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OIL AND GAS

by
John L. Roach*

THE oil and gas problems dealt with by Texas courts during the survey period included the following areas of special interest: (1) the Mineral Interest Pooling Act, (2) interpretation of the term "minerals" concerning coal and lignite, (3) perpetuation or termination of oil and gas leases, and (4) conflicts between holders of different types of mineral interests. Each of these areas will be examined in this Article.

I. THE MINERAL INTEREST POOLING ACT

The Mineral Interest Pooling Act,¹ adopted in 1965 and amended in 1971, continues to be the source of controversy and litigation. Nevertheless, during the survey period only two cases which were decided under this Act are worthy of comment.

*Windsor Gas Corp. v. Railroad Commission*² involved a novel attempt by the owner of a lease covering an undivided mineral interest to apply the Act to force the co-tenant owning the remaining undivided mineral interest to pool his interest. Plaintiff Windsor owned or controlled leases covering an undivided two-thirds of the minerals in 14,537 acres. Windsor attempted to lease the remaining one-third interest, but the owner refused to execute a lease. The owner of the one-third interest then proposed the drilling of a single well by Windsor with the costs attributable to the one-third interest to be recovered by Windsor out of production. Windsor made an offer, which apparently crossed in the mail with the owner's proposal, in which Windsor proposed that (1) the parties enter into a single agreement covering eight wells, and (2) the owner of the one-third interest pre-pay his estimated one-third of the \$160,000 cost of each well or that Windsor be permitted to advance all of the costs and recover from the production attributable to the unleased one-third interest an amount equal to double the costs of drilling attributable to such interest.³ When the owner of the one-third interest failed to reply, Windsor assigned to a partnership of its own creation its interest in eight eighty-acre tracts and then filed eight separate applications with the Railroad Commission to force pool each of such eight eighty-acre tracts with the 240 acres adjacent to it.

The Commission denied Windsor's applications. The district court of Travis County entered judgment that Windsor take nothing by its appeal. The

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1. TEX. REV. CIV. STAT. ANN. art. 6008c (Vernon Supp. 1976-77). See generally Smith, *The Texas Compulsory Pooling Act, Part I*, 43 TEXAS L. REV. 1003 (1965).

2. 529 S.W.2d 834 (Tex. Civ. App.—Austin 1975, no writ).

3. See Smith, *The Texas Compulsory Pooling Act, Part II*, 44 TEXAS L. REV. 387, 390 n.5 (1966), in which it is proposed that any change in excess of 200% recovery of costs might presumably be unfair.

parties stipulated that two issues existed for determination: (1) whether there existed "two or more separately owned tracts of land," as such term is used in the Act,⁴ and (2) whether Windsor had made a "fair and reasonable offer to voluntarily pool," as such term is used in the Act.⁵ The court pointed out that at the time of the offer not a single well had been drilled and Windsor's offer was not to pool to create one unit of 320 acres.⁶ The court held that Windsor's offer for the initial drilling of eight units on a "take it all" or "leave it all" basis coupled with a two-to-one risk factor was not a "fair and reasonable offer to voluntarily pool."⁷ The offer must be fair and reasonable from the standpoint of the party being pooled.⁸

In *Exxon Corp. v. First National Bank*,⁹ a case involving Relinquishment Act lands,¹⁰ the bank sued in 1972 to set aside an order of the Railroad Commission, issued in 1967, which pooled Relinquishment Act lands, the surface of which was owned by the bank. Exxon had applied to the General Land Office for its consent to the pooling and had offered all interest owners in the unit the opportunity to pool voluntarily. The General Land Office had consented to this request. The Bank sought a determination that the order had no force and effect as to any interest of the state. Following a series of cases involving suits for title to Relinquishment Act lands,¹¹ the court held that the bank had no authority to represent the state.¹² Furthermore, the court reasoned that the bank's suit constituted a collateral attack on the order of the Commission and could not be maintained since the order was regular on its face.¹³ In addition, the bank was a party to the proceedings in 1967 and did not appeal the order.¹⁴ Article 6008c, §2(g)¹⁵ provides that an order issued thereunder may be appealed within thirty days to the district court of the county in which the land is situated. This thirty-day provision is jurisdictional.¹⁶

II. INTERPRETATION OF THE WORD "MINERALS" CONCERNING COAL AND LIGNITE

The identification of this survey as one dealing with "Oil and Gas" is a misnomer. The role of coal as a source of energy is expanding, and the reporting services thus include more cases each year involving coal and

4. 529 S.W.2d at 837. The question of whether "two or more separately owned tracts" actually existed (their existence is required by the Act in order to propose compulsory pooling) was never discussed. Such an issue would involve a determination of whether undivided interests in a tract can be treated as "two or more separately owned tracts" for purposes of the Act.

5. *Id.*; see note 3 *supra*.

6. 529 S.W.2d at 837.

7. *Id.*

8. *Id.* See generally Smith, *supra* note 3, at 388-89.

9. 529 S.W.2d 110 (Tex. Civ. App.—El Paso 1975, writ ref'd n.r.e.).

10. TEX. REV. CIV. STAT. ANN. art. 5367 (Vernon 1962).

11. See Herndon v. Hayter, 28 S.W.2d 885 (Tex. Civ. App.—El Paso 1930, writ ref'd); Gulf Prod. Co. v. Colquitt, 25 S.W.2d 989 (Tex. Civ. App.—El Paso 1930), *aff'd as modified*, 52 S.W.2d 235 (Tex. Comm'n App. 1932, jdgmt adopted).

12. 529 S.W.2d at 112-13.

13. *Id.* at 114. See also Bolton v. Coats, 533 S.W.2d 914 (Tex. 1975), *discussed at notes 35-37 infra* and accompanying text.

14. 529 S.W.2d at 114.

15. TEX. REV. CIV. STAT. ANN. art. 6008c, § 2(g) (Vernon Supp. 1976-77).

16. *Id.* § 2(h).

lignite. Various questions exist as to whether the substantive laws applicable to oil and gas will be applied to coal and lignite. The decisions of various jurisdictions are squarely in conflict in many instances.

A survey of cases in other jurisdictions during the past several years reveals an increasing number of cases dealing with the questions of whether the term "minerals" includes coal and/or lignite and whether title to coal and/or lignite passes with the surface estate or the mineral estate.¹⁷ In 1971 the Supreme Court of Texas held in *Acker v. Guinn*¹⁸ that a deed to an undivided one-half interest in and to all of the oil, gas, and other minerals did not include iron ore, although iron ore is itself a mineral, since it had to be mined by open pit or strip mining methods which would consume or deplete the surface. The court held that the iron ore was itself the surface, because "[i]t is not ordinarily contemplated . . . that the utility of the surface for agricultural or grazing purposes will be destroyed or substantially impaired."¹⁹ In *Williford v. Spies*²⁰ it was held that the identical language in a reservation did not reserve coal and lignite which must be mined by open pit or strip mining methods.

The test considered extensively in *Acker* was given controlling effect in *Williford* and also in *Wylie v. Reed*,²¹ the most recent case involving a determination of this issue, and can best be termed the "surface destruction test." The theory of this test is that the surface owner should retain title to any substances to be mined or produced from the land which would tend to render the surface of the land useless. The argument is thus made that the inclusion in "minerals" or "mineral estate" of a substance which comprises such a large part of the surface that its removal would substantially impair the use or value of the surface would make the grant or reservation so abhorrent to common understanding and meaning that such result surely could not have been intended by the parties to the instrument. In reading the statement of the rule in *Acker*,²² it would appear that in determining if a particular substance is a mineral we are to look to the intention of the fee owner of the land who severs his minerals and conclude that he did not intend to convey a mineral if the taking of the particular substance will consume or deplete or substantially

17. For an analysis of this issue see Comment, *Is Coal Included in a Grant of "Oil, Gas or Other Minerals"?*, 30 Sw. L.J. 481 (1976).

18. 464 S.W.2d 348 (Tex. 1971); see Broyles, *The Right to Mine Texas Uranium and Coal by Surface Methods: Acker v. Guinn Revisited*, 13 HOUS. L. REV. 451 (1976); Little, *Lignite—Surface or Mineral? The Single Test Causes Double Trouble*, 28 BAYLOR L. REV. 287 (1976).

19. 464 S.W.2d at 352.

20. 530 S.W.2d 127 (Tex. Civ. App.—Waco 1975, no writ).

21. 538 S.W.2d 186 (Tex. Civ. App.—Waco 1976, writ granted).

22. The Texas Supreme Court stated the rule as follows:

A grant or reservation of minerals by the fee owner effects a horizontal severance and the creation of two separate and distinct estates: an estate in the surface and an estate in the minerals The parties to a mineral lease or deed usually think of the mineral estate as including valuable substances that are removed from the grounds by means of wells or mine shafts. This estate is dominant, of course, and its owner is entitled to make reasonable use of the surface for the production of his minerals. It is not ordinarily contemplated, however, that the utility of the surface for agricultural or grazing purposes will be destroyed or substantially impaired. Unless the contrary intention is affirmatively and fairly expressed, therefore, a grant or reservation of 'minerals' or 'mineral rights' should not be construed to include a substance that must be removed by methods that will, in effect, consume or deplete the surface estate.

464 S.W.2d at 352 (citations omitted).

deplete the remaining surface estate. In cases such as *Williford* a grant or reservation of minerals would include coal or lignite, where open pit or strip mining operations would destroy the surface state, only if such "intention is affirmatively and fairly expressed."²³ In *Wylie* it was held that the opinion testimony of a landowner to the effect that coal and lignite in the area can only be recovered by open pit or strip mining methods was not sufficient to establish any material fact as a matter of law (to meet the *Acker* test) in order to grant a summary judgment for the surface estate owner.²⁴ The issue of whether it was the intention of the parties to the warranty deed to include lignite in the reservation was avoided by the court of civil appeals, and the Supreme Court of Texas has granted a writ of error in *Wylie*. Accordingly, the validity of the application of the surface destruction test of *Acker* in determining the inclusion of coal or lignite in a grant or reservation of "oil, gas, and other minerals" is in suspension until the opinion of the supreme court is rendered.

III. PROBLEMS OF PERPETUATION OR TERMINATION OF OIL AND GAS LEASES

Problems inherent in the perpetuation of leases and other estates, and in the interpretation of the covenants thereof, continually arise. *Obelgoner v. Obelgoner*²⁵ involved the effective date of a "top" lease. The facts of this case consisted basically of three events: (1) in 1956 *A* granted to *X* a lease for a primary term of ten years; (2) in 1960 *A* gave by gift a portion of the land to *B*; and (3) in 1963 *A* and *B* leased to *X* for a primary term of ten years. The 1963 lease stated that it was to run from the effective date thereof, but did not refer to the 1956 lease. No production was ever obtained under any lease. The holder of the 1963 lease contended that its term ran from the expiration of the ten-year term of the 1956 lease. The court pointed out that the granting clause of the 1963 lease was in the present tense,²⁶ that the effective date of the lease means the date when the lease becomes operative, and that the effective date of the lease, and the date on which its term began, was the date set forth in the lease, *i.e.*, the date the lease was executed.

*Morgan v. Fox*²⁷ involved several similar issues. Cross, as grantor, executed a lease to Johnson in 1970, who in 1974 conveyed the land to defendant by a deed which contained a recitation that the land was subject to the lease. Thereafter, defendant contended that the lease had terminated because of inadequate production both prior and subsequent to the 1974 deed. The court followed these well-established principles: (1) the acceptance by defendant of the 1974 deed with such recitation constituted a ratification of the 1970 lease, and defendant was estopped to deny the validity of the lease as of such date; (2) once defendant repudiated the lease, plaintiff was relieved of any obligation to conduct any operations to perpetuate the lease until the controversy

23. 530 S.W.2d at 130.

24. 538 S.W.2d at 189.

25. 526 S.W.2d 790 (Tex. Civ. App.—Corpus Christi 1975, writ ref'd n.r.e.).

26. "Lessor . . . hereby grants, leases and lets . . ." *Id.* at 790 (emphasis by the court).

27. 536 S.W.2d 644 (Tex. Civ. App.—Corpus Christi 1976, writ ref'd n.r.e.).

over the validity of the lease was determined;²⁸ (3) if a small profit²⁹ (excess of income over expense) is realized by the lease owner from its operations, it may be found as a matter of law that the well is producing in paying quantities;³⁰ and (4) non-use by the lease owner of his equipment on the lease did not alone raise an issue of fact as to abandonment since intention is an essential element of abandonment.³¹

*Gulf Oil Corp. v. Prevost*³² should be considered with the decision by the El Paso court of civil appeals in *Hughes v. Cantwell*.³³ Both cases involved the question of whether operations by party *B* will perpetuate a lease or a portion thereof, held by party *A*. In *Prevost* the question was whether the timely commencement of operations by *B* on the geographical portion of a base lease assigned to *B* would perpetuate the lease as to that portion thereof retained by *A*. The court held that operations anywhere on the lease excused payment of rentals as to the entire lease, whether the lease was owned in its entirety by one person or owned in parcels by various parties.³⁴

In *Cantwell*, a case of first impression in Texas, the owner of lease *A*, which covered only a small undivided interest in the minerals, contended that the drilling of a well, in which the owner of lease *A* did not participate, on the same tract by the holder of lease *B*, which covered the remaining undivided interest in the minerals, excused the payment of rentals under lease *A*. The court held that the lease imposed certain requirements on the lessee and it was necessary for the lessee himself to take some action to perpetuate the lease. These required direct or constructive operations by the lessee, and the acts of a third party, the holder of lease *B*, who was a stranger to lease *A* would not suffice to satisfy the requirements imposed on the lessee in lease *A*. The court stated that not even production by the holder of lease *B* would perpetuate lease *A*. The court noted that the holder of lease *A* had been afforded the opportunity to participate in the well and had declined.

IV. CONFLICTS BETWEEN HOLDERS OF DIFFERENT TYPES OF MINERAL INTERESTS

*Bolton v. Coats*³⁵ presented a number of questions. Bolton had assigned leases to Coats, reserving an overriding royalty. Coats drilled a well which was classified by the Railroad Commission as a gas well; Coats then formed a gas unit. In a suit in Panola County, Bolton contended that the well was erroneously classified as a gas well, that Coats owed royalty on the actual

28. Apparently, such a holding provides a remedy so as to avoid the pitfalls of not being a good faith trespasser. See note 45 *infra*.

29. See *Clifton v. Koontz*, 163 Tex. 344, 325 S.W.2d 684 (1959); *Garcia v. King*, 139 Tex. 578, 164 S.W.2d 509 (1942).

30. By way of dictum the court stated that this determination is made by including *as an expense* all payments made to overriding royalty owners. 536 S.W.2d at 650-51.

31. This principle is also reiterated and applied in *Huffington v. Upchurch*, 532 S.W.2d 576, 579-80 (Tex. 1976).

32. 538 S.W.2d 876 (Tex. Civ. App.—San Antonio 1976, no writ). See also *Consolidated Oil & Gas, Inc. v. McKendrick*, No. 15491 (Tex. Civ. App.—San Antonio 1976, writ ref'd n.r.e.) (unreported).

33. 540 S.W.2d 742 (Tex. Civ. App.—El Paso 1976, writ ref'd n.r.e.).

34. 538 S.W.2d at 878. See also W. SUMMERS, *THE LAW OF OIL AND GAS* § 512 (perm. ed. 1958); 2 H. WILLIAMS & C. MEYERS, *OIL AND GAS LAW* § 407.2 (1975).

35. 533 S.W.2d 914 (Tex. 1975).

production notwithstanding the fact that some may have been unlawfully produced, and that Coats was liable for damages because of his failure to protect against drainage. The district court granted Coats' motion for summary judgment on the ground that the suit was a collateral attack on an order of the Commission. The Tyler court of civil appeals affirmed.³⁶ On appeal the supreme court held the following: (1) to the extent the suit challenged the classification of the well it was in fact a collateral attack on the Commission's order, whereas the order could be attacked only by direct appeal in Travis County; (2) the order of the Commission classifying the well as a gas well in one zone was not a finding that there were not separate oil productive zones under the same land; (3) the holding of the lower court did not preclude a suit by Bolton for his overriding royalty share of actual oil produced, even if the oil had been produced in violation of permitted gas-oil rations; and (4) unless an assignment reserving an overriding royalty expressly states to the contrary, the assignee of an oil and gas lease impliedly covenants to protect the lease against drainage.³⁷

*Mengden v. Peninsula Production Co.*³⁸ and *Monsanto Co. v. Tyrrell*³⁹ involved dissimilar problems of payouts and reversions. In the *Mengden* case Peninsula granted two separate farmouts (*A* and *B*) to Mengden. Each provided for reversion to Peninsula of one-fourth of the interest conveyed after recovery from production of the costs of drilling and completing. Farmout *A* provided, however, that if wells were completed in the Escondido Sand, the payout would permit recovery of \$70,000 multiplied by the number of wells, rather than actual costs. Mengden drilled three non-commercial wells on tract *A* and two Escondido wells on that part of tract *B* included in two units consisting of parts of both tracts. Mengden contended that in computing the payout the costs of the unit wells should be allocated between *A* and *B*. The court held that no part of the costs of the two unit wells which were situated on tract *B* lands could be allocated to tract *A* for purposes of computing the payout.

In the *Tyrrell* case Tyrrell's lease to Monsanto provided that when Monsanto recovered all of its costs from total production, the royalty would increase from thirty percent to fifty percent. Monsanto and Tyrrell each executed a separate gas purchase contract with Northern Natural Gas Company, the sole purchaser of gas from the subject property. Northern Natural made an advance payment to Monsanto in excess of \$1,000,000 for gas to be delivered in the future under its contract, which sum was to be recouped by Northern Natural from thirty percent of the amount due to Monsanto for actual

36. 514 S.W.2d 482 (Tex. Civ. App.—Tyler 1974, writ ref'd n.r.e.).

37. *Bolton* appears to be the first Texas case allowing implied covenants to arise between the assignor and assignee of a lease because of a reservation of an overriding royalty. This point, however, was not fully discussed by the court. Other cases recognize the existence of implied covenants between assignor and assignee only when there are express covenants to drill and develop in the lease. See *Kile v. Amerada Petroleum Corp.*, 118 Okla. 176, 247 P. 681 (1926); *Cole Petroleum Co. v. United States Gas & Oil Co.*, 121 Tex. 59, 41 S.W.2d 414 (1931). See also M. MERRILL, COVENANTS IMPLIED IN OIL AND GAS LEASES 416-18 (2d ed. 1940) in which it is proposed that implied covenants should be permitted to operate in overriding royalty situations as between assignor and assignee.

38. 534 S.W.2d 749 (Tex. Civ. App.—Tyler 1976, writ granted).

39. 537 S.W.2d 135 (Tex. Civ. App.—Houston [14th Dist.] 1976, writ ref'd n.r.e.).

production. The well had cost approximately \$374,000. The trial court held that by the term "recovery from production" the parties meant marketing of the production and that the amount so prepaid would be applied on the payout. The court of civil appeals held that since the term "production" has a well established legal meaning,⁴⁰ the advance payment was to be accounted for in computation of the payout only as the gas purchased through the advance payment was actually produced.

In two recent cases the contention was made that reservations in a deed were ambiguous. In *DuBois v. Jacobs*⁴¹ the grantor executed a deed in which she reserved "in favor of [the grantor], her heirs and assigns [a non-participating royalty equal to 1/2 of whatever royalty was reserved in any lease executed], for the term of the natural life of the grantor herein"⁴² Repeated references were made to the estates to be vested in and the royalty to be received by "the grantor herein, her heirs and assigns." It was contended that the references to "heirs and assigns" and "the term of the natural life of the grantor" created an ambiguity. The court held that the grantor's reference to the term of her natural life was for the purpose of directing the manner of payment and had no reference to the duration of the interest retained, that the extent of the reservation, as a fee interest with rights of inheritance and alienability, was controlled by the references to heirs and assigns, and that there was no conflict. *Boyd v. Welch*⁴³ is evidence of the fact that problems will result if grants and reservations of mineral or royalty acres and undivided mineral or royalty interests appear in the same title. The grantors conveyed one-half of the minerals in various specifically described tracts. At the time of the conveyance the grantors owned a remainder interest and Ruth Boyd owned a life estate in additional lands. The deed contained the following provisions in addition to those ordinarily encountered in a mineral deed:

The Grantors herein warrant and represent to the Grantee that by this conveyance they have conveyed to him a minimum of an undivided four hundred (400) mineral or royalty acres under the above described land and, if on examination of title, it is determined that this conveyance covers less than 400 mineral or royalty acres under the above described land, the Grantors will execute such additional conveyances or issuances to accomplish the same.

*IT IS UNDERSTOOD AND AGREED, and herein expressly stipulated that there is conveyed by this instrument an undivided one-half (1/2) interest of the Grantors' interests in the life estate in the minerals now owned by Ruth Boyd, of which, at her death, one-half (1/2) passes to the Grantors herein.*⁴⁴

The grantors contended that the deed conveyed an interest only in the tracts specifically described in the deed. The grantee contended that the deed conveyed a one-half interest in the grantors' remainder interest in *all* lands in

40. "[U]nder Texas oil and gas law the clear, well-established, and unambiguous meaning of the term 'production' is 'actual production' or the actual physical extraction of the mineral from the soil." *Id.* at 137.

41. 533 S.W.2d 149 (Tex. Civ. App.—Austin 1976, no writ).

42. *Id.* at 150.

43. 539 S.W.2d 93 (Tex. Civ. App.—Eastland 1976, no writ).

44. *Id.* at 94 (emphasis by the court).

which Ruth Boyd owned a life estate. A jury found that the grantee's contention represented the intent and agreement of the parties to the deed. The court held that the deed was reasonably susceptible to more than one meaning and, thus, ambiguous and that parol evidence was admissible to show the intent of the parties.

The Court in *Whelan v. Killingsworth*⁴⁵ held that a litigant who, having won in the trial court, entered upon the lands while the case was on appeal and drilled two wells and then lost the title question on appeal could not recover his costs of the two wells as a good faith improver. The court of civil appeals stated that for the purpose of determining good faith those actions taken after a favorable judgment but before the time for an appeal has expired are in the same category as those taken after suit is filed and before judgment is rendered. The improver made the novel argument that the old rule should be abolished since the energy crisis required rapid development of reserves without the delay of appeals. The court answered that the district courts possess ample equity powers to effect development pending appeal.

In *Pritchett v. Forest Oil Corp.*⁴⁶ the plaintiff sought to apply to a unit operator in its purchase of an overriding royalty the same fiduciary duty owed by a lessee to the royalty owner when the lessee avails itself of the pooling powers in the lease. Mrs. Pritchett bought 200 overriding royalty acres under a lease which had pooling powers. A unit was formed with Forest as operator. To hedge her investment Mrs. Pritchett sold fifty overriding royalty acres to a broker, who in turn sold them to Forest, the unit operator. Mrs. Pritchett contended that Forest, as operator, had information about a well that she did not have. The court held that a conventional trust relationship was not created and that no fiduciary duty was owed by a unit operator regarding the giving of drilling information to a royalty owner who has no interest in the cost of production.

Phillips Petroleum v. Hazlewood,⁴⁷ an interpleader action, involved the right to suspended funds in a dispute between parties to an assignment of the properties. For many years Phillips had suspended a portion of the price paid for casinghead gas pending the approval by the Federal Power Commission of the price paid. In 1968 Hazlewood assigned the property to Alstar. In 1971 the Federal Power Commission issued its order with respect to price. The assignment contained the following provision:

This assignment is made subject, also, to the terms and provisions of that certain Casinghead Gas Contract, made and entered into by and between Grady Hazlewood, as 'seller' and Phillips Petroleum Company, as 'buyer' on the 11th day of January, 1962, recorded in Volume 267 at Page 72 of the Deed Records of Hutchinson County, Texas, but covers and includes all of Assignor's rights therein and thereunder.⁴⁸

45. 537 S.W.2d 785 (Tex. Civ. App.—Texarkana 1976, no writ). See generally *Houston Prod. Co. v. Mecom Oil Co.*, 62 S.W.2d 75 (Tex. Comm'n App. 1933, jdgmt adopted), in which a lessee entering land in the face of a title dispute is not held to be a good faith trespasser and hence cannot recoup costs of his improvements.

46. 535 S.W.2d 708 (Tex. Civ. App.—El Paso 1976, writ ref'd n.r.e.).

47. 534 F.2d 61 (5th Cir. 1976).

48. *Id.* at 62.

The Fifth Circuit held that the quoted clause did not convey any rights not conveyed elsewhere in the assignment and that Hazlewood was entitled to the suspended funds.

In *Armstrong v. Penroc Oil & Gas Corp.*⁴⁹ Penroc contended that it had furnished to another corporation (International) the funds to pay as bonus and fees to the state for sulphur leases covering mineral classified lands, that International had made false and fraudulent representations, and that the state had notice of the fraud. Penroc claimed the leases issued to International were void ab initio and that Penroc, as a stockholder and judgment creditor of International, was entitled to a refund of the entire sum paid the state. The court held that only the state may challenge the validity of a lease executed by it, and so long as the lease is not cancelled by the state, it is apparently a valid lease and all parties thereto are bound thereby. The court additionally concluded that there was no evidence that the General Land Office had any notice of possible fraud, and, even if the lease were void, International had paid money voluntarily and with full knowledge of all facts and could not have recovered.

49. 538 S.W.2d 12 (Tex. Civ. App.—Austin 1976, writ ref'd n.r.e.).

