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Contracts--Practical Construction--Acts of the Parties

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CASE COMMENTS

CONTRACTS—PRACTICAL CONSTRUCTION—ACTS OF THE PARTIES.—P leased oil and gas land to D. The lease provided for a land rental of one dollar per acre for the acreage not released by drilling wells. Section four of the lease was the only clause which provided for the release of the acreage from land rental, and it stated: "The drilling of each producing well for oil and gas on the said premises shall release three hundred (300) acres thereof, on which no rental shall be paid. Provided, however, that such land rental shall be paid until the oil and gas is being piped from said land, or until such time as the oil and gas royalties equal the land rental of the entire boundary." There was also a forfeiture clause which stated: "It is understood and agreed by the parties hereto that after the party of the second part has fully explored and drilled said property for oil and gas, and the oil and gas, if there be any, is being removed from the said property, the said second party shall not be required thereafter to pay any further land rental." For four and one-half years after enough wells had been drilled to release the entire acreage as provided in section four, D paid P the land rental. However, the royalties had never equaled the land rentals. P brought this action to recover an unpaid quarterly installment of the land rental. D defended by maintaining that the drilling of enough wells under section four to total the entire acreage of the leased land released him from the payment of the land rentals whether or not the royalties equaled the land rental. P contends that under the forfeiture clause only full development of the leased premises could discharge the obligation to pay rentals, or in lieu thereof the land rentals until such time as the royalties from producing wells equaled or exceeded that sum. The trial court found that the lease was ambiguous; that "or" in section four should be read as "and"; and that since the parties had so construed it for four and one-half years, the doctrine of practical construction bound the court to the parties' interpretation of the lease's terms. Held, on writ of error, that the oil and gas lease is clear in its provisions and free from ambiguity, either latent or patent; that the lease is to be considered on the basis of its express provisions; and that it is not subject to a practical construction by the parties. Reversed. Little Coal Land Co. v. Owens-Illinois Glass Co., 63 S.E.2d 528 (W. Va. 1951).
It is a firmly established general rule of law in West Virginia that when a contract is ambiguous or of doubtful meaning the subsequent conduct of the parties under the contract may be resorted to in determining the proper construction of the agreement. In Clark v. Sayers & Lambert, 55 W. Va. 512, 47 S.E. 312 (1904), practical construction is defined as the meaning given to the terms of an agreement by the parties themselves by their acts done with reference to the contract. The doctrine is usually applied to written contracts, but has been applied to oral contracts. Fuel Distributors, Inc. v. Payne-Barber Coal Co., 107 W. Va. 465, 148 S.E. 854 (1929).

The court has limited this rule of construction by requiring ambiguity in the contract. In Salisbury v. Brooks, 81 W. Va. 238, 94 S.E. 117, 119 (1917), the court says the interpretation the parties themselves have placed upon the contract as a "mode of ascertaining what a writing was intended to accomplish or express is allowed only where its meaning is doubtful or its terms ambiguous, and not otherwise."

The real problem is determining when a contract is ambiguous in order to apply practical construction. In Hall Mining Co. v. Consolidated Fuel Co., 69 W. Va. 47, 48, 70 S.E. 857 (1911), there was a contract involving the sale of coal. The contract stated that the purchaser would pay not less than $1.10 per ton for "each and every ton" of coal shipped. The seller accepted, without objection, a lesser sum for some of the coal sold, but received an average of $1.14 per ton. The court held that the language was ambiguous and applied the doctrine of practical construction. The court, in effect, did away with the requirement that there must be an actual ambiguity and accepted as an ambiguity a construction by the parties different from that which should have been reasonably understood from the terms of the agreement. There must always be interpretation, and what better method is there to interpret the words of the parties than the action they themselves took subsequent to the contract. "The question is not whether the parties should have understood it in only one sense, it is rather whether it is capable or susceptible of being understood in two possible senses." DONLEY, LAW OF COAL, OIL & GAS IN W. VA. & VA. 83 (1951). "Why should the court intervene to upset the deal that the parties have made by their actions which, adage relates, speak louder than words?" Id. at 84.

It is submitted that the lease in the principal case was am-
ambiguous as attested by the acts of the parties and the fact that the
circuit court found the lease ambiguous. It is submitted that the
court is placing a serious limitation on the doctrine of practical con-
struction by holding that there was no ambiguity in this lease. After
all is said and done the function of the court is to enforce the
contract or lease the parties enter into and not write a new agree-
ment for them. It is submitted that the interpretation the parties
place on an agreement is the most accurate and just method of
ascertaining what the parties intended by their words.

R. B. T.

COURTS—PLACE FOR HOLDING SESSION.—Defendant was convicted
in the intermediate court of Ohio County of breaking and enter-
ing. The testimony of one of the State's witnesses was taken at the
home of the witness, in the presence of the jury, trial judge, prose-
cuting attorney, court reporter and defendant and his counsel.
The witness' home was located in Ohio County a few miles distant
from the Ohio County courthouse. The witness was ill and unable
to attend court at the courthouse. Held, on writ of error, that the
action of the trial court in taking the testimony of the witness, over
objection of defendant, at a place other than the courthouse of the
county, constituted reversible error. State v. Burford, 67 S.E.2d

A judgment is void if there is a failure to comply with such re-
quirements as provide for the exercise of power by the court.
RESTATEMENT, JUDGMENTS § 8 (1942). Even though the court has
jurisdiction of a cause, of the subject matter and of the parties, it
is still limited in its modes of procedure and in the extent and
character of its judgments. Generally a departure from established
modes of procedure, as to time and place of session, will render the
judgment void, for the existence and legal constitution of a court
is an inseparable part of its jurisdiction, and it has no power to
hear and determine causes except at times and places authorized
by law. Austin v. Knight, 124 W. Va. 189, 20 S.E.2d 897 (1942);

The place at which the court shall sit is fixed by statute. The
circuit court, county court and other courts of record of any county
shall be held at the courthouse of such county, except where some
other place is prescribed by law or lawfully appointed. W. Va. Code