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OIL AND GAS

by

Gene L. McCoy*

I. MINERAL AND ROYALTY DEEDS

Interpretative difficulties are inchoate in virtually every mineral conveyance involving a "double fraction" (*i.e.*, a grantor owning only a fractional undivided interest conveys or reserves a differing undivided fractional interest). Sometimes these construction problems are resolved on the basis of the presumed or judicially discerned intent of the parties. More often, however, the interpretation is predicated on the application of rigid judicial canons of construction. In *Bass v. Harper*¹ two appellate courts applied the two interpretive approaches in examining the same deed and reached opposite conclusions as to its meaning, while at the same time declaring cavalierly that the document under examination was *not* ambiguous.

In 1957, Bass, owning the surface and 8/14ths of the royalty, made a conveyance to Harper's predecessor of an undivided one-half interest in a tract of land in Cooke County, Texas. Immediately following the granting clause was the language: "This Grant is subject to the Mineral Reservation contained in the following Deed(s): [Then follows a list of nine deeds from various people to Bass in which a total of 6/14ths royalty interest had been reserved]." An habendum clause followed and the deed concluded with a general warranty. Harper contended that Bass, who owned 8/14ths of the royalty, conveyed to Harper one-half of this interest, or 4/14ths of the royalty. The court of civil appeals agreed with this construction, treating that portion of the conveyance quoted above as merely modifying and thereby protecting the grantor in his warranty.³ Moreover, this court made it abundantly clear that it had considered all of the surrounding circumstances, both at the time of and after the execution of the deed, in arriving at this conclusion.

Although the Texas supreme court agreed that the document was unambiguous, it reversed the decision.⁴ In contrast to the court of civil appeals, the supreme court noted that the intentions of the parties, other than the intentions expressed in the wording of the document, were extraneous. The supreme court held that the *grant* was "subject to" the mineral reservations contained in the prior deeds specifically described in the conveyance, and that the "subject to" language had no direct reference to the warranty clause. Accordingly, the court concluded that the express grant of an undivided one-half interest (7/14ths of the royalty) was subject to and reduced by the full burden of the outstanding 6/14ths

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¹ 437 S.W.2d 648 (Tex. Civ. App.—Fort Worth 1968), *rev'd*, 441 S.W.2d 825 (Tex. 1969).

² 441 S.W.2d at 826.

³ *Bass v. Harper*, 437 S.W.2d 648, 651 (Tex. Civ. App.—Fort Worth 1968), *rev'd*, 441 S.W.2d 825 (Tex. 1969).

⁴ *Bass v. Harper*, 441 S.W.2d 825, 828 (Tex. 1969).

royalty interest so that the grantee acquired an undivided 1/14th royalty interest. While this holding may be eminently correct in judicial principle (although no persuasive authority directly in point was cited) and may mirror the intentions of the parties, it is not manifestly clear that the "subject to" language was susceptible of *only* the construction placed on it by the supreme court. Indeed, a respectable argument can be made that the "subject to" clause means "subject to its proportionate part." In any event, those who have heretofore felt that this latter construction was possible must now take full cognizance of this case.

Another reservation problem was involved in *Kirby Lumber Corp. v. Claypool*.⁵ In this case, the grantor conveyed the fee title to a tract of land by a special warranty deed which contained the following reservation:

It is further expressly understood and agreed that the grantor herein reserves unto himself the right to enter upon the possession of said land and prospect for oil and other minerals thereon and in case such oil or other minerals are discovered, he reserves the right to take and remove the same, and for the purpose of removing, construct or operate such pipelines or other means of conveyances as may reasonably be necessary therefor. In such development, or the removing of said oil or other minerals from said land, if it becomes necessary to cut or destroy any of the timber then standing on said land the grantor agrees to pay therefor the reasonable value thereof at such time, and also agrees that in such development, or the laying of pipe lines he will not interfere with any improvements or tram railway then located on said land.⁶

The grantee contended that he acquired the fee title because this clause was ineffective to reserve the minerals. The grantee's position was that the reservation merely created a personal privilege which expired on non-use after a reasonable time. The grantee buttressed his argument by pointing out that the reservation did not contain the words "heirs and assigns." The court of civil appeals, in rather summary fashion and relying on the case of *Forrest v. Hanson*,⁷ declared that the reservation constituted a full and complete reservation of the full fee simple title to the minerals.

It is a fairly well-established common law rule of conveyance that no interest or estate in land may be created in favor of a stranger to the title by means of a reservation contained in a deed. While it would be superfluous to quarrel with this rule at this late date, one might take issue with the strained extension of it in *Ryan v. Fort Worth National Bank*⁸ in which the court declared that a wife's community property interest meets the test of non-relationship for purposes of defining a "stranger to the

⁵ 438 S.W.2d 655 (Tex. Civ. App.—Beaumont 1969), *error ref. n.r.e.*

⁶ *Id.* at 656.

⁷ 424 S.W.2d 899 (Tex. 1968). In this case the supreme court considered and rejected the same argument made in the principal case as to the following reservation:

It is especially understood and agreed that the said H. Bockman retains all of the Oil, Gas and Mineral rights [property description] and at any time he shall desire to develop any of the minerals above mentioned or retained herein, he can proceed with such development at his will by paying to the then owner of the land the actual damages caused by such development, if there should be cause for such damage, otherwise, he shall proceed at his will to the development of said minerals.

Id. at 901.

⁸ 433 S.W.2d 2 (Tex. Civ. App.—Austin 1968).

title." Thus, a reservation in favor of the wife contained in a conveyance of community property was vitiated.

In a case involving a request for reformation of a mineral deed, the court of civil appeals correctly held that the subsequent acts of one of the parties to the deed in executing division orders and accepting payment under them did not constitute evidence of mutual mistake in the execution of a 1935 mineral deed.⁹

II. ROYALTY PROBLEMS

The usual incidents of the mineral ownership, *i.e.*, the right to (1) execute leases, (2) receive bonus payments, (3) receive delay rental payments and (4) royalties, may be segregated and owned, in whole or in part, by any number of persons. The interest of a non-participating royalty owner entitled to royalty only and the interest of the owner of the executive rights entitled to the bonus are not parallel. It is a concomitant of these circumstances that the executive interest owner will seek the largest possible bonus—even if this means obtaining a smaller royalty and thereby sacrificing the interest of a non-participating royalty owner.

This natural avarice is exemplified in the scheme employed in *Lane v. Elkins*.¹⁰ Here, the owner of the executive right executed an oil and gas lease containing the "usual" $\frac{1}{8}$ th royalty to which was attached the following rider:

In addition to the cash consideration above set out and as part of the consideration for the execution of this lease, and not as a part of the royalty hereinabove reserved, the lessors reserve unto themselves, their heirs and assigns, the following overriding royalty, to wit: $\frac{1}{16}$ of $\frac{7}{8}$ of all oil, gas and other minerals, including casinghead gas or other gaseous substances which may be produced and saved, sold and used off from the lands above described under this lease, as, if and when produced and saved, free and clear of all costs . . . ; it being understood and agreed that this reservation shall be $\frac{1}{16}$ of $\frac{7}{8}$ of the total amount of oil, gas and other minerals produced on the entire above mentioned tracts without regard to whether or not the undersigned owns all or less than all of the oil, gas and other minerals under said tracts of land, the heretofore set out reduction clause for ownership of less than fee simple NOT being applicable to this clause.¹¹

Of course, the owner of the executive power contended that this "overriding royalty" was nothing more than "bonus" to which he was entitled to the exclusion of the non-participating royalty owners. Quite correctly, the court of civil appeals pointed out that the executive owner cannot, by the unilateral use of contrived language, change the meaning of the royalty interest so as to defeat the rights of a non-participating royalty owner. Relying on *Griffith v. Taylor*,¹² the court held that an interest which is to continue throughout the life of the lease and which has the ordinary

⁹ *City Nat'l Bank v. Bradshaw*, 433 S.W.2d 955 (Tex. Civ. App.—Fort Worth 1968).

¹⁰ 441 S.W.2d 871 (Tex. Civ. App.—Eastland 1969).

¹¹ *Id.* at 873.

¹² 156 Tex. 1, 291 S.W.2d 673 (1956).

characteristics of a royalty interest is to be treated as a royalty interest regardless of the designation given it by the parties.

In other litigation arising from royalty interests, the Foster family obtained judgment against its lessee, Atlantic Refining Company, in 1963 for \$57,015. This judgment, which was subsequently affirmed by the Fifth Circuit in *Foster v. Atlantic Refining Company*,¹³ represented the difference between the price of gas paid to them by Atlantic and the market price in the field for the gas when run. In that litigation the Fosters utilized a consulting geologist and petroleum engineer as their expert witness, and, on the basis of his testimony as to market values, the deficiency was determined and judgment entered accordingly. Subsequently, the expert witness advised the Fosters that his testimony was incorrect because his calculations included both the prior payments for gas from a gasoline plant and for residue gas, whereas it should have been limited only to residue gas sales. Based upon an affidavit containing his recalculations, the Fosters petitioned the Fifth Circuit to correct the judgment so that they would be awarded \$120,464.21. After the motion was denied, the Fosters instituted suit against the expert witness for damages in an amount equal to the difference between the recalculated sum and the amount of the judgment actually entered. The court of civil appeals in *Foster v. Spice*¹⁴ found that the prior judgment concluded that market price was not limited to the market price of the residue gas. Accordingly, although the expert witness admitted errors in his calculations in the federal court, the court of civil appeals found that those statements were conclusively shown in the first trial to be correct. It remains to be seen whether the Fosters will now sue the lawyers who represented them at the first trial.

III. OPEN MINE

According to general property law, absent special provisions contained in the instrument creating the life estate or other special circumstances, a life tenant in land is entitled to the exclusive possession of the land, but he may not dispose of the corpus of the estate which is to be preserved for the remainderman. The life tenant, acting alone, is not entitled to extract oil, gas or other minerals from the land, without the joinder of the remainderman. Inasmuch as royalties and bonuses are treated as corpus, they are to be preserved for the remainderman, but the life tenant is entitled to receive the interest or income derived from their investment. An exception to this rule is the "open mine" doctrine which permits the life tenant to continue to work and claim all of the royalties from mines which were open at the inception of the life tenancy. Consequently, although the life tenant may not commit waste, he may nevertheless work existing mines to depletion. Under Texas law, the open mine doctrine applies not only to wells drilled prior to the inception of the life tenancy,¹⁵ but also to wells drilled after the commencement of the life estate under the authorization

¹³ 329 F.2d 485 (5th Cir. 1964).

¹⁴ 441 S.W.2d 212 (Tex. Civ. App.—San Antonio 1969).

¹⁵ *Petrus v. Cage Bros.*, 128 S.W.2d 537 (Tex. Civ. App.—San Antonio 1939), *error ref.*

of an oil and gas lease executed by the former owner prior to the creation of the life estate.¹⁶

There is disagreement on the subject of whether the open mine doctrine should apply to a life tenant who has been expressly granted the power to lease.¹⁷ The further related problem of whether the open mine principle will apply when the life tenant has a power of sale was presented recently in *Johnson v. Messer*.¹⁸ There, an oil and gas lease was executed by the life tenant and remainderman after the creation of these estates and prior to the time that any mineral production existed on the property. The will creating these estates stipulated that the life tenant had the power to sell or mortgage the land for his support. It was held that this power was not sufficient authority for invoking the open mine doctrine, at least under these facts, because there was no evidence that the lease was made for the necessary and comfortable support of the life tenant. The court's statement that the execution of an oil and gas lease was not a sale within the meaning of the power of sale expressed in the will seems open to question.¹⁹

In another open mine doctrine case, *Bergendahl v. Blanco Oil Co.*,²⁰ a life tenant without power to sell or lease made a cogent argument for application of this doctrine even though there were no producing wells or existing leases on the property at the time the life estate was created. Nevertheless, the life tenant proved that the land in question was initially purchased as a 12,000-acre ranch and was held intact until its sale by the former owner, at which time the surface and mineral estates were severed with the minerals reserved in the entire ranch. Thereafter, the former owner of the mineral estate gave a shooting option on the entire ranch which resulted in a lease and production on a portion of the ranch not owned by the life tenant. The evidence also showed that the former owner had made oil and gas leases on the land in question which had either expired or been released prior to the time of the creation of the present life estate. The life tenant urged that all of these facts conclusively established that the former owner did indeed devote his mineral estate in the land to the production of oil and gas with the result that it was subject to the application of the open mine doctrine. The court of civil appeals held against the life tenant, citing only two prior Texas cases.²¹ Regrettably, the court gave no other reasons for its holding and failed to mention at least one case²² which would support the argument that the existence of a pre-existing but terminated lease is tantamount to actual production. While it is difficult to draw firm conclusions from these cases, it can at least be said that the proclivity of the Texas courts is to restrict the open mine theory to instances where there exists actual production or an existing oil and gas

¹⁶ *Youngman v. Shular*, 155 Tex. 437, 288 S.W.2d 495 (1956).

¹⁷ *E. KUNTZ, OIL & GAS* 168-71 (1962).

¹⁸ 437 S.W.2d 643 (Tex. Civ. App.—Amarillo 1969), *error ref. n.r.e.*

¹⁹ *Avis v. First Nat'l Bank*, 141 Tex. 489, 174 S.W.2d 255 (1943).

²⁰ 440 S.W.2d 81 (Tex. Civ. App.—Eastland 1969), *error ref. n.r.e.*

²¹ *Clyde v. Hamilton*, 414 S.W.2d 434 (Tex. 1967); *Youngman v. Shular*, 155 Tex. 437, 288 S.W.2d 495 (1956).

²² *Mitchell v. Mitchell*, 298 S.W.2d 236 (Tex. Civ. App.—Beaumont 1957), *rev'd on other grounds*, 157 Tex. 346, 303 S.W.2d 352 (1958).

lease at the inception of the life estate. It cannot be ascertained whether any additional factors reflecting the intention of the former owner to devote the land to the production of oil and gas will be considered in determining the application of the open mine doctrine.

IV. LEASE CLAUSES

*Atlantic Richfield Co. v. Hilton*²³ considered the lessee's abortive attempt to avoid the results of the tendency of Texas courts to construe pooling clauses against the lessees. On August 5, 1951, H & M executed an oil and gas lease covering an 80-acre tract to Atlantic for a ten-year primary term. The lease contained a pooling clause specifying regular 40-acre oil units, but providing that "should governmental authority having jurisdiction prescribe or permit the creation of larger units than those specified, units thereafter created may conform substantially in size with those prescribed by governmental regulations."²⁴ In 1961 the Texas Railroad Commission promulgated an order which permitted but did not "prescribe" 160-acre proration units. In March, 1961, Atlantic, preparatory to the drilling of a well on this lease, unsuccessfully sought from H & M the execution of a lease amendment designed to correct an erroneous call in the lease description. Numerous other requests were likewise refused by H & M.

Having failed to obtain the amendment, Atlantic moved its rig to an adjoining 80-acre tract and completed a producing oil well on June 25, 1961. No well was drilled on the H & M tract. On June 30, 1961, Atlantic executed and filed for record a declaration of unit which recited that the H & M 80-acre tract and the adjoining and producing 80-acre tract were combined to form a unit of 160 acres in conformance with the size permitted by the Railroad Commission.

In November 1961, H & M filed suit to quiet title, claiming that the lease was invalid because of a lack of a sufficient description. The case was removed from the state court to the federal court and subsequently remanded on procedural grounds to the Henderson County District Court. Six years later, in 1967, an additional plaintiff was joined in the suit, and the pleadings were amended to allege, on the basis of the fortuitous decision in *Jones v. Killingsworth*,²⁵ that Atlantic had exceeded the pooling powers in its lease. It was further alleged that the lease had terminated for lack of production on the H & M tract at the expiration of the primary term.

On appeal there was no attack of the lower court's holding that the lease had terminated because of the invalid unit. However, Atlantic contended that the lessors, H & M, had wrongfully repudiated Atlantic's title, thereby suspending the running of the primary term pending a de-

²³ 437 S.W.2d 347 (Tex. Civ. App.—Tyler 1969), *error ref. n.r.e.*

²⁴ *Id.* at 350.

²⁵ 403 S.W.2d 325 (Tex. 1965). *Jones v. Killingsworth* involved interpretation of an identical clause involved in the *Hilton* case. The *Killingsworth* court held that the lease terminated, distinguishing between the 80 acres prescribed by the Commission and the 160-acre unit which it permitted. Since the lease authorized pooling only to the extent *prescribed* by the Commission, the lessee was held to have no right to pool the tract into a unit of more than 80 acres.

termination of the controversy. Three principal factors were said to constitute this repudiation: (1) H & M's refusal to execute a lease amendment; (2) the execution by H & M of two top leases to another party; and (3) statements made by H & M's attorney in a telephone conversation with Atlantic in the first week of July, 1961. The court found that at no time did H & M declare unequivocally that Atlantic had no lease, but rather, that H & M's position was that if Atlantic had a valid lease, there was no need for the amendment. The court characterized the attorney's remarks as a mere reflection of his client's opinion that there was no valid lease and not as a legal opinion. Moreover, the court found that Atlantic was merely "requested," as opposed to "demanded," to amend the unit declaration to exclude the H & M lease. Finally, since Atlantic had no knowledge of the top leases which were executed in 1961 until after the expiration date of the primary term in 1967, the leases were held to have had no effect on Atlantic's operations. Thus, the court concluded that the actions of the lessors and their attorney did not meet the criterion of legal repudiation. Alternatively, there was no evidence of reliance by Atlantic to support a contrary holding. This latter language is not consonant with the facts inasmuch as Atlantic had presumably staked a drilling application on the H & M tract but at the last moment moved that location to the adjoining 80-acre tract.

*Schindler v. Thomas*²⁶ involved the construction of an oil and gas lease which was signed June 4, 1965. This lease provided for a primary term of six months and contained the following clause: "If no well be commenced on said land on or before the — day of November, 1965 this lease shall terminate as to both parties."²⁷ The court of civil appeals held that this provision created an ambiguity as a matter of law, thereby allowing the introduction of parol evidence. There was ample evidence that it was the intent of the parties that the well in question was to be commenced on or before December 4, 1965, six months from the date of the lease. Since the well had been commenced December 3, 1965, the lessee prevailed.

In *Lynch v. Southern Coast Drilling Co.*²⁸ the court of civil appeals considered termination of a lease for lack of production or requisite drilling operations. Inasmuch as the issue arose in this case from a motion for continuance and because the opinion omitted the specific language of the oil and gas lease in question, it is difficult to elaborate on the holding. In a collateral holding, the court interpreted the notice provision of the lease²⁹ and stated that when termination of the lease is due to an absence of production, the notice clause is inapplicable since it relates only to a default in an implied or expressed obligation. Since the lessee was under an optional rather than an affirmative obligation to produce, the clause was held inapplicable.

²⁶ 434 S.W.2d 187 (Tex. Civ. App.—Corpus Christi 1968).

²⁷ *Id.* at 188.

²⁸ 442 S.W.2d 804 (Tex. Civ. App.—San Antonio 1969).

²⁹ The court found that the lessor shall notify the lessee in writing if the lessor considers that the lessee has not complied with the obligations under the lease.

In *P. G. Lake, Inc. v. Sheffield*,³⁰ a case of first impression, the landowners filed suit against the oil and gas lessee for damages resulting from the lessee's failure to restore the leased premises after the completion of drilling and producing operations. The alleged duty was predicated upon an oral contract between the lessor and lessee. In the trial court, the cost of repairs was introduced into evidence by the landowners, but neither party proved the value of the land before or after the injury. The jury found for the lessors on the submitted issues of the reasonable cost of performing the breached contract. On appeal, the lessee complained that the submission of the cost of repairs was error and that the proper measure of damages, considering the permanent nature of the injury, was the market value of the land before and after its injury. The court of civil appeals held, after stating that it had found no case in this jurisdiction on the question of the measure of damages when an oil and gas lessee breaches a contract to repair the premises, that it would adopt the following rule pronounced by the Oklahoma supreme court in *Peevyhouse v. Garland Coal & Mining Co.*³¹

[T]he measure of damages in an action by lessor against lessee for damages of breach of contract is *ordinarily the reasonable cost of performance of the work*; however, where the contract provision breached was merely incidental to the main purpose in view, and where the economic benefit which would result to lessor by full performance of the work is grossly disproportionate to the cost of performance, the damages which lessor may recover are *limited to the diminution in value* resulting to the premises because of the non-performance.³²

Nevertheless the Texas court held for the landowner by further declaring that the *Peevyhouse* rule is to be regarded as an exception to the general rule and is therefore a rule of minimization of damages, defensive in nature, and one that must be raised by the defendant by proper pleadings and proof—a burden which the lessee had, retrospectively, failed to sustain in this case. Although this case considered an oral agreement between lessor and lessee, there appears to be nothing in the opinion which would preclude its applicability to a lease clause on the same subject.

V. OPERATING AGREEMENTS

During the period of this *Survey*, the courts were called upon to consider two controversies involving operating agreements. In the first case, *Bradco Oil & Gas Co. v. Rowan*,³³ suit was brought by holders of 53 per cent of the working interest to remove the old operator and substitute a new operator as provided in the operating agreement. The operating agreement defined a majority as "parties who own more than 50% of the working interest and who are more than six (6) in number."³⁴ The present operator contended that he could only be removed by the vote of six or more of

³⁰ 438 S.W.2d 952 (Tex. Civ. App.—Tyler 1969), *error ref. n.r.e.*

³¹ 382 P.2d 109 (Okla. 1962), *cert. denied*, 375 U.S. 906 (1963).

³² 382 P.2d at 110 (emphasis added).

³³ 437 S.W.2d 58 (Tex. Civ. App.—Houston 1968).

³⁴ *Id.* at 59.

the working interest owners who were signatories to the agreement. The court skirted this issue, holding that the remaining working interest owners who were not before the court were indispensable parties to the action. Thus the court remanded the case for further proceedings.

In the second case, *French v. Joseph E. Seagram & Sons*,³⁵ the court was called upon to construe portions of sections 11 and 12 of an operating agreement. Section 11 of the agreement provided:

Without the consent of all parties: (a) no well shall be drilled on the unit area except any well expressly provided for in this agreement and except for any well drilled pursuant to the provisions of Section 12 of this agreement.³⁶

Section 12 of the agreement provided:

If all the parties cannot mutually agree upon the drilling of any well on a unit area . . . any party or parties wishing to drill, rework, deepen or plug back such a well, *may give the other parties written notice* of the proposed operation, specifying the work to be performed, the location, proposed depth, objective formation, and estimated cost of the operation. The parties receiving such a notice shall have thirty (30) days . . . after receipt of the notice, in which to notify the parties wishing to do the work whether they elect to participate in the cost of the proposed operation.³⁷

The operator sent the parties an instrument called an "AFE" (Authority for Expenditure of Funds) covering the drilling of a new well. The plaintiffs agreed in writing to the drilling, completing and equipping of this well. In refusing to pay their proportionate part of the cost of the well, the plaintiffs argued that the "AFE" did not comport with the requirements of the agreement in that the agreement provided for notices for situations when all parties participated and for separate and distinct notices for proposed operations by fewer than all parties to the agreement. While this argument seems quite tenable, the court concluded that the notice was adequate and proper under the operating agreement and that the non-operating interest owners were bound for their proportionate cost of the well. On a collateral issue, it was held that the operator could not recover attorney's fees under article 2226³⁸ because its suit was on a "special contract."

VI. REGULATORY CASES

In *Foree v. Crown Central Petroleum Corp.*³⁹ several working interest owners sued Crown, a common pipe line carrier, for damages resulting from discrimination practiced by Crown in purchasing its own crude oil in preference to that of the plaintiffs for a period from October 1959 to November 1964. The plaintiffs alleged damages of \$85,998 which were measured by transportation charges of 11¢ per barrel for trucking their oil to a market. The plaintiffs' cause of action was based on section 11(c)

³⁵ 439 S.W.2d 448 (Tex. Civ. App.—El Paso 1969), *error ref. n.r.e.*

³⁶ *Id.* at 450.

³⁷ *Id.* (emphasis added).

³⁸ TEX. REV. CIV. STAT. ANN. art. 2226 (1964).

³⁹ 431 S.W.2d 312 (Tex. 1968).

of article 6049A⁴⁰ which provides that a cause of action for damages lies against a common purchaser who discriminates. The trial court granted summary judgment for Crown, and the court of civil appeals affirmed, on the theory that the Railroad Commission had exclusive original jurisdiction of the complaint. Although the Commission had previously promulgated an order directing Crown to take the plaintiffs' oil, this order had been withdrawn and at the time of the suit there was no existing order by the Commission relative to the alleged discrimination. The supreme court in reversing and remanding, analyzed the statute in question and pointed out that the legislature did not condition the right to damages upon a valid and subsisting Commission finding of discrimination. The court further held that the jurisdiction of the Railroad Commission is thus concurrent with the courts on the issue of discrimination and not exclusive.

In *Railroad Commission v. Miller*⁴¹ the Texas supreme court stated that "[c]ourts must take statutes as they find them,"⁴² and construed the appeal provisions of the Mineral Interests Pooling Act of 1965,⁴³ which, in part, provides: "Any person or party at interest aggrieved by an order of the Commission *effecting pooling* under this Act may appeal such order within 30 days to the District Court of the county in which the land or any part thereof covered by such order is located . . ."⁴⁴ In *Miller* the respondents filed an application with the Railroad Commission to have a four-acre tract which they owned pooled with an existing 651.5-acre gas unit. The Commission denied the application "for failure of the applicant to show that the four-acre tract reasonably appears to lie within the productive limits of the reservoir,"⁴⁵ whereupon the respondents appealed to the district court of Rains County, the situs of the four-acre tract. The supreme court denied the respondents' appeal on the grounds that it was not filed in the proper county, refusing to distort the phrase "effecting pooling" as used in the statute to mean "affecting pooling." As a result, if the Commission "effects" pooling, an appeal will lie to the county in which the land is located; but if the Commission rejects a pooling application the appeal must be to the district court of Travis County under the general appeal provisions of section 8 of article 6049 (c).⁴⁶

In *Schlumberger Well Survey Corp. v. Nortex Oil & Gas Corp.*⁴⁷ Nortex purchased from other parties various mineral leasehold estates in East Texas. When the "slant hole" scandal broke in 1962, Nortex learned that it had purchased a number of wells which were producing from property owned by others. The subsequent loss of production from the illegally deviated wells made these leasehold interests worth far less than Nortex paid for them. In this suit Nortex claimed that Schlumberger conspired with

⁴⁰ TEX. REV. CIV. STAT. ANN. art. 6049A, § 11C (1962).

⁴¹ 434 S.W.2d 670 (Tex. 1968).

⁴² *Id.* at 672.

⁴³ TEX. REV. CIV. STAT. ANN. art. 6008C, § 2(g) (Supp. 1968).

⁴⁴ *Id.* (emphasis added).

⁴⁵ 434 S.W.2d at 671.

⁴⁶ TEX. REV. CIV. STAT. ANN. art. 6049C, § 8 (1962).

⁴⁷ 435 S.W.2d 814 (Tex. 1968).

others to conceal this information from it when it purchased the leases. In the trial court it was shown that Schlumberger logged and perforated a large number of the illegally deviated wells prior to the purchase by Nortex. Furthermore, evidence was introduced that Schlumberger knew that the wells in question were illegally deviated and that it in fact employed a billing procedure which facilitated the concealment of the total depth of the wells it had logged. In holding against Nortex, the supreme court stated, "There is abundant evidence of a conspiracy such as suggested by Nortex, and that the object of the conspiracy was accomplished; but only by suspicion and speculation can Schlumberger be linked to the conspiracy in two vital respects, *e.g.*, knowledge of the object of the conspiracy and intention to injure adjoining owners."⁴⁸ The record was devoid of evidence that Schlumberger knew the location of the various boundary lines or that Schlumberger had the intention to bottom the well wrongfully on the property of others.

In an action by the state against Shell Oil Company⁴⁹ to recover funds held by Shell as a result of the production of oil and gas in accordance with the escheat laws of the state of Texas, Shell interposed the four-year statute of limitations as a defense.⁵⁰ The state argued that the money held by Shell was held as a cotenant and was therefore not subject to the statute of limitations. In finding for Shell, the court of civil appeals held that the relationship between lessor and royalty owner is not one of cotenancy and found the four-year statute of limitations applicable.

⁴⁸ *Id.* at 856.

⁴⁹ *Shell Oil Co. v. State*, 442 S.W.2d 457 (Tex. Civ. App.—Houston 1969).

⁵⁰ TEX. REV. CIV. STAT. ANN. art. 5527 (1958).