Volume 41 | Issue 4 Article 15

June 1935

# Oil and Gas--Quasi Contractual Liability for Storage of Gas under Plaintiff's Land

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earlier *Securo* case.[13] It is doubtful whether the insurance factor should be controlling. Complete fairness to the insurer would require that liability be determined independently of the existence of the insurance contract.[14] If suit is maintainable only where insurance actually exists, moreover, the jury will necessarily be informed that the defendant is protected. At present, the fact of insurance is inadmissible in negligence cases, being both irrelevant and prejudicial.[15] To allow the right to sue to turn on this question, would cure the irrelevancy, without diminishing the prejudicial effect of the evidence. Here again the indemnity corporation would suffer. Similarly, the presence of insurance, regardless of the ground for permitting the action, creates a real danger of collusion between husband and wife with the insurance company as victim.

If our court has correctly determined the policy of the state, its stand on the conflicts problem[17] finds ample authority in the Restatement of the Conflict of Laws.[18] Briefly stated, the rule is that the law of the *locus delicti* will control unless contrary to the strong public policy of the forum. Certain considerations, already suggested, cast doubt upon the wisdom of enforcing such policy.

—GUY OTTO FARMER.

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OIL AND GAS — QUASI CONTRACTUAL LIABILITY FOR STORAGE OF GAS UNDER PLAINTIFF'S LAND. — Defendant gas company pumped a surplus supply of gas into a natural underground reservoir known to extend under plaintiff's land. Plaintiff sued for use and occupation of her premises. Held, restoration of the gas to its natural habitat returns it to its former status analogous to that of an animal *ferae naturae* and terminates defendant's ownership, wherefore he has made no use of the plaintiff's land. *Hammonds v. Central Kentucky Natural Gas Co.*[1]

[13] 110 W. Va. 1, 156 S. E. 750 (1931); (1931) 37 W. VA. L. Q. 315.
[14] This idea is developed in the comment to the Lusk case, cited *supra* n. 12.
[15] Walters v. Appalachian Power Co., 75 W. Va. 676, 84 S. E. 617 (1915).
[16] McCurdy, *op. cit. supra* n. 2, at 1053.
[17] A more difficult problem exists where a suit has been pursued to judgment in State A and is now sought to be enforced in State B. In Metzler v. Metzler, 8 N. J. Misc. R. 821, 151 Atl. 847 (1930), a suit to enforce a judgment of this nature was denied. "Full faith and credit" would seem to dictate the opposite result.
[18] CONFLICT OF LAWS RESTATEMENT (Am. L. Inst. 1934) §§ 384, 615; for case law see NOTE (1935) 94 A. L. R. 1410.

[1] 225 Ky. 685, 75 S. W. (2d) 204 (1934); (1935) 48 HARV. L. R. 855.

Obviously, recovery by the plaintiff in this action must be predicated on the theory that the gas pumped under plaintiff's land was owned by the defendant. That defendant at one time had title to this gas is a proposition that no court would contradict, regardless of its theory of property rights in oil and gas in place, for all agree that oil and gas when reduced to possession become mere personality.[2] How then has the gas company lost it? Clear intent to give up title and possession with no intent to repossess must be shown before abandonment is proved,[3] and certainly no such intent is evident here, the very fact that the gas company was "storing" the gas operating to negative that possibility. Nor does the court find that the defendant has abandoned his title, but rather that the gas has escaped, thus treating the property rights in gas that has been once reduced to possession as analogous to those of an animal *ferae naturae*. This analogy, when employed in the solution of problems as to the acquisition to title to gas has been subjected to much criticism,[4] and, indeed, there seems to be even less basis for employing it where relinquishment of ownership is in question. The rights of the possessor of a wild animal are spoken of as a "qualified property,"[5] since they are terminated if, by any means, the animal regains its freedom, it having no *animus revertendi*. To apply such reasoning to inanimate personalty seems patently illogical. Oil that escapes on the surface may be recovered unless abandonment is shown.[6] Logs that become stranded on the land of a riparian owner while floating down-

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[2] This proposition is universally recognized, and was endorsed by the court in the principal case. "When gas is thus severed and brought under dominion and actual possession at the surface, it, of course, becomes the personal property of the one who has extracted it under a right to do so." 255 Ky. 685, 689, 75 S. W. (2d) 204, 205.

[3] Rice v. Rice, 243 Ky. 837, 50 S. W. (2d) 26 (1932); Stinnett v. Kinslow, 238 Ky. 812, 38 S. W. (2d) 920 (1931); Hediger v. Zastrow, 174 Minn. 11, 218 N. W. 172 (1928); Evans v. Evans, 50 S. W. (2d) 842 (Tex. Civ. App. 1932); State v. Murray, 195 Wis. 657, 219 N. W. 271 (1928).

[4] Ohio Oil Co. v. Indiana, 177 U. S. 190, S. Ct. (1900); Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co., 155 Ind. 461, 57 N. E. 912 (1900). SUMMERS ON OIL AND GAS (1927) § 48, p. 148; 1 THORNTON ON OIL AND GAS (4th ed. 1925) § 25, p. 92; Simonton, *Has a Landowner any Property in Oil and Gas in Place?* (1921) 27 W. VA. L. Q. 281; Greer, *The Ownership of Petroleum Oil and Natural Gas in Place* (1923) 29 W. VA. L. Q. 172; Veasey, *The Law of Oil and Gas* (1920) 18 MICH. L. R. 445.

[5] "But unless killed, this is a qualified property, for when restored to their natural wild and free state, the dominion and individual proprietorship of any person over them is at an end . . . " 255 Ky. 685, 689, 75 S. W. (2d) 204, 206. Accord, Note (1928) 52 A. L. R. 1061.

[6] Burton v. Miller, 169 Ark. 740, 276 S. W. 999 (1925); Duvall v. White, 46 Cal. App. 305, 189 Pac. 324 (1921); (1921) 8 CAL. L. REV. 445.

[7] Flanders v. Locke, 53 Cal. 21 (1878).

stream may be recovered.[7] No more so, it would seem, should the concept of title in gas be limited to possession and control. The fact that dominion over gas may be lost by its escape is a quality of the thing itself analogous to the perishability of vegetables rather than a qualification of title.

The gas pumped back into the ground cannot be said to have become realty through annexation to the land, for here, again, the proper intent on the part of the defendant is lacking. Before personalty becomes realty through annexation, that annexation must have been perpetrated with the thought that it should be permanent,[8] a mere temporary purpose, such as operation of an oil well being insufficient to cause the apparatus such as the casing to become a fixture.[9]

If it is granted that the gas is owned by the defendant, it would seem that the plaintiff has a good cause of action for use and occupation. Recovery for the benefit derived from an unauthorized non-exclusive user of the plaintiff's land has been advocated[10] and allowed,[11] and the fact that the damages are uncertain in amount should be no bar.[12]

—STEPHEN AILES.

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[8] First State Bank of Eubank v. Crab Orchard Banking Co., 255 Ky. 800, 75 S. W. (2d) 517 (1934); Whitaker Glass Co. v. Ohio Bank & Trust Co., 22 F. (2d) 773 (C. C. A. 6th, 1929); Joyner v. Mitchell, 267 Ill. App. 427 (1932); Menard v. Courchaine, 278 Mass. 7, 179 N. E. 167 (1931); Colton v. Michigan Lafayette Bldg. Co., 267 Mich. 122, 255 N. W. 433 (1934); McDonald v. H. B. McDonald Const. Co., 117 N. J. Eq. 181, 175 Atl. 87 (1934); Diamond v. Art Contracting Co., 262 N. Y. Supp. 471 (1933); Kanawha Nat. Bank v. Blue Ridge Coal Co., 107 W. Va. 397, 148 S. E. 383 (1929).

[9] Note (1925) 32 A. L. R. 1255.

[10] WOODWARD, THE LAW OF QUASI CONTRACTS (1913) § 275; KEENER, QUASI CONTRACTS (1893) 165.

[11] Shell Petroleum Corporation v. Scully, 71 F. (2d) 772 (C. C. A. 5th, 1934); (1934) 41 W. VA. L. Q. 89.

[12] If a loss is proven, difficulty encountered in the evaluation of it will not bar recovery. Ashland Coca Cola Bottling Co. v. Brady, 252 Ky. 183, 66 S. W. (2d) 57 (1933); Story Parchment Co. v. Pateson Parchment Paper Co., 283 U. S. 555 (1931); Ward v. General Ice Cream Corp., 118 Conn. 363, 172 Atl. 781 (1934); H. D. Watts & Co. v. American Bond and Mortgage Co., 267 Mass. 541, 166 N. E. 713 (1929); Blanchard v. Makinster, 137 Ore. 58, 1 P. (2d) 583 (1931); Darlington v. Banks County Public Service Co., 303 Pa. 288, 154 Atl. 501 (1931). There is no apparent reason why the same rule should not apply in quasi contracts, where it is clear that a benefit has been received.