

Butler v. Powers Estate
2011 PA Super. 198, No. 1795 MDA 2010

(September 27, 2011)

Prepared by Andy Schwabenbauer, Research Fellow

Filed: September 7, 2011

John E. and Josephine Butler (the Butlers) are the owners in fee simple of 244 acres in Susquehanna County, Pennsylvania. The deed to their land contained a reservation for “one half of the minerals and Petroleum Oils to said Charles Powers, his heirs and assigns...” The Butlers filed a complaint to quiet title naming “Charles Powers’ estate and the estate’s heirs and assigns” as defendants. Heirs to the Powers estate, William H. Pritchard and Craig L. Pritchard (the Pritchards), responded to a motion for publication and filed for declaratory judgment. The Pritchards claimed the reservation of rights in the deed includes Marcellus shale gas. This motion was dismissed by the trial court. On appeal, the Pritchards raised the issue of whether the trial court “erred in determining that the... reservation in the chain of title to the surface land...did not include a reservation of one half of such unconventional Marcellus shale gas...”

The Court mentions the precedent established in *Dunham v. Kirkpatrick*, 101 Pa. 36 (1882), and *Highland v. Commonwealth*, 400 Pa. 261 (1960), (a reservation or exception in a deed reserving “minerals,” without any specific mention of natural gas or oil, creates a rebuttable

presumption that the grantor did not intend for “minerals” to include natural gas or oil). The Court also discusses *U.S. Steel Corp. v. Hoge*, 503 Pa. 140 (1983), (subterranean gas is owned by whoever has title to the property in which the gas is resting) but determines that it cannot resolve the dispute based on the record presented.

The court concluded that it was unable to say with certainty whether the Pritchards have a cognizable claim based on the facts. The case was then remanded to determine (1) whether Marcellus shale constitutes a “mineral”; (2) whether Marcellus shale gas constitutes the type of conventional natural gas contemplated in Dunham and Highland; and (3) whether Marcellus shale is similar to coal to the extent that whoever owns the shale owns the shale gas.



The Agricultural Law Resource and Reference Center has been established pursuant to Pennsylvania statute, 3 PA. STAT. §§ 2201-2209, as a collaborative enterprise between The Dickinson School of Law and College of Agricultural Sciences at The Pennsylvania State University together with the Pennsylvania Department of Agriculture. The Center provides information and educational programs on agricultural law and policy for producers and agribusinesses, attorneys, government officials, and the general public. The Center does not provide legal advice, nor is its work intended to be a substitute for such advice and counsel.