extent said documents purport to affect the half of the lease formerly owned by said Stock, they are ineffective in view of the final adjudication in action Civil 2238 that said half of the lease had been conveyed to plaintiff N. J. Meagher by defendant Paul Stock.

The transfers of interests between the various defendants, so far as the same relate to the undivided half of the lease originally owned by Ray Phebus as aforesaid, are, to that extent, valid against plaintiffs, and plaintiffs assert no interest therein.

The Phebus half interest is presently owned by defendants Weber Oil Company, Joe T. Juhan, and Paul Stock by virtue of an agreement dated April 9, 1951, between said defendants, which, in substance, provides that regardless of the outcome of any litigation said three defendants shall divide between themselves whatever interests any of them may obtain in the Sheridan Lease. No contentions are raised in this proceeding between defendants Weber Oil Company, Juhan and Stock as to their respective interests in the lease as between themselves.

No issue concerning plaintiffs' ownership of an undivided half interest in the Sheridan Lease as to oil exists in this proceeding, so far as concerns defendants Stock and Juhan, which was not raised or could not have been raised and determined in Civil 2238, including said defendants' contentions here based on unjust enrichment and

constructive trust, and said defendants are precluded from litigating or re-litigating such matters.

Defendant Weber Oil Company, who is only a successor in interest and is in privity with defendants Juhan and Stock, and who became such after the transfer from Stock to Meagher, with both actual and constructive notice thereof, is likewise bound and concluded by the judgment in said action, Civil 2238.

Equity Oil Company, which appears in the chain of title to the lease, has transferred all of its interest therein to defendant Weber Oil Company, and asserts that it appears in this action only as a stakeholder requesting the instructions of this Court as to whom it should pay the proceeds of its operations.

Defendant Equity Oil Company is party to an operating agreement between it and defendants Weber Oil Company, Stock and Juhan whereby it is authorized, as the agent of said defendants, to conduct all operations under the Sheridan Lease in their behalf.

Pursuant to said operating agreement, Equity Oil Company has entered upon the leased lands, drilled for, produced and marketed all of the oil which has been extracted therefrom.

Pursuant to stipulation made in open court and approved by the prior order of this Court, defendant Equity Oil Company holds in a special fund proceeds of oil sales which are undistributed and are subject to the further orders of this Court.

By virtue of the foregoing and good cause otherwise appearing, therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Judgment and Decree of this Court in Civil No. 2238 is a final and conclusive adjudication that plaintiffs N. J. Meagher, Jr., Mary Alice Arentz, Katherine C. Ivers and Margaret Frances Price own an undivided one-half interest in and to all of the lessee's rights with respect to oil under the aforesaid Sheridan Lease as against any and all adverse claims of defendants Joe T. Juhan and Paul Stock.

2. The aforesaid judgment likewise concludes and is binding upon Weber Oil Company, so far as concerns any and all adverse claims of defendant Weber Oil Company to any interest in the aforesaid undivided one-half interest in said Lease, because as to any such interest defendant Weber Oil Company is a mere successor in interest to and is in privity with defendants Juhan and Stock.

3. Defendants Weber Oil Company, Joe T. Juhan and Paul Stock own the remaining undivided one-half interest in and to the lessee's rights with respect to oil under the aforesaid Sheridan Lease as against any and all adverse claims of plaintiffs and each of them.

4. Defendant Equity Oil Company has no right, title or interest in or to the aforesaid Sheridan Lease, but at all relevant times has been and now is the agent of defendants Weber Oil Company, Joe T. Juhan and Paul

Stock, and in said capacity has acted as the operator under said lease and has produced and marketed all the oil which has been extracted from the lands covered by said lease.

5. By virtue of their interests in said lease, as aforesaid, plaintiffs N. J. Meagher, Jr., Mary Alice Arentz, Katherine C. Ivers and Margaret Frances Price are entitled to one-half of the oil produced thereunder or the proceeds thereof, subject to the payment of one-half of the sums due the owners of outstanding royalties, (which royalties amount to 18½ percent of the gross production or proceeds thereof) and subject to one-half of the reasonable and allowable expenses incurred by defendants or any of them in the operations conducted under said Sheridan Lease. In terms of gross crude oil runs, or the proceeds thereof, the aforesaid plaintiffs are entitled to 40.75 percent, less one-half of said expenses.

6. Defendant Equity Oil Company, as the agent of defendants Weber Oil Company, Joe T. Juhan and Paul Stock, is hereby directed to render promptly a full, complete and detailed report and accounting to the plaintiffs named in Paragraph 5. above and in such form as is customarily employed in the oil industry between lease operators and the owners of working interests in oil leases, setting forth all pertinent matters concerning the oil produced under said lease from discovery to September 30, 1955, (or, in the alternative, to whatever date in September of 1955 is the accounting date employed by Equity Oil Company) together with the customary details con-

cerning the quantity, gravity of oil and related matters, and setting forth the customary information and detail regarding sales or other disposition of oil, together with a detailed enumeration of all expenses and distributions claimed as chargeable to said operations. Said report and account shall cover the period from commencement of said operations to and including the date of account aforesaid. From and after said date of accounting, and for so long as defendant Equity Oil Company continues to act as the operator of said lease as agent for any owner of any interest in said lease, defendant Equity Oil Company is hereby directed to render to plaintiffs the customary monthly reports and accounts as to its operations under said lease. In no event shall any of the aforesaid reports and accounts contain less information or detail than shall have been contained in the reports and accounts, if any, heretofore rendered by Equity Oil Company to its principals, Weber Oil Company, Joe T. Juhan and Paul Stock, or any of them, with respect to its activities, receipts and disbursements as operator of said lease.

7. Upon rendering its report and account to the accounting date in September 1955, as aforesaid, defendant Equity Oil Company is directed to pay forthwith to the plaintiffs hereinabove named in Paragraph 5. 40.75 percent of the proceeds of oil produced and marketed from the lands covered by said lease, less one-half of the expenses which have been expended or incurred by it or its said principals in the operations conducted under said lease and which are claimed to be chargeable to said oper-

ations, from the commencement of said operations to and including the accounting date in September of 1955 hereinabove defined. In no event shall the amount so paid to said plaintiffs be less than the amounts paid, or claimed to be payable, as to oil, to the owners of working interests in said lease other than said plaintiffs. Thereafter, defendant Equity Oil Company is directed to pay monthly to said plaintiffs their share of the proceeds of oil produced from the lands covered by said lease as said share is hereinabove defined, and to continue to make said payments so long as Equity Oil Company continues to act as the agent for any owner of any interest in said lease with respect to operations thereunder.

8. Defendant Equity Oil Company is hereby authorized to employ the funds contained in the special account described above in making the payments to plaintiffs as directed herein.

9. The facts hereinabove set forth exist without substantial controversy, and whether there are any material facts which are controverted in good faith can only be determined after the aforesaid report and account is rendered. Since defendant Equity Oil Company will claim credit in said account for such expenses as it deems allowable, defendant Equity Oil Company is directed to pay to plaintiffs the amount due them, as reflected in its account, forthwith upon rendition thereof, as said amount will constitute the minimum amount payable to plaintiffs.

10. This Judgment and Decree is interlocutory, no ruling as to costs or interest is made at this time, and the Court retains jurisdiction of the cause for such further proceedings as shall be deemed necessary upon motion of any party or upon the Court's own motion.

Dated this 13th day of December, 1955.

By The Court:

R. L. TUCKETT

Appendix E

THE INADVERTENT ORDER OF DECEMBER 13, 1955.

The following is a complete copy of this Order.

O R D E R

Civil No. 3228

The defendants Paul Stock and Joe T. Juhan have moved this Court for an order requiring the above named defendant Equity Oil Company to forthwith pay over to Paul Stock and Joe T. Juhan jointly a sum of money equal to one-half of the 40.75% of the proceeds of the sale of crude oil after appropriate expenditures have been deducted therefrom, which Equity Oil Company is now holding as stakeholder, and said motion having been submitted to the Court by all of the parties and no objection thereto having been made by any of the parties and the Court being fully advised in the premises, and good cause appearing therefor, it is

ORDERED that said Equity Oil Company forthwith pay over to said Paul Stock and Joe T. Juhan jointly, or to their order, one-half of the 40.75% of the proceeds of the gross crude oil runs now in its hands as stakeholder after deducting the appropriate proportionate share of operating expenditures.

DATED this 13 day of December, 1955.

BY THE COURT:

R. L. TUCKETT

District Judge

Appendix F

THE ORDER OF DECEMBER 15, 1955, VACATING THE ORDER OF DECEMBER 13, 1955.

The above described Order is set forth in full as follows:

No. 3228 O R D E R

In this matter the Court on the 13th day of December, 1955, made and entered an order based upon a motion filed by the defendants Paul Stock and Joe T. Juhan, whereby the Court ordered that the defendant Equity Oil Company, a Corporation, pay over to the said Paul Stock and Joe T. Juhan one-half of the 40.75 per cent of the proceeds of the gross crude oil runs now in its hands after deducting an appropriate share of operating expenditures.

After further consideration of the motion of the said Paul Stock and Joe T. Juhan, the Court now concludes that said order was erroneously made and entered, on the grounds that there is no issue of law or of fact presented by the pleading on file herein upon which said order could be based, and that said order is in conflict with the interlocutory judgment and decree entered in said cause on the 13th day of December, 1955.

It is hereby ordered that the Order of the Court dated the 13th day of December, 1955 be and the same is hereby recalled, vacated and set aside.

Dated at Provo, Utah, this 15th day of December, 1955.

BY THE COURT:

R. L. TUCKETT

Judge

Appendix G

AFFIDAVIT OF HERBERT VAN DAM DATED JANUARY 3, 1956.

This Affidavit is set forth in full as follows:

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION TO CLARIFY RECORD

Civil No. 3228

STATE OF UTAH :
) ss
County of Salt Lake :

HERBERT VAN DAM, being first duly sworn, deposes and says:

I am one of the attorneys for plaintiffs in the above entitled cause.

On December 13, 1955, while in my office in Salt Lake City, I received a telephone call from Judge Tuckett in Vernal. He told me he had decided to enter the Interlocutory Judgment and Decree proposed by plaintiffs. I asked him if he had made any changes in it, and he said he had made none.

Then Judge Tuckett said that Mr. Musser had presented an order to him in behalf of defendants Stock and Juhan, and he asked me if we objected to it. I asked him whether the order would have any effect upon the rights of plaintiffs under the Interlocutory Judgment and Decree. He

said it was his understanding that it would not. I then told the Judge that I could see no reason for objecting to something which is none of our concern, and said that it is no concern of plaintiffs how defendants divide their interest in the oil proceeds as between themselves. I did not then request the Judge to disclose the precise contents of the order to me, and we concluded our conversation without his doing so.

No copy of the order which Mr. Musser presented to Judge Tuckett was ever served upon me or anyone representing plaintiffs. I therefore concluded that it would be prudent to determine the precise contents of the order, and, within fifteen or twenty minutes after the aforesaid telephone conversation, I telephoned back to Judge Tuckett and asked him to advise me just what the order was. He did so. I then told him it seemed to me that the order was in conflict with the Interlocutory Judgment and Decree, and had the effect of distributing part of the impounded funds both to plaintiffs and to defendants Stock and Juhan at the same time. Judge Tuckett said he did not intend to do any such thing, and stated that he would withhold the order and take it back with him to Provo. He also said he would grant Mr. Musser a hearing on the matter if Mr. Musser desired it. He requested me to notify counsel that he had entered the Interlocutory Judgment and Decree and to notify Mr. Musser of his intentions with respect to the order. I called Mr. Gustin and informed him of the Interlocutory Judgment and Decree, and told him that Mr. Musser had requested an order

which the Judge had withheld. I tried to get Mr. Musser on the telephone several times that afternoon and also the next day, but could not reach him.

On or about December 15, Judge Tuckett telephoned me from Provo and informed me he had made a formal order setting aside the order of December 13, which had been presented by Mr. Musser as aforesaid.

During the late afternoon of December 15, Mr. Gustin's secretary came to my office to serve upon me a notice of entry of the order of December 13. I informed her I would not accept service of such notice because I had been informed by the Judge that the order had been set aside. She telephoned to Mr. Gustin's office from my office, and got Mr. Musser on the line. I talked to Mr. Musser who said the order of the 13th had been signed and filed and said he had a photostatic copy of it.

When Mr. Musser told me that the order of December 13, had been signed and filed, and after Judge Tuckett advised me that the order of December 13, had been vacated and set aside, I contacted representatives of the Walker Bank & Trust Company where the impounded funds are deposited in an effort to prevent withdrawal of any such funds. On the morning of December 16, I met Mr. John M. Wallace, President of the bank, at the bank. I then telephoned to Judge Tuckett and asked him if he would inform Mr. Wallace of the status of the matter. He said he would do so, and I handed the telephone to Mr. Wallace, who talked with the Judge. I did not hear

what the Judge said to Mr. Wallace, but when he hung up Mr. Wallace said the Judge had instructed him not to permit the withdrawal of any of the impounded funds in reliance upon the order of December 13.

Herbert Van Dam

Herbert Van Dam

Subscribed and sworn to before
me this third day of January,
1956.

H. Morton Murdock
Notary Public
Salt Lake City, Utah

(Seal)

My Commission Expires:
November 1, 1959

Appendix H

DECLARATION OF TRUST DATED APRIL 14, 1945, EXECUTED BY CHAS. S. HILL IN FAVOR OF PAUL STOCK.

This document is Exhibit A-48 in the quiet title suit, (District Court No. 2238). It discloses the unrecorded agreement under which Chas. S. Hill received a quitclaim from Stock subsequent to the Stock-to-Meagher transfer. Except for the acknowledgment, it is reproduced in full.

D E C L A R A T I O N

The undersigned Charles S. Hill, herein referred to as Hill, having simultaneously herewith received from Paul Stock, herein referred to as Stock, a Quitclaim Deed and Assignment, also signed by his wife, in respect to the following described land:

Section 15:

E $\frac{1}{2}$ of SE $\frac{1}{4}$;

Section 22:

E $\frac{1}{2}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$;

Section 23:

NW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$;

All in Township 5 South, Range 22 East, Salt Lake Meridian, Uintah County, Utah;

and having received said land in trust and under agreement, does hereby declare the said trust, and state said agreement as follows:

Hill agrees to investigate the title of Stock in respect to said land; to manage the interest of said Stock therein

with all the rights of ownership, including the right to sell, assign or contract with reference to the same and to bring suits to assert, protect and defend the said interest; to do whatever in his judgment may be advisable to make said interest valuable and saleable; and to pay all expenses in relation thereto. But it is agreed that Hill shall have no power whatsoever to contract any debt or obligation in any way binding upon Stock, and that if he should contract, or attempt to contract, any debt binding on Stock, his interest in the premises shall immediately cease and all title revert to Stock. It is the purpose of the parties that ultimately the said interest shall be converted into money or into a property with unquestioned title, either readily saleable or producing income. Hill shall have the right to reimburse himself for all expenditures out of the said joint estate, and upon being reimbursed, the beneficial interest in and to said property, or what remains after payment of all the expenses and the satisfaction of all obligations, shall belong to the parties in the proportion of 12½ percent to Stock and 87½ percent to Hill, and either party shall have the right, when there is any money on hand in addition to what may be needed for future operations, or when there is any property of either class above provided, to have the same divided. Hill may at any time surrender this contract, in which event his interest shall revert to Stock.

WITNESS the signature of Charles S. Hill, this 14th day of April, 1945.

Chas. S. Hill

Appendix I

DECLARATION OF TRUST DATED JANUARY 5, 1946, EXECUTED BY JOE T. JUHAN IN FAVOR OF CHAS. S. HILL.

This document is Exhibit A-49 in the quiet title suit, (District Court No. 2238). It contains the terms under which Hill quitclaimed to Juhan, and discloses that the Stock interest which Hill purported to transfer to Juhan, is contingent upon successful litigation between Juhan and Meagher. It also discloses that J. L. Dougan has agreed to finance all necessary litigation pertaining to the lease.

The declaration of trust is set forth in full, except for the acknowledgment.

D E C L A R A T I O N

The undersigned JOE T. JUHAN, herein referred to as Juhan, having simultaneously herewith received from CHARLES S. HILL, herein referred to as Hill, a Quitclaim Deed and Assignment, also signed by his wife, in respect to the following described land:

Section 15:

E $\frac{1}{2}$ of SE $\frac{1}{4}$;

Section 22:

E $\frac{1}{2}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$;

Section 23:

NW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$;

All in Township 5 South, Range 22 East, Salt Lake Meridian, Uintah County, Utah;

and having received said land in trust and under agreement, does hereby declare the said trust, and state said agreement as follows:

Juhan agrees to investigate the title of Hill in respect to said land; to manage the interest of said Hill therein with all the rights of ownership, including the right to sell, assign or contract with reference to the same and to bring suits to assert, protect and defend the said interest; to do whatever in his judgment may be advisable to make said interest valuable and saleable, and to pay all expenses in relation thereto. But it is agreed that Juhan shall have no power whatever to contract any debt or obligation in any way binding upon Hill, and that if he should contract, or attempt to contract, any debt binding upon Hill, his interest in the premises shall immediately cease and all title revert to Hill. It is the purpose of the parties that ultimately the said interest shall be converted into money or into a property with unquestioned title, either readily saleable or producing income. It is recited that this declaration is made with knowledge of and subject to a declaration by Hill to one Paul Stock of Cody, Wyoming, by the terms of which the said Stock was to receive Twelve and One-half (12½%) Per Cent of the net. In order to fully show all interests that may affect the interested parties as of this date, and without increasing the interest of the said Stock, it is now recited that one J. L. Dougan has agreed to finance all necessary litigation for an undivided Fifty (50%) Per Cent interest in the recovery from the above described land, which has

been obtained by two quitclaim deeds and assignments, one from Ray Phebus and one from Paul Stock. A Twelve and One-half (12½%) Per Cent interest in the said recovery from the above described acreage to belong to said Stock, based on his half interest when and if the title to his interest is sustained by a court of competent jurisdiction or if his former interest is adjudicated as belonging to T. J. Meagher, then and in such event the said Stock shall have no interest. A Twelve and One-half (12½%) Per Cent interest in the recovery from the above described land to belong to Phebus as to his one-half interest insofar as the oil is concerned, and as to the entire interest insofar as the gas is concerned, and the remaining interest in all said above described land under both the Phebus and the Stock quitclaim deeds and assignments to be owned and held by the said Juhan. In the event that the former Stock interest is held to be the property of Juhan it is understood and agreed that one-half of what is saved and retained by Juhan as herein provided shall be held in trust for Hill and shall be and become his property and subject to conveyance or assignment to Hill as hereinafter provided. Prior to the receipt of any monies or interests by any of the parties save and except J. L. Dougan, it is understood that Juhan shall have the right to reimburse himself for any and all cash out-of-pocket expenditures which now amount to
together with
any and all necessary expenditures to which he may be put in the future, and upon being reimbursed the bene-

ficial interest in and to said property, or what remains after payment of all the expenses and the satisfaction of all obligations, shall belong in the proportions hereinabove provided for, and any of said parties shall have the right, when there is any money on hand, in addition to what may be needed for future operations, or when there is any property of either class above provided, to have the same dividend and to receive conveyances therefor. Juhan may at any time surrender this contract, in which event his interest shall revert to Hill.

WITNESS the signature of JOE T. JUHAN, this 5th day of January, 1946.

Joe T. Juhan

JOE T. JUHAN

Appendix J

LETTER AGREEMENT OF JULY 9, 1948, BETWEEN JOE T. JUHAN AND PAUL STOCK.

This agreement is Exhibit A-51 in the quiet title suit, (District Court No. 2238). It is signed by Stock and Juhan and provides that Juhan will go forward at his expense with the quiet title litigation. It also discloses the plan to eliminate Chas. S. Hill and Phebus from the chain of title. It refers to a contemplated "joint venture agreement" between Equity Oil Company, Juhan and Stock, which parties are to divide the property in the proportions 50 percent, 25 percent and 25 percent, respectively.

JOE T. JUHAN
Oil and Mining
Glenwood Springs, Colo.

July 9th, 1948.

Mr. Paul Stock,
Cody, Wyoming.

Dear Mr. Stock:

This is to confirm our understanding this day with respect to the following described land situate in Uintah County, State of Utah, to-wit:

Section 15:

E $\frac{1}{2}$ of SE $\frac{1}{4}$;

Section 22:

E $\frac{1}{2}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$;

Section 23:

NW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$;

All in Township 5 South, Range 22 East, Salt Lake Meridian, Uintah County, Utah.

With your cooperation, I am to secure the release of Charles S. Hill of that certain Declaration executed in your favor under date of April 14th, 1945, and likewise the release of that certain Declaration acknowledged by me under date of December 5th, 1945, in favor of Charles S. Hill, both releases to confirm the Quit-Claim Deed in my favor executed by Charles S. Hill and wife under date of January 5th, 1946, and all affecting the above described property.

Notwithstanding said Release, I will go forward, at my own cost and expense, in the litigation now undertaken to quiet title to the mineral rights in the said property, in support of the Modification Agreement dated the 21st day of May, 1927, by and between M. P. Smith and Ellen M. Smith, his wife, as first parties, and Ashley Valley Oil Company, second party.

Upon obtaining the Releases indicated, I will quit-claim to you an undivided one-fourth ($\frac{1}{4}$) interest in the above described property, the same to become the subject of a Joint Venture Agreement between Equity Oil Company, a Utah corporation, the owner of an undivided fifty per cent (50%) interest in and to said property, myself, the owner of an undivided twenty-five per cent (25%) interest

in said property, and yourself, as the owner of the remaining twenty-five per cent (25%) interest in said property.

In consideration of the foregoing, you are to forthwith pay to me the sum of Six Thousand Five Hundred (\$6,500.00) Dollars, the same to be used for the purpose of honoring a draft drawn upon me in that amount by Ray Phebus, the purchase price of his interest in said property, and to forthwith pay to me the further sum of Thirteen Thousand (\$13,000.00) Dollars, the same being the balance of the purchase price on your part for twelve and one-half per cent (12½%) interest to be conveyed to you as aforesaid, making your interest twenty-five per cent (25%) of the whole.

Very truly yours,
Joe T. Juhan

The foregoing is hereby
approved this 9th day of July, 1948.

Paul Stock

Appendix K

JOINT VENTURE AGREEMENT DATED JULY 9, 1948, BETWEEN EQUITY OIL COMPANY, JUHAN AND STOCK.

This agreement is Exhibit A-52 in the quiet title suit, (District Court No. 2238). The agreement confirms the understanding between Equity Oil Company (acting by J. L. Dougan), Stock and Juhan to form the joint venture agreement which is mentioned in the letter agreement between Stock and Juhan, hereinabove set forth as Appendix J. It provides for division of interests between the three parties 50 percent to Equity, 25 percent to Juhan and 25 percent to Stock. It is reproduced here in full.

July 9th, 1948.

Mr. Paul Stock,
Cody, Wyoming.

Dear Mr. Stock:

Subject to the approval of the Board of Directors of Equity Oil Company, a Utah corporation, this is to confirm our understanding as to a Joint Venture Agreement to develop the interests indicated in that certain letter addressed to you this date by Joe T. Juhan, the Joint Venture Agreement to be executed upon terms mutually agreeable by Equity Oil Company, Joe T. Juhan and yourself and to contain, among other things, provisions with respect to the assignability of interests, subject to lien rights, after the assigning party has given either one or both of the parties not assigning the first right of re-

fusal of any bona fide offer; provided, however, that as to Equity Oil Company an assignment to a wholly-owned subsidiary shall not constitute a sale.

The purpose of the Joint Venture Agreement would be to prospect and develop the property particularly described in the aforesaid letter, each party to bear his or its proportionate share in the cost and expense thereof, the proportionate share to be based upon undivided interests, fifty per cent (50%) to Equity Oil Company, twenty-five per cent (25%) to Joe T. Juhan and twenty-five per cent (25%) to you.

It is contemplated that a test well will be drilled in the near future, provided materials and appropriate drilling contracts can be obtained for that purpose, anticipating that the well will be drilled to a depth to test the Weber sands, the drilling to be done at such periods of the year, preferably this fall, as weather and other conditions warrant and permit, with the view of completion prior to the coming winter. Any dry hole contributions from third parties will be to the benefit of the joint venture.

Very truly yours,

Equity Oil Company

by J. L. Dougan,

President

The foregoing is hereby approved this 9th day of July, 1948.

Paul Stock,

Joe T. Juhan.

Appendix L

DEFENDANTS' AGREEMENT OF APRIL 9, 1951.

Exhibit P-13 in District Court No. 3228 (the instant case) received in evidence at the hearing of the motion for summary judgment. It consists of an agreement between Equity Oil Company (by J. L. Dougan), Weber Oil Company (by J. L. Dougan), Stock and Juhan, and is reproduced here in full, except for omission of the acknowledgments. This agreement discloses that when Weber, Stock and Juhan entered into the operating agreement under which Equity Oil Company was named their agent and operator, Weber, Stock and Juhan claimed to own all of the Sheridan Lease in the proportions of 50 percent, 25 percent and 25 percent, respectively. This agreement of April 9, 1951 was made by the defendants between themselves one month after the decision was rendered in the lower court after the second trial of the quiet title suit. It discloses that the defendants are now confirming their previous operating agreement and, as to title between themselves, they now agree that whatever their interest may have been prior to this time, or may later be determined to be, they will share between themselves whatever they ultimately attain in the proportions of 50 percent to Weber, 25 percent to Stock and 25 percent to Juhan. This is referred to in plaintiffs' Brief as defendants' "all-for-one, one-for-all" agreement.

AGREEMENT

EQUITY OIL COMPANY, a Utah corporation, herein called Equity, WEBER OIL COMPANY, a Colorado corporation, herein called Weber, PAUL STOCK of Cody, Wyoming, herein called Stock, and JOE T. JUHAN of Glenwood Springs, Colorado, herein called Juhan, agree with one another as follows:

1. Weber, Stock and Juhan on or about the 30th day of December, 1948 claimed to be the holders and owners of all the working or operating rights in and to Four Hundred Eighty (480) acres of land herein referred to as the "subject lands", described as follows:

Section 15:

E $\frac{1}{2}$ of SE $\frac{1}{4}$;

Section 22:

E $\frac{1}{2}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$;

Section 23:

NW $\frac{1}{4}$ of NW $\frac{1}{4}$; S $\frac{1}{2}$ of NW $\frac{1}{4}$; N $\frac{1}{2}$ of SW $\frac{1}{4}$; SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$;

all in Township 5 South of Range 22 East, Salt Lake Meridian, Uintah County, Utah;

all said operating rights in and to the said subject lands being held and owned, fifty percent (50%) by Weber, Twenty-five percent (25%) by Stock and Twenty-five percent (25%) by Juhan; the said parties on the said 30th day of December, 1948, entered into an agreement, herein referred to as the "operating Agreement", in which agreement Equity was named as the operator and a party to the same, as such.

2. The parties ratify and confirm the said operating agreement and all of the provisions thereof, except as herein expressly modified or changed, and they mutually agree that whatever their aggregate working or operating rights were on the 30th day of December, 1948, or may hereafter be determined to have been as of that date, said working or operating rights shall be owned and held by them in the proportions of Fifty Percent (50%) thereof to Weber, Twenty-five percent (25%) thereof to Stock and Twenty-five percent (25%) thereof to Juhan; provided further that the lien claimed by Weber on a portion of Juhan's interest shall not be affected hereby and provided further that each of the parties hereto releases and conveys, without warranty of title, to the other party such interest in the working or operating rights as may be necessary to establish the aforementioned holdings, to-wit: Fifty percent (50%) thereof to Weber, Twenty-five percent (25%) thereof to Stock and Twenty-five percent (25%) thereof to Juhan, and agree that any loss, diminution or failure of the title, or the title of any of them, claimed, held or owned as of December 30, 1948, will be borne by the said Weber, Stock and Juhan in the proportions stated. The respective parties hereby acknowledge the receipt of One Dollar (\$1.00) to each of them in hand paid by the other, and the mutual covenants, conditions, ratifications and approvals in this agreement contained, as the full, complete consideration of this agreement.

3. The covenants and conditions of this agreement are binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

Witness the signatures of Equity and Weber by their respective officers and the signatures of Stock and Juhan, this 9th day of April, 1951.

Equity Oil Company

by J. L. Dougan

President

Weber Oil Company

by J. L. Dougan

President

Paul Stock

Joe T. Juhan

Appendix M

TESTIMONY OF PAUL STOCK RE STATUS OF CHAS. S. HILL.

In the second trial of the quiet title suit Paul Stock testified. The following is quoted from Stock's testimony to demonstrate (a) that Hill was merely representing Juhan in his dealings with Stock and (b) that Hill and Stock, at this time, discussed the transfer Stock had previously given Meagher.

"A. Mr. Hill stated that the property at Vernal in Ashley Valley was in litigation, and if I would turn it over to him on that agreement, that he would handle it and litigate it, or clean it up, clean the title. Q. Then in consummation of that agreement with Hill, he gave you another document called a Declaration of Trust, didn't he?

A. The trust agreement was signed along with it.

Q. Now I show you Exhibit A-48 and ask you if that isn't a photostatic copy of the trust agreement you just referred to?

* * * * *

Q. It is?

A. Yes.

* * * * *

Q. Did you subsequently have a conversation with Mr. Juhan, in which you discussed your deal with Charles S. Hill?

A. I had a good many different discussions with Mr. Juhan.

Q. Well, in any of those discussions did Juhan tell you that Charles S. Hill had been working for him when he got that quitclaim deed from you?

A. He told me that he had acquired the Hill interest.

Q. And he told you that he sent Hill over to you just for that purpose, didn't he?

A. Yes.

* * * * *

Q. At the time of your transaction with Charles S. Hill, did you tell him you had given the release to Mr. Meagher?

A. He told me, and we discussed it.

Q. And part of his job, after that deal was made, was to eliminate any contentions that Meagher might make with respect to that release, isn't that correct?

A. Yes."

Appendix N

TESTIMONY OF STOCK RE HIS ACQUISITION OF AN INTEREST IN THE PHEBUS HALF IN 1948.

The following extract from Stock's testimony is presented to demonstrate that when Stock bought back into the lease in 1948, he sought to acquire an interest traceable to the Phebus Half regardless of the litigation with Meagher.

“Q. Now in July of 1948 you purchased a 25 per cent interest in the Sheridan lease from Juhan, didn't you?

A. Yes, sir.

* * * * *

Q. Juhan then got the one eighth that you had reserved in your deal with Hill, I mean in July of 1948?

A. Yes.

Q. But you paid Juhan some \$19,500 in that transaction, didn't you?

A. Yes, sir.

Q. So you gave Juhan, according to your position, the \$19,500 cash, and your old one-eighth contingent interest, didn't you?

A. Yes, sir.

Q. And Juhan gave you a quarter interest in the lease, according to your contention, didn't he?

(Witness nods head affirmatively.)

Q. And you contended that the quarter interest in the lease that you then got from Juhan was traceable to the Phebus source of title, is that right?

A. Yes, sir.

* * * * *

Q. But it is a fact, isn't it, Mr. Stock, that the reason you were putting good money into that transaction was to get a position in that lease which was independent of any claims of Meagher, isn't that true?

A. I was putting the money into the lease with Juhan and with Mr. Dougan in order to drill the well, that we drilled.

Q. I know. Of course you were anticipating drilling a well, but you were trying to get a 25 per cent interest in that lease, win, lose or draw, in the case with Meagher, isn't that true?

A. That's the way the deed is.

Q. Well, that was your position too, wasn't it?

A. That's right."