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**ESTOPPEL, WAIVER, AND RATIFICATION AFFECTING MINERAL AND LEASEHOLD RIGHTS**

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**INTRODUCTION TO THE TERMS AND RULES**

Estoppel, waiver, and ratification are terms of renown, with rather precise dictionary and textbook definitions, used by the courts to reach a result which to the particular court appears to accomplish justice and comport with good conscience. Refinement of the terms can be noted and may have, at one time, been justified; but it is now best to recognize and accept these concepts as tools, equitable in nature, used to protect and even create titles when it appears necessary to the court to prevent inconsistency and rightly retain continuity of title.

The principles that have arisen out of these three theories or concepts of law have been applied to make effective deeds that were wholly inoperative as to the true owners of the land or minerals, and as to nonjoining homestead owners and married women. They have been effectively used to create ***oil*** and gas leasehold rights where the leases were originally incomplete and ineffective, as well as to revive leases that had expired by their own terms and limitations. They have been utilized to prevent lessors from challenging drilling and production operations of their lessees, and they have been held to bar a grantee's challenge of his grantor's reserved mineral or royalty interests and title. In other words, insofar as ***oil*** and gas rights and titles are concerned, these concepts have been used and extended separately, together, and interchangeably so that it may not now be said that any of them is purely defensive in character and ineffective to create any new right or title.

Not only are the actual parties to the acts giving rise to waiver, estoppel, or ratification bound, so also are their privies in title bound.[[1]](#footnote-2)1 As said by the Oklahoma court in applying estoppel as well as estoppel by deed, "The grantor and all persons in privity with him shall be estopped from ever afterwards denying that he was so seized and possessed at the time he made the conveyance-"[[2]](#footnote-3)2 And as declared by the Texas court, "The doctrine of estoppel applies against those holding in privy of title from one against whom estoppel is asserted. 19 Am.Jur., Estoppel, § 152."[[3]](#footnote-4)3 In other words, once the courts decide to apply any one of the doctrines, they seemingly do not hesitate to bind forever one and all in privy of title-

**Definitions**

Perhaps no other technical legal term is more loosely used than the term *estoppel*. It is almost impossible to frame any formal definition that will cover or include all the matters to which the term has been applied by the courts. The broad concept of estoppel is that one who, by his speech or conduct, has induced another to act in a particular manner ought not to be permitted to adopt an inconsistent position or course of conduct and thereby cause loss or injury to the other party. Or, speaking generally, it has been said that estoppel is a bar, which precludes a person from denying or asserting anything contrary to that which has, in contemplation of law, been established as the truth, either by the acts of the courts or by his own deed or representations, either express or implied.[[4]](#footnote-5)4

Estoppels are placed in three categories: (1) by record, (2) by deed, and (3) by matters in pais- Estoppels by record and by deed are often referred to as technical estoppels, as distinguished from estoppels in pais.[[5]](#footnote-6)5*Estoppel by record* precludes the denial of the truth of matters set forth in a judicial (or legislative) record. Akin to this doctrine is the rule that a party who has made a sworn statement in the course of judicial proceedings may not be heard afterward to maintain a contrary position in the absence of proof that the averment was made inadvertently or by mistake, fraud, or duress. This is sometimes called "judicial estoppel" or "estoppel by oath."[[6]](#footnote-7)6

*Estoppel by deed* is the bar that precludes a party to a deed and his privies from asserting, as against the other party and his privies, any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it- Estoppel by deed is said to mean no more than that a party is bound by the terms of his own contract until it is set aside or annulled for fraud, accident, or mistake.[[7]](#footnote-8)7

*Equitable estoppel* or *estoppel in pais* is the term applied to a situation where, because of something that a party has done or omitted to do, he is denied the right to plead or prove an otherwise important fact. It is generally said that, in order to constitute an equitable estoppel, (1) there must exist a false representation or concealment of material facts, (2) made with knowledge, actual or constructive, of those facts, (3) to a party without knowledge or the means of knowledge of the real facts, (4) with the intention that it should be acted on, and (5) the party to whom it was made must have relied or acted on it to his prejudice.[[8]](#footnote-9)8

A *waiver* is a voluntary and intentional abandonment or relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of the right- Thus waiver is a question of intention.[[9]](#footnote-10)9 It has been briefly explained by the North Dakota court that "a waiver is the voluntary relinquishment of a known right."[[10]](#footnote-11)10

It is said that *ratification* is equivalent to a previous authorization- It is defined as meaning the act of giving sanction and validity to something done by another, the adoption of an act purporting to have been done on behalf of the ratifier, or the confirmation of a previous act done either by the party himself or by another. It has been declared that ratification is binding approval after the acts or conduct have taken place and is a matter of intention, predicable upon a voluntary assumption of a prior unauthorized act.[[11]](#footnote-12)11

**Comparison of the Terms**

Equitable estoppel or estoppel in pais is concerned with and admits evidence of the truth on the ground of promoting the equity and justice of the case by preventing a party from asserting his rights, when he has so conducted himself that it would be contrary to equity and good conscience for him to allege and prove the truth. Estoppel by deed excludes such evidence of the truth and the equities of the particular case. It is, in fact, merely a form of quasi-estoppel, based on the idea that a party to a deed or other contract will not be permitted to take a position inconsistent with its provisions, to the prejudice of another. Estoppel by deed is based on the written instrument. By the execution or acceptance of the written instrument, the party has bound himself thereto, and as he has bound himself he must stand bound.[[12]](#footnote-13)12

The term waiver is frequently used by the courts in the sense of estoppel, but it is said by the text writers and a few of the courts to have a decidedly different meaning- It is not necessary that the party invoking waiver show that he has been misled to his injury by reliance upon the act of the other party. Waiver is the voluntary surrender of a right; estoppel is the inhibition to assert such a right because of the mischief that would follow.[[13]](#footnote-14)13

Ratification is said to differ even further from estoppel than does waiver. The substance of estoppel is the inducement to another to act to his prejudice, while the substance of ratification is historically treated as confirmation after conduct. It is explained almost by rote that ratification is a matter of intention, which is a question of fact. The writers declare that the distinction between being bound by ratification and being bound by an estoppel is that in ratification the party is bound because he intended to be; in estoppel he is bound even though there was no such intention. The same idea is expressed by saying that ratification requires an intention of the party to be bound, whereas estoppel binds a party regardless of intention if the other party would be unjustly prejudiced.[[14]](#footnote-15)14

Notwithstanding these often-repeated definitions and refinements, the decisions abound in opinions where little or no distinction is drawn between estoppel, waiver, or ratification, in most instances without harmful results- Time after time the courts impose one such equitable defense for the defendant or raise one such concept for the protection or continuity of the title of the plaintiff, discuss waiver and/or ratification, and then declare that the other party is estopped by reason thereof.

**APPLICATION-EXAMPLES**

**Estoppel by Deed or Record**

***Warranty of Title***

A lessor, as well as any other grantor of minerals or royalties, who was without title or had only a limited title or interest in the land when he executed the lease purportedly covering such land, but who thereafter acquired good title, will be estopped to assert against his lessee (1) the lessor's original lack of title, and (2) that his after-acquired title is not subject to the lease.[[15]](#footnote-16)15 This is the same theory, generally stated, that a grantor is estopped from denying the title of his grantee or his own authority to sell-[[16]](#footnote-17)16

This doctrine is applied to the grantor and also to his heirs, both in states with and without after-acquired-title statutes.[[17]](#footnote-18)17 In *Robben v- Obering*,[[18]](#footnote-19)18 the federal district court declared:

The common law doctrine of after-acquired title or estoppel by deed applies to leases. In Poultney v. Emerson, 117 Md. 655, 658, 84 A. 53, 54, it was said in this connection:

"It is a well-recognized rule that if a lease is made by one who has no present interest in the demised property, but acquires an interest during the term, the lease will operate upon his estate as if vested at the time of its execution...."

The doctrine has been applied to ***oil*** and gas leases. Columbian Carbon Co. v. Kight, 207 Md. 203, 114 A.2d 28, 51 A.L.R.2d 1232. See also cases cited in the annotation in 51 A.L.R.2d commencing at page 1238.

An interesting situation was presented in the North Dakota case of *Aure v. Mackoff*,[[19]](#footnote-20)19 where the husband and wife, Matias Aure and Mattie Aure, joined in the execution of a conveyance to W- R. Olson of their right and interest to a 10 percent royalty in ***oil*** and gas and agreed to warrant and defend the title. At the time of the royalty conveyance the premises were subject to a mortgage in favor of the state of North Dakota. The mortgage was foreclosed, and a deed issued to the state and others. Thereafter Mattie Aure obtained a deed to the land. Mattie Aure as plaintiff contended that the royalty interest of the defendants claiming through the original royalty assignment to W. R. Olson was extinguished by foreclosure of the state's mortgage. The defendants contended that the plaintiff, having been a party to the original royalty assignment to Olson, was estopped from claiming that the foreclosure extinguished the royalty interest. The court cited cases from Kansas[[20]](#footnote-21)20 and Montana,[[21]](#footnote-22)21 holding that the original owners were *not* estopped by their covenants of warranty from acquiring full title to the property from purchasers at foreclosure sales under mortgages that were outstanding against the property at the time the owners executed their general warranty upon the theory that the warranties were rendered nugatory by the foreclosures- The court cited cases from Oklahoma,[[22]](#footnote-23)22 Minnesota,[[23]](#footnote-24)23 Georgia,[[24]](#footnote-25)24 Tennessee,[[25]](#footnote-26)25 and New Hampshire,[[26]](#footnote-27)26 applying the doctrine of estoppel in such situations, and then applied estoppel to preclude the plaintiff's attack upon defendants' title-

The Texas courts have struggled with this question concerning the effect of estoppel and the warranty clauses in mineral and royalty deeds and ***oil*** and gas leases. The rule of estoppel is still applied to both deeds and leases to preclude the grantor or lessor from asserting an after-acquired title.[[27]](#footnote-28)27 The effect of the warranty is still recognized without qualification as to deeds,[[28]](#footnote-29)28 but it is limited and has been said not to extend to ***oil*** and gas leases-[[29]](#footnote-30)29 In *Duhig v. Peavy-Moore Lumber Company*,[[30]](#footnote-31)30 a grantor in a deed purported to a convey fee simple title by his deed containing a general warranty, reserving an undivided one-half interest in the minerals- One-half of the minerals had theretofore been severed and was outstanding in a third person. It was held that the warranty extended to the surface of the land and to one-half of the minerals, and that equity would estop the grantor and those claiming under him from asserting against the grantee the title to the one-half of the minerals reserved. The effect of the holding was to take from the grantor the one-half of the minerals retained by him, without regard to the intention of the parties, and give the same to the grantee in order to fulfill the covenant of the warranty.

In *McMahon v. Christmann*,[[31]](#footnote-32)31 the court declined to extend such a rule to an ***oil*** and gas lease- In that case the lessors had executed the lease covering a particular 240-acre tract of land, with general warranty and reservation to the lessors of the usual one-eighth royalty. The lease contained a proportionate-reduction clause. Attached to the lease was a typewritten clause or "rider," reserving to the lessors as an overriding royalty a net 1/32 of 8/8 of the ***oil*** and gas produced, with the words "without reduction" included therein. At the time of the execution of the lease, the lessors owned only an undivided one-sixth interest in the property. The court confirmed the reduction in the usual one-eighth royalty but, giving effect to the "without reduction" clause in the rider, refused to reduce the overriding royalty. The court makes an outright holding that the *Duhig* doctrine has no application to interests reserved to a lessor in an ***oil*** and gas lease.

***Acceptance of Deed or Lease***

Mr. Summers, in his treatise on ***oil*** and gas says that "where a deed conveys land subject to an ***oil*** and gas lease and provides that the grantee shall be entitled to the royalties on the accrued ***oil*** runs, acceptance of the deed by the grantee is a ratification of the lease."[[32]](#footnote-33)32 Whether this is the law of the other states, it is the law applied by the Texas courts-

In *Loeffler v. King*,[[33]](#footnote-34)33 there was a mineral lease from Loeffler and Rankin to Horwitz, which, some time after the expiration of its primary term, terminated through failure of the lessee to produce ***oil*** in paying quantities- There was a second lease covering the tract from Mrs. Chilson to Cotton, which was later acquired by Armour. On July 19, 1948, Armour completed a deep well on the premises. Shortly after the completion of this well, Rankin by deed conveyed to Loeffler a royalty interest of one-twelfth in a portion of the premises, which deed recited that it was understood and agreed that the land was under an ***oil*** and gas lease providing for a royalty of one-eighth of the ***oil***, etc. The Supreme Court of Texas held that by acceptance of such deed there was a ratification of both the Horwitz lease and the Chilson lease, the court declaring:

By authority of an unbroken line of decisions by this court it must be held that, by the execution and acceptance of the royalty deed the parties ratified and gave new life to the Horwitz lease, even if it had in fact theretofore terminated.

By accepting a royalty deed which recognized the validity of Mrs. Chilson's lease, Loeffler and Rankin would have ratified and adopted it and brought their interest within its terms.

An earlier Texas court had, in effect, made the same holding in the often-cited and criticized case of *Hoffman v. Magnolia Petroleum Company*.[[34]](#footnote-35)34 There the deed to a one-half interest in the minerals was delivered nine months after the execution of the lease, with the deed reciting that the lands "being now under an ***oil*** and gas lease-..it is understood and agreed that this sale is made subject to said lease...." It has been pointed out that the basic philosophy indicated by the *Hoffman* decision was that mention of an existing lease in a mineral or royalty deed might have the effect of reviving a terminated lease.[[35]](#footnote-36)35 In fact, such reference has now been given that effect. In *Rainwater v. Mason*,[[36]](#footnote-37)36 the owner of eight lots leased them for ***oil*** and gas- A producing well was drilled on an adjacent lot, which had been placed in a unit with the other eight lots by the operator. The lessor of the eight lots conveyed them by deed which provided that the grantee was entitled to the ***oil*** royalties payable under the lease. In a suit by the grantee to recover the leasehold estate, claiming that the lease had terminated because no well had been drilled on the eight lots during the primary term and that the pooling agreement was not binding on the lessor, it was held that the grantee, by accepting the deed making reference to the lease, had ratified the lease and the unification thereof and the lease continued in force as to all of the lots.

Historically, title to an interest in realty could be conveyed only by a deed or other instrument of conveyance with words of grant in favor of the grantee. The doctrine adopted by the Texas courts in these cases has been criticized on the ground that ratification of a lease by a subsequently accepted mineral or royalty deed, which refers to the lease, is logically a matter of intention to ratify based on full knowledge of all the important facts, and mere casual reference to the lease fails to show any such intention. It has been criticized on the ground that such application of the doctrine of revivor, after the lease has terminated by reason of a limitation, involves the granting of a new estate in land without showing of the intent to grant it.[[37]](#footnote-38)37 However, these criticisms fail to consider that the ground had already been broken for exceptions to these rules in *Greene v- White*[[38]](#footnote-39)38 and *Adams v. Duncan*.[[39]](#footnote-40)39

In *Greene v- White*,[[40]](#footnote-41)40 Alex Garrett and his wife, Mandy Garrett, had their home on a tract of land. F. M. Greene, who claimed to own the land, executed and delivered to Alex Garrett a deed that contained the provision "that all minerals on and under said land is reserved in this conveyance and remains the property of the said F. M. Greene." At the time of the execution of the deed, Greene's claim of title was subject to dispute. He had record title through a deed from Huffhines if the land was within the bounds of the Davenport survey, but he did not have title if the tract was in the Trammel survey, and there was considerable dispute and much evidence concerning the disputed location of the boundary lines of those two surveys. On the other hand, Garrett was in possession of the land, claiming to have acquired title to it by such possession, but his title was not evidenced by any formal instrument or legal determination of the sufficiency of his possession. The court held that the grantee was a party to the deed, even though he did not sign it, and that he was concluded by its recitals. It said that "the recitals which gave the surface estate to Garrett and reserved the mineral estate to Greene are likewise contractual. They define the character and extent of the ownership and interest of the parties in the land affected by the deed."

In *Adams v. Duncan*,[[41]](#footnote-42)41 in 1906, there was a deed from John G- Ford to Adams covering the William Duncan survey, with Ford reserving one-half of the mineral estate. There was considerable question concerning the legal sufficiency of the Ford title. There was also testimony that a third person, Bilbo, had acquired title to 160 acres of the land under the statutes of limitation and that Adams had a subsequent deed from Bilbo. The court brushed all of these arguments aside, saying that the effect of the Ford deed was settled by *Greene v. White*.[[42]](#footnote-43)42 The court made this holding even as to the so-called Bilbo 160-acre tract. The court declared:

Although they did not sign the deed, grantees Adams accepted it and subsequently used it to their advantage; so they and petitioners, their privies, were concluded by its recitals and by the reservations therein in favor of the Duncan estate and its heirs, the respondents. Moreover, the deed's recitals that it conveyed the surface estate and only one half the mineral estate and reserved one half the mineral estate to Ford and to the heirs and devisees of William Duncan, deceased, were contractual provisions that defined "the character and extent of the ownership and interests" of both grantors and grantees in the land.

Whatever their title may have been and whatever its source prior to 1906, they contracted away one half the mineral estate in the whole survey by their acceptance of the Ford deed.

The Texas Supreme Court has confirmed these prior decisions in the most recent case of *Newsom v. Newsom*.[[43]](#footnote-44)43 S- Y. Newsom and his wife, Minnie L. Newsom, conveyed land to Charles Willis Newsom, the son of S. Y. Newsom, reserving to themselves the possession, use, and benefit of the land during their lives. The property was originally acquired as the community property of Mr. Newson and the first Mrs. Newsom. The first Mrs. Newsom died and as Charles Willis Newsom was the only child of that marriage he inherited an undivided one-half interest in the land. The court held, however, that, by reason of the deed, Minnie L. Newsom was entitled to exclusive possession of the land during her life. The court held that "The deed represents a bilateral agreement to which Respondent as grantee is bound contractually; he is estopped by his acceptance of the deed to deny the provisions or reservations therein which may be adverse to him."

It is to be noted in this connection that the rule of *Greene v. White*[[44]](#footnote-45)44 and *Adams v- Duncan*[[45]](#footnote-46)45 probably will be applied only if the parties to the deed in some way have accepted and used the instrument in their chain of title or for their benefit.[[46]](#footnote-47)46 Further, when considering these cases the Texas rule that a married woman is estopped only by affirmative misconduct or sufficient execution of a written instrument must be kept in mind-[[47]](#footnote-48)47

These decisions appear irreconcilable with the statement made twice by the United States Court of Appeals for the Fifth Circuit, that "it is well settled that title to real property cannot be acquired by estoppel...."[[48]](#footnote-49)48 They also appear contrary to the declarations of the Texas courts in the cases involving insurance policies that waiver and estoppel cannot create a new and different contract because estoppel is defensive in character and cannot create a cause of action-[[49]](#footnote-50)49

In this connection, attention should also be called to the cases from other states holding void a mineral exception or reservation in favor of a stranger, whether made in deeds[[50]](#footnote-51)50 or in ***oil*** and gas leases-[[51]](#footnote-52)51 Some of these cases have held the reservation or exception ineffective to withhold the minerals from the grantee,[[52]](#footnote-53)52 while others hold that title stays in the grantor-[[53]](#footnote-54)53

It is submitted that where there is acceptance of the deed or lease by recording or use thereof by the grantee to his benefit, then the doctrine of the Texas cases is sound. This does constitute a proper application of estoppel.

***Judgments and Judicial Representations***

One who accepts and retains the benefits of a judgment is estopped thereafter to assert its invalidity. The rule has even been applied where the invalidity is alleged to result from an absence of jurisdiction.[[54]](#footnote-55)54

Further, it may be stated as a general proposition that, where a party assumes a certain position in a legal proceeding and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assert a contrary position- A party will not be heard to say that what was asserted by him on a former trial was false, even if the assertion was made by mistake. In other words, it is a general rule that a party is bound by his judicial declarations, and he is estopped to contradict them in a subsequent action or proceeding.[[55]](#footnote-56)55

**Estoppel in Pais**

***Acceptance of Delay Rentals***

It would be supposed that there would be a vast difference in the manner in which the courts apply the doctrine of estoppel to the problems of delay-rental payments and claimed forfeiture and abandonment under an "or" lease and the manner in which these same principles are applied to similar situations under an "unless" lease. The courts are said to be more prone to apply estoppel and waiver to an "or" lease than they are in preventing the termination of an "unless" lease.[[56]](#footnote-57)56 This is understandable because the drill-or-pay clause with forfeiture provisions has the effect of creating an estate or interest in the lessee on a condition subsequent- Only the lessor may exercise the power to forfeit the lease for breach of the lessee's promise to drill or pay. The "unless" clause creates in the lessee an estate or interest on limitation. Upon the happening of the limitation the lease terminates; there is theoretically no further lease or estate upon which estoppel, waiver, or ratification can act.[[57]](#footnote-58)57 Notwithstanding these theoretical differences, from a study of the cases, it appears that practically all of the courts hold that the lessor has waived the termination of the lease or is estopped to declare such termination if he has accepted the delay rentals, regardless of the lease form under study.[[58]](#footnote-59)58

In the Texas case of *Humble* ***Oil*** *and Refining Company v- Harrison*,[[59]](#footnote-60)59 Otto, the owner of an undivided three-fourths interest in the minerals, conveyed to Harrison an undivided one-half interest. The deed contained provisions in regard to the ownership of delay rentals due under two leases which were then in force and owned by Humble. Humble made a mistake, in good faith, in its interpretation of the deed and did not pay the correct amount of delay rentals. Harrison was cognizant of the fact that Humble had made a mistake but remained silent. The court held that the lease had not terminated, and declared:

Where, as in this case, the lessee has in good faith made a mistaken construction of the lessors' partial conveyance of their interests and lessee has made a payment in accordance with such construction, of which the assignee has notice, the duty rests on the assignee to notify the lessee of its mistake so that the lessee will have an opportunity to make a proper payment of the delay rentals. Where the assignee, instead of giving the lessee such notice, remains silent, we hold that the assignee is estopped to assert that the lease has terminated as to his interest on the ground that the lessee has failed to pay to him a sufficiently large share of the delay rentals.

In these cases involving late or insufficient payment of delay rentals, the courts have talked of both waiver and estoppel. It has been argued that this is inconsistent with the principles normally applicable to clauses of limitation as distinguished from clauses of condition.[[60]](#footnote-61)60 In fact, Mr- A. W. Walker, in his earlier articles, declared that a new deed or lease was necessary to revest an estate in the grantee or lessee, once the estate had expired by force of a special limitation. He said that the mere acceptance of delay rentals by the lessor after the due date and after the lessee's title had reverted to the lessor would not seem to be sufficient performance to take the case out of the statute of frauds.[[61]](#footnote-62)61 Another highly regarded Texas lawyer has said that in the *Harrison* decision the Supreme Court reached the wrong conclusion. He argued that the doctrine of the *Harrison* opinion was in direct conflict with the court's prior opinions in *Humble v. Mullican*[[62]](#footnote-63)62 and *Watson v- Rochmill*.[[63]](#footnote-64)63 He said:

The decision in Humble v. Harrison indicates an unhealthy inclination on the part of the courts to enlarge the realm of exceptions to the rule in regard to the automatic termination of leases where there has been default in the payment of delay rentals. It is contrary to the true concept of a special limitation.

The court completely overruled the self-operative effect of the delay rental clause and in the face of the Statute of Frauds, created in the lessee a determinable fee estate. Estoppel is not applicable and there is no basis for waiver. There was nothing for the lessor to waive. A breach of condition may be waived, but not a special limitation.[[64]](#footnote-65)64

If the delay-rental payments were made by check which recited the basis of payment, the endorsing of the check would ordinarily constitute a sufficient memorandum of the writing (the lease) to satisfy the statute of frauds, since the reference to the lease (if sufficient reference be there made) would suffice to incorporate it in the memorandum- Be this as it may, and regardless of the criticisms, the courts have consistently held that the acceptance of delay rentals preclude the lessor's attack upon the lease.

***Acceptance of Shut-In Gas Royalty***

Where the lessor has accepted a shut-in gas royalty payment, he has been estopped from claiming termination of the lease.[[65]](#footnote-66)65 In *Shell* ***Oil*** *Company v- Goodroe*,[[66]](#footnote-67)66 during the secondary term of the lease the gas pressure from the one producing gas well declined below the level required for delivery into the pipeline and deliveries of the gas ceased. The lessee tendered and the lessor accepted payment of shut-in gas well royalty. Subsequently the lessor sought cancellation of the lease on the ground that it had expired by reason of the failure of production. The court held for the lessee and gave as one of its grounds for the holding that "the acts of the appellees in accepting the payment of shut-in royalty, in our opinion, estop them from contending otherwise." In *Bristol v. Colorado* ***Oil*** *and Gas Corporation*,[[67]](#footnote-68)67 the federal court was clearly influenced by the plea of estoppel where, for some time, the lessors had accepted the tendered shut-in royalty payments even though the lease did not contain a shut-in royalty clause- Forfeiture of the lease was denied the lessors by reason of their acceptance of the shut-in royalty payments for some nine and one-half years.

It has been held in Louisiana, however, that the acceptance of the shut-in royalty for a unit well did not estop the lessor from asserting that the unit was invalid and that, therefore, there was no unit production, actual or constructive, sufficient to prevent the prescription of the royalty interest.[[68]](#footnote-69)68

Professor E- O. Kuntz argues that if there is no production and the lessor accepts the tender of shut-in royalty payments, even though not bound by a shut-in royalty clause, he should not be permitted to deny the obligations after receiving the benefits.[[69]](#footnote-70)69 It appears that there is no more reason to impose estoppel because of acceptance of delay rentals than there is to impose it upon the lessor who accepts and retains shut-in gas royalty payments.

***Acceptance of Royalty Payments***

The decisions are divided as to whether receipt and acceptance of royalty payments, standing alone, give rise to an estoppel. Because, historically, equitable considerations have been viewed as relevant to the operation of forfeiture clauses but not to clauses of limitation, this is one type of situation where the courts appear much slower to impose estoppel to preclude termination of the "unless" lease where there is no production but there has been acceptance of royalties.

In *Bearden v. Texas Co*.,[[70]](#footnote-71)70 it was held that the defense of estoppel against one Bessie Lee Griffin was established by her act in receiving from her former guardian, on final settlement of the guardianship, several thousand dollars collected by him as royalties from the lease in question and further receipts of royalties by her after her marriage- In *Leopard v. Stanolind* ***Oil*** *and Gas Company*,[[71]](#footnote-72)71 the lessors received some fifty-three royalty checks, knew that the checks were from a well producing on a unit that included their property, and accepted and cashed such checks. The court held that the acceptance of the royalty checks was a ratification of such unitization and the appellants were estopped to challenge the lease or the unit. The same holding was made in *Texas Company v. McMillan*.[[72]](#footnote-73)72 The Texas courts, however, held directly to the contrary in *Guerra v- Chancellor*[[73]](#footnote-74)73 and *Woodson* ***Oil*** *Company v. Pruett*.[[74]](#footnote-75)74 In those cases the courts said that if the royalty checks were cashed after the leases had terminated, this could not bring life back into the leases that had terminated by their own terms- These latter Texas decisions are followed by the Fifth Circuit decisions in *Gas Ridge v. Suburban Agricultural Properties*,[[75]](#footnote-76)75*Sinclair Prairie* ***Oil*** *Company v. Campbell*,[[76]](#footnote-77)76 and *Haby v- Stanolind* ***Oil*** *and Gas Company*.[[77]](#footnote-78)77

Differing from the above decisions, which concern "unless" leases, the courts of California and Oklahoma have held the acceptance of royalties on production, subsequent to the accrual of grounds for forfeiture of the lease, estops the lessor from asserting such forfeiture.[[78]](#footnote-79)78 On the other hand, the courts of other states (said to represent the weight of authority[[79]](#footnote-80)79) have held that the mere acceptance of royalties does not deprive the lessor of the benefit of the express or implied forfeiture provisions of the lease-[[80]](#footnote-81)80

Mr. Brunini, in his paper for the NINTH INSTITUTE ON ***OIL*** AND GAS LAW AND TAXATION, states that he believes that where royalty is accepted without complaint during a period of claimed noncommercial production, the lessor should be estopped from claiming termination of the lease when it again becomes productive in paying quantities. Mr. Brunini argued that, by accepting the royalty, the lessor is actually receiving more than he would have obtained if he had operated the lease himself during such period of noncommercial production and such lessor should not be allowed to take this benefit and the well too, when and if it later becomes valuable, especially when the lessee has spent money in reworking or redrilling the well. It would appear that this argument has considerable basis in logic and reason, especially when the lessee makes payment of the royalty by check, showing on the check a sufficient reference to or description of the lease, the period of production for which such payment is being made, and the interest of the payee, so that when the mineral owner accepts, endorses, and cashes the check it can serve as a memorandum to satisfy the statute of frauds.

***Silence During Drilling or Other Operations***

Disagreement often occurs between the lessor and lessee when the end of the primary term has passed and the lessor does not forthwith assert termination of the lease but remains silent while the lessee makes large expenditures of money in drilling or reworking a well commenced after the lease has terminated. Even in cases involving "unless" leases, some courts have held the lessor estopped to claim termination of the lease in the suit for its cancellation. And where the question is one of forfeiture or enforcement of a drilling provision, the lessor has often been held to have waived his power of forfeiture, if after the breach giving rise to such forfeiture, he has acquiesced in the delay in drilling and has silently permitted the lessee to continue the expenditure of considerable sums of money.[[81]](#footnote-82)81 Mr- Williams argues that the lessor should not be estopped by his silence because the lease imposes no duty on the lessor to notify the lessee of the termination of the lessee's estate. In other words, it has often been said that "mere silence of itself will not raise an estoppel."[[82]](#footnote-83)82 This position is certainly supported by the later decisions of the Texas courts and the United States Court of Appeals for the Fifth Circuit.[[83]](#footnote-84)83

***Delays Resulting From Conduct of the Lessor***

It is often contended that even though there has been a failure to drill within the primary term or to secure and continue paying production during the secondary term of the lease, the courts should give consideration to equitable considerations and hold that the lease has not terminated- The courts have recognized the validity of such arguments and have given consideration to such factors. They generally hold that, when the lessee is ready to drill or produce and the lessor prevents performance, the lessor will be estopped from asserting termination of the lease.[[84]](#footnote-85)84

It is held that the lessor cannot enforce a termination of the lease for failure of the lessee to drill or develop or pay delay rentals where the failure of the lessee to act is due to the fault of the lessor. This is operative under the terms of the "unless" drilling clause as well as the drill-or-pay clause.[[85]](#footnote-86)85 In *Fey v- A.A.* ***Oil*** *Corporation*,[[86]](#footnote-87)86 during the secondary term of a lease in full effect, the lessors denied the lessee admission to the premises for further drilling. The Montana court held that such an attack upon the lessee's title by the lessors would relieve the lessee of the duty either to proceed with the drilling operations or the payment of the delay rentals during the contest of the lessee's title. The court said: "the plaintiffs may not in equity insist upon the performance of the terms of the lease and at the same time prevent the performance thereof. One who prevents the performance of the terms of the contract cannot avail himself of the non-performance which he himself prevents." A Louisiana case held that when the lessor filed and prosecuted a suit against his lessee for the annulment or forfeiture of the lease, he thereby deprived the lessee of the exercise of the rights granted to him by the lease, and that if the lessee prevailed, he was entitled to an extension of the lease equal to the period of litigation.[[87]](#footnote-88)87 The law of Texas on this question is given in *Kothmann v- Boley*,[[88]](#footnote-89)88 where the Supreme Court declared:

Lessors who thus wrongfully repudiate the lessees' title by unqualified notice that the leases are forfeited or have terminated cannot complain if the latter suspend operations under the contract pending a determination of the controversy and will not be allowed to profit by their own wrong.

**Ratification**

***Execution of Division Order and Acceptance of Royalty Payments***

The courts of some of the states have flatly held that the execution of a division order *and* the acceptance of royalty payments under it operate as a ratification of the lease referred to in such instrument.[[89]](#footnote-90)89 Probably the leading decision in this connection is the Texas case of *Texas and Pacific Coal and* ***Oil*** *Company v- Kirtley*,[[90]](#footnote-91)90 where the landowner executed an ***oil*** and gas lease and, while it was in force, executed a mineral deed to a one-fourth interest in the minerals in a part of the land covered by the original lease. The first lease expired, and the landowner executed a second lease on the same land, purporting to cover the entire interest. The vendees of the mineral interest did not execute the second lease. Production was obtained on the land under the second lease. Division orders were prepared and circulated, which credited the vendees of the mineral interest with a royalty interest as though their mineral interest had been subjected to the lease. The vendees of the mineral interest signed the division order and for some time thereafter accepted royalty payments. They then filed suit for one-fourth of the value of the ***oil*** produced from the tract on the theory that their interest was not subject to the lease. The court held that the acts of the plaintiffs in signing the division order and accepting the royalty payments amounted to a ratification of the lease, and the owners of the mineral interest were denied recovery. The plaintiffs argued that they were not estopped from claiming their interest in the minerals, because there was no evidence of any injury to the defendant or that the defendant had changed its position for the worse on account of the execution of the division order. The court declared:

By accepting their proportionate part of the royalties provided for in said lease, and by the execution of the written instruments agreeing that they claimed as royalty owners under said lease, appellees made themselves in effect parties thereto and thereby bound themselves, and as they bound themselves so must they stand bound.

The *Kirtley*, opinion was cited with approval by the Supreme Court of Texas in *Gulf* ***Oil*** *Corporation v. Marathon* ***Oil*** *Company*.[[91]](#footnote-92)91 That case involved the contention that a boundary-line agreement had been ratified by the execution of a division order by the contestants- The court distinguished the case from the *Kirtley* case and, in doing so, made the following statement: "It has been held that the execution of a division order and the acceptance of payments under it operate as ratification of the lease referred to in the order."

The Montana court made a similar holding in *Corey v. Sunburst* ***Oil*** *and Gas Company*,[[92]](#footnote-93)92 in which the plaintiff, while a homesteader on federal land, before he had made the final proof required as preliminary to the issuance of a patent, executed an ***oil*** and gas lease- The patent was issued some two years thereafter, and ***oil*** was later discovered in the area. Thereafter, plaintiff brought suit to cancel the lease on the ground that it was void, because he had no right to lease until the patent was issued. While the cause was on appeal, plaintiff executed and delivered to the defendant-lessee a division order, reciting that plaintiff was the owner of an interest in the production and authorizing defendant to receive the ***oil*** produced from the well. The court held for the defendant-lease operator, saying, "lastly, while [plaintiff] seeks to have the court declare the lease invalid, he himself does that what declares it valid."

The Nebraska court, in *Hafeman v. Gem* ***Oil*** *Company*,[[93]](#footnote-94)93 refused to give any such effect to the division order as the Texas and Montana courts had given- The court there held that, by signing the division order, the signer admits that he owns the amount of ***oil*** set apart to him therein and authorizes the pipeline company to take it and pay him therefor on that basis, but there is no intention to convey or transfer any interest in the property. The court held that acquiescing in such royalty payments in incorrect amounts or to the wrong party with execution of a division order is not enough to create an estoppel against the true owners of the royalties. The Illinois court, in *Elliott v. Pure* ***Oil*** *Company*,[[94]](#footnote-95)94 also refused to give the effect of estoppel to a division order. The plaintiff there sued for cancellation of ***oil*** leases for failure to develop. The trial court entered an alternate decree that, unless the defendant should commence to drill within sixty days and drill the well with reasonable diligence to completion, the lease was to be cancelled in part. On appeal, the defendant argued that plaintiffs were estopped because they had signed a division order and had been accepting royalty checks. The court cited the Montana case of *Corey v. Sunburst* ***Oil*** *and Gas Company*,[[95]](#footnote-96)95 saying that that case held that a division order is a quasi-contract between the owners and the ***oil*** purchasers, is conclusive as to the designated interest owned, and operates as an estoppel if such interests are subsequently denied, but then said that the signing of such a division order and the acceptance of such royalty payments would not estop the plaintiffs from taking action to compel the defendant to fulfill its duty to drill an additional well to protect plaintiffs' premises from drainage-

Professor W. D. Masterson, Jr. explains the effect of a division order by saying that, if a third party is purchasing and distributing payment, it is protected against liability for erroneous payments to those who executed the division order as to the payments made in accordance therewith.[[96]](#footnote-97)96 While execution of a division order erroneously setting forth an interest protects a third-party purchaser, it does not operate as an estoppel infavor of the lessee who is overpaid, with resulting underpayment to the lessor- In other words, by execution of the division order, there may be estoppel to deny the lease, but no estoppel has been raised between signing mineral owners. However, Professor Masterson does say that, if a mineral deed is ambiguous and both the grantor and the grantee execute a division order based upon their construction thereof, this construction would be binding upon them.[[97]](#footnote-98)97

The division order is in writing. It describes and refers to the ***oil*** and gas lease and it names the owners of the production. By the execution of the written instrument, the signers obtain payment for the ***oil*** produced and taken from the land. Having so evidenced their claim as royalty owners and admitted the lease, the courts were justified in holding that, as they had thus bound themselves, so they must stand bound.

***Ratification by Deed***

One of the most interesting subjects of discussion when deciding whether there has been ratification is the question of ratification or estoppel by reason of references to earlier instruments in later deeds or leases. It is still contested in the courts and among the text writers, teachers, and institute speakers. It is argued by those opposing such idea of ratification that the prior lease is mentioned in the subsequently executed mineral or royalty deed merely for the purpose of avoiding possible liability on covenants of warranty contained in the mineral or royalty deed. It is argued that ratification is logically a matter of intention and mere reference to the prior lease or deed in the later instrument is wholly lacking in proof of any such intention. Regardless of these statements of the finer points of the law, the courts, particularly the Texas courts, have enforced the ratification and estoppel doctrines under such circumstances.

In *Grissom v. Anderson*,[[98]](#footnote-99)98 two husbands executed the lease, but their wives failed to join in the execution- The property being homestead, the lease was inoperative. Thereafter, the husbands and wives, in a series of conveyances, conveyed minerals to other persons. Each of the conveyances contained the recital that the land was under an ***oil*** and gas lease executed in favor of the named lessee, O. T. Welch, with the provision that the sale was made subject to the terms of said lease, but covered and included all of the ***oil*** royalty and gas well royalty to be paid under the terms of said lease. The court said: "by their acts in executing the royalty deeds ... they gave the lease life. Their acts constituted a ratification of the lease." In *Humble* ***Oil*** *and Refining Company v. Clark*,[[99]](#footnote-100)99 the lease was obtained from Margaret Coolidge, but through mistake the delay-rental records of Humble listed her as a minor, and payment of rentals was made to her supposed guardian, thereby occasioning termination of the lease as to her undivided interest. Later, Margaret Coolidge joined in a deed conveying a fractional interest in the minerals, which recited that it was the intention of the parties to the mineral deed to cover all of the land covered by the ***oil*** and gas leases held by Humble. The court held that reference to the lease constituted a restoration of the lease, declaring the mineral deed to be a "ratification of the lease, and it was revived."

This rule, as adopted by the Texas courts, is usually followed by the courts of the other states.[[100]](#footnote-101)100 It has been applied to revive deeds that were wholly inoperative- The subsequent execution of a formal document, even to a third person, which expressly recognized the validity of the lifeless deed or lease, has been held to give it life. Leases that have terminated under their own limitations have been revived. As said in the late Texas case of *Hastings v. Pichinson*,[[101]](#footnote-102)101 "The rule of ratification or revivor is well established."

In the *Texas Law Review*,[[102]](#footnote-103)102 it is argued that the ratification of the lease by the subsequently executed mineral or royalty deed that refers to the lease logically must be treated as a matter of intention to ratify, based on full knowledge of all the important facts; and yet, inquiry into the facts is not permitted- It is argued that "application of the doctrine of revivor involves the granting of a new estate in the land," and that

the new estate should not be held to have been granted without a showing of intent to grant it, and casual reference to the earlier deed or lease in a subsequently executed instrument cannot reasonably be said adequately to evidence such intent where the reference to the earlier instrument is made to avoid possible liability on covenants or results from the chance use of a formal printed instrument in which the clause in question is included.

And the statement is made that "revivor of a lease by reason of such casual reference flies in the face of the policy followed in many jurisdictions that an estate may not be reserved or excepted to a third person, not a party to the instrument in question."[[103]](#footnote-104)103

The weakness in these and similar arguments and objections is that they fail to give full credence to the long-recognized doctrine that he who accepts benefits under an instrument must adopt the whole of it- No man will be permitted to claim inconsistent rights with regard to the same instrument. Having accepted that part beneficial to him, he cannot deny those provisions that may be detrimental.

This may not be truly ratification. Neither is estoppel by record or estoppel by deed truly estoppel under the traditional concept of estoppel. And yet the courts have not hesitated to bar a party to a deed from asserting against the other party any right or title in derogation of the deed or from denying the truth of any material fact asserted in it. Neither have the courts hesitated to preclude a party who has made a sworn statement in the course of judicial proceedings from afterward taking a contrary position. In line with this reasoning and for the same purposes the courts have applied what might be better called *ratification by deed*, and as such it may be best recognized.

**CONCLUSION**

The land and mineral owner and lease operator-as well as those lawyers who represent them-can no longer depend for fixing of title upon the one written contract or abstract of title. Constantly to be kept in mind is the fact that the deed, which was originally wholly ineffective and from all appearances void, may have been ratified by some innocuous clause in a printed form of some later-executed deed, lease, mortgage, division order, or other title instrument. The lease, which had under its own limitations expired, may have been revived by unrecorded acceptance of delay rentals or shut-in gas royalties or other royalties by the lessor or by his privies in title. The minerals to presently be acquired from the record owner may have already been contracted away by some deed or lease accepted, recorded, and used ten years before. The lease, shown by all the records to have expired for many years and on which premises no drilling rig has ever operated may continue in full force and effect by reason of the refusal of the land and mineral owner to permit drilling operations. Constitutional and statutory provisions requiring a writing for conveyances of realty may have been circumscribed by acts-or even silence-giving rise to equitable estoppel as effective as any legal document.

These concepts of estoppel, waiver, and ratification are firmly entrenched in the jurisprudence of the various states. They are fixed by the decisions of the courts, and court law more and more is becoming the law of the land. Although they trespass upon and in part override the provisions of the familiar and age-old statute of frauds and strong argument persists that they are too indiscriminately applied with insufficient consideration of the facts of each particular case, they cannot be ignored. Particularly, they must not be ignored by those lawyers engaged in the practice of law as it concerns ***oil***, gas, and mineral titles and transactions.

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1. 1Cummings v. Midstates ***Oil*** Corp., 193 Miss. 675, 9 So. 2d 648 (1942); Gypsy ***Oil*** Co. v. Marsh, 121 Okla. 135, 248 P. 329 (1926); Grisham v. Southland Royalty Co., 332 P.2d 1099 (Okla. 1958); Lucas v. Cowan, 357 P.2d 976 (Okla. 1960); Seydler v. Herder, 361 S.W.2d 411 (Tex. Civ. App. 1962, error ref'd, n.r.e.); State v. Davis, 368 S.W.2d 658 (Tex. Civ. App. 1963). [↑](#footnote-ref-2)
2. 2Grisham v. Southland Royalty Co., 332 P.2d 1099, 1101 (Okla. 1958). [↑](#footnote-ref-3)
3. 3State v. Davis, N. 1 *supra*, at 663. [↑](#footnote-ref-4)
4. 419 Am. Jur. "Estoppel" § 2 (1939); Annot., 7 A.L.R.2d 294, 298 (1949); 22 Tex. Jur. 2d "Estoppel" § 1 (1963). [↑](#footnote-ref-5)
5. 531 C.J.S. "Estoppel" § 2 (1964); 19 Am. Jr. "Estoppel" § 3 (1939); Ashabranner, "Standards of Mineral Title Examination-Marketable Title vs. Defensible Title," 9 ROCKY MT. MIN. L. INST. 95, 109 (1964); Brunini, "Estoppel, Adoption and Ratification Affecting ***Oil***, Gas and Mineral Leases, Pooling and Unitization Agreements," 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 167 (1958). [↑](#footnote-ref-6)
6. 619 Am. Jur. "Estoppel" §§ 3, 74 (1939); 22 Tex. Jur.2d "Estoppel" § 18 (1963). [↑](#footnote-ref-7)
7. 719 Am. Jur. "Estoppel" § 6 (1939); Annot., 7 A.L.R.2d 299 (1949); 22 Tex. Jur. 2d "Estoppel" § 3 (1963). [↑](#footnote-ref-8)
8. 819 Am. Jur. "Estoppel" § 34; 31 C.J.S. "Estoppel" § 67 (1964); Annot., 7 A.L.R.2d 298 (1949); Gulbenkian v. Penn, 151 Tex. 412, 252 S.W.2d 929 (1952). [↑](#footnote-ref-9)
9. 919 Am. Jur. "Estoppel" § 36 (1939); 92 C.J.S. "Waiver" 1041, 1061 (1955); Ford v. Culbertson, 158 Tex. 124, 308 S.W.2d 855, 865 (1958). [↑](#footnote-ref-10)
10. 10Hove v. Atchison, 138 F. Supp. 486, *aff'd*, 238 F.2d 819 (1956). [↑](#footnote-ref-11)
11. 1175 C.J.S. Ratification 608 (1952); 19 Am. Jur. "Estoppel" § 37 (1939); Annot., 7 A.L.R.2d 299 (1949); Steffens v. Nelson, 94 Minn. 365, 102 N.W. 871 (1905); Humble ***Oil*** & Refining Co. v. Jeffrey, 38 S.W.2d 374, 377 (Tex. Civ. App. 1931), *aff'd*, 55 S.W.2d 521 (Tex. Comm'n App. 1932); Barr v. Wall, 265 S.W.2d 208 (Tex. Civ. App. 1953, error ref'd, n.r.e.). [↑](#footnote-ref-12)
12. 1219 Am. Jur. "Estoppel" §§ 6, 34 (1939); Annot., 7 A.L.R.2d 298 (1949); 22 Tex. Jur. 2d "Estoppel" § 3 (1963); Texas & Pac. Coal & ***Oil*** Co. v. Kirtley, 288 S.W. 619 (Tex. Civ. App. 1926, error ref'd); Bearden v. Texas Co., 41 S.W.2d 447, 464 (Tex. Civ. App. 1931), *aff'd*, 60 S.W.2d 1031 (Tex. Comm'n App. 1933). [↑](#footnote-ref-13)
13. 1319 Am. Jur. "Estoppel" § 36 (1939); 22 Tex. Jur. 2d "Estoppel" § 5 (1963); Wirtz v. Sovereign Camp, W.O.W., 114 Tex. 471, 268 S.W. 438 (1925); Langley v. Norris, 167 S.W.2d 603 (Tex. Civ. App. 1942), *aff'd*, 141 Tex. 405, 173 S.W.2d 454 (1943); Bearden v. Texas Co., 41 S.W.2d 447, 464 (Tex. Civ. App. 1931), *aff'd*, 60 S.W.2d 1031 (Tex. Comm'n App. 1933). [↑](#footnote-ref-14)
14. 1419 Am. Jur. "Estoppel" § 37 (1939); Annot., 7 A.L.R.2d 299; 22 Tex. Jur. 2d "Estoppel" § 6 (1963); Ashabranner, 9 ROCKY MT. MIN. L. INST. 95, 109 (1964); Brunini, 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 171 (1958); Texas & Pac. Coal & ***Oil*** Co. v. Kirtley, 288 S.W. 619 (Tex. Civ. App. 1926, error ref'd). [↑](#footnote-ref-15)
15. 15Annot., 51 A.L.R.2d 1238, 1241 (1957). [↑](#footnote-ref-16)
16. 1619 Am. Jur. "Estoppel" § 10 (1939). [↑](#footnote-ref-17)
17. 17Robben v. Obering, 279 F.2d 381 (7th Cir. [Ill.] 1960); Butler v. Bazemore, 303 F.2d 188 (5th Cir. [La.] 1962); Piney ***Oil*** & Gas Co. v. Scott, 258 Ky. 51, 79 S.W.2d 394 (1934); Grisham v. Southland Royalty Co., 332 P.2d 1099 (Okla. 1958); Aure v. Mackoff, 93 N.W.2d 807 (N.D. 1958). [↑](#footnote-ref-18)
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20. 20Schultz v. Cities Serv. ***Oil*** Co., 149 Kan. 148, 86 P.2d 533 (1939). [↑](#footnote-ref-21)
21. 21Rowell v. Rowell, 119 Mont. 201, 174 P.2d 223 (1946). [↑](#footnote-ref-22)
22. 22Hanlon v. McLain, 206 Okla. 227, 242 P.2d 732 (1952); and see also Lucas v. Cowan, 357 P.2d 976 (Okla. 1960). [↑](#footnote-ref-23)
23. 23Rooney v. Koenig, 80 Minn. 483, 83 N.W. 399 (1900). [↑](#footnote-ref-24)
24. 24Federal Land Bank v. Bank of Lenox, 192 Ga. 543, 16 S.E.2d 9 (1941). [↑](#footnote-ref-25)
25. 25Home Owners' Loan Corp. v. Guaranty Title Trust Co., 168 Tenn. 118, 76 S.W.2d 109 (1934). [↑](#footnote-ref-26)
26. 26Parsons v. Little, 66 N.H. 329, 20 A. 958 (1890). [↑](#footnote-ref-27)
27. 27Caswell v. Llano ***Oil*** Co., 120 Tex. 139, 36 S.W.2d 208 (1931); Farmers Royalty Holding Co. v. Cherry, 142 S.W.2d 255 (Tex. Civ. App. 1940), *aff'd*, 138 Tex. 576, 160 S.W.2d 908 (1942); Farmers Royalty Holding Co. v. Kulow, 186 S.W.2d 318 (Tex. Civ. App. 1945), *aff'd*, 144 Tex. 312, 190 S.W.2d 60 (1945); Frels v. Schuette, 222 S.W.2d 1006 (Tex. Civ. App. 1949, error ref'd, n.r.e.). [↑](#footnote-ref-28)
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35. 35Williams, "Hoffman v. Magnolia Petroleum Company: The 'Subject to' Clause in Mineral and Royalty Deeds," 30 Texas L. Rev. 395, 397 (1952). [↑](#footnote-ref-36)
36. 36Rainwater v. Mason, 283 S.W.2d 435 (Tex. Civ. App. 1955). [↑](#footnote-ref-37)
37. 37Williams, N. 35 *supra*, at 407. [↑](#footnote-ref-38)
38. 38137 Tex. 561, 153 S.W.2d 575 (1941). [↑](#footnote-ref-39)
39. 39147 Tex. 332, 215 S.W.2d 599 (1948). [↑](#footnote-ref-40)
40. 40Greene v. White, N. 38 *supra*. [↑](#footnote-ref-41)
41. 41Adams v. Duncan, N. 39 *supra*. [↑](#footnote-ref-42)
42. 42Greene v. White, N. 38 *supra*. [↑](#footnote-ref-43)
43. 43Newsom v. Newsom, 378 S.W.2d 842 (Tex. 1964). [↑](#footnote-ref-44)
44. 44137 Tex. 361, 153 S.W.2d 575 (1941). [↑](#footnote-ref-45)
45. 45147 Tex. 332, 215 S.W.2d 599 (1948). [↑](#footnote-ref-46)
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49. 49Southland Life Ins. Co. v. Vela, 147 Tex. 478, 217 S.W.2d 660 (1949); Snow v. Gibraltar Life Ins. Co., 326 S.W.2d 501 (Tex. Civ. App. 1959, error ref'd, n.r.e.); Great Am. Reserve Ins. Co. v. Mitchell, 335 S.W.2d 707 (Tex. Civ. App. 1960, error ref'd); White v. Great Am. Reserve Ins. Co., 342 S.W.2d 793 (Tex. Civ. App. 1961). See decisions upholding claims against an insurer upon grounds of waiver or estoppel by the courts of Alabama, Colorado, Florida, Kentucky, Nebraska, and Ohio, cited in Great Am. Reserve Ins. Co. v. Mitchell, *supra*. [↑](#footnote-ref-50)
50. 50White v. Hogge, 291 S.W.2d 22 (Ky. 1956); Sword v. Sword, 252 S.W.2d 869 (Ky. 1952); Flynn v. Fike, 291 Ky. 316, 164 S.W.2d 470 (1942); Pruitt v. Burrow, 291 P.2d 349 (Okla. 1955); Leidig v. Hoopes, 288 P.2d 402 (Okla. 1955). [↑](#footnote-ref-51)
51. 511 WILLIAMS & MEYERS, ***OIL*** & GAS LAW § 310.4. [↑](#footnote-ref-52)
52. 52Harris, "Reservations in Favor of Strangers to the Title", 6 Okla. L. Rev. 127 (1953). [↑](#footnote-ref-53)
53. 53White v. Hogge, 291 S.W.2d 22 (Ky. 1956); Sword v. Sword, 252 S.W.2d 869 (Ky. 1952); *cf*. Wilson v. Gerard, 213 Miss. 177, 56 So. 2d 471 (1952); Stetson v. Nelson, 118 N.W.2d 685 (N.D. 1962); 1 WILLIAMS & MEYERS, ***OIL*** & GAS LAW § 310.4. [↑](#footnote-ref-54)
54. 5430A Am. Jur. "Judgments" § 47 (1958); 49 C.J.S. "Judgments" § 453 (1947); Davis v. Wakelee, 156 U.S. 680 (1895); Livesay Indus. v. Livesay Window Co., 202 F.2d 378 (5th Cir. 1953); Wilson v. Union Elec. Light & Power Co., 59 F.2d 580 (8th Cir. 1932); Nail v. American Nat'l Bank, 103 F.2d 37 (10th Cir. 1939); Halverson v. Hageman, 249 Iowa 1381, 92 N.W.2d 569, 574 (1958); Patterson v. Patterson, 164 Kan. 501, 190 P.2d 887 (1948); Owen v. City of Branson, 305 S.W.2d 492 (Mo. 1957); *In re* Reynolds' Will, 85 N.W.2d 553 (N.D. 1957); Marshall v. Lockhead, 245 S.W.2d 307 (Tex. Civ. App. 1952, error ref'd, n.r.e.); Bearden v. Texas Co., 41 S.W.2d 447 (Tex. Civ. App. 1931), *aff'd*, 60 S.W.2d 1031 (Tex. Comm'n App. 1933); Williamson v. Jones, 39 W. Va. 231, 19 S.E. 436 (1894). [↑](#footnote-ref-55)
55. 5519 Am. Jur. "Estoppel" §§ 72-74 (1939), and the many cases there cited; Livesay Indus. v. Livesay Window Co., 202 F.2d 378 (5th Cir. [Fla.] 1953); Trinidad Asphalt Mfg. Co. v. Gregory, 166 F.2d 745 (5th Cir. [Miss.] 1948); Peterson v. Taylor, 255 Minn. 220, 96 N.W.2d 247 (1959); Lloyds Casualty Insurer v. Farrar, 167 S.W.2d 221 (Tex. Civ. App. 1942), *aff'd*, 141 Tex. 497, 174 S.W.2d 302 (1943); Behrens v. Baldenecker, 76 S.D. 327, 77 N.W.2d 917 (1956). [↑](#footnote-ref-56)
56. 56Brunini, 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 185 (1958). [↑](#footnote-ref-57)
57. 573 *Summers,* ***Oil*** *& Gas* §§ 448, 452 (1958); Summers, "Equitable Relief From Termination of ***Oil*** and Gas Leases for Failure of the Lessee to Meet the Requirements of the Drilling and Delay Rental Clauses," 5 INST. ON ***OIL*** & GAS LAW & TAXATION 1 (1954); 3 *Williams,* ***Oil*** *& Gas Law* § 606.3 (1962). [↑](#footnote-ref-58)
58. 58Brunini, 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 188 (1958); 3 *Summers,* ***Oil*** *& Gas* §§ 448, 452 (1958); 3 *Williams,* ***Oil*** *& Gas Law* §§ 606.3, 606.6 (1962); Miller v. Union Gas & ***Oil*** Co., 295 Fed. 27 (6th Cir. 1924) (Kentucky-acceptance of delay rental paid late); Attaway v. Stanolind ***Oil*** & Gas Co., 232 F.2d 790 (10th Cir. 1956) (Oklahoma-acceptance of delay rentals for nine years by nonexecuting partner); Buchanan v. Sinclair ***Oil*** & Gas Co., 218 F.2d 436 (5th Cir. 1955) (Texas-amount of delay rental paid was less than that provided in the lease); Standard ***Oil*** Co. of Tex. v. Clark, 133 F. Supp. 346 (E.D. Tex. 1955) (retention by lessors of delay-rental payments in improper amounts); Woolley v. Standard ***Oil*** Co. of Tex., 230 F.2d 97 (5th Cir. 1956) (Texas-retention of insufficient delay rentals by lessors); Hove v. Atchinson, 138 F. Supp. 486 (D.N.D. 1956), *aff'd*, 238 F.2d 819 (8th Cir. 1956) (retention by lessor of inadequate delay rental payments); Sun ***Oil*** Co. v. Oswell, 258 Ala. 326, 62 So. 2d 783 (1953) (lessor's acceptance of delay rental after he had acquired the right to forfeit the lease); Clear Creek ***Oil*** & Gas Co. v. Brunk, 160 Ark. 574, 255 S.W. 7 (1923) (acceptance of delay rentals held to constitute waiver by the lessor of lessee's failure to drill wells to prevent drainage); Warren v. Martin, 168 Ark. 682, 272 S.W. 367 (1925) (surviving wife held to have waived her right to forfeit lease on homestead by accepting delay rentals); Cordell v. Enis, 162 Ark. 41, 257 S.W. 375 (1924) (holding by lessor of delay rental check received two weeks after due date); Bray v. Woodley, 162 Ark. 186, 258 S.W. 119 (1924) (acceptance of delay rental tendered after the due date); Kugel v. Young, 132 Colo. 529, 291 P.2d 695 (1955) (acceptance of insufficient amount by owners of a portion of the lease); Walter v. Ashland ***Oil*** & Refining Co., 300 Ky. 43, 187 S.W.2d 425 (1945) (court held that the principles of waiver and estoppel operated to prevent the termination of an "unless" lease as well as a "drill or pay" lease where lessor had accepted delay rentals); Kelley v. Ivyton ***Oil*** & Gas Co., 204 Ky. 804, 265 S.W. 309 (1924) (delay rentals accepted after due date); Great W. Petroleum Corp. v. Samson, 192 Ky. 814, 234 S.W. 727 (1921) (acceptance of delay rentals constituted waiver of lessor's right, created by a collateral agreement, to receive $500 in the event a well had not been drilled within six months); Louisiana Canal Co. v. Heyd, 189 La. 903, 181 So. 439 (1938) (grantor sold four acres of half section; before grantee recorded the deed, the grantor executed a lease on the entire half section; grantee ratified lease as to his four acres by accepting his pro rata share of delay rentals); Jones v. Southern Natural Gas Co., 213 La. 1051, 36 So. 2d 34 (1948) (acceptance of less delay rental than required by the lease); Nadeau v. Texas Co., 104 Mont. 558, 69 P.2d 586 (1937) (acceptance of late payment of delay rental); Southwestern ***Oil*** Co. v. McDaniel, 71 Okla. 142, 175 P. 920 (1918) (acceptance of delay rental held a waiver of conditions that would have terminated the lease); Mitchell v. Simms, 63 S.W.2d 371 (Tex. Comm'n App. 1933) (acceptance of delay rental tendered after due date); Myers v. Crenshaw, 116 S.W.2d 1125 (Tex. Civ. App. 1938) (acceptance of delay rental); McCoy v. Texon Royalty Co., 124 S.W.2d 877 (Tex. Civ. App. 1939, error dism'd, judgm't correct) (acceptance of delay rental after due date); Humble ***Oil*** & Refining Co. v. Harrison, 146 Tex. 216, 205 S.W.2d 355 (1947) (payment of incorrect amount of delay rental under ambiguous lease, with silence by lessor); Gulf Prod. Co. v. Continental ***Oil*** Co., 139 Tex. 183, 164 S.W.2d 488 (1942) (lessor accepted syndicate certificates in advance of rental-payment date as substitute for the money delay-rental payments, and he was held bound thereby); Ball v. Yowell, 222 S.W.2d 277 (Tex. Civ. App. 1949, error ref'd, n.r.e.) (*held* that rentals had been paid when lessor and lessee agreed to offset the delay-rental payment against another obligation of the lessor to the lessee). [↑](#footnote-ref-59)
59. 59146 Tex. 216, 205 S.W.2d 355 (1947), discussed in 26 Texas L. Rev. 826 (1948); 2 Sw. L.J. 291 (1948); 4 INST. ON ***OIL*** & GAS LAW & TAXATION 26 (1953). [↑](#footnote-ref-60)
60. 603 *Williams,* ***Oil*** *& Gas Law* § 606.6 (1962). [↑](#footnote-ref-61)
61. 61Walker, "The Nature of the Property Interests Created by an ***Oil*** and Gas Lease in Texas," 8 Texas L. Rev. 483, 486 (1930). [↑](#footnote-ref-62)
62. 62144 Tex. 609, 192 S.W.2d 770 (1946). [↑](#footnote-ref-63)
63. 63137 Tex. 565, 155 S.W.2d 783 (1941). [↑](#footnote-ref-64)
64. 64Scurlock, "Practical and Legal Problems in Delay Rental and Shut-In Royalty Payments," 4 INST. ON ***OIL*** & GAS LAW & TAXATION 26-28, 32 (1953). [↑](#footnote-ref-65)
65. 65Shell ***Oil*** Co. v. Goodroe, 197 S.W.2d 395 (Tex. Civ. App. 1946, error ref'd, n.r.e.); Bristol v. Colorado ***Oil*** & Gas Corp., 225 F.2d 894 (10th Cir. [Okla.] 1955); Brunini, 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 196 (1958); 3 *Williams,* ***Oil*** *& Gas Law* § 634.3 (1962). [↑](#footnote-ref-66)
66. 66Shell ***Oil*** Co. v. Goodroe, N. 65 *supra*. [↑](#footnote-ref-67)
67. 67Bristol v. Colorado ***Oil*** & Gas Corp., N. 65 *supra*. [↑](#footnote-ref-68)
68. 68Union ***Oil*** Co. v. Touchet, 229 La. 316, 86 So. 2d 50 (1956). [↑](#footnote-ref-69)
69. 69Discussion Notes, 5 O. & G.R. 59, 61 (1956). [↑](#footnote-ref-70)
70. 7041 S.W.2d 447 (Tex. Civ. App. 1931), *aff'd on other grounds*, 60 S.W.2d 1031 (Tex. Comm'n App. 1933). [↑](#footnote-ref-71)
71. 71220 S.W.2d 259 (Tex. Civ. App. 1949, error ref'd, n.r.e.). [↑](#footnote-ref-72)
72. 7213 F. Supp. 407 (N.D. Tex. 1935). [↑](#footnote-ref-73)
73. 73103 S.W.2d 775 (Tex. Civ. App. 1937, error ref'd). [↑](#footnote-ref-74)
74. 74281 S.W.2d 159 (Tex. Civ. App. 1955, error ref'd, n.r.e.). [↑](#footnote-ref-75)
75. 75150 F.2d 363 (5th Cir. 1945). [↑](#footnote-ref-76)
76. 76164 F.2d 907 (5th Cir. 1947). [↑](#footnote-ref-77)
77. 77228 F.2d 298 (5th Cir. 1955). [↑](#footnote-ref-78)
78. 78Title Ins. & Trust Co. v. Hisey, 95 F.2d 555 (9th Cir. [Cal.] 1938); ***Kern*** Sunset ***Oil*** Co. v. Good Roads ***Oil*** Co., 214 Cal. 435, 6 P.2d 71 (1931); Prairie ***Oil*** Co. v. Carleton, 91 Cal. App. 2d 555, 205 P.2d 81 (1949); Renner v. Huntington-Hawthorne ***Oil*** & Gas Co., 39 Cal. 2d 93, 244 P.2d 895 (1952); Victory ***Oil*** Co. v. Hancock ***Oil*** Co., 270 P.2d 604 (Cal. 1954); Bristol v. Colorado ***Oil*** & Gas Corp., 225 F.2d 894 (10th Cir. [Okla.] 1955). [↑](#footnote-ref-79)
79. 793 *Williams,* ***Oil*** *& Gas Law* § 658.3 (1962). [↑](#footnote-ref-80)
80. 80Stanolind ***Oil*** & Gas Co. v. Guertzgen, 100 F.2d 299 (9th Cir. [Mont.] 1938); Elliott v. Pure ***Oil*** Co., 10 Ill. 2d 146, 139 N.E.2d 295 (1956); Louisiana Livestock & Planning Co. v. Kendall, 155 La. 122, 98 So. 862 (1923); Scilly v. Bramer, 170 Pa. Super. 276, 85 A.2d 592 (1952). [↑](#footnote-ref-81)
81. 813 *Summers,* ***Oil*** *& Gas* §§ 447, 452 (1958); Brunini, 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 197 (1958); Campbell v. Rock ***Oil*** Co., 151 Fed. 191 (7th Cir. 1907) (Indiana-lessor gave notice that lease would be forfeited due to failure to develop and then remained silent while lessee invested $3,700 in developing the lease; lessor not allowed to enforce termination); Duffield v. Michaels, 102 Fed. 820 (4th Cir. 1900) (West Virginia-lessor delivered wood for drilling and lodged drilling laborers while lessee drilled; lessor not permitted to enforce forfeiture); Transcontinental ***Oil*** Co. v. Spencer, 6 F.2d 866 (5th Cir. 1925) (Louisiana-lessee commenced drilling and then suspended drilling for four months, and lessor made no objection to renewal of drilling; lessor held to have waived right to have lease annulled); Eggleson v. McCasland, 98 F. Supp. 693 (E.D. Okla. 1951) (lessee unable to obtain market for gas during term of lease but expended $800,000 in the area and located market, during which time lessors had knowledge of the operations and acquiesced in the search for the market; lessors estopped to challenge the lease); Hodges v. Harrell, 173 Ark. 210, 293 S.W. 25 (1927) (lease appeared to be forfeited because of failure of lessee to commence drilling within a five year period, but lessee entered upon land and in good faith began drilling a well, while lessor remained silent; lessor precluded from enforcing forfeiture); Vickers v. Peaker, 227 Ark. 587, 300 S.W.2d 29 (1957) (assignee of lease commenced first well after the crucial date, and later completed such well and drilled a second and third well; assignor knew of the activities and did not assert termination until after all the drilling had been completed; *held* that the assignor by his silence was estopped to assert termination of the assignment); Alphonzo E. Bell Corp. v. Listle, 55 Cal. App. 2d 300, 130 P.2d 251 (1942) (the lessors suggested lessee incur expenses to repair a drilling well so that it would be operative; lessor estopped from claiming any prior rights of forfeiture); Fitzwater v. Norcross, 95 Colo. 527, 37 P.2d 522 (1934) (assignor precluded from attacking his assignment where he remained silent while large amount of money was expended upon the lease by his assignee); Bay State Petroleum Co. v. Penn Lubricating Co., 121 Ky. 637, 87 S.W. 1102 (1905); and Backer v. Penn Lubricating Co., 121 Ky. 637, 87 S.W. 1102 (1905) (conduct of lessee showed abandonment of lease, but, on reentry, lessor made no objection and acquiesced in resumption of operations; *held* that such acquiescence estopped the lessor to complain of the reentry); Cadillac ***Oil*** & Gas Co. v. Harrison, 196 Ky. 290, 244 S.W. 669 (1922) (after expiration of time for perpetuating ***oil*** lease by drilling, purchaser of part of land leased stood by silently and saw expenditures made in good faith for drilling on the part sold to him; such owner estopped to claim forfeiture for failure to develop); Parten v. Webb, 205 La. 799, 18 So. 2d 198 (1944) (lessor requested drilling of additional wells and lessee undertook to drill and did complete additional wells; lessor estopped from later obtaining cancellation for failing to develop); Lane v. Urbahn, 265 S.W. 1063 (Tex. Civ. App. 1924, error dism'd) (lessee did not pay delay rentals or commence drilling of well within time fixed in lease but lessor was silent until after lessee had drilled well to considerable depth; *held* that lessor's silence amounted to a waiver of strict performance and estopped him to claim termination of lease); Masterson v. Amarillo ***Oil*** Co., 253 S.W. 908 (Tex. Civ. App. 1923, error dism'd) (lessor permitted expenditure of large sums of money in development and accepted royalties; *held* lessor may have thus waived his right to declare forfeiture). [↑](#footnote-ref-82)
82. 8231 C.J.S. "Estoppel" § 87 (1964); Sinclair Prairie ***Oil*** Co. v. Campbell, 164 F.2d 907, 910 (5th Cir. 1947). [↑](#footnote-ref-83)
83. 83Guerra v. Chancellor, 103 S.W.2d 775 (Tex. Civ. App. 1937, error ref'd); Watson v. Rochmill, 137 Tex. 565, 155 S.W.2d 783 (1941); Sinclair Prairie ***Oil*** Co. v. Campbell, 164 F.2d 907 (5th Cir. [Tex.] 1947); Gas Ridge v. Suburban Agricultural Properties, 150 F.2d 363 (5th Cir. [Tex.] 1945). [↑](#footnote-ref-84)
84. 843 *Summers,* ***Oil*** *& Gas* § 451 (1958); 3 *Williams,* ***Oil*** *& Gas Law* § 604.7 (1962); Brunini, 9 INST. ON ***OIL*** & GAS LAW & TAXATION 165, 198 (1958). [↑](#footnote-ref-85)
85. 85Twyford v. Whitchurch, 132 F.2d 819 (10th Cir. 1942) (Oklahoma -an attack upon the lessee's title by the lessor was held to relieve the lessee of the duty either to proceed with drilling operations or pay delay rentals); Alphonzo E. Bell Corp. v. Listle, 74 Cal. App. 2d 638, 169 P.2d 462 (1946) (lessor made an unjustifiable declaration of forfeiture and followed that with a suit to quiet title against the lessee; *held* that performance by the lessee of drilling operations was suspended during the pendency of the litigation); Kelley v. Ivyton ***Oil*** & Gas Co., 204 Ky. 804, 265 S.W. 309 (1924) (lessors announced they would refuse delay rentals, and refused to take registered letter from post office for fear it contained check in payment of such rentals; lease could not be forfeited for failure to pay annual rental); Leonard v. Busch-Everett Co., 139 La. 1099, 72 So. 749 (1916) (lessor refused to accept rentals and sued to annul; lessor could not cancel); Transcontinental ***Oil*** Co. v. Thomas, 29 F.2d 733 (5th Cir. 1928) (Louisiana-lessor sued to forfeit the valid lease; he could not thereafter contend that the lessee had abandoned the lease); Stanolind ***Oil*** & Gas Co. v. Christian, 83 S.W.2d 408 (Tex. Civ. App. 1935, error ref'd) (during the time suit questioning the lease was pending, lessor could not complain that lessee had breached the implied covenants by failing to develop); Fey v. A.A. ***Oil*** Corp., 129 Mont. 300, 285 P.2d 578 (1955) (lessor refused to permit lessee to enter premises for the drilling of additional wells and lessor also brought suit to cancel the lease; lessor's suit barred); Greer v. Carter ***Oil*** Co., 373 Ill. 168, 25 N.E.2d 805 (1940) (lessee was ready to drill but was prevented by a suit questioning the title; lessor was estopped from claiming forfeiture for failure to perform); Clayton v. Atlantic Refining Co., 150 F. Supp. 9 (D.N.M. 1957) (lessor owned the lands adjoining the leased premises and refused to permit lessee to enter over such lands in order to complete seismographic exploration on the leased property; court indicated lessor would be estopped from claiming foreiture under the implied covenant to reasonably explore and test the leased premises); Shell ***Oil*** Co. v. Goodroe, 197 S.W.2d 395 (Tex. Civ. App. 1946, error ref'd, n.r.e.) (repudiation of the lease by lessor while it was in effect relieved lessee of duty of operating the well on the premises until the controversy was settled); Baker v. Potter, 223 La. 274, 65 So. 2d 598 (1953) (primary term extended during pendency of suit); Braun v. Mon-O-Co. ***Oil*** Corp., 133 Mont. 101, 320 P.2d 366 (1958) (lessor had given lessee notice that he considered the lease had terminated); Hudspeth v. Schmelzer, 182 Okla. 416, 77 P.2d 1123 (1938) (lessor had given lessee notice that he considered that the lease had terminated); Kothmann v. Boley, 156 Tex. 56, 308 S.W.2d 1 (1957) (lessor had given lessee notice that he considered the lease had terminated); Hodges v. Miller, 244 S.W. 634 (Tex. Civ. App. 1922), *aff'd*, Miller v. Hodges, 260 S.W. 168 (Tex. Comm'n App. 1924) (lessor wrongfully repudiated the lease; lessee held entitled to reasonable time after expiration of the lease to commence development). [↑](#footnote-ref-86)
86. 86129 Mont. 300, 285 P.2d 578 (1955). [↑](#footnote-ref-87)
87. 87Baker v. Potter, 233 La. 274, 65 So. 2d 598 (1953). [↑](#footnote-ref-88)
88. 88Kothmann v. Boley, 156 Tex. 56, 308 S.W.2d 1 (1957). [↑](#footnote-ref-89)
89. 89Rain, "A Further Look at Division Orders and Problems in Accounting and Payment of Proceeds From ***Oil*** and Gas," 8 ROCKY MT. MIN. L. INST. 69, 78 (1963); Bounds, "Division Orders," 5 INST. ON ***OIL*** & GAS LAW & TAXATION 91, 102 (1954). [↑](#footnote-ref-90)
90. 90288 S.W. 619 (Tex. Civ. App. 1926, error ref'd). [↑](#footnote-ref-91)
91. 91137 Tex. 59, 152 S.W.2d 711 (1941). [↑](#footnote-ref-92)
92. 9272 Mont. 383, 233 P. 909 (1925). [↑](#footnote-ref-93)
93. 9380 N.W.2d 139 (Neb. 1956). [↑](#footnote-ref-94)
94. 94139 N.E.2d 295 (Ill. 1956). [↑](#footnote-ref-95)
95. 9572 Mont. 383, 233 P. 909 (1925). [↑](#footnote-ref-96)
96. 96Chicago Corp. v. Wall, 156 Tex. 217, 293 S.W.2d 844 (1956). [↑](#footnote-ref-97)
97. 97Masterson, Discussion Notes, 7 O. & G.R. 69, 70-71 (1957). [↑](#footnote-ref-98)
98. 98125 Tex. 26, 79 S.W.2d 619 (1935). [↑](#footnote-ref-99)
99. 99126 Tex. 262, 87 S.W.2d 471 (1935). [↑](#footnote-ref-100)
100. 100Meeks v. Taylor, 138 F.2d 458 (5th Cir. 1943) (Georgia-where husband, without authority, executed lease covering lands owned by wife, the wife by making a subsequent mortgage including lease and rentals due thereunder ratified the lease); Glasscock v. Farmers Royalty Holding Co., 152 F.2d 537 (5th Cir. 1945) (Texas-mineral deeds ratified by subsequent lease); Self v. Prairie ***Oil*** & Gas Co., 28 F.2d 590 (8th Cir. 1928) (Oklahoma-where Indian held to have ratified ***oil*** and gas lease made by his guardian while he was a minor by execution of a casinghead gas lease reciting that the ***oil*** and gas lease was in effect); Reserve Petroleum Co. v. Hodge, 147 Tex. 115, 213 S.W.2d 456 (1948) (where mineral deeds without any description were ratified by a subsequent ***oil*** and gas lease with proper acknowledgment both as to the lack of description and as to the insufficient acknowledgment for homestead purposes); Humble ***Oil*** & Refining Co. v. Jeffrey, 38 S.W.2d 374 (Tex. Civ. App. 1931), *aff'd*, 55 S.W.2d 521 (Tex. Comm'n App. 1932) (mineral deeds made subject to the lease; lease ratified); Mid-Texas Petroleum Co. v. Colcord, 235 S.W. 710 (Tex. Civ. App. 1921) (where parties executed a partition deed reciting the third party was co-owner of ***oil*** and gas lease; they were estopped from disputing title of third party); Surtees v. Hobson, 13 S.W.2d 345 (Tex. Comm'n App. 1929) (where life tenant who executed leases as guardian for the remaindermen was estopped from a claim based on his own life estate); Turner v. Hunt, 131 Tex. 492, 116 S.W.2d 688 (1938) (where mineral owner's execution of royalty deed subject to lease from mineral owner's grantor held a ratification of lease as to the mineral owner's interest); Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44 (1947) where minerals were conveyed subject to subsisting lease which on the date of the mineral conveyance omitted eleven acres and correction lease was obtained after the mineral conveyance); Wabash Drilling Co. v. Ellis, 230 Ky. 769, 20 S.W.2d 1002 (1929) (where husband was held to have ratified lease bearing his forged signature by joinder in conveyance of one-half of his wife's royalty under the lease); McConnell v. Pierce, 210 Ill. 627, 71 N.E. 622 (1904) (estoppel from claiming forfeiture of lease for causes occurring prior to deed subject to the lease); Cummings v. Midstates ***Oil*** Corp., 193 Miss. 675, 9 So. 2d 648 (1942). [↑](#footnote-ref-101)
101. 101370 S.W.2d 1 (Tex. Civ. App. 1963), citing, among other authorities, Tracy v. Lion ***Oil*** Co., 312 S.W.2d 562 (1958); 3A *Summers,* ***Oil*** *& Gas* § 606.1 (1958); and Annot., 7 A.L.R.2d 294 (1948). [↑](#footnote-ref-102)
102. 102Williams, "Hoffman v. Magnolia Petroleum Company: The 'Subject To' Clause in Mineral and Royalty Deeds," 30 Texas L. Rev. 396, 409, 412 (1952); Scurlock, "Practical and Legal Problems in Delay Rental and Shut-In Royalty Payments," 4 INST. ON ***OIL*** & GAS LAW & TAXATION 26, 32 (1954). [↑](#footnote-ref-103)
103. 103Williams, N. 102 *supra*. [↑](#footnote-ref-104)