
M. B. F.

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The impact of the present decision on the construction industry remains to be considered. The Supreme Court has preferred a restrictive view of the Mechanics' Lien Act or, at least, has opposed its extension. It may well be argued that, to the extent which the Act protects substantial contractors and suppliers such as the present respondents, it merely does for them what they ought to be expected to do for themselves. It ought to be a primary concern of any businessman to assure himself of the strength of the credit of any party with whom he proposes to contract. It is submitted that there seems to be little justification for giving the members of a particular trade special protection in case their initial precautions prove inadequate. Therefore, to the extent that the decision of the Supreme Court arrested the further expansion of such special protection, it is to be applauded.

An interview with the manager of a firm in the equipment rental business amply justifies this conclusion. When told of the Court's decision, he commented that the result had not altered his view of his legal rights in any way. He never had considered a mechanics' lien to be a protection of which he could avail himself. Knowing that his claim for rent would be unsecured, he habitually took extra care in the selection of his "accounts" and where a venture appeared risky he insisted on payment of rent in advance.

It is just such reasonable business attitudes which the Act tends to make unnecessary for those who are protected by it. Admittedly labourers are entitled to special protection but there seems to be little justification for the continued pampering of large companies which ought to be perfectly capable of looking after themselves.

It is for the legislature to decide whether the conclusion of the Supreme Court is to be overcome by new legislation. Doubtless it will be ably assisted in its deliberations by the members of the trades affected. It is submitted that the result of the Supreme Court decision ought not to be changed. If anything, to the extent that the Mechanics' Lien Act operates as an insurance policy against the consequences of sloppy credit practices, consideration ought to be given to amending it. The benefits would probably outweigh the disadvantages if substantial contractors and suppliers were deprived of the special protection which they now enjoy. B.B.C.T.

(iii) MINE LEASES


This case is concerned basically with the effect of section 3 of the *Road Allowances Crown Oil Act*, 1959 (Sask.) upon the ownership of oil within an oilfield, and with the nature of the interest created by *The Mineral Resources Act* 1931 (Sask.) c. 16, which
Acts declared that 1.88% of all produced oil belongs to the Crown in right of Saskatchewan.

By virtue of a producing-licensing arrangement, two oil companies were obligated to pay a royalty to the owner of the property; the sub-lessee deducted 1.88% of his royalty obligation from his payments under the sublet contract and paid it to the owner. The lessee, being fully liable on the contract for royalties, paid the owner the difference of royalty and sued the sub-lessee for that amount.

Interpretation of the two above-mentioned Acts by the Supreme Court indicated that the ownership of the 1.88% of the "producing oil reservoir", meaning by this 1.88% of the oil produced, was the sole property of the Crown. The Court ruled that this interest was a property interest in respect of all of the recoverable oil within the whole of a producing reservoir, no matter where the oil migrated to. As a result of this interpretation, the Court found that there could be no obligation upon the lessee or sub-lessee to pay a royalty upon that oil which was not the property of the owner and that the lessee's action failed. M.B.F.


The issue in this case as it appeared in the Supreme Court of Canada revolves around the interpretation to be attached to the phrase "net proceeds of production" as found in a farm-out agreement between the sub-lessee plaintiffs and the lessee defendants. By the agreement the plaintiff participants were to enter into the costs of drilling of a test well upon property leased by the defendant companies with the defendant doing the drilling, in return for the plaintiff participants being entitled to share in the "net proceeds of production."

By bringing the wells into production, the defendant companies were entitled *inter alia*, to a 25% interest in the leases. The plaintiffs contended that "net proceeds of production" included that interest in the leases.

In interpreting the phrase "net proceeds of production", the Court found that the defendant companies had never "contemplated or agreed to the participant (plaintiff) becoming owner of a fractional interest in the said lands", and that "the effect of clause 10(b) (net proceeds of production) cannot do more than confer some intangible equitable interest in the lands occupied by a producing well in which the participant had participated."

Hence, the interest which the plaintiffs had, was an interest tied to the monies derivable from the sale of production. M.B.F.

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1 The Mineral Resources Act 1953 R.S. Sask. c. 47 s. 2(3).
2 Clause 1, paragraph (c) of the agreement of May 18, 1951.
3 36 W.W.R. 157 at 173, report of the Trial Judge, Milvrain, J.