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RIGHTS OF REMOVAL UNDER THE "ANYTIME" PROVISION
IN OIL AND GAS LEASES

Upon the termination of an oil and gas lease many problems arise, not the least of which is the right of removal of machinery and equipment by the lessee from the lessor's land. Since it is a well-settled rule that machinery and equipment may be removed any time during existence of the lease,¹ the problem confronting the courts is the right of removal after the lease has expired. Generally speaking, if the lessee has not removed his equipment prior to the termination of the oil and gas lease, he may do so within a reasonable time thereafter.² In an apparent effort to avoid the necessity of removing within a reasonable time, many leases provide further that the lessee may remove his equipment at any time before or after the termination of the lease.³

By express provision in the lease, the lessee has attempted to secure to himself not only the legal right to remove within a reasonable time after the expiration of the lease, but also the absolute right to remove at any time. It is easy to see that the construction of the phrase, "at any time," gives rise to a great deal of controversy surrounding the right of removal in light of the reasonable period of time qualification. In cases involving the construction of a lease with the "any time" provision, most courts have held that such a provision does not confer upon the lessee the absolute right of removal.⁴ Going further, these courts maintain that the provision allowing removal at "any time" must be interpreted to mean a reasonable time after the expiration of the lease,⁵ thus conferring upon the lessee no greater right than he had in leases without the "any time" provision. The reasoning behind these decisions seems to be that it was not within the contemplation or intent of the parties that the lessee should be able to withhold possession of the fee from the lessor to the extent covered by his machinery after the lessee's rights under the lease were terminated by failing or refusing to remove his machinery and equipment.⁶ Thus, even though the lease contains a provision for removal at any time, the lessee still must remove his equipment within a reasonable time after the expiration of the lease.

Once the problem of removal has been disposed of, the next problem

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1. 3 Summers Oil and Gas, Sec. 326, p. 214; *Shellar v. Shivers*, 237 Pa. 613, 33A. 95 (1895); *Collins v. Mt. Pleasant*, 85 Kan. 483, 118 Pac. 54 (1911); *Tyler v. Wilhite*, 97 Okla. 159, 223 Pac. 997 (1923); *Corona Invest Co. v. Rudman*, 11 Cal. App.2d 645, 54 P.2d 85 (1936).
 2. *Ibid.*
 3. *Perry v. Adme Oil Co.*, 44 Ind. App. 297, 88 N.E. 859 (1906); *Sanders v. Davis*, 79 Okla. 253, 192 Pac. 694 (1920); *Beckham v. Bussie*, 152 So. 393 (1934); *Oceana Oil Producers v. Portland Silo Co.*, 100 N.E.2d 895 (1951).
 4. *Perry v. Adme Oil Co.*, 44 Ind. App. 207, 88 N.E. 859 (1909); *Standard Oil Co. v. Barlow*, 114 La. 52, 74 So. 627 (1917); *Terry v. Crosswy*, 264 S.W. 718 (1924); *Rennie v. Red Star Oil Co.*, 79 Okla. 208, 190 Pac. 391 (1920).
 5. *Ibid.*
 6. *Shellar v. Shivers*, 237 Pa. 613, 33 A. 95 (1895); *Wright v. MacDonnell*, 88 Tex. 140, 30 S.W. 907 (1895); *Terry v. Crosswy*, 264 S.W. 718 (1924).

confronting the courts is the determination of that period of time which may be deemed to be reasonable. Usually, the question as to the reasonableness of the length of time is one of fact which must be determined by a jury,⁷ if there is one, according to the circumstances surrounding each case.⁸ Because of the different set of facts and circumstances surrounding each case, it would be impossible in the space allotted to attempt to establish a mean by which courts determine unreasonableness of time. Some courts have held that periods of time up to seven years were not unreasonable.⁹ Other courts decided that eight months or less was an unreasonable length of time in which to remove the equipment.¹⁰ Even though some courts have held that periods up to seven years were reasonable,¹¹ the majority of courts maintain that these periods are unreasonable, regardless of the surrounding circumstances, on the theory that to allow such an extension of time would be to imply an "any time" provision and uphold it.¹²

Upon failure by the lessee to remove his equipment from the land of the lessor within a reasonable length of time after the expiration of the lease, what are the respective rights of the parties in regard to the machinery? Generally speaking, the lessee, upon failure to remove his equipment within a reasonable time after the expiration of his lease, loses all rights to the property.¹³ The theory which the courts apply to reach this result is that the machinery and equipment are trade fixtures,¹⁴ and as such, the lessee has the right of removal based upon the common law right of removal of trade fixtures.¹⁵ Machinery and equipment, as trade fixtures, can be lost to the lessee by either of two methods, forfeiture or abandonment. To lose his rights to the equipment through forfeiture, the lessee must be guilty of failure to remove within a reasonable length of time after the expiration of the lease.¹⁶ Upon forfeiture of the right to the equipment, title to that equipment passes to the lessor or landowner upon whose premises the machinery is located. Some courts, as pointed out previously, will award

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7. *Patton v. Woodrow*, 198 Ky. 85, 248 S.W. 226 (1923).
 8. *Collins v. Mt. Pleasant*, 85 Kan. 483, 118 Pac. 54 (1911); *Patton v. Woodrow*, 198 Ky. 85, 248 S.W. 226 (1923); *Wilson v. Wilson*, 280 Ky. 461, 133 S.W.2d 722 (1937); *Stevens v. Iverson*, 179 Okla. 401, 66 P.2d 12 (1937).
 9. *Collins v. Mt. Pleasant*, 85 Kan. 483, 118 Pac. 54 (1911); *Bickham v. Bussa*, 152 So. 393 (1934); *Stephens v. Lundy*, 172 Okla. 79, 44 P.2d 843 (1935); *Hoing v. River Valley Gas Co.*, 186 Ark. 165, 121 S.W.2d 513 (1938).
 10. *Wilson v. Wilson*, 280 Ky. 461, 133 S.W.2d 722 (1917).
 11. *Collins v. Mt. Pleasant*, 85 Kan. 483, 118 Pac. 54 (1911); *Hoing v. River Valley*, 196 Ark. 1165, 121 S.W.2d 513 (1938).
 12. *Shellar v. Shivers*, 171 Pa. 569, 33 A. 95 (1895); *Michauls v. Pontius*, 83 Ind. App. 66, 137 N.E. 519 (1922); *Bain v. Gruber*, 271 Ky. 393, 112 S.W.2d 66 (1937); *Oceana Oil v. Portland Silo Co.*, 100 N.E.2d 895 (1951).
 13. *Shellar v. Shivers*, 171 Pa. 569, 33 A. 95 (1895); *Standard Oil v. Barlow*, 141 La. 52, 74 So. 627 (1917); *Michauls v. Pontius*, 85 Ind. App. 66, 137 N.E. 519 (1922).
 14. *Cassell v. Crothers*, 193 Pa. 359, 44 A. 446 (1899); *Schertzer v. Myers*, 82 Kan. 275, 108 Pac. 105 (1910); *Gartland v. Hickman*, 56 W. Va. 75, 119 S.E. 14 (1904).
 15. *Ibid.*
 16. *Wright v. MacDonnell*, 88 Tex. 140, 30 S.W. 907 (1859); *Terry v. Crosswy*, 264 S.W. 718 (1924).

the property to the lessor on the theory of abandonment.¹⁷ Vesting title in the lessor by abandonment is much more difficult than vesting title by forfeiture, because to constitute an abandonment in order to give another party the right to assume title and control of the property, certain elements must exist. There must be an actual act of abandonment, coupled with the intention to abandon.¹⁸ Thus, in those jurisdictions following the abandonment theory, failure to remove the machinery within a reasonable length of time, while it may be evidence of abandonment, is not sufficient to divest the lessee of his rights to the property without proof of the intention to abandon.

Should the lessor and lessee litigate the question pertaining to the termination date of the lease, it must be understood that the lessee will not lose title to his property upon the ground that it remained on the lessor's land an unreasonable length of time.¹⁹ In such a situation, the period constituting reasonableness of time would begin from the date on which the adverse judgment was rendered and would not relate back to the court determined date of expiration.²⁰ If the lessor prevents removal before a reasonable length of time has passed, the lessee may seek injunctive relief in the courts.²¹

In closing, it might be noted that the trend of some courts is to hold that the parties may stipulate as to when the machinery and equipment may be removed, and such stipulations will be binding.²² In effect, these courts are giving validity to the "any time" provisions, and should the trend continue, future suits over the right to remove equipment may be governed by express contract provision, rather than by that resilient commodity, time.

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PLAINTIFF'S RIGHT TO DISMISS UNDER THE CODE AND THE PROPOSED RULES

Like a woman privileged to change her mind, a plaintiff has in the past been given a right to bring to a halt an action without prejudice to a later suit during trial.¹ However, the Federal Rules of Procedure and

17. *Standard Oil v. Barlow*, 141 La. 52, 79 So. 627 (1917); *Michauls v. Pontius*, 83 Ind. App. 66, 137 N.E. 579 (1922); *Rennie v. Red Star Oil Co.*, 78 Okla. 208, 190 Pac. 391 (1927); *Bain v. Graber*, 271 Ky. 393, 112 S.W.2d 66 (1937).
18. *Rennie v. Red Star Oil Co.*, 78 Okla. 208, 190 Pac. 391 (1927); *Bickham v. Bussa*, 152 So. 393 (1934).
19. *Tally v. Ganahl*, 151 Cal. 418, 90 Pac. 1049 (1907); *Bird v. American Surety Co.*, 175 Cal. 625, 166 Pac. 1009 (1917); *Yoakham v. Hogan*, 198 Cal. 16, 243 Pac. 21 (1921).
20. *Terre Haute v. Hudnut*, 112 Ind. 542, 13 N.E. 686 (1887); *N.Y. Cent. R. R. Co. v. Reidenbach*, 71 Ind. App. 370, 125 N.E. 55 (1919); *Maddox v. Yocum*, 114 Ind. 380, 52 N.E.2d 636 (1844); *Oceana Oil v. Portland Silo Co.*, 100 N.E.2d 895 (1951).
21. *Myers v. Bradford*, 54 Cal. App. 157, 201 Pac. 471 (1921).
22. *Hughes v. Kershaw*, 42 Colo. 40, 93 Pac. 1116 (1908); *VanHoozer v. Gattis*, 139 Ark. 390, 219 S.W. 44 (1918); *Newland v. Eldis*, 131 Kan. 419, 292 Pac. 754 (1930); *Smith v. U.S.*, 113 F.2d 191 (1940).

1. *Wyo. Comp. Stat.* 1945 sec. 3-3505; *Fed. R. Civ. P.* 41(a); *Proposed Rules* 41(a), 41(b).