January 1918

Mines and Mining–Construction of Oil and Gas Lease–What is a Gas Well

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
Available at: https://researchrepository.wvu.edu/wvlr/vol25/iss2/11

This Recent Case 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.
the principal case may be difficult to support on time-honored principles of the law of contracts, it is to be commended because it mitigates the harshness of the strict common-law rule and at the same time sufficiently protects the owner by giving him the benefit of the honest judgment of his architect or engineer.

**Mines and Mining—Construction of Oil and Gas Lease—What is a Gas Well.**—In an action for gas rental on a lease providing for a royalty of one eighth of the oil and $300 per annum for "each and every gas well," it appeared that a well produced both oil and gas. The evidence tended to show that the well had a very strong rock pressure and a capacity of about one million feet of gas per day, but that the gas could not be marketed profitably by the lessee. *Held,* that the well was a "gas well" within the meaning of the lease. *Prichard v. Freeland Oil Co.,* 93 S. E. 871 (W. Va. 1917).

When this case was previously before the Supreme Court, *Prichard v. Freeland Oil Co.,* 75 W. Va. 450, 84 S. E. 495 (1914), the court decided that the term "gas well" in this lease meant a well from which, considering its location with reference to any market for gas and its capacity as a gas producer, the lessee, by reasonable effort, could market or use the gas with reasonable profit. The judgment entered for the plaintiff in the trial court was reversed on the ground that the evidence failed to show that the well in question produced gas in such quantity that it could be marketed with profit by the lessee. Although the evidence tended, in the principal case, to show that the lessee could not market the gas from this well with profit, yet the court held that the evidence was sufficient to sustain the judgment for the plaintiff. Thus the court as to the same lease has materially modified its former holding as to the meaning of the term "gas well" by disregarding proof of the lessee's inability to dispose of the gas at a profit. In other words, the idea of the court now seems to be that "gas well" means such a well as operators of oil and gas wells in the neighborhood would consider a gas well. This appears to be a more reasonable construction, and more in conformity with the probable intent of the parties, than the construction placed upon the term in the former case. Under the construction put upon the lease in the former case, a well could not be a gas well, no matter how productive, unless its product could be profitably utilized by the lessee. The holding in the principal case, that the lessee may be liable for both the oil royalty and the gas rental from the same well, is in accord with decisions in other jurisdictions. *Mathes v. Shaw Oil Co.,* 80 Kan. 181, 101 Pac. 998 (1909); *Indiana Natural Gas and Oil Co. v. Wilhelm,* 44 Ind. App. 100, 86 N. E. 86 (1908); *Pittsburg-Columbia Oil & Gas Co. v. Broyles,* 46 Ind. App. 3, 91 N. E. 754 (1910).