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SURFACE DAMAGES—CLAIMS BY SURFACE ESTATE OWNER AGAINST MINERAL ESTATE OWNER

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I. INTRODUCTION

In the brief time alloted to this paper, and in the face of the very extensive scope of the subject matter, I have only been able to achieve a very abbreviated treatment of the generally accepted basic legal principles, a few illustrations of the more common activities and claims, a brief look at the statutes and Wyoming cases in point, and some concluding practical suggestions for Wyoming attorneys involved with such claims. In line with my mineral law experience, I have dealt primarily with oil and gas problems, but the basic principles are very similar as to all of the valuable minerals.

This brief presentation is primarily aimed at the basic principles applicable to severed estates in private lands, but there is in Wyoming such a tremendous acreage of severed government mineral lands, particularly minerals reserved by the federal government in the public domain, often in combination with severed privately owned surface estates, notably homesteads, that I have tried to work in some coverage of same, although it would take a separate paper just to adequately cover these alone. Development of the law in Wyoming has so far followed the basic principles with only one or two peculiar developments of importance, and I have avoided getting involved herein with peculiarities of other states and have not attempted to discuss or footnote cases from other jurisdictions. Furthermore, although we will frequently mention them, this paper is not a study of the complicated relationships created by that specialized instrument, the oil and gas, or other mineral lease, by means of which most exploration and development is actually brought about. The standard legal encyclopedias and texts briefly treat the subject, and several good leading articles have also been published, to a number of which source authorities I commend you in the footnote hereto,[1] which should lead anyone in as deeply and in as many directions as he may care to go.

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1. Most of the following deal primarily with surface rights of *lessees* of oil and gas or other minerals, since surface damages problems most often arise from that particular relationship, but the basic principles apply to any type of severed mineral estate or ownership. Encyclopedic and text treatments include 58 C.J.S. Mines and Minerals, §§ 159 and 201; 36 Am. Jur. Mines and Minerals, § 177; 4 Summers, Oil and Gas, § 652; 1 Thornton, Oil and Gas, § 131; Kulp, Oil and Gas Rights, §10.58; Sullivan, Handbook of Oil and Gas Law, § 35. Excellent recent lead-articles include 6th Annual Southwestern Institute on Oil and Gas Law and Taxation 231 (1955), and 1st Annual Rocky Mountain Mineral Law Institute 85 (1955). The latter article entitled "Rights of Mineral Owners in Surface" was authored by Casper attorney Harold H. Healey, whose many years of distinguished oil and gas law experience in Wyoming, particularly qualify him on the subject, and his article includes significant discussion of our Wetsern public lands problems.

As the title indicates, we are not concerned herein with the relatively simple problems of a surface owner's claims against a mineral trespasser. We are concerned with the much more compex problems of surface damage claims by a surface estate owner against the owner of a mineral estate in the same land, the latter most often being an oil and gas, or other mineral lessee. The complexity, which has been aggravated by considerable confusion and loose thinking, stems from the inescapable and hard fact of life that ordinarily a surface owner and a mineral owner *both* have rights to the *same* surface. Such rights inevitably may clash, since no one has yet overcome that immutable law of nature that only one body can occupy the same space at the same time, and the more valuable the respective surface and mineral estates may be, the more likely the possible collision.

The term, damages, as a legal term can be very simply defined as pecuniary compensation, recoverable at law, by a person who has suffered a loss or injury through the wrongful conduct of another person.[2] And, in common usage, and as used herein as above indicated, the term "surface damages" applies to such an award to a surface estate owner against a mineral estate owner.[3]

Here, I will pause briefly to treat the subject of mineral severance. This interesting concept is the one that really causes this paper to be written, because so long as the same person owns and develops and operates by himself the entire estate in land, surface and mineral, he clearly can use as much of his own surface in any manner he pleases in reaching his own minerals, subject only to such extraneous considerations as his neighbor's rights or governmental regulations like those in conservation laws. Accordingly, my entire paper presupposes that some type of severed mineral ownership exists, of course.

Mineral severance can be temporary or permanent, complete or partial, and can occur in a number of ways; for example, by a grant or by a reservation in a conveyance, by an oil and gas, or other mineral lease, or by any instrument or contract which creates some mineral estate separate from the surface estate.[4] Severance usually is a deliberate and voluntary action, although it can be involuntary, as in condemnation of a surface estate only. At any event, both mineral owners and surface owners in effect acquiesce to and are charged with the consequences of this situation when they hold title to any severed estate. A special category of severance of great importance in Wyoming is created by the aforementioned mineral reservations found in many Patents by the United States government, as required by the several applicable United States Acts. These Acts often

2. Words and Phrases, Permanent Edition. Black's Law Dictionary.
3. The title "Surface Damages" was assigned to me and I retained it because it is a short and expressive label, although not an accurate or well-defined term.
4. See 2 Wyo. L.J. 62 (1948) for a useful note on mineral severance in Wyoming, which also touches on our subject.

include some provisions as to surface rights, which harmonize pretty much with the generally accepted basic principles in most respects. Difficult problems between private surface Patentees or their successors on the one hand, and mineral lessees from the mineral owner, The United States of America, on the other hand, can and do occur here, as will be noted later in reviewing statutes and Wyoming case law involving government leases. State lands represent another special category, as will also be noted later.

II. SURFACE RIGHTS INHERENT IN MINERAL OWNERSHIP

It is after all only elementary common sense that after severance, mineral ownership or operating rights would ordinarily be completely meaningless and worthless without the essential surface rights of access to reach the minerals. Accordingly, the law long ago adopted the initial irrefutable principle that there must be and there is a legitimate area within which such mineral ownership of necessity carries with it inherent surface rights to find and develop the minerals, which rights must and do involve the surface estate. From the rationale of this situation, the concept of *dominant estate* has been generally recognized, that is the mineral estate as to such surface rights is said to be dominant to the surface estate which is therefore servient; in other words, charged with a servitude for these essential purposes.[5]

It is true, of course, that any severed mineral estate can, and oil and gas leases usually do, contain specific contractual covenants setting forth many of the rights of the parties, including some covenants as to the surface rights of the mineral owner or lessee. These control the specific situations they cover, of course, but the inherent rights described above and hereinafter largely remain intact. It is also true that surface access can be mutilated or even conclusively repelled by the language used, so that no other construction is possible, but except for some unusual types of "non-drilling" oil and gas leases covering smaller tracts like rights-of-way or some other possible unusual situations, such repugnant covenants are not often found in practice, because no mineral owner or operator could accept such an estate without enjoyment for the most obvious reasons.

The next problem which logically arises is the extent or *how much* of the surface is subject to this necessary servitude, this inherent dominant right of the mineral estate, which inevitably must conflict with unrestricted enjoyment of the surface estate. As in so many fields of law, the standard of reasonableness has long been invoked, so that the next logical and common sense principle is simply that a mineral owner can use and occupy only so much of the surface as is *reasonably* necessary or incident to enable him to find, develop and produce his particular minerals.[6]

5. 1 Thornton, Oil and Gas, § 131. I particularly refer to the Pocket Supplement which was prepared by Gene Kuntz, who is now Professor of Law at Oklahoma University, and from whom I was privileged to study Oil and Gas Law at Wyoming University in 1947.
6. 4 Summers, Oil and Gas, § 652.

This depends entirely on the customary and accepted practices required to extract the particular mineral involved, and varies widely, of course, but the basic principle is well established, so that if the extent of surface use is so reasonable, it not only cannot be denied, but it is not in itself compensible as surface damages. On the other hand, obviously, surface use by a mineral owner established to be unreasonable or unnecessary does entitle the surface owner to recover surface damages for any losses caused by such excess use.

Assuming the mineral operator's basic right of surface use is established, and that he is occupying only so much of the surface as is reasonably necessary to his particular operation, the problem remains that he and the surface owner must live together, often in closest proximity, in exercising their respective surface rights. So, logically there has been invoked the further common sense principle that the mineral owner or operator must behave with proper regard or *due care* for the surface owner's rights,[7] so that this most familiar principle of law protects the surface owner and entitles him to surface damages whenever harm results from the mineral owner's negligence or, of course, wilful misconduct in carrying on operations.

III. ACTIVITIES COMMONLY INVOLVED

In the field of oil and gas, certain activities commonly become the subject of surface damage claims. I will very briefly describe a few of the main ones.

A. *Exploration.* Geophysical exploration for oil and gas through seismic exposions is an interesting problem of considerable importance. I must limit this paper as previously mentioned, so remind you we are talking about surface and mineral owners, both having rights. Occasionally, claims for surface damages have arisen in situations where the surface owner showed that the complained-of operations were by a seismic trespasser who had no mineral estate at all. Clearly a much more severe standard of liability applies to such a trespasser. But even the true mineral owner must be most careful with the necessary explosions involved in seismic work. He must not make these tests unreasonably close to habitations of the surface owner, for example, and the shot holes should be capped afterwards. The ramifications here could be and have been the sole subject of separate articles and papers.[8] Oil is so difficult to find, that an entire science in the realm of geology has evolved from this problem, because "dry holes" are most expensive. Hence, surface exploration is a legitimate and necessary exercise of mineral ownership, and may

7. 1 Thornton, Oil and Gas, § 131.

8. 29 Texas L. Rev. 310 (1951). 3rd Annual Rocky Mountain Mineral Law Institute 57 (1957). Such articles are usually primarily concerned with the most serious problem of wrongful disparagement of the mineral quality of a mineral owner's estate, usually caused by seismic trespass, but they also contain some coverage of our subject.

involve any or all of the several accepted methods of exploration, including simple surface examination and the interesting techniques involved in aerial reconnaissance. Commonly the oil and gas lease provides specifically for such exploration by the operator, but the right has been recognized as an integral part of the inherent surface rights in the absence of any specific provision in the lease.

B. *Drilling.* Drilling is actually the final and only conclusive means of exploration for oil and gas. You are probably familiar with the difficult odds against success of exploratory or wildcat wells. These odds vary greatly and can run from as low as around nine or fifteen to one against finding a very small field, to as high as around one thousand to one against finding a very large field.[9] Here again logic tells us that the mineral owner has the inherent right to occupy such portion of the surface as is reasonably necessary to get into the well locations and, of course, to occupy areas needed for the complex paraphernalia of modern drilling rigs, which in typical Wyoming ventures may have to go down as far as two or three or even more miles into the earth. Existing roads, if any, are used for ingress and egress where suitable, with construction of new roads held down, to minimize the great expense of wildcats. Here, as always, the operator must use due care, and if he does not and surface injury is caused by his negligence, the surface owner will be entitled to surface damages. If the operator is lucky and finds production, his inherent surface rights permit him to drill necessary development wells, of course, and similarly, adjoining production may cause necessary off set well drilling. In all operations, the operator must observe governmental regulations as to safety and conservation, which are of benefit to the surface and mineral owner alike. Also, here the typical oil and gas lease specifies in more or less detail some of the rights and obligations involved, as will be mentioned further.

C. *Production and Storage.* Production and storage in a successful field bring in some new elements. The roads are still needed for ingress and egress, of course, and where a number of wells are involved, a logical pattern of roads becomes reasonable and necessary. Existing roads are still used, where appropriate, and will be improved sufficiently to cut down wear and tear on vehicular equipment. Initially, the gathering system of storage tanks or treaters on the lease is simple. However, the tanks or treaters, for safety reasons, must be located at least fifty to one hundred yards from the well. The oil must be trucked to market from the storage, of course, until the installation of a full-fledged pipeline gathering system becomes economically feasible. If the well is a natural gas well, the problems are similar, but differ in detail, since gas can only be practically

9. These ratios as to the chances of success in drilling a rank wildcat and finding oil or gas are from a study and report prepared by the American Association of Petroleum Geologists some two years ago. The February 23, 1959, Oil and Gas Journal published similar approximations which vary from a very small field at 12 to 1 up to a large field at 700 to 1.

stored in the ground. If there is a market for gas, so that it is being produced, a pipeline system is required all the way from the wellhead. If the field is a real success, and is some miles from any settlement, as can occur in Wyoming, the erection of dwelling houses for those employed in operating the subject property may even become appropriate as a reasonable use of the surface by the mineral owner, as will be discussed later in reviewing Wyoming case law. Again, the typical lease will contain provisions in this respect, detailing some of the rights of surface and mineral owners in line with the applicable principles.

D. *Transportation.* I have already partially covered transportation of oil and gas. Here, the same rights of reasonable use of surface, and responsibilities to use due care, are applicable whether the oil is transported from the well by pipeline or truck or both. If the pipeline reasonably must cross through tilled fields, it is customarily buried below plow depth and leases generally so provide. On the other hand, in Wyoming's more arid areas, where no agriculture is involved, pipelines sometimes remain on or near the surface and represent a reasonable use of the surface under such circumstances.

IV. COMMON TYPES OF SURFACE DAMAGES CLAIMS

Next, we will most briefly look at a very few samples of surface damages claims out of the myriad of usual or unusual possible situations.

A. *Crops and Improvements.* Oil and gas leases customarily provide that the surface owner shall be compensated for any injury to growing crops. Federal statutes likewise specifically require that the public land lessee so indemnify the private surface owner for any loss of crops. Crops have been defined by many cases, including our Wyoming cases as discussed later, to include only those agricultural products of the soil which result from cultivation and harvesting by the surface owner, which has been held to exclude compensation for use of the typical natural grass grazing land found in our Western area. Later, we will look at an unusual 1955 Wyoming Act defining crops to include natural grass and even sagebrush. In this respect, one must recognize that these lease provisions are actually in derogation of the inherent dominant right of the mineral owner to use so much of the surface as is reasonably necessary to operate, without any compensation to the surface owner for unavoidable losses, always provided due care is used, of course.

Likewise, leases customarily protect the surface owner's improvements. A typical lease provision prohibits location of a well too near the surface owner's improvements, such as his house or barn; 200 feet is a typical specified minimum in our country. This appears simply to be a detailed provision of what would be covered anyway by the reasonableness principle. For example, it would ordinarily be unreasonable to locate a well only a few feet from a habitation in our wide open spaces, as opposed to

the intricate problems in wells in home owner's front or back yards in cities, such as Oklahoma City's strange situation where such practices have been permitted.

B. *Livestock.* Injuries to livestock fall into the same rules. For example, the due care principle requires the operator take reasonable steps to respect the surface owner's fences and gates, and if livestock stray and are injured as a result of negligence in this respect, the surface owner can recover surface damages for his loss. In improving roads or building necessary new ones, due care might require an operator to build suitable gates or cattleguards at new openings in the surface owner's fences, failing in which such liability would be present.

C. *Water.* Water problems, particularly water pollution, occupy another large area and we can only scratch the surface. Oil, mud or salt water escaping may injure vegetation or livestock, and the same standards of due care require the operator to take all practical steps to minimize such contamination by the use of pits, tanks, or other means at his disposal. Also, the operator must take reasonable steps to minimize interference with the surface owner's irrigation ditches, or like improvements, as by the use of road culverts, if necessary. Although it is outside the purview of this paper, it is interesting that liability for injury caused to neighboring lands by drainage of badly polluted water thereon can be much more severe; some jurisdictions have even imposed what amounts to absolute liability for such injuries to neighboring lands, on the theory of nuisance or as a result of statute, regardless of how careful the mineral operator may have been.

V. STATUTES AND WYOMING CASES

A. *Statutes.* There are a great many of these, both state and federal, which may affect our subject in one way or another. I will attempt to highlight some of the more significant ones.

1. Federal Statutes. Ordinarily, federal laws are not applicable, of course, to early day homesteads, mining claims, and the great many other situations in which the United States has patented the entire unsevered fee simple in federal lands with no reservation of minerals. However, to the extent they are in point, the many complex federal statutes do control as to development of federally reserved minerals, whether in public domain, acquired lands, Indian lands, or otherwise, and whenever our subject arises because of some surface estate or interest granted by the United States. Two important illustrations are the Agricultural Entry Act of 1914[10] and the Stock Raising Homestead Act of 1916.[11] Both provide for reservation of minerals by the United States, and as to any person to whom the United States may give the right to remove its reserved minerals (such

10. 38 Stat. 509 (1914), 30 U.S.C. § 121, as amended.
11. 39 Stat. 862 (1916), 43 U.S.C. § 291, as amended.

as a federal oil and gas lessee), both Acts provide in identical language that such person may "occupy so much of the surface thereof as may be required for all purposes *reasonably incident* to the mining" of such minerals. Both Acts go on to provide in similar fashion that the mineral developer shall first execute a bond or undertaking to secure the payment of "all damages" to "crops" or other "improvements" on the lands. We will see litigation involving these acts hereinafter as to Wyoming cases. Another important illustration is the Taylor Grazing Act,[12] and the several provisions which it contains of a similar nature as to mineral development.

2. State Statutes. There are a number of Wyoming statutes which touch on our subject. As to state and state school land mineral leases, our 1955 statute contains the very interesting provision that "rules and regulations adopted by the board as herein authorized, shall provide for joint use of such lands for grazing and agricultural or mineral purposes without *undue* interference by the lessees under any such class of leases with lessees under any other such class."[13] This seems clearly to authorize "due" or reasonable interference brought on by the necessities of mineral development, and so harmonizes with the basic principles as to private lands, it appears. As to county, city, town or school district land oil and gas leases, our 1949 statute contains nothing so directly in point, but does interestingly provide that operations "shall in no way interfere with the *public use* of said lands or the purpose for which said lands were acquired,"[14] which does not appear to negate the basic principles as between private parties.

Title 30 of our new Wyoming Statutes, 1957, entitled "Mines and Minerals" contains a number of sections as to coal and other solid minerals as well as oil and gas which relate to surface responsibilities of *all* owners of such interests in Wyoming. Specifically, Article 6 of Title 30 contains our 1951 Oil and Gas Conservation Act. An interesting earlier 1950 Act as to waste of natural gas makes it unlawful to permit gas "to pollute or contaminate the atmosphere to such an extent that injury or damage is sustained by growing crops, vegetation, livestock, wild life, or domestic fowls, or to such an extent that the human health, welfare, or safety is in anywise impaired or damaged."[15] In the 1951 Conservation Act, there are several provisions which touch on possible sources of surface damage claims. For example, drilling, casing, and plugging of wells is required to be done so as to prevent the pollution of fresh water by oil, gas or salt water, and so as to prevent blow-outs, cave-ins, seepages, and fires.[16] The Conservation Commission is empowered to regulate disposal of salt water,

12. 48 Stat. 1269 (1934), 43 U.S.C. § 315, as amended.
13. Section 36-74, W.S. 1957.
14. Section 36-79, W.S. 1957.
15. Section 30-232, W.S. 1957.
16. Section 30-219(d) (1) (C), W.S. 1957.

nonpotable water, and oil field wastes,[17] and the Act specifically preserves the right to conduct private damage suits, and also permits a private person to seek injunctive relief, where the Commission fails so to do.[18] The aforementioned unusual 1955 Wyoming Act on crops defines "crop" and "agricultural crop" to include not only enumerated vegetables, grains, hay and such, which ordinarily are cultivated and harvested, but also enumerated natural grasses, forage plants, and sagebrushes.[19]

B. *Cases.* I have only three cases in Wyoming's courts directly in point, two involve governmental leases, the other involves a private or fee lease. There are cases in Wyoming which touch indirectly on our subject, involving trespassers or injuries to adjoining owners, but I will confine discussion to the three directly in point.

1. Government Leases. *Kinney-Coastal Oil Company v. Kieffer.*[20] This interesting 1928 case arose in the United States District Court for Wyoming, the decision of which was eventually affirmed by the United States Supreme Court. In this *Kieffer* case, the holder of an oil and gas lease from the United States successfully enjoined the homestead entryman from establishing a townsite on the surface, where one well was already producing, and further development wells would require most of the surface. The U. S. Supreme Court based this unusual relief on the simple proposition that the mineral estate had a statutory servitude on the surface estate to permit extraction and removal of the oil and gas, which would be defeated by location of a town thereon. The Court observed that this surface estate was based on an Agricultural Entry Act of 1914 homestead, and made it clear that under the Act the surface owner was entitled to surface damages for injury to crops, if any, and went on to define crops as those of agricultural nature.

Holbrook v. Continental Oil Company.[21] The 1955 *Holbrook* case involved extensive surface claims by a surface owner of homestead lands against the holder of an oil and gas lease from the United States. The Wyoming Supreme Court affirmed the trial court in denying any recovery basing its opinion on the applicable federal statutes. The defendant over a period of some ten years had drilled some fifteen wells, nine of which were still producing. The trial court found among other things that the defendant's installations and use of the surface had been "reasonably

17. Section 30-219 (d) (2) (D), W.S. 1957.

18. Section 30-224 (b), W.S. 1957.

19. Section 11-1, W.S. 1957. This unique law is compiled in the Title on Agriculture. In the open discussion held after oral presentation of this paper it was stated that the motivation for this legislation was the extensive surface activity in the uranium field. It was also stated that it would seem that in no event could this state law provision apply to federal mineral lands and leases, whatever its effect, if any, on other mineral lands and leases. Be that as it may, this "black is white" law seems ta contradict the great majority of judicial and non-judicial definitions of crop, as found in Words and Phrases, Dictionaries, etc.

20. 277 U.S. 488, 48 S. Ct. 580, 72 L. Ed. 961 (1928).

21. 73 Wyo. 321, 278 P.2d 798 (1955).

incident" to the production and removal of oil as provided by the federal statutes, that only natural grasses were growing on plaintiff's surface, such not being a crop, and so, not compensible under the statutes,[22] that there was no water pollution to the injury of the plaintiff, and, in general, that no adequate showing was made as to other types of alleged damages. Judge Riner's affirming opinion quoted from the aforesaid Kieffer case as supporting the trial court's findings of law. One interesting element of this case was the approval of the three residences for employees actually engaged in operations on the lease involved, as mentioned earlier in this paper.

2. Private or Fee Leases. I have found no reported Wyoming cases involving private or fee leases. However, attorney W. J. Wehrli of Casper, Wyoming, furnished me with a copy of a six page Memorandum Opinion by Judge Kennedy in the 1950 federal court case of *Livingston v. The Texas Company*,[23] involving a fee lease. This case demonstrates application of most of the generally accepted basic principles, so I will discuss it at some length and quote from it in the belief it may be helpful to anyone faced with such a case. This case involved, as plaintiff, the private surface owner, and, as defendant, the oil and gas lessee from the private mineral owner. Defendant had successfully discovered oil and had completed a development program, resulting in some dozen producing wells connected to tankage by pipelines.

Plaintiff's allegations listed a considerable number of complaints, most of which seemed to be based in large part on alleged unnecessary construction and use of roads and equipment on the land. There were allegations that such caused destruction or impairment of his irrigation system, fields, and fences, and consequent impairment of grazing and haying operations to the detriment of stock raising operations. There were also complaints about such things as escaping oil, improper use of a dam on a small stream, and the leaving of stray pieces of discarded materials and machinery about the premises after the development program was finished.

Judge Kennedy succinctly observed that "it appears that it is not so much a controversy between wrong and right as it is between two rights."

22. See 11 Wyo. L.J. 116 (1957) for an interesting brief note on surface damages under federal oil and gas leases, which critically discusses the Holbrook case and presents an ingenious argument that under the Stock-Raising Homestead Act, which was involved therein along with the Agricultural Entry Act, crops should not have been restricted to agricultural crops, but should have been held to include grass, because it is necessary to stock raising. This 1957 note makes no mention whatever of our unusual 1955 Wyoming Act, § 11-1, W.S. 1957, discussed earlier herein, which defines crop to include natural grass and even sagebrush, presumably on the previously discussed basis that this state statute can have no application to federal mineral lands and leases, whatever its effect may be as to other mineral lands and leases. The note argues that crop does not have such a fixed definition, so as to bar such a judicial definition under the Stock-Raising Homestead Act, but this argument seems to leave room for serious debate.

23. No. 3233 Civil, U.S. District Court for District of Wyoming.

He went on to reject plaintiff's reliance on the severe surface damages standards in mineral trespasser cases, particularly the 1923 Wyoming federal court *Sussex* case, which he himself had decided and which had been affirmed by the 8th Circuit Court.[24] The Judge discussed the generally accepted principles, observed that there was no controlling Wyoming state court case or statute directly in point, and he cited cases, including an Oklahoma case,[25] from which he quoted with approval as follows:

> The rules as to rights and obligations arising under an oil and gas lease is stated in Mills-Willingham Law of Oil and Gas, Sec. 163, p. 252, as follows: "The grant, or reservation, of the right to operate for oil and gas carries with it, as an incident, the right to the use of the premises to an extent reasonably necessary for that purpose. Consequently, the damage to the soil, trees or crops, upon the land, which is incidental to and the result of such reasonable operations, is damnum absque injuria, and no recovery can be had therefor against the operator. The lessee, however, is liable for damages to the surface resulting from the negligent, as distinguished from reasonable use.

As to the evidence, the court observed that defendant had made a considerable showing that it had developed the field in a manner consistent with "recognized and approved methods," but that plaintiff had failed to show that "the exploitation of the tract was done in a manner contrary to the approved methods of developing oil fields." It is clear from Judge Kennedy's opinion that he found the extent of the surface taken up by defendant's use of his inherent surface rights to have been reasonably necessary under the circumstances. In other words, the roads were reasonably necessary for ingress and egress, wells reasonably and consistently spaced on a logical pattern, pipelines reasonably located for transportation, etc.

The Court then found that the evidence did not show negligence or lack of due care in the actual carrying on of defendant's drilling program, noting that the equipment used was proper for the purpose, culverts were installed at irrigation ditches, cattle guards installed where needed, etc. The Court said the evidence even showed instances in which the defendant's operations were of actual benefit to the plaintiff, such as plaintiff's use of defendant's roads, some of which were hard surfaced, and his use of water from a dam built by defendant. The Court threw in the observation that there was even a lack of convincing evidence that the plaintiff had suffered any real loss to his livestock operation, remarking that he was "running about the same number of animals as before." Judge Kennedy concluded the Livingston case by finding for plaintiff on only one of his numerous complaints, the one concerning defendant's failure to sufficiently clean up and, as much as reasonably possible, re-

24. Sussex Land and Livestock Company v. Midwest Refining Company, 294 F. 597, 34 A.L.R. 249 (1923).
25. Marland Oil Company v. Hubbard, 34 P.2d 278 (1934).

store the land to a useable condition after the drilling program was completed, involving such things as the needed repair of culverts, borrow pits, and diversion structures, and the cleaning up of discarded drilling materials. The Court allowed as surface damages a relatively very small sum, as compared with the total amount of plaintiff's claim, observing that such "failure in restoration in this case is of a temporary character and not permanent," and the sum allowed would amply enable plaintiff to so restore the premises if he wished, and the Court briefly observed that such allowance would also take care of any loss for the year to plaintiff's production of hay, properly treating hay as a crop, under the lease involved. It would appear that this finding for plaintiff was based on the proposition that defendant had failed to use "due care" in this clean up phase of its operations.

VI. CONCLUDING REMARKS

It seems reasonable to conclude from the foregoing Wyoming cases that the pattern of the law governing surface damages between surface and mineral estates in Wyoming is pretty well established. This Wyoming pattern has followed closely the applicable basic legal principles generally accepted in the United States, as set forth earlier in this paper. These basic principles are woven around established legal doctrines which are quite familiar to lawyers, such as the inherent access right of ownership, the standard of reasonableness, and the standard of due care-negligence, which familiar doctrines have been invoked in a natural and common sense manner to control the two rights involved.

In this limited paper, we have only been able to move quickly from one high point to another. I could not try to cover all the varied legal nomenclature used by the different courts to express the basic principles, of course. Neither do I claim that this paper has hit all the high spots adequately, though I have made a sincere effort to achieve that difficult goal in such an abbreviated treatment.

As Casper Attorney Harold Healy well expressed it at the end of his paper cited in the first footnote hereto, there is need at the least for enlightened self-interest in these matters, and preferably a sense of fairness involving a recognition by each of the rights of the other. Perhaps this can be summed up as a need for reciprocal good faith. Of course, experience tells us there are bound to be a few "cantankerous" surface owners and a few "fly-by-night" mineral operators who are simply unreasonable and irresponsible by nature. As in all human affairs, these can make life miserable, not only for themselves, but for all who have to deal with them, including their own lawyers, and sometimes the best and only place to deal with such is in the courthouse armed with a well prepared lawsuit. However, it is submitted that experience also tells us that most surface owners and mineral operators are sensible and responsible persons, who can and usually do work out their differences

realistically and manage to get along together, *if* they understand their respective rights and obligations. It is here that as counselors at law, we lawyers are often the only ones who can see that our clients are properly and accurately informed, so that they may work out their problems, if possible, short of the courthouse, with the resulting practical savings of time, trouble and expense to everyone involved. It is true that there will still be those complex or borderline cases, of course, that may require a full dress courtroom adjudication to unravel, regardless of good faith, but better understanding of the respective right involved by and through us lawyers should minimize these considerably.