

**INNOCENT PURCHASER OF OIL
AND GAS LEASE: A DISCUSSION
OF THE ESTATE CREATED BY AN
OIL & GAS LEASE**

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Innocent Purchaser of Oil and Gas Lease: A Discussion of the Estate Created by an Oil & Gas Lease by R. E. Hardwicke

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R. E. HARDWICKE

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**A Discussion
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By An Oil & Gas Lease**

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**OIL & GAS LEGAL SERVICE
MARTIN STATIONERY COMPANY
Dallas, Texas
1921**

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Innocent Purchaser of an Oil and Gas Lease

WHAT IS THE NAME AND NATURE OF THE ESTATE CREATED BY THE ORDINARY MINERAL LEASE, AS DISTINGUISHED FROM A CONVEYANCE OF MINERALS IN PLACE?

In the most common form of instrument the landowner, called lessor, "leases, demises and lets" the land to another, called lessee, for the purpose of having the same developed for oil and gas, with the right to appropriate the minerals obtained through the operations, and deliver a part thereof, usually one-eighth, as royalty to the lessor. Ordinarily, the right to enter and develop is limited to a five-year period, unless oil or gas is found in paying quantities within such period, in which last event the right to develop continues as long as oil or gas is produced in paying quantities. It is usually provided that, if the lessee fails to begin operations within one year, his right shall terminate, but may be extended from year to year, but not beyond the five-year period, by payment of a stated consideration.

There is another type of instrument in general use which is practically identical with the instrument outlined above, except that the grantor or lessor "grants, sells and conveys all the oil and gas in and under the land." Except for the language in the granting clauses, the provisions in the two instruments are practically the same.

The layman, in speaking of such instruments, uses the term "lease", and this designation is for convenience generally adopted by the courts in those instances where correct nomenclature is not involved, and will so be used herein.

More than anything else, the great confusion existing in oil law has been caused by the assumption in the earlier decisions that oil and gas are migratory to a remarkable extent, that they wander about with the utmost freedom—here today and there tomorrow. The vagrant nature of oil or gas has been likened to subterranean streams, but more often to *ferae naturae*; and, in discussing their ability of self-transmission, the terms fugitive, fugacious, volatile and nomadic are in common use. This concept has been accepted in the later decision. *Ohio Co. v. Indiana*, 177 U. S. 190, 44 L. Ed. 729; *Texas Co. v. Daugherty*, 176 S. W. 717; 107 Tex. 226; *Grub v. McAfee*, 212 S. W. (Tex.) 464. Out of this theory grew the rule that leases are to be construed most strictly against the lessee, and to the end that the lessee should be required to develop without delay and produce oil or gas before it should escape to neighboring lands. The rule as to strict construction was formulated to occasion development under those leases where no time limit was fixed for commencement of operations, or where the real consideration for the lease was development. Necessarily, under such conditions, it was proper to hold that the lease should be

strictly construed and with the view of imposing upon the lessee the obligation of development within a reasonable time under penalty of loss of the lease, for it is clear that the lessee should not be permitted, under such circumstances, to hold the lease for speculative purposes and without drilling. See Thornton Oil & Gas, 2nd Edition, Sec. 83. The courts have, however, adopted the rule generally, and without regard to the reason for the rule or the conditions which it was designed to meet, so that now all questions as to the rights of the parties are approached with the lessor being the favored litigant.

Going back to the supposed migratory nature of oil and gas, it seems to be almost the unanimous opinion of petroleum geologists and experienced operators that oil or gas, but particularly oil, does not wander about and does not possess the quality of self-transmission, except to a limited extent. Ages ago there doubtless was more or less movement of these minerals, but after they once accumulated or were trapped in the underground reservoir, these minerals were confined as in a tank, and are little more mobile than a deposit of coal, until the reservoir is penetrated by the drill, and even after a well is drilled into the sand the drainage is very small, only a few acres being drained by each well. It is, therefore, asserted as a fact that oil and gas are not migrating in what may be designated as a state of nature.

As a further conclusion from the idea that oil and gas are migratory—roaming underground passages like wild beasts—the courts announced the doctrine that oil and gas were not susceptible of ownership separate and apart from the land, and therefore a deed to such minerals simply amounted to a right to drill and to appropriate such minerals as should be reduced to possession. It was held