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Robert L. LaVine

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prerequisite to Hudson's right to claim non-liability under the provision, the court took into consideration the position of the clause in the contract and the existence of several other provisions which would be "utterly meaningless" if the Hudson interpretation were to prevail.[13]

The California court approved the reasoning of the *Dreher* case and of another early automobile franchise case, *Dildine v. Ford Motor Co.*,[14] which also recognized the importance of considering the instrument as a whole in the light of the objects sought to be achieved. It was there held with regard to an exculpatory provision:[15]

> We think the stipulation was only intended to give defendant control over general conditions and contingencies, and was not intended for use as a weapon of fraud or of individual oppression.

As observed in both the *Milton* and *Dreher* opinions, the authorities are not entirely in accord with their conclusions. At first glance it might appear that the California court has written into a contract an implied obligation which is contrary to its express terms, with a resultant limitation upon the right of the individual to contract. However, the careful analysis by the court in following established procedures in the construction of ambiguities negated this impression. The court endeavored to place itself in the position of the parties at the time of the contract and to consider the instrument as a whole in order to give weight and meaning to all its provisions. This approach and analysis are in line with the recognized duties of a court in the construction of contracts, and have led to the proper result.

Alice Porter

COVENANTS: APPORTIONMENT OF OIL LEASE PAYMENTS UNDER CALIFORNIA STATUTE

"There's gold in them thar hills!" But did the people of California, particularly the legislators of 1872, realize that there was also "Black Gold" under those hills? If not, did the legislators intend that if oil were discovered, the statute[1] would apply to oil lands? Upon this point the case of *Dishman v. Union Oil Company of California*[2] was decided.

Union Oil had agreed to make payments to the owner of a lot within a large unit parcel. The payments were to be made on the basis of the proportionate assessed value of that lot to the entire parcel. The lot was later subdivided with plaintiffs Dishman and defendants Roche each coming to own a part of the lot. The *value* of Dishman's land was greater than Roche's, but Roche's *area* was greater than Dishman's.

It was found that a single point of law was in controversy: What was to be the mode of distribution of Union's payments allocated to the lot? Should distribution to the owners of the lot be on the basis of area or value?

Bearing directly on this question, Section 1467 of the California Civil Code, enacted in 1872, provides that:

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[13] 152 Cal. App. 2d at 431, 313 P.2d at 944.
[14] 159 Mo. App. 410, 140 S.W. 627 (1911).
[15] *Id.* at 415, 140 S.W. at 629.

[1] CAL. CIV. CODE § 1467.
[2] 145 Cal. App. 2d 261, 302 P.2d 326 (1956).

> Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests on point of quantity.

Section 1467 had never received judicial construction.

Assuming, as did both the trial and appellate courts, that this agreement was a covenant running with the land, it would appear that the statute would decide questions of this nature without room for doubt. By an ingenious argument, however, in a memorandum ruling by the trial court, apportionment was made on the basis of area.

The trial court took the position that since the statute had been enacted prior to a discovery of oil in California, the statute should be construed as applying to agricultural and perhaps "other lands," but not to oil lands. The trial court therefore did not give effect to the statute and distribution was made on the basis of acreage.

The trial court's position that the statute does not apply to oil lands can be very effectively rebutted in two ways.

First, even though oil had not yet been discovered in California at the time the statute was written, the legislature must necessarily have included oil lands within its purview. A thorough examination of the cases will establish that almost without exception, oil and gas are classified as minerals.[3] In its broad and scientific meaning, a mineral is a natural body destitute of organization or life; any inorganic species or substance having a definite chemical composition.[4] As was said in *Crain v. Pure Oil Company*:[5] "There is no question that minerals include oil and gas."

Without question, minerals were known to be present in California in 1872 when Section 1467 was enacted. Gold and silver already had been mined for many years. The "other lands" to which the statute was construed to apply, according to the trial court, most certainly would embrace such mineral lands since they were not specifically excluded from the statute. It follows that, since mineral lands are included in Section 1467 and oil is a mineral, oil lands are within the scope of the section.

The second rebuttal of the trial court's position would require an affirmative answer to the inquiry: Was it the intent of the legislature that oil lands, if discovered (though none had yet been found in California), be included within the provisions of the statute?

It is a fundamental rule of statutory construction that since the intent of the legislature is the law,[6] the courts will give effect to the intention of the legislature as expressed in the statute.[7] Since the statute is silent as to circumstances to arise in the future, we must utilize the generally accepted rules of statutory interpretation and construction.

A statute that is framed in general terms will apply to those cases and subjects

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[3] Gom v. Rex Crude Oil Co., 147 Cal. 659, 82 Pac. 317 (1905); Standard Pipe & Supply Co. v. Red Rock Co., 57 Cal. App. 2d 897, 135 P.2d 659 (1943); Cornwell v. Bulk & Stoddard, 28 Cal. App. 2d 333, 82 P.2d 516 (1938).

[4] Ozark Chemical Co. v. Jones, 125 F.2d 1 (10th Cir. 1941).

[5] 25 F.2d 824, 826 (8th Cir. 1928).

[6] Morton v. Richards, 134 Cal. App. 665, 26 P.2d 320 (1933).

[7] Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); Morse v. Industrial Accident Comm'n, 108 Cal. App. 2d 355, 238 P.2d 1042 (1951).

subsequently arising.[8] The fact that a situation is new[9] or that a particular thing was not in existence,[10] or not invented,[11] at the time the statute was enacted, does not preclude the application of the law to the situation or thing.[12] The language of a statute may be so broad and its object so general as to reach conditions not coming into existence until a long time after its enactment.[13]

Accordingly, it is a general rule of statutory construction that legislative enactments in general and comprehensive terms, prospective in operation, apply alike to all persons, subjects, and businesses within their purview and scope coming into existence subsequent to their passage.[14] Where a statute is expressed in general terms and in words of the present tense, it will be construed to apply not only to things and conditions existing at its passage, but will also be given a prospective interpretation by which it will apply to such as come into existence thereafter.[15]

The language used in Section 1467 of the Civil Code is general in that it refers only to "the land." The prescribed method of distribution then would, under the above rules, be intended by the legislature to apply not only to presently known agricultural and other lands, but to possible future discovered oil lands as well. There is no indication to the contrary in the statute, and by application of the general rules of construction stated above, it is not possible to exclude oil lands from the purview and scope of the statute.

The District Court of Appeals reversed the trial court holding that:[16]

> . . . . [I]t appears entirely logical to conclude all payments allocated to [the] lot . . . should be apportioned in the manner required by Section 1467 of the Civil Code, that is, according to value . . . . To hold otherwise would amount to judicial legislation and to write into a statute something which is not there.
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> . . . . [N]o California case exists as authority for excepting oil land interests from the operation of such statute.

In the absence of Section 1467 of the Civil Code, how would apportionment of the payment allocated to the owners of the lot be made? If the payment to the land owners is a royalty,[17] we would reach the same result as by the application of Section 1467.

The weight of authority holds that the royalty return a lessee pays to the lessor is rent,[18] or so closely analogous as to partake of its incidents.[19] The words "royalty" and "rent" are used interchangeably to convey the same meaning.[20]

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[8] Heuber v. Royal Realty Co., 86 Cal. App. 2d 596, 614, 195 P.2d 501, 513 (1948).

[9] J. H. Remick & Co. v. American Automobile Accessories Co., 5 F.2d 411 (6th Cir. 1925).

[10] Feitler v. United States, 34 F.2d 30 (3d Cir. 1929).

[11] Zucarro v. State, 82 Tex. Crim. 1, 197 S.W. 982 (1917).

[12] Browder v. United States, 312 U.S. 335 (1941).

[13] Comm. v. Tilley, 306 Mass. 412, 28 N.E.2d 245 (1940).

[14] Schus v. Powers-Simpson Co., 85 Minn. 447, 89 N.W. 68 (1902). (A statute which on its face was applicable to commercial railroads was held to apply to logging railroads though they were unknown at the time the statute was enacted.)

[15] Lockhart v. Wolden, 17 Cal. 2d 628, 111 P.2d 319 (1941); Acme Oil & Gas Co. v. Cooper, 168 Okla. 346, 33 P.2d 191 (1934); Thorne v. San Francisco, 4 Cal. 127 (1854).

[16] 145 Cal. App. 2d at 265–66, 267, 302 P.2d at 329–30.

[17] Dabney-Johnston Oil Co. v. Walden, 4 Cal. 2d 637, 52 P.2d 237 (1935).

[18] *Ibid.* See also Standard Oil Co. v. J. P. Mills Organization, 3 Cal. 2d 128, 43 P.2d 797 (1935); McIntire v. Bond, 227 Ky. 607, 13 S.W.2d 772 (1929); Barnard v. Jamison, 78 Cal. App. 2d 136, 177 P.2d 341 (1947).

[19] Callahan v. Martin, 3 Cal. 2d 110, 43 P.2d 788 (1935).

[20] Denio v. City of Huntington Beach, 22 Cal. 2d 580, 140 P.2d 392 (1943); Barnard v. Jamison, 78 Cal. App. 2d 136, 177 P.2d 341 (1947).

The royalty to be paid is not a payment for the oil removed but is the compensation paid the landlord for that species of occupation which the contract between them allows.[21]

Establishing then that royalty is analogous to rent, in the absence of statute, how is rent to be apportioned between several owners of the same parcel of land? Although a common law doctrine held that an entire contract could not be apportioned, this principal did not extend to covenants that run with the land.[22] Apportionment of rent as to amount has always been recognized[23] and when there is a severance of the reversion, the rent will be apportioned between the several owners of the reversion.[24] As a general rule, in the case of a severance of the reversion, and the title resting in different persons, the rent is to be apportioned among the several owners according to the value of the land[25] and not to the relative area.[26] Considering the payment as a royalty, from the foregoing discussion we would reach the same result as by relying on Section 1467 of the Civil Code.

What of the intention of the parties? As said by the appellate court in the principal case:[27]

> . . . . [A] solution should be sought . . . which will neither do violence to any intention evidenced by the written instruments nor to any applicable statutory or case law.

Generally, the cardinal principal in the interpretation of contracts is to ascertain and give effect to the mutual intention of the parties[28] if it can be done consistent with legal principles.

The trial court found that the purpose of the agreement was to gain and maintain the cooperation and good will of the owners.[29] The agreement provided that periodically a sum equal to 10 per cent of the value of the oil removed would be paid by the Union[30]

> to each signatory Owner of lands . . . subject to this agreement, in the same proportion for each owner as the assessed value of his holding (land and improvements thereon), subject to this agreement, bears to the total assessed value of all lands (and improvements thereon) . . . .

The values of such lands and improvements were to be determined by the Los Angeles County assessment roll for the fiscal tax year immediately preceding the date of commencement of drilling operations. The contract therefore provided the manner in which the money set aside for the entire tract was to be distributed to the signatory owners: On the basis of value determined by the county assessment roll.

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[21] Elsinore Oil Co. v. Signal Oil & Gas Co., 3 Cal. App. 2d 570, 40 P.2d 523 (1935); Musgrave v. Musgrave, 86 W. Va. 119, 103 S.E. 302 (1920).

[22] Van Rensselaer v. Bradley, 3 Denio 135 (N.Y. 1846).

[23] Worthington v. Cooke, 56 Md. 551 (1881).

[24] Cheairs v. Coats, 77 Miss. 846, 28 So. 728 (1900); Linton v. Hart, 25 Pa. 193 (1855).

[25] Campbell v. Lynch, 81 W. Va. 374, 94 S.E. 739 (1918); Worthington v. Cooke, 56 Md. 551 (1881); Moore v. Turpin, 28 S.C. (1 Speers) 32 (1842).

[26] Int'l Dye & Print Works v. Fashion Screen Printing Co., 116 N.J.L. 610, 186 Atl. 467 (1936), *aff'd*, 117 N.J.L. 424, 189 Atl. 138 (1937).

[27] 145 Cal. App. 2d at 265, 302 P.2d at 329.

[28] Wilson v. Brown, 5 Cal. 2d 425, 55 P.2d 485 (1936); Lemm v. Stillwater Lead & Cattle Co., 217 Cal. 474, 19 P.2d 785 (1933).

[29] 145 Cal. App. 2d at 262, 302 P.2d at 327.

[30] *Id.* at 262–63, 302 P.2d at 328.