Michigan Law Review

Volume 47 | Issue 8

1949

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REAL PROPERTY — GENERAL MINERAL RESERVATION IN DEED — LACK OF KNOWLEDGE THAT SUBSTANCE IS A MINERAL—In 1892 plaintiff's predecessor in title contracted to convey certain land to defendant, subject to a reservation[1] of "all coal and mineral deposits in and upon said lands," and in 1896 he executed a deed to defendant containing the same reservation. Plaintiff, in 1947, filed a bill to quiet title to bauxite deposits on the land. *Held*, bill dismissed.[2] Bauxite,

[1] Although the legal effect of such language is that of an exception, the courts commonly refer to these provisions as mineral "reservations." 40 C.J., Mines and Minerals, §557; 4 TIFFANY, LAW OF REAL PROPERTY, 3d ed., §973 (1939).

[2] Three justices dissented without opinion.

not being generally regarded as a mineral at the time of conveyance, was not intended to be within the operation of the mineral reservation. *Carson v. Missouri Pac. R. Co.*, 212 Ark. 963, 209 S.W. (2d) 97 (1948).

It is well settled that land may be severed and conveyed in horizontal as well as vertical estates.[3] The question of the principal case appears to be: what portions of the sub-surface area were reserved under the general description "all coal and mineral deposits"? A "mineral" is generally defined as any inorganic substance, except common soil or rock, which can be taken from the land.[4] Bauxite is well within this general definition, and the principal case so concedes. While this appears to be the first case concerning bauxite, a similar problem has arisen many times with respect to petroleum.[5] In those cases the general rule is, langauge to the contrary not appearing, that petroleum is within the operation of a general mineral reservation.[6] The courts look upon use of the word "mineral" as a clear expression of an intent to include all that is within a broad definition of that word, and, to restrict this broad meaning, express qualifications are required. The minority rule, followed in the principal case, while recognizing petroleum as a mineral, does not include it within the operation of a general mineral reservation if the deed in question antedated popular knowledge that petroleum was a mineral.[7] The reasoning of these cases appears to be that the grantor could not have intended to reserve a substance the existence of which as a mineral was unknown at the time of the conveyance.[8] Careful reading indicates, however, that in many of the petroleum cases purporting to follow the majority rule, factors were present

[3] 1 BARRINGER & ADAMS, THE LAW OF MINES & MINING 35 (1900); 40 C.J., Mines and Minerals, §969; 2 TIFFANY, THE LAW OF REAL PROPERTY, 3d ed., §§585, 587 (1939).

[4] 2 BOUVIER LAW DICTIONARY, Rawle's 3d rev., p. 2213 (1914).

[5] See cases collected in 17 A.L.R. 156 at 162 (1922); 86 A.L.R. 983 at 986 (1933); LINDLEY ON MINES, 3d. ed., §§86-95 (1914).

[6] Anderson & Kerr Drilling Co. v. Bruhlmeyer, 134 Tex. 574, 136 S.W. (2d) 800 (1940); Rowe v. Chesapeake Mineral Co., (C.C.A. 6th, 1946) 156 F. (2d) 752. See also No. Pac. Rw. Co. v. Soderberg, 188 U.S. 526, 23 S.Ct. 365 (1903), interpreting statutory mineral exceptions made in 1864 and 1866; Waugh v. Thompson Land & Coal Co., 103 W.Va. 567, 137 S.E. 895 (1927); Warren v. Clinchfield Coal Corp., 166 Va. 524, 186 S.E. 20 (1936); Barker v. Campbell-Ratcliff Land Co., 64 Okla. 249, 167 P. 468 (1917).

[7] The leading case following this view has been thought to be Dunham and Shortt v. Kirkpatrick, 101 Pa. 36, 47 Am. Rep. 696 (1882), which first expressed what is called the "Pennsylvania rule." The force of this decision has been somewhat weakened by Gill v. Weston, 110 Pa. 312, 1 A. 921 (1885). For a more authoritative decision see Detlor v. Holland, 57 Ohio St. 492, 49 N.E. 690 (1898). For discussion of the rule in England, see 173 LAW TIMES 446 (1932).

The Arkansas court in two previous cases brought by plaintiff held that petroleum was not within the mineral reservations of two deeds executed at the same time, by the same grantor and identical in language with the deed in the principal case. Mo. Pac. R. Co., v. Furqueron, 210 Ark. 460, 196 S.W. (2d) 588 (1946); Mo. Pac. R. Co. v. Strohacker, 202 Ark. 645, 152 S.W. (2d) 557 (1941).

[8] It is important to note that the principal case is not authority for the proposition that the grantor, to reserve or convey minerals, must know of the presence of a specific mineral in the land in question or even in the region as a whole.

which would lead to the same decision had the minority view been approved.[9] It is reasonable to expect further litigation in this field; for instance, in the case of newly developed uranium deposits. Not only are the facts of the principal case peculiarly compelling in favor of the decision herein,[10] but it is also submitted that if a general rule for this type of case exists, it is probably in harmony with that adopted by the Arkansas court.

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[9] Burke v. So. Pac. R. Co., 234 U.S. 669 at 677, 34 S.Ct. 907 (1913), interpreting a statutory mineral exception, points out Congress' knowledge of petroleum as a mineral. In Barker v. Campbell-Ratcliff Land Co., 64 Okla. 249 at 250, 167 P. 468 (1917), the court appears to approve the rule of Detlor v. Holland, supra, note 7. In Rowe v. Chesapeake Mineral Co., (C.C.A. 6th, 1946) 156 F. (2d) 752; and Maynard v. McHenry, 271 Ky. 642, 113 S.W. (2d) 13 (1938), the word "oil" appeared in the deed.

[10] The open pit method of mining bauxite would have destroyed almost the entire value of defendant's land. Moreover, in Mo. Pac. R. R. Co. v. Strohacker, 202 Ark. 645 at 647, 152 S.W. (2d) 557 (1941), it appears that the only purpose of these reservations was to protect the grantor in the event that the United States should exercise mineral reservations in the original patents. These reservations made by the government were subsequently abandoned.