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Duquesne Natural Gas Co. v. Fefolt: Reservation of One-Eighth Interest in Gas and Oil-Estate in Land or Personalty in Pennsylvania?

Roger B. Cubbage

DUQUESNE NATURAL GAS CO. V. FEFOLT: RESERVATION OF ONE-EIGHTH INTEREST IN GAS AND OIL—ESTATE IN LAND OR PERSONALTY IN PENNSYLVANIA?

In *Duquesne Natural Gas Co. v. Fefolt*,[1] the Superior Court of Pennsylvania held that a reservation[2] of an equal one-eighth part of all gas and oil produced and saved as consideration for an oil and gas lease is real property. The purpose of this Note is to set forth the principles involved in three basic methods of creating interests in oil and gas—license, lease and sale—all commonly referred to as leases, and to examine these concepts with a view toward explaining how the superior court reached the decision that oil and gas royalties are real property. Furthermore, the Note will suggest how the courts might reach a decision more in accord with Pennsylvania law and with the intent of the parties to the original agreement.

In Pennsylvania, oil and gas are considered to be minerals,[3] belonging to the owner as part of the land, so long as they are within the boundaries of the estate.[4] They can be sold apart from the surface and apart from other minerals beneath it.[5] The agreement of sale can effect a severance, creating a separate freehold of inheritance in the oil and gas.[6]

The question of whatever gas and oil royalties are to be treated as realty or personalty is important in regard to at least three areas: (1) how the

1. 203 Pa. Super. 102, 198 A.2d 608 (1964).

2. A reservation is "a clause in a deed or other instrument of conveyance by which the grantor creates, and reserves to himself, some right, interest, or profit in the estate granted, *which had no previous existence as such*, but is first called into being by the instrument reserving it. . . ." BLACK, LAW DICTIONARY (4th ed. 1951). (Emphasis added.)

The reservation is to be distinguished from an exception. An exception withholds from the operation of the grant something in existence. Lacey v. Montgomery, 181 Pa. Super. 640, 648, 124 A.2d 492, 496 (1956). A rent payment is a "reservation" because the rent is brought into existence by the conveyance. The withholding of the northeast section from the conveyance of a tract of land would be an "exception" because the northeast section was in existence prior to the grant and the exception operated on the description of the land conveyed.

3. Since oil and gas are minerals the same doctrines of ownership apply to them as apply to solid minerals, such as coal and limestone. Hamilton v. Foster, 272 Pa. 95, 103, 116 Atl. 50, 52 (1922); Rockwell v. Warren County, 228 Pa. 430, 431, 77 Atl. 665 (1910); Stoughton's Appeal, 88 Pa. 198, 201 (1879); Prager's Estate, 74 Pa. Super. 592, 595 (1920). See also Penn-Ohio Gas Co. v. Frank's Heirs, 322 Pa. 233, 237, 185 Atl. 280, 281 (1936); City of Erie v. Public Serv. Comm'n, 278 Pa. 512, 520, 123 Atl. 471, 474-475 (1924). Therefore, where it is helpful, cases involving solid minerals have been cited.

4. City of Erie v. Public Serv. Comm'n, 278 Pa. 512, 520, 123 Atl. 471, 474 (1924).

5. *Ibid.*

6. *Id.* at 521, 123 Atl. at 475.

royalty is to be taxed;[7] (2) whether the heir or personal representative takes the royalty interest upon the death of the owner;[8] and (3) whether the royalty passes by deed.[9]

The lease in the *Duquesne* case was as follows:

> [A] . . . hereby grants unto . . . [B] . . . its successors and assigns, all the oil and gas in and under the following described premises, with the right to use as much water as may be necessary in its operations, together with the rights of ingress and egress at all times for the purpose of drilling and operating for oil, gas or water and to conduct all operations, erect such buildings and tanks and lay and maintain all pipes necessary for the production and transportation of oil, gas or water, and remove all said pipes and property during or after the termination of this grant; reserving however, to first party the equal one-eighth (⅛) part of all oil produced and saved from said premises, to be delivered in the pipe line to the credit of first party free of charge. . . . [I]f and as long as gas is found in sufficient quantity to convey to market, the consideration in full to the grantor for each and every well so producing gas upon said land, shall be as follows: ⅛th part of all gas sold from each well.[10]

The real estate which was still retained by *A* was conveyed to several successive grantees ending with *C*. An interpleader in equity was filed by *D* as assignee of *B*, the original lessee, to determine whether *D* should pay the royalties to *A*, the original grantor, or to *C*, the successive grantee of *A*.

A contended that the conveyance between *A* and *B* caused a complete severance of all oil and gas in the land, thereby creating a separate freehold; that the reservation of a one-eighth interest in the oil and gas was personalty, and did not pass by conveyance of the retained real estate to *C*.

C contended that *A* conveyed only seven-eighths of the oil and gas to *B*; that the reservation of the one-eighth interest remained vested as real property in *A*, and passed by deed to *C*. The superior court agreed with *C* and held he was entitled to the royalty payments.

The superior court dealt with a similar problem in *Prager's Estate*.[11]

7. Real property and personal property are taxed on a different basis. Rockwell and Co. v. Warren County, 228 Pa. 430, 77 Atl. 665 (1910).

8. Real property, upon the death of the owner, passes directly to his heir, while the title to personal property vests in the decedent's personal representative. Prager's Estate, 74 Pa. Super. 592, 594 (1920). See Wettengel v. Gormley, 184 Pa. 354, 362, 39 Atl. 57, 58 (1898); Fairchild v. Fairchild, 6 Sadler 231, 241, 9 Atl. 255, 256 (Pa. 1887).

9. If the royalty is regarded as personalty, it is treated as purchase money for the oil and gas. It then would remain payable to the grantor and not the grantee of a subsequent conveyance of a remaining interest in the land. If the royalty is considered to be real property, it runs with the land to a subsequent grantee as a rent payment. See Brunot's Estate, 41 Pittsb. Leg. J.N.S. 105 (Pa. C.P. 1898).

10. Brief for Appellants, pp. 24a-25a.

11. 74 Pa. Super. 592 (1920).

Prager involved an oil and gas lease, which differed from the *Duquesne* lease in only one material respect. It was limited to a term of years or so long as gas or oil could be produced in paying quantities.[12] The *Prager* case held that the grantor's interest—

> . . . was limited to the purchase money, that is, to the payment of a certain amount of money proportioned to the amount and pressure of the gas used off the premises and marketed, and to one-eighth of the oil "produced and saved" from the premises, and was *personal property* which, at his death, vested in his executor and did not pass to his devisee. . . .[13]

The court further said that payment of the purchase money in the form of royalties rather than in one lump sum did not change the character of the estate conveyed from personalty to realty. Similarly, the personal property interest retained by the grantor did not pass by his deed of his remaining interest in the real estate to a subsequent grantee.[14]

The court in the *Duquesne* case, without overruling or distinguishing *Prager's Estate*, decided that the royalty interest was realty, partially on the basis of the more recent decision in *Penn-Ohio Gas Co. v. Frank's Heirs*.[15] The *Penn-Ohio* case involved an oil and gas lease providing for payment of one-eighth of the oil produced and three hundred dollars for each gas well. The grantors retained the right to declare a forfeiture of the lease unless at least one producing well was completed in three months or unless the grantee paid a rental of twenty-five cents per acre for each additional three-month period during which completion was delayed. The question involved was whether the grantor's heirs could forfeit the rights of the grantee under the lease for the nonpayment of the sums stipulated to be paid for each gas well. The court construed the forfeiture clause narrowly and held that it only applied to the nonpayment of the twenty-five cents an acre rental provision and did not apply to the gas well payments.[16] That the decision in no way labeled the royalty interest is made clear by this statement from the court:

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12. If oil and gas is found in sufficient quantities to pay a reasonable profit on the sum required to be expended it is considered to be found in paying quantities. See Pelham Petroleum Co. v. North, 78 Okl. 39, 188 P. 1069 (1920).

13. 74 Pa. Super. 592, 594 (1920). (Emphasis added.)

14. That the consideration money for the oil was "reserved" in the deed of conveyance to Cypher [grantee] did not create a technical reservation, for no oil was reserved in place but only one-eighth of what was produced and saved, that is, one-eighth of what was produced after it was raised to the surface and had become personal property. . . . If George Prager [grantor], after his deed to Cypher, had conveyed the farm to one with notice of the prior grant of the oil and gas, he would have taken only what real estate was left in the grantor, and would have not been entitled to the royalties from the oil and gas previously conveyed. . . .

Id. at 596.

15. 322 Pa. 233, 185 Atl. 280 (1936).

16. *Id.* at 238, 185 Atl. at 282.

> [T]he term by which these payments are designated does not affect the decision of this case, and . . . it is not necessary at this time to determine their precise character, but we cannot agree with the interpretation by the court below of the forfeiture provision.[17]

In addition to the *Penn-Ohio* case the *Duquesne* court also cited *Barnsdall v. Bradford Gas Co.*,[18] for the proposition that a royalty interest is real property. *Barnsdall* held that the instrument in dispute created a lease, rather than a license to enter and operate for oil and gas. The reason for this decision was that the agreement granted the land itself and not simply the the right to enter, prospect and remove oil and gas. Therefore, the lessee could sue in ejectment, a remedy that a mere licensee could not utilize. The court in the *Barnsdall* decision said that the title to the oil, except for the one-eighth royalty interest, vested in the lessee. The court did not discuss the nature of this excepted interest, since that question was not before it. However, by stating that title to one-eighth of the oil did not vest in the lessee, the court would seem to imply that it remained in the grantor as an exception from the grant, and was therefore, a realty interest.

It has been about one hundred years since oil and gas were produced in paying quantities in Pennsylvania.[19] During this period there have been changes in the type of contracts employed to define the relationship between the owner of the land and those who propose to remove the oil and gas.[20] These may be divided into three groups—licenses, leases, and sales.[21] A license grants a *right* to produce gas and oil with the *right* to use as much of the land as is necessary to accomplish this purpose.[22] Only the licensee can exercise the rights created by the license.[23] When the license is granted the legal title to the land, including the oil and gas, remains in the grantor. Title to the minerals passes to the licensee only upon their severance from the land.[24]

The lease[25] is limited to a certain number of years.[26] It passes to the

17. *Id.* at 236, 185 Atl. at 281.
18. 225 Pa. 338, 74 Atl. 207 (1909).
19. See Appeal of Baird, 132 Pa. Super. 573, 580, 1 A.2d 485, 488 (1938); McManus v. Acklin, 62 Pa. D. & C. 527, 529 (C.P. 1947).
20. *Ibid.*
21. See Appeal of Baird, 132 Pa. Super. 573, 580, 1 A.2d 485, 488 (1938); McManus v. Acklin, 62 Pa. D. & C. 527, 530-531 (C.P. 1947).
22. See Funk v. Haldeman, 53 Pa. 229 (1866).
23. See II AMERICAN LAW OF PROPERTY § 8.77 (Casner ed. 1952).
24. See Funk v. Haldeman, 53 Pa. 229 (1866).
25. There have been many types of agreements used to define the rights and duties between grantor and grantee concerning oil and gas. All of these are referred to in the decisions as leases. In this part of the Note, the term "lease" refers to a lease as thought of in popular terms, *i.e.*, an ordinary farm lease with the additional right to remove oil and gas.
26. *E.g.*, Irwin v. Hoffman, 319 Pa. 8, 179 Atl. 41 (1935); Nesbit v. Godfrey, 155

grantees a corporeal estate (a leasehold of the necessary surface) with the exclusive right to take the oil and gas.[27] This agreement may be called a leasehold without impeachment of waste concerning the oil and gas, since these minerals can be removed by the lessee.[28] When an oil and gas lease is construed as an ordinary lease the royalties run with the land.[29] It is submitted that these royalties are in the nature of rent. Unless rent is specifically excepted, it passes or runs with the land upon the conveyance of the reversion to which the rent is an incident.[30] The lessee "is not an absolute owner of the whole of the oil as he would be were all the oil in place conveyed to him in fee."[31] Part of the interest remains in the grantor as real estate—a reversion to which the royalties are attached as an incident.

For years after oil and gas were discovered in substantial quantities in Pennsylvania, the lease and the license were the most popular contract forms employed to convey interests in these minerals. The courts, recognizing that gas and oil were minerals with peculiar attributes, looked upon them as minerals *ferae naturae*[32] because they had the power to escape without the desire of the owner. Because of this fugitive characteristic, parties seldom entered into agreements creating separate fees in oil and gas.

As the courts began to realize that oil and gas, like other minerals, are "confined in certain underlying strata and [are] . . . a part of the land in the same manner as underlying coal or other minerals . . ."[33] the sale became a more acceptable means of creating oil and gas interests. It appears that the *ferae naturae* concept has now been rejected in Pennsylvania.[34] Oil and gas are presently treated like other minerals in that there can be a complete severance of them.[35] Because of their fugacious or migratory nature there

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Pa. 251, 25 Atl. 621 (1893); Brown v. Beecher, 120 Pa. 590, 603, 15 Atl. 608, 608-609 (1888). *But cf.* Barnsdall v. Bradford Gas Co., 225 Pa. 338, 74 Atl. 207 (1909).

27. *E.g.*, McKean Natural Gas Co. v. Walcott, 254 Pa. 328, 98 Atl. 955 (1916); Westmoreland Gas Co. v. DeWitt, 130 Pa. 235, 18 Atl. 724 (1889); Chicago and Allegheny Oil and Mining Co. v. U.S. Petroleum Co., 57 Pa. 83 (1868). *But cf.* Barnsdall v. Bradford Gas Co., 225 Pa. 338, 74 Atl. 207 (1909).

28. See Denniston v. Haddock, 200 Pa. 426, 428, 50 Atl. 197, 197 (1901), where the court noted that this is how the agreement was characterized at common law.

29. See Bryant v. Morgan, 51 Pittsb. Leg. J. 53 (Pa. C.P. 1903).

30. See generally CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 187-96 (2d ed. 1947).

31. Duke v. Hague, 107 Pa. 57, 66 (1884).

32. Westmoreland and Cambria Natural Gas Co. v. DeWitt, 130 Pa. 235, 249-250, 18 Atl. 724, 725 (1889).

33. McManus v. Acklin, 62 Pa. D. & C. 527, 530 (C.P. 1947).

34. See City of Erie v. Public Serv. Comm'n, 278 Pa. 512, 520-521, 123 Atl. 471, 474-475 (1924); Blakely v. Marshall, 174 Pa. 425, 429, 34 Atl. 564, 565 (1896); Prager's Estate, 74 Pa. Super. 592, 595 (1920).

35. See City of Erie v. Public Serv. Comm'n, *supra* note 34, at 520, 123 Atl. at 475 (1924); Hamilton v. Foster, 272 Pa. 95, 102, 116 Atl. 50, 52 (1922); Prager's Estate, 74 Pa. Super. 592 (1920).

are certain distinctions between oil and gas on the one hand and fixed or solid materials on the other, but there is no difference with regard to the interest that can be created in them by deed.[36]

The court in *Duquesne* stated that the severance which creates a separate freehold in the oil and gas occurs when all the oil or gas itself is conveyed in fee.[37] The interest conveyed has been treated as a separate fee when the mineral has been granted for a term of years and as long thereafter as the mineral could be produced in paying quantities.[38] The question arises as to the classification of the interest in the oil and gas that the grantor retains. To create a reversion the grantor must convey an estate of a lesser quantum than that which he had before the conveyance.[39] In an oil and gas lease which creates a separate fee the grantor conveys all of his interest in the oil and gas. He retains no reversion. The interest the grantor reserves in the oil and gas is that sometime in the future these minerals may become exhausted and the land from which they were removed will return to the grantor or his heirs. It could be argued that this interest should properly be termed a possibility of reverter because the grantor conveyed an estate in the oil and gas of the same quantum that he had before the conveyance. The interest of the grantee in such a situation would be a determinable fee limited by the express or implied[40] provision that it will last only so long as oil or gas exist at all or in paying quantities, and would terminate automatically upon the exhaustion of the mineral. Therefore, it is submitted that in the *Duquesne* case *A* retained a possibility of reverter and not a reversion in the oil and gas. If there were no reversion there was nothing to which the royalties could attach as incidents in order to run with the land in the subsequent conveyance to *C*. This is because *A* had conveyed all his interest (the same quantum as *A* had) in the oil and gas to *B*. There is a logical inconsistency in this proposition because it has been stated that the grantor retains a possibility of reverter. Nevertheless, it is submitted that the *Duquesne* court was not implying that an incident can attach to a possibility of reverter. Generally, the possibility of reverter is ignored and the cases state that the *only* interest the grantor has in the created fee is a right to the purchase money in the form of royalties paid in installments.[41]

The court in *Duquesne* concluded that the agreement between *A* and *B*

36. Prager's Estate, *supra* note 35, at 595.
37. 203 Pa. Super. at 104, 198 A.2d at 610 (1964).
38. See Smith v. Glen Alden Coal Co., 347 Pa. 290, 32 A.2d 227 (1943); Prager's Estate, 74 Pa. Super. 592 (1920). *Contra*, Barnsdall v. Bradford Gas Co., 225 Pa. 338, 74 Atl. 207 (1909).
39. See I AMERICAN LAW OF PROPERTY § 4.12 (Casner ed. 1952).
40. *Id.* at § 4.13.
41. *E.g.*, Smith v. Glen Alden Coal Co., 347 Pa. 290, 297, 32 A.2d 227, 232 (1943); Prager's Estate, 74 Pa. Super. 592, 594 (1920).

was a sale, severing the oil and gas from the rest of the real estate, and thereby creating a separate freehold of inheritance. To this conclusion it applied the principle of an ordinary lease that the grantee was not "an absolute owner of the whole"[42] but only an owner of seven-eighths of the oil and gas in place. The superior court reasoned that the one-eighth royalty interest remained in the grantor as a realty interest in the oil and gas in place. It treated the one-eighth interest of the grantor as a vested interest—a reversion to which the royalties attached and therefore ran with the land to *C*. It would seem that the court in *Duquesne* confused the principles creating a sale with those of a lease in holding that the royalties ran with the land to *C*.

The general rule in Pennsylvania is that a royalty interest is personal property when the conveyance is a sale, and therefore it is treated as a covenant to pay which is personal to the grantor.[43] Concerning oil and gas conveyances, only one Pennsylvania case has held,[44] and one implied,[45] that the royalty interest is an exception from the grant which remains in the grantor as real property when the conveyance is by sale causing a severance.[46]

The Pennsylvania Supreme Court in *Smith v. Glen-Alden Coal Co.*,[47] questioned[48] the superior court case of *Burke v. Kerr*.[49] *Burke* held that when the grantor leased all the limestone under a certain tract of land for a royalty the grantor retained an interest in the limestone which was real property and therefore subject to the lien of a judgment. *Smith* held that a lease of all the coal in place leaves the grantor with an interest in the royalties to be paid under the lease, and that this interest is personalty. The court stated:

> It is a necessary corollary that if the fee to the severed coal is vested in the lessee no interest in the coal as real property remains in the lessor and that his only interest therein is personal property. The lessor's interest is properly termed a possibility of reverter.[50]

This language seems to clearly indicate the proper classification of the interest created by a lease that causes a severance of the mineral under consideration. *Smith* and *Burke* dealt with solid minerals—coal and limestone —which have characteristics different from oil and gas. However, as stated

42. See Duke v. Hague, 107 Pa. 57, 66 (1884).

43. See Smith v. Glen Alden Coal Co., 347 Pa. 290, 298-300, 32 A.2d 227, 232-233 (1943); Robinson v. Pierce, 278 Pa. 372, 123 Atl. 324 (1924); Fairchild v. Fairchild, 6 Sadler 231, 9 Atl. 255 (Pa. 1887); Prager's Estate, 74 Pa. Super. 592 (1920); Brunot's Estate, 40 Pittsb. Leg. J.N.S. 105, 107 (1898).

44. Appeal of Baird, 132 Pa. Super. 573, 1 A.2d 485 (1938).

45. Barnsdall v. Bradford Gas Co., 225 Pa. 338, 343, 74 Atl. 207, 208 (1909).

46. This conclusion has been adopted in at least one other jurisdiction. See Hager v. Stakes, 116 Tex. 435, 294 S.W. 835 (1927).

47. 347 Pa. 290, 32 A.2d 227 (1943).

48. *Id.* at 300-02, 32 A.2d at 333-34.

49. 142 Pa. Super. 37, 15 A.2d 685 (1940).

50. 347 Pa. at 301, 32 A.2d at 233.

above,[51] the fugacious character of oil and gas does not prevent a creation of a separate fee by grant. Nevertheless, while overruling *Burke* in fact, the *Smith* court refused to come out in its opinion and directly overrule the superior court decision. The Supreme Court of Pennsylvania felt that the principles of *stare decisis* prevented it from doing so, and because of the fact that the *Burke* decision held only that the royalty was subject to the lien of a judgment.

That the intention of the parties, and particularly of the grantor, is to be carried out whenever possible is one of the primary rules to be followed in determining the meaning of a conveyance.[52] In *Duquesne A* granted to *B* all the oil and gas, *reserving* to *A* one-eighth of all oil produced and saved and also one-eighth of all gas sold from each well. *A*, the grantor, expressly used the term "reserving." A reservation narrows or limits that which the grantee takes. It retains in the grantor some right over the property but does not effect the description of the property granted.[53] On the other hand, an exception withholds from the operation of the deed something which without the exception would pass to the grantee. An exception operates upon the description, withdrawing the excepted property from it.[54] In *Duquesne, A* did not limit the amount of oil and gas granted or exclude any part of it from the grant. *A* created a new right by the conveyance; that is, a right to the purchase money paid in the form of royalties. This right was a reservation—not an exception—of oil and gas in place.

In *Appeal of Union Oil Co.*,[55] the court held that where the oil royalty was to be paid from a ". . . product *produced* on or from said piece of land . . ."[56] this did not create an exception of the oil and gas in place. The quoted language above was used to designate a right in the grantor to one-eighth of the oil when and if *produced*. It would seem to be reasonable to assume that the words "produced and saved," as used in the *Duquesne* case, were intended to have a similar meaning. The oil and gas is not produced until brought to the surface and severed from the fee. When severed, the oil and gas become subjects of commerce like any other product of the field, forest, or mine[57] and constitute personal property.[58]

Construing a royalty interest as an exception of a certain percentage of oil and gas in place and thereby labeling it realty causes an undesirable legal

51. See notes 36 and 37 *supra* and accompanying text.
52. See Lacey v. Montgomery, 181 Pa. Super. 640, 648, 124 A.2d 492, 496 (1956).
53. *Ibid.*
54. *Ibid.*
55. 3 Penny. 504 (Pa. 1883) (the case involved an oil lease).
56. *Id.* at 505. (Emphasis added.)
57. See City of Erie v. Public Serv. Comm'n, 278 Pa. 512, 521, 123 Atl. 471, 475 (1924).
58. 24 P.L.E. *Mining, Oil and Gas* § 11, at 141 (1960).

consequence. If one-eighth of oil and gas in place remains in the grantor, the grantor and the grantee would be tenants in common[59] because the only requirement necessary to have a tenancy in common is unity of possession.[60] Unity of possession is present in the *Duquesne* case only if the one-eighth royalty interest is determined to be real property—an exception of one-eighth of the oil and gas in place. There would be nothing to prohibit the grantor from drilling for his one-eighth interest, because one co-tenant may use and enjoy all of the property as if he were the sole owner, provided his behavior does not bar the other co-tenants from enjoying their respective shares of the benefits.[61] It is not unusual for an interest in an oil and gas lease to amount to one-three hundredth of the whole.[62] Thus, all of the realty owners could drill for their respective interests in the oil and gas. Needless to say, this would create unsurmountable problems in the oil and gas industry. However, if the royalty interest is determined to be a personal property right, the owner of the right would not be a tenant in common with the grantee because there would be no unity of possession in the oil and gas estate. The only interest the grantor would have in the severed fee of oil and gas would be personal right to the purchase money paid in installments in the form of royalties.[63]

CONCLUSION

The courts call the contracts used to define the rights and duties of parties entering into oil and gas agreements—leases.[64] This is an unfortunate situation because it leads to misunderstanding. If the courts would first decide whether the "lease" is in fact a lease, a license or a sale, much of the difficulty would be eliminated. This classification should be based on a reasonable interpretation of the intent of the parties as manifested in the particular instrument. If this were done, legal principles appropriate to the type of agreement under consideration could be applied with a resulting consistency of interpretation with regard to each type of instrument.

ROGER B. CUBBAGE

59. See Appeal of Union Oil Co., 3 Penny. at 506 (Pa. 1883).
60. See II AMERICAN LAW OF PROPERTY § 6.5 (Casner ed. 1952).
61. See IV POWELL, THE LAW OF REAL PROPERTY § 603 (1954).
62. See Appeal of Baird, 132 Pa. Super, 573, 576, 1 A.2d 485, 487 (1938).
63. See note 40 *supra* and accompanying text.
64. See, *e.g.*, Appeal of Baird, 132 Pa. Super. 573, 580, 1 A.2d 485, 488 (1938).