

December 1934

Oil and Gas--Damages for Wrongful Geophysical Exploration

Stephen Ailes

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Oil, Gas, and Mineral Law Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

Stephen Ailes, *Oil and Gas--Damages for Wrongful Geophysical Exploration*, 41 W. Va. L. Rev. (1934).
Available at: <https://researchrepository.wvu.edu/wvlr/vol41/iss1/15>

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

Unquestionably, the decision in the principal case reaches the desirable result. No good reason is advanced for giving a defendant at law an advantage not afforded a plaintiff. But in the light of the state of the common law authority, it is believed that the decision would have been strengthened by at least an analogy to if not an application of the existing statute.

—GUY OTTO FARMER.

OIL AND GAS — DAMAGES FOR WRONGFUL GEOPHYSICAL EXPLORATION. — Plaintiff owned some twenty-six thousand acres of salt marsh in an oil bearing region. Defendant's agents entered by mistake and made certain geophysical tests, thereby revealing the presence of oil. Plaintiff brought this action, setting up the value of a "selection lease"¹ as the correct measure of damages. Defendant argued that the amount of money normally paid for a "shooting permit"² was the proper criterion by which to ascertain that sum. *Held*, plaintiff may recover the reasonable value of the privilege used. Evidence of the value of a selection lease should be admissible on a retrial of the case, but the attention of the jury should be called to the fact that the defendant did not get an important incident of a selection lease, namely, the option. *Shell Petroleum Corporation v. Scully*.³

Previously, when recovery has been sought for defendant's trespass and discovery of information as to the presence of oil, the problem has been attacked from the tort aspect, with the extent of plaintiff's loss constituting the measure of damages.⁴ The

rett, 265 Fed. 557 (C. C. A. 1st, 1920); *Whitney v. Johnson*, 14 F. (2d) 24 (C. C. A. 9th, 1926). *Contra*: *Keatley v. U. S. Trust Co.*, *supra* n. 4; *Pringle v. Storow*, *supra* n. 4.

¹ A selection lease conveys to the lessee full exploratory privileges plus the option to take up what acres the lessee desires at a previously agreed upon price. The down payment made by the lessee is normally between \$0.25 and \$4.00 per acre. Appellant's brief, p. 9, citing record.

² A shooting permit conveys exploratory privileges alone. The value normally is from \$15.00 to \$50.00 a shot point, depending on whether or not the Oil Co. will have to refill the holes. The amount of land involved is immaterial. Some permits require additional payments of as much as \$5.00 per 100 pounds of dynamite used. Appellant's brief, pp. 9 and 10, citing record.

³ 71 F. (2d) 772 (C. A. A. 5th, 1934).

⁴ *Humble Oil Co. v. Kishi*, 261 S. W. 228 (Tex. Civ. App. 1924), 276 S. W. 190 (Tex. Comm. App. 1925), 291 S. W. 538 (Tex. Comm. App. 1927); *Martel v. Hall Oil Co.*, 36 Wyo. 166, 253 Pac. 862, 52 A. L. R. 91 (1927); *Thomas v. Texas Co.*, 12 S. W. (2d) 597; note (1928) 4 TEX. L. REV. 215.

prospective lease value constituted the loss in those cases, the information obtained having been unfavorable. In the principal case, the information obtained was favorable, the lease value of the premises was not destroyed, and the plaintiff seeks to recover the value of the benefit taken by the defendant. Thus the basis of recovery would seem to be in quasi contract and so the court considered it.⁵

Can there be a recovery in quasi contract for a trespasser's use of land which does not exclude the owner from possession? The benefit in this case was taken by the defendant rather than having been conferred by the plaintiff.⁶ In a case of this nature, it must be shown that the benefit received by the defendant has actually been taken from the plaintiff,⁷ a "minus quantity"⁸ on the part of the plaintiff being necessary as well as a "plus quantity" on the part of the defendant. The minus quantity in a case of this nature is found in the fact that the plaintiff has been temporarily deprived of the exclusive use of his land to which he is entitled.⁹ As for the plus quantity on the part of the defendant, it seems clear that he has received a benefit. Not only has he received information as to lands other than the plaintiff's, but he has exercised a privilege for which payment is usually made. Though it has been argued that the benefit must consist in an actual increase in the estate of the defendant,¹⁰ it would seem that so long as the defendant receives something desired by him, actual enrichment is unnecessary.¹¹

As to the measure of recovery, it is fundamental that the value of the benefit enjoyed by the defendant forms the correct test.¹² In the principal case, the defendant conducted explorations on

⁵ ". . . the simple theory of plaintiff's case (that by an act at least quasi an offense, giving rise to an obligation in quasi contracts, defendant had taken a privilege for which he ought to pay . . .)". 71 F. (2d) 772, 775.

⁶ This subtitle in the law of quasi contracts has been variously termed by the writers. It has been called "Waiver of Tort" in KEENER, QUASI CONTRACTS (1893) 159, and THURSTON, CASES ON QUASI CONTRACTS (1916) 573; and "Action for Restitution as Alternative Remedy for Tort" in WOODWARD, THE LAW OF QUASI CONTRACTS (1913) 437.

⁷ WOODWARD, *op. cit. supra* n. 6, § 274.

⁸ WOODWARD, *op. cit. supra* n. 6, § 274. KEENER, *op. cit. supra* n. 6 at 163.

⁹ WOODWARD, *op. cit. supra* n. 6, § 275, KEENER, *op. cit. supra* n. 6 at 165. *Contra*: Phillips v. Homfray, 24 Ch. D. 439 (1883).

¹⁰ Phillips v. Homfray, *supra* n. 9; Payne's Appeal, 65 Conn. 397, 32 Atl. 948 (1895). These cases involve actions against executors, and this factor appears to be the basis of the holding that an actual enrichment of the estate is necessary.

¹¹ WOODWARD, *op. cit. supra* n. 6, § 8. KEENER, *op. cit. supra* n. 6, at 164.

¹² WOODWARD, *op. cit. supra* n. 6, § 292.

the plaintiff's land and garnered information as to the location of oil in the general neighborhood. Under a shooting permit, he would have been privileged to do exactly that. He did not receive the option that forms a vital part of the consideration in a selection lease. Evidence of the value of a selection lease has no bearing on the measurement of the value of the privilege to make tests on the plaintiff's land unless the option may be separately evaluated, and no attempt was made to do this. It would seem, therefore, that the evidence was irrelevant. The court thought it admissible because of a certain Code provision¹³ allowing the jury great discretion in the assessment of damages in a case in quasi contracts.¹⁴ Since the damages are to be measured by the value actually taken, it would seem that the jury, regardless of its discretion, should be limited in its consideration to that value, and evidence, otherwise irrelevant, should not be rendered relevant by this provision.

—STEPHEN AILES.

PARENT AND CHILD — EFFECT OF PAYMENT BY BANK OF CHILD'S DEPOSIT TO PARENT NOT A LEGAL GUARDIAN. — Defendant bank had paid out a deposit belonging to infants, to their father, without their consent. The father had not qualified as their legal guardian. Plaintiff brought an action on behalf of the infants to recover the amount of the deposit. There was a finding of fact that the fund represented not earnings of the children but gifts to them by their parents. The circuit court gave judgment for the defendant and the plaintiff brought error. *Held*, the bank had paid the funds to one not the legal guardian of the infants and was liable to them for the amount of the deposit. Reversed and remanded. *Fleshman v. Bank of Marlinton*.¹

This decision is perfectly sound but the circumstances of the case present a situation subject to misinterpretation on the part of the business community.

At common law the father is the natural guardian of his infant children² and, in the absence of good and sufficient cause,³ is

¹³ LA. REV. CIV. CODE (Merrick's 3d ed. 1925) art. 1934.

¹⁴ 71 F. (2d) 772, 774.

¹ 173 S. E. 775 (W. Va. 1934).

² *Rust v. Vanvacter*, 9 W. Va. 600 (1876); *Green v. Campbell*, 35 W. Va. 698, 14 S. E. 212 (1891).

³ *State v. Rueff*, 29 W. Va. 751, 2 S. E. 801 (1886).