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Oil and Gas Lease--Natures of Lessee's Interest--Enforcement of Lien of Execution

OIL AND GAS LEASE — NATURE OF LESSEE'S INTEREST — ENFORCEMENT OF LIEN OF EXECUTION. — In previous actions against the defendant as executor of a lessee's estate, the plaintiffs had secured several judgments. The plaintiffs then brought this suit in chancery against the executor to subject an oil and gas lease, limited to a term of years and so long thereafter as oil and gas shall be produced from the premises, to the liens of the executions issued upon the judgments. *Held,* that a lessee's interest under such an oil and gas lease is a "chattel real" and is subject to a lien of execution. *Drainer et al. v. Travis.*[1]

The court's analysis of the nature of the lessee's interest is consistent with authority both in West Virginia[2] and in other jurisdictions.[3] It has been held reversible error for a circuit court to find that a lease of oil and gas for a term of years is subject to a tax on real property.[4] In deciding the question whether a deed, conveying exclusive rights to oil and gas, gave rise to an implied warranty of title, it was held that the deed transferred merely a leasehold interest which as a matter of law carries with it a warranty of title, rather than a freehold estate in which no warranty is implied.[5] A dictum by Judge Dent states that a leasehold interest in oil and gas is ". . . . . personal property and may be levied on and sold under execution."[6] There are other cases, however, which say that the lessee's interest is real property,[7] although it was apparently unnecessary in any of these cases to determine the lessee's interest to be realty in order to achieve the result reached by the court.[8]

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[1] 180 S. E. 435 (W. Va. 1935).

[2] Toothman v. Courtney, 62 W. Va. 167, 58 S. E. 915 (1907); State v. South Penn Oil Co., 42 W. Va. 80, 24 S. E. 688 (1896).

[3] Duff v. Keaton, 33 Okla. 92, 124 Pac. 291 (1912), 42 L. R. A. (N. S.) 472; Tibbens v. Clayton, 288 Fed. 393 (1923); 1 THORNTON, OIL AND GAS (4th ed. 1925) § 53. But see Note (1918) 31 HARV. L. REV. 882.

[4] State v. South Penn Oil Co., *supra* n. 2.

[5] Headley v. Hoopengarner, 60 W. Va. 626, 55 S. E. 744 (1906).

[6] Showalter v. Lowndes, 56 W. Va. 462, 463, 49 S. E. 448 (1904).

[7] Wilson v. Youst, 43 W. Va. 826, 28 S. E. 78 (1897); Barnsdall v. Bradford Gas Co., 225 Pa. 338, 74 Atl. 207 (1909); Blakley v. Marshall, 174 Pa. 425, 34 Atl. 564 (1896); Wettengel v. Gormley, 160 Pa. 559, 28 Atl. 934 (1893).

[8] For example, in Wilson v. Youst, *supra* n. 7, life tenants had leased the oil and gas under a tract of land. The lower court decreed that this was a sale of a portion of the realty and that the life tenants were entitled to two-thirds of the royalties and the infant reversioners to one-third. In the appellate court the remaindermen sought to set this decree aside as far as it affected the apportionment of the proceeds. The decree was reversed, allowing the life tenants to have only the interest on the royalties and holding that the remaindermen were entitled to the corpus. Although the upper court

Having decided that the leasehold in the principal case was a "chattel real," which is treated as personal property, it follows that the lessee's interest is subject to a lien of execution.[9] Since such an interest is intangible and consequently incapable of an actual levy, the procedure necessary to enforce the lien and satisfy the judgment may present some difficulty. The instant case is based upon the statute[10] providing for a separate suit in equity to enforce the judgment. Whether or not this remedy is exclusive is questionable.[11] The section "On What Fieri Facias May be Levied"[12] has been enlarged to include new classes of property, in order to make unnecessary the tedious and costly separate suit in equity,[13] but since neither an oil and gas leasehold nor any interest of similar nature is expressly incorporated within the section, it can hardly be urged that its provisions are applicable to this subject matter.[14] The statutory proceeding by interrogatories[15] is another possible remedy in lieu of an actual levy. This section provides that the debtor shall assign all property, including intangibles, to the officer;[16] that the court shall order such disposition of the property as it sees fit;[17] and that the officer is authorized to deal with the personalty as if an actual levy had been made.[18]

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purported to hold the interest conveyed to be realty, such a determination was not necessary for the disposition of the case.

[9] See Park v. McCauley, 67 W. Va. 104, 105, 67 S. E. 174 (1910); Bisbee v. Hull, 3 Ohio 449 (1828); 28 L. R. A. (N. S.) 1036; State v. South Penn Oil Co., *supra* n. 2; Aderhold v. Oil Well Supply Co., 158 Pa. 401, 28 Atl. 22 (1893).

[10] W. VA. REV. CODE (1931) c. 38, art. 5, § 20.

[11] The syllabus in Stix & Co. v. York, 84 W. Va. 446, 100 S. E. 221 (1919) says that "The remedy given by . . . . [c. 38, art. 5, § 20] to enforce the lien of an execution upon property owned by the judgment debtor not capable of manual seizure, possession and delivery, and sale by the officer under the execution, that is by suit in equity . . . . is exclusive of all other remedies." It is believed, however, that an examination of the facts of that case shows that the court was not called upon to decide the exclusiveness of the statutory remedy. Furthermore, it may be urged with some force that the revised statute (c. 38, art. 4, § 6) intends to cover the subject matter of this suit and thus dissipates the effect of the language of the court in the syllabus. Regardless of the intent of the revisers it should be observed that the subject matter of the suit was "shares" of stock, while the revised statute specifies "certificates" of stock. There is a valid distinction between these two terms. See c. 31, art. 1, § 53, providing that no levy of execution shall be valid until the certificates of stock have been actually seized or surrendered to the corporation.

[12] W. VA. REV. CODE (1931) c. 38, art. 4, § 6.

[13] *Ibid.* Reviser's note, c. 38, art. 4, § 6.

[14] See *supra* n. 11.

[15] W. VA. REV. CODE (1931) c. 38, art. 5, § 1.

[16] *Ibid.* c. 38, art. 5, § 4.

[17] *Ibid.* c. 38, art. 5, § 7.

[18] *Ibid.* c. 38, art. 5, § 9.

Since it may be contended that the purpose of interrogatories is to ascertain property concealed by the debtor, it can be argued that this remedy is limited to circumstances where there is concealment.[19] It follows from the foregoing analysis that the statutory suit in equity is the advisable procedure, unless the facts clearly warrant the adoption of one of the suggested concurrent remedies.

WORKMEN'S COMPENSATION — INJURY IN COURSE OF EMPLOYMENT — TRANSPORTATION TO WORK IN EMPLOYER'S CONVEYANCE. — A coal company transported by bus, for compensation, such of its employees as elected to avail themselves of the service. The company carried liability insurance as required by statute.[1] The plaintiff, a coal loader, joined the coal company and the insurance company as defendants in a suit in assumpsit on an independent contract of carriage for injuries sustained while riding to his place of employment. The defendant insurance company demurred to the plaintiff's declaration, contending that the injury arose in the course of employment and was compensable under workmen's compensation.[2] *Held*, that the injury did not arise in the course of employment. Demurrer overruled. *Cramblitt v. Standard Accident Insurance Company.*[3]

The case presents for initial consideration in West Virginia the problem whether or not an injury sustained by an employee while going to or from work on a vehicle furnished by his employer is within the course of employment. Previous West Virginia cases have held that an injury sustained by an employee in going to or from work is not within the course of employment where no vehicle was furnished by the employer, unless the injury occurred on or

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[19] The facts in this case do not require a consideration of the remedy of Suggestions on Judgment (W. VA. REV. CODE (1931) c. 38, art. 5, § 10) because there is no personalty in the possession of third parties. It is believed that if such a state of facts existed, procedure by suggestion would be available to the judgment creditor.

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[1] W. VA. REV. CODE (1931) c. 17, art. 6, § 6.

[2] W. VA. REV. CODE (1931) c. 23, art. 4, § 1. The Workmen's Compensation Act requires that for an injury to be compensable it must have been received "in the course of and resulting from" the employment. In the principal case it is clear that the injury resulted from the employment and the only problem is whether or not it occurred in the course of employment.

[3] 180 S. E. 434 (W. Va. 1935).