Volume 42 | Issue 1 Article 12

December 1935

Mines and Minerals--Effect of Reservation of Royalties from Leasehold as to Inclusion of Same on Renewal

MINES AND MINERALS — EFFECT OF RESERVATION OF ROYALTIES FROM LEASEHOLD AS TO INCLUSION OF SAME ON RENEWAL. — A grantor who owned land subject to a coal lease conveyed, reserving the royalties.[1] The lease contained a provision for renewal and the privilege thus created having been exercised, the question arose as to the proper recipient of the royalties. *Held,* that the royalties under the renewal were effectively reserved by the grantor, for, since the coal lease contained a renewal provision, the parties must be deemed to have contemplated operations under this provision. *Gay Coal & Coke Co. v. Chafin.*[2]

Assuming that it is possible to reserve royalties to be paid on the contingency that an existing lease be renewed,[3] was it properly held that the grantor did so in this case? A reservation is effective in so far as the intent of the grantor is made clear, and no further.[4] A court will, however, regard the language of the instrument with an eye to its author, and construe accordingly.[5] Thus the word "leasehold" in this reservation, regardless of its legal significance, means a tract of land, for it obviously meant that to the parties.[6]

Courts assume that every provision in a deed was intentionally included, and interpret so as to give effect to this intent.[7]

---

1 Reservation.

"Except the royalties now due or hereafter to become due from the coal mined from the Gay leasehold, which was leased to said company by Moses Mounts in his lifetime.

"It being understood hereby that the said Minnie Hall is to receive said royalties that are now due or may hereafter become due, from said leasehold, the same as if this deed had never been made . . . "

2 180 S. E. 95 (W. Va. 1935).

3 No problem arises as to the rule against perpetuities, since at the time of the conveyance, the original lease had but seven years to run, and vesting of an estate in royalties could not be deferred beyond that period.

4 W. VA. REV. CODE (1931) c. 36, art. 1, § 11.

5 M. T. Garvin & Co. v. Lancaster County, 290 Pa. 448, 139 Atl. 154 (1927); Johnson v. McCoy, 112 Va. 580, 72 S. E. 123 (1911); Bridgewater Milling Corporation of Fredericksburg v. Fredericksburg Power Co., 116 Va. 333, 82 S. E. 173 (1914); Butler v. Carlyle, 84 W. Va. 753, 100 S. E. 736 (1919); Ramage v. South Penn Oil Co., 94 W. Va. 81, 118 S. E. 162 (1923).

6 *Supra* n. 1. As a practical matter it is difficult to conceive of coal being mined from an intangible estate. Consequently the parties must have meant "leasehold" to signify a particular tract.

7 City Nat. Bank v. City of Bridgeport, 109 Conn. 529, 147 Atl. 181 (1929); Woods v. Seymour, 350 Ill. 493, 183 N. E. 458 (1933); Foster v. Lee, 271 Mass. 200, 171 N. E. 229 (1930); Benton v. Montgomery Lumber Co., 195 N. C. 363, 142 S. E. 229 (1928); First Carolinas Joint Stock Land Bank of Columbia v. Ford, 180 S. E. 562 (S. C. 1935); Spiller v. McGehee, 68 S. W. (2d) 1093 (Tex. Civ. App. 1934); Carpenter v. Camp Mfg. Co., 112 Va. 300, 71 S. E. 559 (1911); Browning v. Blue Grass Hardware Co., 153 Va. 20, 149 S. E. 497 (1929).

The second paragraph of the reservation in question must therefore be held to explain rather than merely repeat the first. The reservation may then be paraphrased as follows: "royalties from the coal mined from a particular tract to be ascertained 'the same as if this deed had never been made' ". The intent of the grantor to reserve royalties under the new lease would seem to be apparent in the light of this construction.[8]

The syllabus,[9] however, in the principal case, states a proposition which extends far beyond these facts. Is the mere presence of a renewal provision in the original lease sufficient evidence of the grantor's intent to reserve royalties in the event of renewal? The presence of that provision merely puts the question as to the disposition of possible future royalties, and the grantor's answer is not to be found in the reservation. In the absence of extrinsic evidence, he cannot be said to have conceived of the present and possible future terms as one, since in the eyes of the law they are clearly separate.[10] It seems, therefore, that the requirements as to reservation would not be satisfied and that royalties from the second lease would pass under the conveyance.[11]

---

[8] Further intrinsic evidence supporting this construction may be found in the words "now due or hereafter to become due." Since rent already due is generally held to be a chose in action it would seem to need no reservation. 1 TIFFANY, LANDLORD AND TENANT (1910) 1109. Therefore, if these words have any meaning at all, the grantor meant them to apply to royalties to arise from the present lease and from the future lease.

[9] "The seller and buyer of an undivided interest in coal being operated under a lease — royalty arising from the leasehold being reserved in the sale — must be deemed to have contracted in contemplation of operations under a renewal of the original, when it contains a covenant for renewal." 180 S. E. 95.

[10] Some courts expressly hold that the present lease and lease on renewal are two separate estates. *In re* Fellow's Estate, 106 Cal. App. 681, 289 Pac. 887 (1930); Fuchs v. Peterson, 315 Ill. 370, 146 N. E. 556 (1925). Many distinguish between renewal and extension of a lease and in the case of renewal require a new lease. Riggs v. United States, 12 F. (2d) 85 (1926); Johnson *et al.* v. Mary Oliver Candy Shops, Inc., 116 Conn. 86, 163 Atl. 606 (1933); Candler v. Smyth *et al.*, 168 Ga. 276, 147 S. E. 552, 554 (1929); Shannon v. Jacobson, 262 Mass. 463, 160 N. E. 245 (1928); Holloway v. Schmidt *et al.*, 67 N. Y. Supp. 169 (1900); Clifford v. U. S. Fidelity and Guaranty Co., 119 Okla. 133, 249 Pac. 938 (1926); Whalen v. Manley, 68 W. Va. 328, 69 S. E. 843 (1910); Ammar v. Cohen, 96 W. Va. 550, 123 S. E. 582 (1924); Note (1925) 31 W. VA. L. Q. 136. Fergen v. Lyons *et al.*, 162 Wis. 131, 155 N. W. 935 (1916). 2 TIFFANY, LANDLORD AND TENANT 1514. But *cf.* Orr *et al.* v. Doubleday, Page & Co., 233 N. Y. 334, 119 N. E. 552, 1 A. L. R. 338 (1918).

[11] *Supra* n. 4.