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OIL AND GAS AS MINERALS WITHIN A GRANT OR RESERVATION

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For many years a continuing source of oil and gas litigation has been a deed, usually an old one, containing a grant or reservation of "minerals," but not mentioning oil and gas, although often enumerating one or more other specific minerals. Such a deed ordinarily gives rise to no controversy until oil or gas is discovered, and in most cases this does not happen until many years have elapsed since the original conveyance containing the grant or reservation was made. If the landowner had expressly granted oil and gas or if he had expressly reserved oil and gas from the conveyance of his land, the subject matter of the grant or reservation could not be questioned.[1] But where, as in the cases we are going to consider, the grantor has used the term "minerals" and has not used the words "oil and gas," it at once becomes a question as to whether oil and gas are included within the grant or reservation.[2]

NATURE OF THE LANDOWNER'S INTEREST

Various interests may be disposed of by the owner of a fee simple in mineral lands. He has all of the rights recognized by the law in both the surface and in the minerals. He may, if he wishes, transfer all of his rights in the entire premises, or he may sever all or a part of the minerals or his rights therein from the remainder of his estate.[3] He can carve out various interests either by granting his general estate with an exception or reservation of mineral rights,[4] or by granting the minerals,[5] or the

[1] 1A Summers, Oil And Gas § 135, p. 269 (Perm ed. 1954).
[2] Ibid.
[3] Stowers v. Huntington Development & Gas Co. 72 F.2d 969 (4th Cir. 1934) (grantor's severance of mineral rights held binding upon his subsequent grantee of land); Harris v. Currie, 142 Tex. 93, 176 S.W.2d 302 (1943) (grantor's conveyance in ordinary form of deed containing no exception or reservation passed title to the grantee and such title included all minerals).
[4] Central Coal & Coke Co. v. Carseloway, 45 F.2d 744 (10th Cir. 1930); Adams V. Riddle, 233 Ala. 96, 170 So. 343 (1946).
[5] Stowers v. Huntington Development & Gas Co., 72 F.2d 969 (4th Cir. 1934).

surface alone.[6] He can sell all, a segregated part, or an undivided interest in the minerals.[7] And, of course, his grants can extend to different kinds of minerals, or to different strata of minerals, so that there can be as many owners as there are kinds and strata of minerals.[8] Because such control over the type and extent of the interest conveyed is possible, the intent with which a particular conveyance is made will extend or limit the interest conveyed or reserved depending upon the language employed and the pertinent facts and circumstances.

DEFINITION OF THE WORD MINERAL

When the general term "mineral" is used in a grant or reservation, its meaning must necessarily depend upon the intent with which it is used.[9] In a strict sense the words "oil and gas" are not included within the meaning of the word "mineral" because oil and gas are classed scientifically as hydrocarbon compounds.[10] But in *Sellars v. Ohio Valley Trust Co.*,[11] the court asserted that the term "minerals" included oil and gas even though in a strict sense oil and gas were properly classed as hydrocarbon compounds.[12] To apply the term "minerals" in its narrow signification to a grant of land containing an exception or reservation of minerals might prove absurd, because in a broad sense oil and gas must logically be termed minerals since they are neither animal nor vegetable.[13]

Some courts prefer to define oil and gas as minerals on the ground that the term includes every inorganic substance extracted from the earth for profit.[14] A number of other authorities adopt the definition that a mineral is any natural substance having sufficient value to be

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[6] "The owner of the entire estate in land may convey the minerals therein separately from the surface. Conversely, he may convey the surface separately from the minerals." Harris v. Curre, 142 Tex. 93, 176 S.W.2d 304 (1943).

[7] Sullivan, Oil And Gas, p. 264 (1955).

[8] Delaware & H Canal Co. v. Hughes, 183 Pa. 66, 38 Atl. 568 (1897).

[9] United States ex rel and for Use of Tennessee Valley Authority v. Harris, 115 F.2d 343, 344 (5th Cir. 1940) (the meaning of the term minerals is to be determined from the language of the grant or reservation, the surrounding circumstances and the intention of the grantor).

[10] Carothers v. Mills, 233 S.W. 155 (Tex. Civ. App. 1921).

[11] 248 S.W.2d 897 (Ky. App. 1952).

[12] "Strictly speaking, oil and gas are not minerals, but hydrocarbon compounds. However, in a broad sense they may be and are termed minerals. So when the word "minerals" is used without qualifications, it is construed as covering all organic and inorganic substances that can be taken from the earth." Id. at 899.

[13] Silver v. Bush, 213 Pa. 195, 62 Atl. 832 (1906).

[14] Stowers v. Huntington Development & Gas Co., 72 F.2d 969 (4th Cir. 1934); McKinney's Heirs v. Central Kentucky Gas Co., 134 Ky. 239, 120 S. W. 314 (1909); Sult v. A. Hochstetter Oil Co., 63 W. Va. 317, 61 S.E. 307 (1908).

mined, quarried or extracted for its own sake or for its own specific use.[15] Under these broad definitions the term "minerals" has been held to include oil and gas in a long line of decisions.[16] These decisions have set a common standard of meaning for the term, and the courts are almost unanimous in holding that a conveyance or reservation of "minerals" includes oil and gas, in the absence of evidence of a contrary intention indicating a more restricted use.[17]

THE KENTUCKY VIEW

The question as to whether oil and gas has been included in a grant or reservation of "minerals" has been litigated in the Kentucky courts many times.[18] In the decisions reported from that jurisdiction the view taken with respect to the question under consideration is certainly representative of the majority position,[19] and an analysis of the Kentucky cases affords an understanding of the basic distinctions between cases following the majority view and cases purporting to do so and yet holding that oil, gas, or both, are not included within a particular grant or reservation of "minerals."

In *Scott v. Laws,* [20] under what was labeled the majority rule, it was held that a conveyance of "all the mineral right, and coal privileges and rights of way to and from said minerals and coal privileges, also the right to search for all undiscovered minerals and coals,"[21] included all inorganic substances which were capable of being taken from the land, and that to restrict the meaning of the term "minerals" there must be some qualifying words or language indicating that the parties did not intend such a broad meaning.[22] The instant case was distinguished from the case of *McKinney's Heirs v. Central Kentucky Natural Gas Co.,*[23] in which it was held that gas did not pass by a conveyance which contained the clause "all minerals such as coal, iron, silver, gold, copper, lead, bismuth, antimony, zinc *or any other mineral of any marketable value.*"[24]

Is the distinction drawn between the *Scott* and *McKinney* cases sound? The ground upon which the distinction was made was that in *McKinney* the words "any other material of any marketable value" were to be read in connection with the minerals previously enumerated and were confined to minerals of the same character.[25] Apparently the enumerated minerals were considered to be of a character different from gas.

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[15] Murray v. Allred, 100 Tenn. 100, 43 S.W. 355 (1897).
[16] Brown v. Spilman, 155 U.S. 665 (1895); Lovelace v. Southwestern Petroleum Co., 267 Fed. 513 (6th Cir. 1920); Stowers v. Huntington Development & Gas Co., 72 F.2d 969 (4th Cir. 1934); Osborn v. Arkansas Territorial Oil Co., 103 Ark. 175, 146 S.W. 122 (1912); Missouri Pac. RR. Co. v. Strohacker, 202 Ark. 645, 152 S.W.2d 557 (1941); Cornwell v. Buck & Stoddard, 28 Cal. App. 2d 333, 82 P.2d 516 (1938) (holding that while oil and gas are minerals their production is not mining); West Virginia Gas Co. v. Preece, 260 Ky. 601, 86 S.W.2nd 163 (1935); Calhoun v. Ardis, 144 La. 311, 80 So. 548 (1918;) Wagner v. Mallory, 169 N.Y. 501, N.E. 584 (1902); Norman v. Lewis, 100 W. Va. 429, 130 S.E. 913 (1925).
[17] See cases collected in IA Summers, Oil And Gas § 135, p. 271 (Perm ed. 1954).
[18] See Kentucky cases collected in Annot., 37 A.L.R. 2d 1440 (1955).
[19] See cases collected in IA Summers, Oil And Gas § 135, p. 269 (Perm ed. 1954).
[20] 185 Ky. 440, 215 S.W. 81 (1919).
[21] 215 S.W. at 81.
[22] 215 S.W. at 82.
[23] 134 Ky. 239 120 S.W. 314 (1909).
[24] 120 S.W. 314 (emphasis supplied).
[25] 215 S.W. at 82.

In the *Scott* case the only mineral expressly mentioned was coal and the court held that "all mineral right" included oil and gas.

The decision in *McKinney* has not been considered to be a departure from the majority view, with the exception that Pennsylvania claims that it represents the minority view.[26] Thus, in *Lovelace v. Southwestern Petroleum Co.,* [27] a federal court discussed the *McKinney* case[28] and said that it plainly was not opposed to the general rule.[29] The federal court also indicated that *McKinney* was construed as being in the ejusdem generis class.

Perhaps the distinction drawn by the Kentucky cases is best understood in the light of the following language used in the *McKinney* case.

> "It will be observed that gas is not specifically mentioned in either of the deeds, but in all of them the word 'minerals' is used, which counsel for the parties concede, when given its broadest meaning, includes natural gas. But the question to be determined is: What was the intention of the parties to the deeds at the time they were made?"[30]

The holding was, no doubt, based partly on the opinion that the long list of enumerated minerals evidenced an intention not to include gas, because it would appear to be common sense that if it were the intention of the parties to include gas, they would have added it to the list of enumerated minerals. This position was no doubt strengthened by the fact that the easements accompanying the grant were inapplicable to the production of oil or gas.

Another Kentucky case which is worthy of mention is *Lambert v. Prichett,*[31] a 1955 case, where the controversy was over the scope of a reservation in a certain deed to the effect that "no coal or mining rights are hereby conveyed." It was held that the words "mining rights" following a reference to coal must be considered as having been used in their ordinary sense and related to the specific mineral mentioned. But in *Murray v. Allred,* [32] where the common predecessor in title of both the defendant and the complainant conveyed to the defendant's remote grantor the land in question, reserving "all mines, minerals, and metals in and under the land," it was held that the reservation included oil. The court pointed out that the true meaning of the word "mineral" included oil and gas and was to be determined from dictionaries and other similar authorities.[33] The minority view, as enunciated in *Dunham v. Kirkpatrick,*[34] was disapproved in clear and emphatic language.[35]

OTHER JURISDICTIONS

Generally speaking, and with the exception of Pennsylvania, every jurisdiction which has passed upon the problem of whether oil and gas are included within an exception or grant of "minerals" has purported to follow the rule that oil and gas are included, unless from the lan-

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[26] Preston v. South Penn Oil Co. 238 Pa. 301, 86 Atl. 203, 204 (1913).
[27] 267 Fed. 513 (6th Cir. 1920).
[28] Id. at 517, 518.
[29] Id at 518.
[30] 120 S.W. at 317.
[31] 284 S.W.2d 90 (Ky. 1955).
[32] 100 Ky. 100, 43 S.W. 355 (1897).
[33] Id. at 117, 43 S.W. at 359.
[34] 101 Pa. 36 (1882).
[35] 43 S.W. at 359.

guage of the instrument, or from the surrounding circumstances at the time it was executed, it is concluded that the term was used in a less inclusive sense.[36] The cases commented upon in this section are examples of this general rule.

Branham v. Minear,[37] involved a determination by the Texas Court of Civil Appeals of the meaning of a reservation of "any minerals on said land." The court made the observation that the cases seemed conclusive and that the reservation in the deed in question undoubtedly meant all minerals, including oil and gas. The question was deemed to be so well settled that the court found it unnecessary to cite any authorities.[38]

It was held, in *Warren v. Clinchfield Coal Corp.*,[39] that a conveyance of "all the coal and minerals of every description" embraced oil and gas. The rule laid down was that under normal circumstances a conveyance or exception of minerals will include natural gas in place and oil, in the absence of proof of a contrary intent.[40]

THE PENNSYLVANIA VIEW

An early Pennsylvania case, *Dunham v. Kirkpatrick*,[41] held that a reservation of "all timber suitable for sawing, also all minerals" did not include oil and gas. The court recognized that oil was considered to be a mineral, in a broad sense of the term,[42] but reasoned that in popular estimation it was not so regarded, and that the parties must have intended to use the term mineral in a sense based upon the ideas of everyday life.[43] Perhaps the holding in the case is not too far out of line with the majority view, but the reasons advanced by the court to sustain its position were poorly stated and reflect the weakness of its position. The particular language of the court from which the instant conclusion is drawn is:

> "They [the parties] were, doubtless, at that time unaware of the character of the property as oil territory. But if they did entertain such an idea, and expected to reserve oil under the general term 'mineral,' they were mistaken, and should have known that they were using that word in a manner not sanctioned by the common understanding of mankind, hence, in a manner that could not be approved by the courts of justice."[44]

Later Pennsylvania cases have adhered to this same view, but the reasons given for the following *Dunham* are based partially on the doctrine of stare decisis, as is indicated in the other cases which have entrenched the minority view more deeply into the law of that jurisdiction.

Dunham was followed in *Silver v. Bush*,[45] where it was held that a reservation of "the mineral underlying" the land conveyed did not include natural gas, and that the grantee under the deed was entitled to it.

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[36] See note 16 supra.
[37] 199 S.W.2d 841 (Tex. Civ. App. 1947).
[38] Id. at 845, 846.
[39] 166 Va. 524, 186 S.E. 20 (1936).
[40] 186 S.E. at 22.
[41] 101 Pa. 36 (1882).
[42] Id. at 43.
[43] Id. at 44.
[44] Ibid.
[45] 213 Pa. 195, 62 Atl. 832 (1906).

The court advanced the position that although such natural gas was a mineral in the broadest sense of the term, evidence was needed to establish that the parties intended to include gas within the reservation.[46] Since there was no evidence on that point in the record, the minority rule was again applied. It was stated that the *Dunham* decision was a part of the law of the state when the deed was executed, and to some extent at least had become a rule of property on which many titles in western Pennsylvania depended.[47]

And, following *Dunham* and *Silver,* the court held in *Preston v. South Penn. Oil Co.,*[48] that a reservation of "all minerals and mining rights and the incidents thereto," did not include oil and natural gas, in the absence of a showing of an intent to include them. Again it was pointed out that the rule in *Dunham* had become a rule of property and would not be disturbed.[49] An additional comment was that the decisions in other jurisdictions were not harmonious on the question before the court, and that the Pennsylvania view had been followed in *Detlor v. Holland,*[50] an 1898 Ohio case, and in *McKinney v. Central Kentucky Natural Gas Co.,*[51] discussed earlier.

Once again in *Bundy v. Myers,*[52] a 1953 decision, a reservation of "oil, coal, fire clay, and minerals of every kind and character," was held not to include natural gas. The court said that in Pennsylvania there is a rebuttable presumption that when the word "mineral" is used in a deed, reservation or exception, it does not include oil or gas.[53] The court rejected the contention that gas should be included under the doctrine of ejusdem generis, and pointed out that if gas had been intended to be included, "then why was the oil expressly reserved?"[54]

Ohio is the only other jurisdiction that has relied on the *Dunham* decision. In *Detlor v. Holland,*[55] it was decided that a grant of "all the coal of every variety, and all the iron ore, fire clay, and other valuable minerals, in, on, or under" the land did not include oil and gas. The decision was based upon what was called the correct rule of construction and upon the authority of the *Dunham* case.[56]

Although it might have been asserted that in *Detlor* the Ohio court had followed the minority view, the question was settled in *Jividen v. New Pittsburgh Coal Co.,*[57] where it was held that oil and gas were included within a reservation which read: "This deed is to convey the surface only . . . [the grantors] reserve all coal and other minerals, with the right to mine and haul the same. . . ."[58] The *Detlor* case was distinguished and the court espoused the general rule that the term "minerals" includes oil and gas, in the absence of a showing of a contrary intent.[59]

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[46] 62 Atl. at 833.
[47] Ibid.
[48] 238 Pa. 301, 86 Atl. 203 (1913).
[49] 86 Atl. at 204.
[50] 57 Ohio St. 492, 49 N.E. 690 (1898).
[51] See note 21 supra.
[52] 372 Pa., 583, 94 A.2d 724 (1953).
[53] 94 A.2d at 725.
[54] Id. at 726.
[55] See note 48 supra.
[56] 49 N.E. 692, 693.
[57] 187 N.E. 124 (Ohio 1933).
[58] Id. at 125.
[59] Ibid.

COLORADO

There is no Colorado case which has decided the question whether a grant or reservation of "minerals" includes oil and gas. But in *Farrell v. Sayer*,[60] the Colorado Supreme Court did decide that a reservation "excepting and reserving all minerals and all mineral rights and rights to enter upon the surface of the land and extract the same" did not include ordinary sand and gravel. The rule set out in the opinion was that the word "minerals" when found in a reservation means substances exceptional in use, value and character, and does not include the ordinary soil found on the land and common to the area where the land is situate.[61]

Although the *Farrell* case did not involve oil and gas, the opinion does indicate that the court considered substances exceptional in use, value and character to come within the purview of the term "minerals," when used in a grant or reservation. The interesting question presented is, therefore, whether oil and gas are substances falling under the court's definition. They appear to fit the requirements laid down by the court.

The question will be of considerable interest to oil and gas lawyers when the time arrives for the Colorado view to be enunciated. That time is not far away, for there is presently before the Colorado Supreme Court an action involving a claim to oil and gas arising out of a deed containing a reservation of "the exclusive right to prospect for coal and other minerals."[62]

PARTICULAR LANGUAGE AND CIRCUMSTANCES

A substantial number of cases involving the question we have been considering have been decided under the rule that intention controls.[63] Consequently, it is important to understand the rule that: when from the language of the instrument, or from the facts and circumstances at the time of its execution, it appears that the parties did not have oil and gas in mind, a grant or reservation of minerals will not include oil and gas.[64] If the cases which seem to have departed from the general rule are viewed in relation to this principle they may be entirely consistent.

The case of *Monon Coal Co. v. Riggs*[65] is an example of a situation in which the courts will apply the principle that intention governs. In this case the Indiana court recognized the rule that oil and gas are included within a reservation of minerals, in the absence of a contrary intention. However, it held that a deed of "all the coal, fire clay and minerals underlying the surface" of the land in question was ambiguous and required the introduction of parol evidence. From the evidence so let in the court determined that the parties had not intended to include oil and gas.

But in *Shell Oil Co. v. Moore*,[66] a deed of "the surface only" of the land in question, reserving to the grantor the right to mine and remove "all the coal and other minerals underlying said land," was held to reserve to the grantor the ownership of the oil and gas, the right to explore for it, and the right to use the surface to obtain it. The court observed

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[60] 129 Colo. 368, 270 P.2d 190 (1954).
[61] Id. at 373, 270 P.2d at 192.
[62] Radke v. Union Pacific RR., No. 18254.
[63] 1A Summers, Oil And Gas § 135, p. 278 (Perm ed. 1954).
[64] Ibid.
[65] 115 Ind. App. 236, 56 N.E.2d 672 (1944).
[66] 382 Ill. 556, 48 N.E.2d 400 (1943).

that it regarded oil and gas as minerals, and that rule, coupled with the fact that only the surface was included within the grant, led the court to the conclusion that the mineral estate and the right to explore for oil and gas were left in the grantor.

Riggs and *Moore* do not represent inconsistent viewpoints. Quite the contrary, they represent the rule that the intent of the parties indicated from the language of the instrument and from the surrounding facts and circumstances will control.

Where the language in a grant or reservation is unusual, the cases indicate that a fine line is drawn. No general standard is controlling, and common sense seems to be the best guide. Thus, it has been held that the language "excluding all the mineral on said land, excluding all the timber that belongs to [a former grantor]" is ambiguous,[67] and evidence is admissible to show that oil and gas were not intended.

In other difficult cases, it has been held that an exception of "mineral deposits" includes oil and gas,[68] against the objection that although oil and gas may be minerals they are not "deposits"; that a reservation of "coal, mineral, stone, or any other mineral deposits" includes oil and

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[67] Kentucky Coke Co. v. Keystone Gas Co., 296 Fed. 32 (6th Cir. 1924).
[68] Roth v. Huser, 147 Kan. 433, 76 P.2d 871 (1938).

gas;[69] that a grant of "coal and mining rights" does not convey oil and gas.[70]

In some cases either the word oil or the word gas, but not both, are specifically mentioned together with the term minerals. When such a case arises it is usually contended that the inclusion of one results in the exclusion of the other. On this point the cases are in hopeless conflict.

It has been held that the word "mineral" in an exception of "mineral and timber and oil" includes natural gas, where there is nothing to show a contrary intention.[71] Another case held that a reservation of "all minerals, mineral substances and oil of every sort and description" included natural gas.[72] But a reservation of "all oil privileges" has been held not to include natural gas.[73]

APPLICATION OF THE RULE OF EJUSDEM GENERIS

In addition to the problem arising out of a situation where either oil or gas is specifically mentioned to the exclusion of the other, the enumeration of one or more specific minerals in conjunction with the general term "minerals," presents a problem of construction. Sometimes the courts consider the enumeration to be indicative of an intent to omit oil and gas, or of an ambiguity. This frequently leads to the specific question of the applicability of the doctrine of ejusdem generis.[74]

A reservation of "the exclusive right to the iron, coal and other minerals" was held not to include oil and gas in a 1922 Louisiana decision.[75] In reaching the decision the court applied the rule of ejusdem generis and pointed out that the words "other minerals" following the specific terms "coal and iron" were to be construed as including minerals of a character similar to coal and iron, such as solids or minerals in place.

In contrast with the Louisiana case just mentioned, the case of *Shell Oil Co. v. Dye*[76] held that oil and gas were included in a conveyance of "all the coal and other minerals in, on and under" the land. The court refused to apply the doctrine of ejusdem generis and took the position that the naming of one specific mineral, namely coal, was not an enumeration. The court also mentioned that coal and oil had some common characteristics, since they were both used for fuel and were, from a technical viewpoint, both hydrocarbons.

An interesting observation was made in *Federal Gas, Oil & Coal Co. v. Moore*,[77] where the court stated that it was within the common knowledge of mankind that oil is usually found in salt water and that, therefore, a conveyance of "all the coal, saltwater and minerals" included oil and gas.[78] The doctrine of ejusdem generis did not operate to exclude oil and gas, and extrinsic evidence was inadmissible.

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[69] Rio Bravo Oil Co. v. McEntire. 128 Tex. 124. 95 S.W.2d 381 (1936).
[70] Easley v. Melton. 262 S.W.2d 686 (Ky. 1953).
[71] 252 Ky. 17. 66 S.W.2d 19 (1933).
[72] Dingess v. Huntington Development & Gas Co., 271 Fed. 864 (4th Cir. 1921).
[73] Murphy v. Vanvoorhis, 94 W. Va. 475, 119 S.E. 297 (1923).
[74] "In the construction of laws, wills and other instruments, the 'ejusdem generis rule' is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying to persons or things of the same general kind or class as those specifically mentioned." Black, Law Dictionary (4th ed. 1951).
[75] Huie Hodge Lumber Co. v. Railroad Land Co., 151 La. 197, 91 So. 676 (1922).
[76] 135 F.2d 365 (7th Cir. 1943).
[77] 290 Ky. 284, 161 S.W.2d 46 (1942).
[78] 161 S.W.2d at 48.

A deed to a railroad of a right-of-way "together with the right to take and use all the timber, earth, stone and mineral" was held not to convey the oil under the land.[79] The ground on which the court based its decision was that the interest granted was the right-of-way and the facilities necessary to the efficient use of that right, and that under the rule of ejusdem generis, the word "mineral" should be applied to the same class of substance as the particular words indicated.

Similarly, a reservation of "all the minerals, coals, together with all the necessary rights of way" was held not to exclude oil and gas when read in connection with the provision "to mine, excavate, and transport the same."[80] The court concluded that the deed, when read as a whole, and the word "coals" immediately following the term "minerals," indicated an intention on the part of the grantor to limit or restrict the meaning of the more comprehensive term "minerals," and that the only mineral actually reserved was coal.

The cases which have been placed in the ejusdem generis class might seem inconsistent if the language employed in the instruments of conveyance is alone considered, but they may appear quite consistent when analyzed from the viewpoint that intention is a factor of major importance. This is indicated in the last-mentioned case, where the court observed that both intent and the specific language of the instrument were to be considered.

CONCLUSION

The question whether oil and gas are included in a grant or reservation of "minerals" has been litigated many times. The continuing discovery of oil on newly explored lands affords ample background for this type of litigation and the courts are constantly being called upon to decide the question. An over-all survey of the cases indicates that there is a great deal of consistency among the decisions. The Pennsylvania view has not gained a following, and the courts are practically unanimous in holding that oil and gas are included in a grant or reservation of "minerals," unless it appears from the language of the deed, or from the facts and circumstances existing at the time of its execution, that oil and gas were not intended to be included. The apparent inconsistency in some of the decisions is best explained in light of the cardinal principle that intention governs.

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[79] 106 Tex. 94, 157 S.W. 737 (1913).
[80] Horse Creek Land & Mining Co. v. Midkiff, 81 W. Va. 616, 95 S.E. 26 (1918).