Wyoming Law Journal

Volume 11 | Number 2 Article 12

December 2019

Another Look at the Martel Case

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Recommended Citation
Leonard McEwan, *Another Look at the Martel Case*, 11 Wyo. L.J. 109 (1957)
Available at: https://scholarship.law.uwyo.edu/wlj/vol11/iss2/12

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doctor, that we can summarily revoke the beer license while we must leave the doctor to go on filling graveyards until notice and a complete hearing have taken place. From the pecuniary aspect both licenses probably represent a very substantial investment.

Where the usual method of solving a problem has been criticised as unfair, it is in order to offer an alternative solution. In the matter of licenses this does not seem to be too difficult. Actually nearly all kinds of licenses require certain standards before granting, and an agency should not refuse to grant, or revoke, any license so long as there is compliance with these standards. Thus all that needs to be added is that with any license the agency should actually have to find the non-compliance after the licensee has been given notice and a chance to defend, rather than refusing or revoking certain licenses on mere suspicion or hearsay and without hearing or notice. Where there is a real danger, and summary revocation would seem to be necessary, the use of an injunction could solve the problem, thereby protecting the public in all things and not just within certain categories. Little burden would be added either to agencies or to courts. Even now agencies seldom revoke without some sort of fact finding. Actually, more stringent due process requirements in granting and revoking licenses would probably cut down the number of cases coming into the courts.

DONALD L. YOUNG

ANOTHER LOOK AT THE MARTEL CASE

In the *Martel*[1] case, an oil and gas lessee brought suit against a trespasser. Martel, the lessee, attempted to recover damages for the value of the mineral interest for leasing purposes from the trespasser who drilled a dry hole thereby rendering the lease valueless as a speculation. The Wyoming court denied recovery on the ground that Martel's damages were too speculative. Barquin, Martel's lessor, in an action arising out of the same trespass,[2] recovered for surface damages and punitive damages. In both of these cases, the court said that a right had been violated and the parties so deprived could recover damages as shown. Plaintiff's counsel in the *Martel* case brought to the court's attention the *Kishi*[3] case in which the Texas court allowed recovery under a similar situation. The Wyoming court said that it was not disposed to follow the holding of the *Kishi* case. Out of this background has grown a general belief that the holdings in these two cases are in direct conflict[4] as to whether a mineral owner may recover for the type of trespass involved in the *Martel* case. This note will be concerned with a discussion as to whether these cases truly represent conflicting views as to the rights of the injured party.

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1. Martel v. Hall Oil Co., 36 Wyo. 166, 253 Pac. 862 (1927).
2. Hall Oil Co. v. Barquin, 33 Wyo. 92, 237 Pac. 255 (1927).
3. Humble Oil & Refining Co. v. Kishi (Tex. Comm. App.), 276 S.W. 190 (1925).
4. 1 Wyo. L.J. 123 (1946).

Consideration shall first be given to the distinguishing facts of the *Martel* and *Kishi* cases. In the Wyoming *Martel* case, there were no sales of any oil rights in the immediate area and the lease in question was two miles from the nearest producing well. In the Texas *Kishi* case, there was testimony from several witnesses that a lease, such as Kishi's, could have been made for bonuses ranging from $750 to $2,500 an acre. It is true that Kishi did not show that he was actually offered a lease, but the Texas court in its findings of fact said that it would seem probable, in view of all the evidence, that purchasers could have been found to speculate on the probability of oil being found in this tract, who would have paid, during the period of uncertainty as to its productiveness, at the rate of $1,000 per acre for the customary lease of the fifty acres, and that it had such a market value during that time, and it was so determined. Kishi's fifty acres adjoined a small tract on which a producing well, about 150 feet distant, was located. It was the bringing in of this well that rendered Kishi's land valuable as a possible productive territory. Thus, we see that there are at least two important factual differences between these two cases: (1) In all probability Kishi could have leased for $1,000 an acre, while Martel could not even show there was any interest in his lease; (2) there was a producing well in close proximity to Kishi's land, while the closest producer was two miles distant from Martel's lease.

It is submitted that because of the difficulty, if not impossibility, of showing damages in the *Martel* case, the Texas court, in a similar factual situation, might well have arrived at the same holding as did the Wyoming court. If, for the sake of argument, it is granted that this conclusion is valid, the question arises as to whether the inverse would be true, that is, would there be recovery in Wyoming under facts similar to the *Kishi* case. The Wyoming court, in the *Martel* case, states that the Hall Oil Company interfered with Martel's exclusive right to explore the land in question and to drill for oil and gas thereon and remove it therefrom, if found, and, if the latter sustained any damage by reason thereof, he is entitled to recover it. However, the court then held that whatever value Martel's rights had were purely speculative, and that such speculative value did not furnish any basis for damages. This suggests that it is merely a problem of showing damages for the holder of the mineral interest to recover from such a trespasser. In assessing damages, the market value is the usual standard, and merely because the market value is difficult to determine is no basis for assessing only nominal damages.

Dean Leon Green, in an article[5] criticizing the holding of the *Kishi* case, and Summers[6] both agree that the rights of the owner of oil and gas interests have been violated where there has been such a trespass, but say that damages are too speculative and under no present theory of tort law may damages be awarded for such a loss. They, as well as the Wyoming

5 4 Tex. L. Rev. 215.
6. Summers, Oil and Gas, Vol 1, § 25.

court in the *Martel* case, state that there is enough of a deterrent, in that the trespasser will lose all production and perhaps costs of production and exploration, if the property yields a producing well. This concept would seem to require a re-examination. It may well be a general rule that wells will not be drilled if the lease is in question, although both the *Martel* and *Kishi* cases limit this general proposition. In both of those cases, the subsequently determined trespassers had actual notice that their right to drill was being strongly questioned and that litigation was pending.

In contrast to Green and Summers, McCormick[7] advocates the awarding of damages in such situations. He recognizes that one common motive actuating purchasers is the desire of holding the property for speculation on the hazard of a rise in value. McCormick further says that this speculative attractiveness, though occasionally frowned upon, as in the *Martel* case, seems properly recognized as a factor to be considered in determining market value, that is, the amount that a purchaser could have been induced to pay. He then sets out a broad policy for determining value by saying that if a high price for the property actually could have been secured at the time in question, this should be accounted its then market value, however sudden this rise may have been or however much of it may have been due to baseless rumors or to illegal pools or combinations, unless it appears that the person claiming compensation has himself unlawfully participated in artificial market operations which swelled the price, in which event he might well be limited, as a matter of policy, to a more normal and usual price.

It is submitted that McCormick's view is the more realistic and recognizes that an intangible, such as a speculation, has value. There are many persons engaged in the buying and selling of oil and gas leases solely for speculative purposes. They form an important part of our economy and perform a valuable function in the oil industry. To say that we recognize that they have a valuable right, but, if that right is violated, they can recover only nominal damages, because all other damage is too uncertain, is actually to ignore the right itself. An examination of cases in which recovery has been allowed reveals that market value of an unproved lease has been determined in many ways. The following cases illustrate some of the methods used: (1) Landowner was allowed to recover $5.00 an acre where the Defendant trespassed and made geophysical explorations, and it was shown that the Defendant itself paid $5.00 an acre for the privilege of shooting certain acreage within its own lease block.[8] (2) Recovery of $10.00 an acre was allowed where the Defendant trespasser made a geophysical test, and the landowner introduced evidence that the Defendant had paid $10.00 an acre for a lease on similar land one-half mile from Plaintiff's land.[9] (3) The owners were allowed a recovery of $4,000 from

7. McCormick, Handbook on the Law of Damages, West (1935).
8. Layne La. Co. v. Superior Oil Co., 209 La. 1014, 26 So.2d 20 (1946).
9. Angelloz v. Humble Oil & Ref. Co., 196 La. 604, 199 So. 656 (1940).

the Defendant trespasser, who drilled a dry hole, where it was shown that the trespasser had paid the holder of a void lease, on the land in question, $4,000 for the assignment thereof.[10] (4) Where the Defendant holder of a void lease on eighty acres refused to release the same, and the Plaintiff mineral owner could show that he had an opportunity to lease for a substantial sum and could have done so but for the Defendant's conduct an award of $24,000 was granted.[11] (5) The Plaintiff landower recovered against the holder of a lease that had expired, where such holder refused to release the expired lease, and there was evidence of an expert as to the market value of such lease, even though no leases were taken in the field during that period.[12] In the foregoing cited cases, it is to be noted that damages were awarded for the interference of the Defendant with the exclusive rights of the mineral owner or lessee in situations in which the actual presence of oil and gas had not been previously determined. The courts clearly had no difficulty in assessing damages based upon realistic appraisal of the market value of the exclusive opportunity to ascertain the absence or presence of oil and gas.

In reconsidering the *Martel* case of 1927, cognizance must be taken of current practices and developments in the oil industry. If a typical oil and gas lease of today is examined, it will be observed that there are two main valuable rights contained therein. The lessee receives, first, the mineral owner's *exclusive* right to explore for oil and gas, and second, the right to retain a percent of oil and gas discovered and produced. Since the lessee has this exclusive right, all exploration, during the term of the lease, must be under his consent. This exclusive right of exploration, in many cases, is as important a consideration for entering into the lease as is the percent of production to be retained. Many leases are taken by persons who are not themselves engaged in the exploration and production of oil and gas. While it is true that they may retain an override and assign the lease to someone who will develop the acreage, their bargaining power lies in their exclusive right of exploration. If the rule in the *Martel* case is so broad as to preclude damages for the interference with exclusive exploratory rights, the lessee could not even recover from a trespasser in bad faith who made geophysical explorations on the acreage that the lessee had under lease. This would then mean that anyone who is desirous of obtaining geological information would not even have to determine the mineral ownership of land, but merely make what exploration he desired in derogation of recognized rights. The information thus received may be worth many thousands of dollars, and would have cost something had the right to make such examination been purchased from the rightful owner. Since the 1927 decision in the *Martel* case, great strides have been made in the development of scientific methods of exploration. Valuable information is gained from such exploration and justifies the tremendous

10. Matheson v. Placid Oil Co., 212 La. 807, 33 So.2d 527 (1947).
11. American Surety Co. of N.Y. v. Marsh, 146 Okla. 261, 293 Pac. 1041 (1930).
12. Soleberg v. Sunburst Oil & Gas Co., 76 Mont. 254, 246 Pac. 168 (1926).

amounts of money spent thereon. Thus, the exclusive right to explore is recognized as a valuable right, and one to be bargained for, bought and sold as any tangible.

It would seem harsh to say that in Wyoming only nominal damages can be recovered today for a trespass, as in the *Martel* case, regardless of the proof of damages. It is submitted that it is merely a matter of degree in evidence as to whether damages are too speculative to allow recovery, and that the *Martel* case, in recognizing the invasion of a right, would allow damages upon sufficient proof. Thus, where it can be shown that the mineral owner had a valid offer that was withdrawn because of the trespasser's acts, the damages are not speculative. Present practices should also cause recognition of established market values where leases are being bought and sold in the area, and it appears reasonable that the lease could have been sold for a certain amount, so that value is definite enough to take the damages out of the speculative category. Where the holder of the mineral title cannot show that he had an offer or even that it might reasonably be concluded that he could have leased for a determined amount, his damages are speculative and recovery will be denied.

LEONARD MCEWAN

VALUATION OF A WIDOW'S LIFE ESTATE FOR ELECTION PURPOSES

It frequently happens that it is necessary to calculate the value of a life estate. It is difficult, if not impossible, to make an exact calculation, thus parties seeking such a determination must be satisfied with a just or equitable result. The problem arises in such situations as the partition of property[1] and the determination of value for inheritance tax purposes.[2] However, the present concern is with the method of determining the value of a widow's life estate, for purposes of determining whether the widow may elect to take her statutory share against the husband's will under Wyoming's forced heir statute.[3]

In past history, various methods for determining the value of life estates have been relied upon. Possibly, the most simple is the agreement of the parties in interest,[4] such as the life tenant and the remainderman. This would be an acceptable solution at the present time, but it is seldom that the parties are so agreeable. In England, a rule was established that the value of a life estate should be a one-third share of the net estate.[5] This was known as the Equitable or the Common-law rule. This rule has

1. South Carolina Savings Bank v. Stansell, 160 S.C. 81, 158 S.E. 131 (1931).
2. In re Leonard's Estate, 199 Misc. 138, 100 N.Y. Supp.2d 105 (1950).
3. Wyo. Comp. Stat. § 6-301 (1945).
4. United States v. 15,883.55 Acres of Land in Spartanburg County, South Carolina, 45 F. Supp. 783 (1942).
5. Keniston v. Gorrell, 74 N.H. 53, 64 Atl. 1101 (1906).