



1959

Mines and Minerals - Leases, Licenses, and Contracts - Oil and Gas Lease Terminates upon Unreasonable Cessation of Production

Lawrence M. Nagatomo

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Nagatomo, Lawrence M. (1959) "Mines and Minerals - Leases, Licenses, and Contracts - Oil and Gas Lease Terminates upon Unreasonable Cessation of Production," *North Dakota Law Review*. Vol. 35 : No. 3 , Article 10.

Available at: <https://commons.und.edu/ndlr/vol35/iss3/10>

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

No cases directly involving a right-to-work law such as the one in the instant case could be found, consequently it can only be left to conjecture as to what the decision would be in North Dakota which also has a right-to-work law similar to that of Arkansas.¹¹

From the standpoint of public policy it seems that unionization of police officers would not be in the best interests of the community. Since public employees if they do unionize, do not have the privilege to strike, bargain collectively, picket or have a closed shop,¹² it would appear to be of slight advantage to be a member of a union. The possibility exists that the employees would be better served by having a local committee, elected from their membership to discuss local wages, hours, working conditions, and in this way present their problems to the proper public officials.

RICHARD J. RAMAGE.

MINES AND MINERALS — LEASES, LICENSES, AND CONTRACTS — OIL AND GAS LEASE TERMINATES UPON UNREASONABLE CESSATION OF PRODUCTION. — Plaintiff purchased a leasehold estate existing under an oil and gas lease covering property where there was one small producing well, and the terms of the lease were for one year and as long thereafter as oil and gas were produced. The primary term of the lease had expired, when the lessees ceased production five or six months prior to the purchase due to a dispute between themselves. The lessors contended that, with the voluntary cessation of production the lease terminated. The Supreme Court of Oklahoma, three justices dissenting, *held* that the well had not been shut down for an unreasonable length of time by the five or six month period, hence the lease had not expired. *Cotner v. Warren*, 330 P.2d 217 (Okla. 1958).

In determining whether an oil or gas lease has been forfeited for breach of covenant to market production, equity imposes a rigid standard of good faith on the part of lessee, measured not only by lapse of time,¹ but by diligence of the lessee.²

The court in the principal case, followed the Kentucky rule that the only fair and just rule is "a lease continues in force unless the cessation period viewed in light of all the circumstances is for an unreasonable time."³ In-

11. N. D. Rev. Code § 34-0114 (Supp. 1957) "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization, and all contracts in negation or abrogation of such right are hereby declared to be invalid, void and unenforceable."

12. See *Beverly v. Dallas*, 292 S.W.2d 172 (Tex. Civ. App. 1956).

1. *Bell v. Kilburn*, 192 Ky. 809, 234 S.W. 730 (1921) (While courts usually disfavor forfeitures, gas and oil leases present a recognized exception to this rule, based on the view that because of their elusive and transitory character, time must be regarded as the essence of the contract).

2. *Bristol v. Colo. Oil and Gas Corp.*, 225 F.2d 894 (10th Cir. 1955). (Under Oklahoma law, actual production within definite term of an oil and gas lease which is to extend as long as oil or gas is produced is not a condition precedent to extension of lease beyond definite term, and lessee has a reasonable time to market after discovery and expiration of definite term. But the lessee as condition precedent to extension impliedly covenants to operate the validated lease in a prudent manner and with reasonable diligence because the covenant necessarily embraces a duty to market production to mutual advantage of lessor and lessee). *Accord*, *Christianson v. Champlin Refining Co.*, 169 F.2d 207 (10th Cir. 1948).

3. *Lamb v. Vansyckle*, 205 Ky. 597, 266 S.W. 253 (1924). *Compare with* Louisiana rule where, "in order to cancel the lease, there must be some evidence that the wells thereon are no longer capable of producing oil or gas in paying quantities; or that

terpretation of this rule necessarily considers benefits and hardships.⁴ Only by the production and sale, basic consideration for execution of the lease, does the lessor realize value.⁵ It appears that the better rule is for lease termination when there are no reasonable grounds for ceasing production,⁶ and this was followed in Oklahoma recently.⁷

It may be inferred from a decision that North Dakota courts would render the same judgment as given in the principal case.⁸ Such a holding would be repugnant to the view of lease termination under common law or special limitation upon which interest terminates immediately,⁹ and also derogatory to statutory interpretation,¹⁰ unless delay rental is provided for under the terms of the lease.¹¹

The instant case is subject to criticism because no logical reason appears why the shut-down period could not extend to a year or longer, if lessee suggests it is "temporary." Suggested for consideration, was the possibility of continued production with impoundment of the runs, thereby protecting interests of lessors as well as disputing lessees.¹²

LAWRENCE M. NAGATOMO.

MINES AND MINERALS — NATURE OF ESTATE GRANTED OR RESERVED — RESERVATION CLAUSE HELD TO RESERVE MINERALS IN PLACE. — Plaintiff brought an action to determine his rights under the following mineral reservations in a deed of land not under any oil and gas lease: "We do hereby

lessee, in closing down the wells had done so with the intention of abandoning the same." *Tyson v. Surf Oil Co.*, 195 La. 248, 196 So. 336 (1940). Also compare with Texas rule, which is much more favorable for the lessor than the Louisiana rule, because it has been modified to allow a temporary cessation of production due to sudden stoppage of the well or some mechanical breakdown of the equipment used in connection therewith, or the like." *Watson v. Rochmill*, 137 Tex. 565, 155 S.W.2d 783 (1911). Cf. *Waggoner v. Sigler Oil Co.*, 118 Tex. 509, 19 S.W.2d 27 (1929). (In place of forfeiture it was suggested a lease is a determinable fee which is lost on cessation of production). See also, 2 SUMMERS, OIL & GAS § 305 n. 19.

4. See, e. g., *Lamb v. Vansyckle*, 205 Ky. 597, 266 S.W. 253 (1924) (No termination where royalties were paid during period of 56 days cessation); *Zeller v. Book*, 7 Ohio Cir. Ct. (N.S.) 429, 28 Ohio C.C. 119 (1905) (Where cessation was due to derricks being blown down in storm).

5. In the instant case the dissenting opinion stated that the holding amounted to amending the lease by the court. "Its effect is to change the 'as long thereafter' clause to read 'It is agreed that this lease shall remain in force for a term of one year from date, and as long thereafter as oil or gas, or either of them, can be produced from said land by the lessee, as distinguished from 'is produced.'"

6. *Anthis v. Sullivan Oil & Gas Co.*, 83 Okla. 86, 203 Pac. 187 (1921); *Western States Oil and Land Co. v. Helms*, 140 Okla. 206, 288 Pac. 964 (1930); *Woodruff v. Brady*, 181 Okla. 105, 72 P.2d 709 (1937). For a further discussion, see 2 SUMMERS, OIL & GAS § 305 n. 19.

7. *Brown v. Shafer*, 325 P.2d 743 (Okla. 1958).

8. *Herman Hanson Oil Syndicate v. Bentz*, 77 N.D. 20, 40 N.W.2d 304 (1949) (court will not declare an oil and gas lease terminated by lessee unless it appears by direct evidence or preponderant circumstances that lessee intended to abandon the lease, and there must be a demand by lessor upon lessee to comply with implied covenants and allowances of a reasonable time for compliances).

9. *Woodside v. Lee*, 81 N.W.2d 745 (N.D. 1957) (Under an "unless" oil and gas lease, failure of lessee to commence drilling operations within stated time terminates lease without any notice or demand upon part of lessor, unless delay rentals are paid).

10. N. D. Rev. Code § 47-1616 (1943).

11. N. D. Rev. Code § 38-1003 (1957 Supp.) (Provides for payment of royalties and delay rentals. A lease may provide for delay rentals which will operate as a rental to cover privilege of deferring commencement of a well for a period or successive periods as provided in a lease).

12. The dissenting opinion in the instant case stated that there appears no reason under the record which would have prevented continuing production and impounding the runs during the dispute between the lessees.