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Cases and Materials on the Law of Oil and Gas

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machinery of the courts has been accomplished, there will remain the great task of modernizing the substantive law to better meet the needs of this era of rapid social change. This is a monumental task. The substantive law is already a mountain of court decisions, statutes, and administrative rules and decisions. There are now 2,100,000 reported American court decisions, and they are increasing at the rate of 22,000 a month. While this case law is fairly well indexed and digested, the vast bulk of the statutory law is inadequately indexed. Each state has its own system with local subject names and categories. And much of the administrative law is not indexed at all. Vanderbilt proposes that the total resources of the legal profession be utilized to make a systematic study of each field of substantive law. For this purpose he would have the law schools broaden their scope to become law centers, where professors, practicing lawyers, judges, and interested laymen would combine their talent and experience. Scholars would study and borrow from the law of foreign countries where appropriate. Each law center should specialize in the law of its own state, and the larger centers could consider problems of national and international scope.

Judge Parker has said, "This is a book which ought to be read by every lawyer and judge in the United States."⁷ If this be so, then the lawyers and judges of West Virginia should read it twice, for there is too much good material here for the reader to absorb the first time.

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CASES AND MATERIALS ON THE LAW OF OIL AND GAS. By Howard R. Williams, Richard C. Maxwell and Charles J. Meyers. Brooklyn: The Foundation Press, Inc. 1956. Pp. xlv, 790. \$9.50.

The authors (the word is used advisedly, for they have done much more than editing) state in the preface that this casebook is prepared for use in a third year course or seminar in the law of oil and gas. It is certainly true that inexperienced students would be perplexed, if not entirely overwhelmed, by its wealth of detailed and complex materials.

In the first chapter there is a twelve-page introduction to scientific and engineering background, which is excellent and is illus-

⁷ Parker, Book Review, 42 A.B.A.J. 259 (1956).

trated by drawings showing various geologic formations. Then, as the authors state, "for pedagogical reasons, this collection departs from the organizations of earlier cases on oil and gas." It would be impossible, within the limits of this review, to state in detail the extent of that departure in comparison with such casebooks as Summers' 1952 edition or Kulp's 1947 third edition, both of which I have used in the course in Coal, Oil and Gas, at West Virginia University. One example is illustrative. The authors begin the materials on conservation of oil and gas on page 76, while Summers places similar materials in the last chapter, beginning on page 657, and Kulp in chapter 5, beginning on page 539. Such matters are largely ones of individual preference, and I do not attach much importance to them; nor is there any obstacle to skipping from one chapter to another if it is thought to be advantageous.

There is a great wealth of text material sandwiched between the cases, and the footnotes are sometimes almost overwhelming in detail, well demonstrating the admirable scope of the learning, industry and research that have gone into the preparation of the book.

Another feature which attains considerable prominence is the method of posing problems for the student, followed by the materials which aid in finding the answers. For example, on page 444, the student is asked:

"What is the relevance of equitable considerations in an action for partition of producing (or prospectively producing) mineral lands? Should the granting of relief be denied if the land is under lease? If it is producing? If the interest of one party is so small that the portion of the tract partitioned to him will be too small for the obtaining of a well permit under applicable spacing rules? What is the impact upon the availability of the remedy of partition of the conceptual classification of the interest of the owner of an undivided interest in the minerals, the interest of a lessee, or the interest of the owner of an oil payment or overriding royalty? How may partition be accomplished by concurrent owners?"

In this connection, it is stated on pages 446-447 that "in West Virginia, the interests of cotenants or lessees in severed minerals may be partitioned only by sale and not in kind", citing *Hall v. Vernon*,¹ *Preston v. White*,² and *Robertson Consol. Land Co. v. Paull*.³ This

¹ 47 W. Va. 295, 34 S.E. 764 (1899).

² 57 W. Va. 278, 50 S.E. 236 (1905).

³ 63 W. Va. 249, 59 S. E. 1085 (1907).

was true prior to the statutory amendment by the West Virginia Acts of 1939, chapter 146. The amendment provides that "tenants in common, joint tenants and coparceners of real property, *including minerals, and lessees of mineral rights other than lessees of oil and gas minerals, shall be compelled to make partition.*"⁴

As I have sought to show elsewhere, the effect of this statute is to change the rule of *Hall v. Vernon* and to make oil and gas which has been severed in title from the other strata partitionable in kind.⁵ However, in a casebook of this scope and character, it cannot be expected that the authors could accomplish the inhuman labor of finding all statutory modifications of decisions throughout the forty-eight states.

The chief objection that I have to the book is that it contains too many cases decided by the Texas courts. The student will find, of course, that these cases are, in many instances, based upon the pioneer decisions made by the courts of Pennsylvania and of West Virginia, where the fundamental principles were first carved out and which led the thinking of courts in the West, Southwest and California when they encountered their problems at a later time. It would seem that the book would have been improved by including more cases of this type, by way of historical background. For example, in the problem of apportionment of royalties, the casebook reports *Central Pipe Line Co. v. Hutson*⁶, decided in 1948. The court there refers to the famous case which has been the storm center of the controversy, *Wettengel v. Gormley*,⁷ decided in 1894, and to the conflict which arose among the judges in West Virginia, where the *Wettengel* case was first followed in *Campbell v. Lynch*⁸ and rejected one year later in *Pittsburgh and West Virginia Gas Co. v. Ankrom*.⁹ For my own part, I believe the student would gain more insight into the relative merits of these ideas if the majority and minority opinions in *Campbell v. Lynch* had been substituted for the report of the Illinois case above mentioned.

Summers and Kulp both report the landmark case of *Hague v. Wheeler*¹⁰ but here it is mentioned quite briefly as "an early lead-

⁴ Italics supplied.

⁵ DONLEY, LAW OF COAL, OIL AND GAS IN WEST VIRGINIA AND VIRGINIA §§ 23, 24 (1951).

⁶ 401 Ill. 447, 82 N.E.2d 624 (1948).

⁷ 160 Pa. 559, 28 Atl. 934 (1894).

⁸ 81 W. Va. 374, 94 S.E. 739 (1917).

⁹ 83 W. Va. 81, 97 S.E. 593 (1918).

¹⁰ 157 Pa. 324, 27 Atl. 714 (1893).

ing case", in text material on page 21. Instances could be multiplied where the early cases have been either omitted or briefly mentioned. These old friends are missed. Perhaps the new ones will take their places.

The very interesting and important questions arising out of the underground storage of gas are given about two inches of page 36, with the statement that "space limitations preclude detailed discussion of such problems." Perhaps so, but the student would gain considerable grist for the mill if he were to read *Tate v. United Fuel Gas Co.*,¹¹ a case of first impression in West Virginia and which, therefore, may influence for better or for worse the thinking of other courts when they are confronted with similar problems.

Now that I have succumbed to the reviewer's malady of finding something which I would have otherwise than it is, there are other admirable features of this work. In the sections dealing with the habendum and delay rental clauses, there have been inserted typical clauses quoted from standard forms of leases, followed by cases construing them. This should be helpful to the student and bring to him a realization of the soundness of the statement made in the Preface that "certain standard types of forms in common use create problems for the parties of serious difficulty and greatly increase the expense of the oil and gas industry. It would be a simple matter for a small group of skilled lawyers, of whom there are many working in this area, to draft instruments far more appropriate for the accomplishment of the reasonable desires of the parties. Yet, older forms persist without radical revision, although occasionally a bit of patching here and there eliminates one or another of the defects. The student should inquire as to the reason for this state of affairs." Much valuable material is contained upon unitization and pooling, and taxation. The appendices contain forms of leases, deeds, assignments and other types of agreement. As previously indicated, the very voluminous footnotes constitute a veritable mine of source material, with copious citations to the law reviews—a collection which is doubtless unique and which should be invaluable to students, teachers, lawyers and judges. With the publication of this volume, there would seem to be no necessity for writing any more case-books on oil and gas law for many years to come. There is, indeed, room for a book which includes cases on the law of coal and coal

¹¹ 137 W. Va. 272, 71 S.E.2d 65 (1952). I have discussed this case at length in Donley, *Ownership of the Containing Space After the Removal of Subsurface Minerals*, 55 W. VA. L. REV. 203 (1953).

mining. There must somewhere be an enterprising member of a law faculty who will endure the drudgery of preparing it and who will be fortunate enough to find a publisher. Until then, let us be thankful for the excellent tools provided by such a book as this one.

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