

## CITIZENS' INVESTMENT COMPANY v. ARMER.

Opinion delivered April 15, 1929.

1. DEEDS—CONSTRUCTION—INTENTION OF PARTIES.—A deed must be construed according to the intention of the parties as manifested by the language of the whole instrument.
2. DEEDS—CONSTRUCTION TO GIVE EFFECT.—Such construction should, if possible, be given to a deed that all parts of it may stand together.
3. DEEDS—REPUGNANCY.—Where there is a repugnancy between the granting and *habendum* clauses of a deed, the granting clause will control.
4. DEEDS—RIGHTS CONVEYED.—The grantee in a deed can only acquire the rights of the grantor in the property conveyed.
5. MINES AND MINERALS—CONVEYANCE OF MINERAL RIGHTS.—Where a deed conveyed an undivided one-sixteenth portion of mineral rights accruing and to become due under an existing oil and gas lease, and provided that, if the lease should become void, one-half of the mineral rights and royalties should be owned by the grantee and his heirs and assigns, the grantee became entitled to one-half the minerals when the existing lease expired without any development having taken place.

Appeal from Union Chancery Court, First Division;  
*J. Y. Stevens*, Chancellor; affirmed.

## STATEMENT OF FACTS.

Appellees brought this suit in equity against appellants to quiet their title to an undivided one-half interest in the oil and gas in the forty acres of land described in the complaint. Appellants denied the ownership of appellees in an undivided one-half interest in the oil and gas in said land, and Citizens' Investment Company, one of the appellants, filed a cross-complaint, in which it seeks a partition of the oil and gas in said land, alleging that

appellees owned only a one-sixteenth undivided interest in the oil and gas in said forty acres of land.

Appellee, Sallye A. Armer, is the widow and the other appellees are the children and sole heirs at law of Claude Armer, who died intestate in Union County, Arkansas, on the 24th day of September, 1926.

On the 23d day of June, 1922, Alex Armer and his wife conveyed to Claude Armer an undivided one-sixteenth portion of an interest in and to all of the oil, gas and other minerals in and under and that may be produced from a specifically described forty acres of land situated in Union County, Arkansas, with the right of ingress and egress for the purpose of mining and exploring said land for oil, gas and other minerals and removing the same therefrom. The deed then recites that said land is under an oil and gas lease executed in favor of Fred Mellor, and that the sale to Claude Armer is made subject to said lease, and includes one-sixteenth of all the oil royalties and gas rentals accruing and becoming due under the terms of said lease. The deed then contains the following clauses:

"It is agreed and understood that one-sixteenth of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease shall be paid to the said Claude Armer or his heirs or assigns, and in the event that said above described lease shall for any reason become canceled, forfeited, or in any manner ineffective, then and in that event the lease interests and all future rentals on said land, for oil, gas and mineral mining privileges, shall be owned jointly by Claude Armer and Alex Armer, Claude Armer to own a one-half portion of and interest in all oil, gas and other minerals in, under and upon said land, and that may be produced therefrom, together with a like portion of and interest in all future rents and all oil, gas and mineral royalties arising from said lands under any future lease thereon.

"To have and to hold the above described property, together with all and singular the rights and appurten-

ances thereto in any wise belonging, unto the said Claude Armer and unto his heirs and assigns forever; and they do bind themselves, heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said Claude Armer and unto his heirs and assigns against every person whomsoever claiming or to claim the same or any part thereof."

The deed was duly acknowledged on the 23d day of June, 1922, and duly filed for record on the 24th day of June, 1924.

Alex Armer and Claude Armer were brothers. The land in question was neither drilled nor explored for oil by Fred Mellor or his assignees. They paid the rental for the full five years of the term of the lease. The oil and gas lease to Fred Mellor to the land in question was executed by Alex Armer and his wife on the 17th of June, 1922. The lease was on the regular form of commercial oil and gas leases, and provided that it should be in force for a term of five years, and as long thereafter as oil or gas be produced and saved from the leased premises.

On the 18th day of April, 1927, Alex Armer and his wife conveyed said land by warranty deed to George M. LeCroy. On the 18th day of June, 1928, George M. LeCroy and his wife, for value received, conveyed said land by warranty deed to the Citizens' Investment Company.

The chancellor found that appellees were entitled to the relief sought in their complaint, and that the cross-complaint of the Citizens' Investment Company should be dismissed for want of equity. A decree was entered of record in accordance with the findings of the chancellor, and to reverse that decree this appeal has been prosecuted.

*Powell, Smead & Knox*, for appellant.

*Stewart & Oliver*, for appellee.

HART, C. J., (after stating the facts). The correctness of the decree of the chancery court depends upon the construction to be placed upon that part of the deed from Alex Armer and his wife to Claude Armer which is

copied in our statement of facts and which need not be repeated here. That mineral deed was executed on the 23d day of June, 1922. At that time there was a mineral lease on the land in favor of Fred Mellor which had been executed by Alex Armer and his wife on the 17th day of June, 1922. By the terms of that lease it was to run for five years from the date thereof, or as long as oil or gas might be produced or saved from the land. The present suit was commenced on the 21st day of June, 1928. This was more than five years from the date of the execution of the mineral lease to Fred Mellor. The record shows that neither Fred Mellor nor his assignees ever drilled or explored the land for oil and gas. Thus, by the terms of the mineral lease, it expired five years from the date of its execution, which was on June 17, 1927.

It will be noted that the part of the deed under which appellees claim to own an undivided one-half interest in the oil and gas in the forty acres of land in question appears in the granting clause of the deed immediately before the *habendum* clause. In express terms it provides that, if the Mellor lease shall for any reason become forfeited or terminated, all future lease interests and rentals on said land for oil, gas and mining privileges shall be owned jointly by Claude Armer and Alex Armer. It expressly provides that Claude Armer is to "own one-half portion of an interest in all oil, gas or other minerals in, under and upon said land, and that may be produced therefrom."

It is the settled rule in this State that a deed must be construed according to the intention of the parties, as manifested by the language of the whole instrument; and it is our duty to give all parts of the deed such construction, if possible, as that they would stand together. Where there is a repugnancy between the granting and the *habendum* clauses, the former will control the latter. *McDill v. Meyer*, 94 Ark. 615, 128 S. W. 364; *Dempsey v. Davis*, 98 Ark. 570, 136 S. W. 975; *Mount Olive Stave Co. v. Handford*, 112 Ark. 522, 166 S. W. 532; *Georgia State*

*Savings Ass'n. v. Dearing*, 128 Ark. 149, 193 S. W. 512; *Jackson v. Lady*, 140 Ark. 512, 216 S. W. 505; *Cummins Brothers v. Subiaco Coal Co.*, 150 Ark. 187, 233 S. W. 1075; *Alexander v. Morris & Co.*, 168 Ark. 31, 270 S. W. 88; and *Pelt v. Dockery*, 176 Ark. 418, 3 S. W. (2d) 62.

In the present case there is no conflict between the granting and *habendum* clauses of the deed, and by the plain terms of the deed itself Claude Armer became entitled to one-half of the oil, gas and other minerals in said land after the lease by Alex Armer and his wife to Fred Mellor had expired on the 17th day of June, 1927. Claude Armer died intestate in Union County, Arkansas, where the land was situated, on the 24th day of September, 1926; and after his death his widow, Sallye A. Armer, and the other appellees, who were his children and sole heirs at law, became the owners of the said undivided one-half interest in the oil and gas in the forty acres of land described in the complaint. The conveyance made by Alex Armer to George M. LeCroy was made on the 18th day of April, 1927. This conveyance in no wise could affect the interests of appellees, which had become vested in them by a prior conveyance. On the 18th day of June, 1928, George M. LeCroy and his wife conveyed the land to the Citizens' Investment Company, a corporation. It could only acquire by said deed the rights of its grantor.

It follows that the rights of appellees to an undivided one-half interest in the oil and gas in said forty acres of land had become vested before the execution of the deed by Alex Armer to George M. LeCroy and the subsequent conveyance by George M. LeCroy and wife to the Citizens' Investment Company. Therefore the decree of the chancery court quieting the title in appellees to an undivided one-half interest in the oil and gas in said forty acres of land was correct, and must be affirmed.