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is an assessment of "future damages." It is submitted that this displays a misconception of the foundation for recovery. Though legally not a nuisance because authorized by law, *Spencer* v. *Pt. Pleasant & Ohio River Ry. Co.*, 23 W. Va. 406, 427; *Watson* v. *Fairmont Ry. Co.*, 49 W. Va. 528, 540, 39 S. E. 193, still it is in fact a nuisance which, for reasons of public policy, may not be abated. *Geer* v. *Durham Water Co.*, 127 N. C. 349, 37 S. E. 474, 475. The person injured has a right of action for damages suffered by what is in its nature an exercise of the right of eminent domain to establish a nuisance as an easement over the plaintiff's property. *Hargreaves* v. *Kimberly*, 26 W. Va. 787, 799; *City of Nashville* v. *Comer*, 88 Tenn. 415, 12 S. W. 1027, 1029. The damages awarded are not future damages because: first, as held in the principal case, the immediate depreciation in the value of the property is damage already suffered; second, future damages are often in such cases not ascertainable; and, third, since in fact a nuisance, the rule should hold that damages created by a nuisance are not recoverable until suffered. See WOOD, NUISANCES, 2 ed., 1001; *Luther* v. *Winnisimmet Co.*, 9 Cush. (Mass.) 171, 175.

MINES AND MINING — OIL AND GAS LEASE — DIVISION OF ROYALTY ON LEASE BY ADJOINING LANDOWNERS. — Owners of several adjoining tracts of land leased their tracts jointly as a single parcel for the purpose of producing oil and gas. A producing well was drilled on the land of the defendant who claimed all of the royalty. *Held*, that the total royalty must be divided among all the lessors in the proportion that the area owned by each bears to the whole tract. *Lynch* v. *Davis*, 92 S. E. 427, (W. Va. 1917).

The principal case differs from the case of *Wettengel* v. *Gormley*, 160 Pa. St. 559, 28 Atl. 934. In the latter case a tract was leased for oil and gas purposes and later devised in three portions to the lessor's three sons, thus severing the reversion, and it was held that the royalties should be divided equally among the devisees. In ordinary leases if the reversion is severed the general rule is that the rent must be apportioned according to the respective value of the parts. TIFFANY, LANDLORD AND TENANT, § 175; UNDERHILL, LANDLORD AND TENANT, § 341. This rule is not applicable to oil and gas leases, however, since the lessee has a right to take a part of the realty itself, instead of having the mere use of the premises as in the case of an ordinary lessee. Where there has been a severance of the reversion of an oil and gas lease into two or more parts, two cases have held that the owner of each part is entitled to all of the royalty from the mineral produced on his soil. *Northwestern Ohio Natural Gas Co.* v. *Ullery*, 68 Ohio St. 259, 67 N. E. 494; *Osborn* v. *Arkansas Territorial Oil and Gas Co.*, 103 Ark. 175, 146 S. W. 122. It would seem that these cases lay down the correct rule where the conveyance or conveyances which sever the reversion do not make provision for the division of the royalty, and such rule was approved by way of dictum in *Rymer*

v. *South Penn Oil Co.*, 54 W. Va. 530, 46 S. E. 559. Obviously none of the above cases are like the principal case. The only similar case found is *Higgins* v. *California Petroleum Co.*, 109 Cal. 304, 41 Pac. 1087, but in that case while there was a lease by two landowners, it does not appear that the area of each parcel was the same. The court held there was a presumption that the royalties were to be divided equally and this was supported by the fact that the parties had so interpreted the contract up to the time of the dispute. Since it does not appear that the parcels were equal in area the rule laid down is not the same as that of the principal case which divided the royalty in proportion to the areas of the several tracts. It is submitted that since the lessee in the principal case has the right to develop any part of the entire tract and cannot be compelled to protect any particular parcel from drainage the conclusion reached by the court is sound.

PRACTICE AND PROCEDURE — NUNC PRO TUNC ORDER — FUNCTION AND NATURE — WHEN ENTERED. — In a proceeding, by way of motion, for execution on a forthcoming bond, the plaintiff had judgment below and a writ of error was awarded to the defendant. The defendant appeared for the purpose of making a motion to set aside the verdict and to grant him a new trial, but the court, being engaged in other matters, did not entertain such motion, or direct any order to be filed, or pass upon or file the motion. At a subsequent term, the court entered a *nunc pro tunc* order filing the motion for a new trial, overruling the same, and showing the defendant's exceptions. *Held,* that the writ of error granted by the lower court be dismissed on the ground that a *nunc pro tunc* order cannot be entered to make the action of the court speak as of a date different from the day upon which such action took place. *Payne* v. *Riggs,* 92 S. E. 133 (W. Va. 1917).

The power of courts to make entry of orders or judgments *nunc pro tunc* has been exercised from the earliest times. *Weatherman* v. *Commonwealth,* 91 Va. 796, 22 S. E. 349. The function of a *nunc pro tunc* order is to make the record of the court speak the truth. *Payne* v. *Riggs, supra; O'Sullivan* v. *People,* 144 Ill. 604, 32 N. E. 192. At common law, the judge might, while the proproceeding was in the breast of the court, amend the record so as to make it truthfully set forth what had occurred, but this could not be done after the term at which final judgment was rendered. This rule resulted in such hardship that relief was given by early English statutes, which are the sources of our practice as to *nunc pro tunc* orders. See 17 ENCY. PL. AND PR. 919. A *nunc pro tunc* entry is a present entry of something which was actually done previously, but to have effect as of the former date. The principal case shows that its office is not to supply omitted action of the court, but only to supply an omission from the record of action already had, which was omitted from the record through inadvertence or mistake. *Perkins* v. *Haywood,* 132 Ind. 95, 31