



Termination of a Coal Lease by the Lessee

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Synopsis

Table listing sections: § 12.01. Surrender (359), § 12.02. Abandonment (365), § 12.03. Lessee's Obligation to Mine (369), § 12.04. Termination of the Lease Term (373), § 12.05. Escape Provisions (377), § 12.06. Conclusion (383)

A coal company is lessee under a long-term lease. It has mined the coal for 10 years, has ceased operations for market reasons and has idled the mine. Under the lease it is paying a substantial annual minimum royalty, plus a fixed rent, taxes and idling costs. May it unilaterally terminate its obligations and give up the lease?

§ 12.01. Surrender. [1] — Express Right.

A lessee can "surrender" a lease if the lease gives him an express right to do so. So it is stated unequivocally in Donley, The Law of Coal, Oil and Gas in West Virginia and Virginia (1951) Section 152, which sets forth an appropriate surrender provision to be inserted in a lease. However, there is very little case law on the subject of a unilateral right to surrender. This may be true for two reasons: few leases contain express provisions for surrender, and over the years few lessees have reached a point where they actively wish to give up control of the coal reserves.

Early cases dealing with an alleged right in the lessee to surrender the lease took the position that if such a right existed it would be a unilateral

right to terminate the lease and as a result the contract would lack mutuality. In *Cowan v. Radford Iron Co.*,<sup>1</sup> the court construed a provision that the lessee could “remove all his equipment at any time” as a right to surrender and stated that if one party could terminate a lease at any time, so could the other. In *Kentucky Coke Co. v. Smith*,<sup>2</sup> the term of a coal lease was “for as long as may be desired” by the lessee, who could also surrender it “at any time [on] a reasonable notice.”<sup>3</sup> The court decided that these provisions “rendered the contract unilateral and wholly unenforceable in equity.”<sup>4</sup> Those cases were distinguished in *Taylor v. Kingman Feldspar Co.*,<sup>5</sup> where a 99-year lease of minerals expressly allowed the lessee to terminate at any time. The court upheld this provision against a claim by the lessor that it rendered the contract ineffective for want of mutuality, and distinguished the *Kentucky Coke* case as one where no consideration had passed to the lessor. In contrast, in *Taylor* the lessee had made substantial cash payments to the lessor upon the signing of the lease (to be credited to future production royalties) and in addition had undertaken the obligation to mine diligently so long as he retained the lease.

The view that a right to surrender does not negate mutuality was confirmed in *Iafolla v. Douglas Pocahontas Coal Corp.*,<sup>6</sup> where the lease term was one year, renewable by the lessee for successive one-year terms indefinitely. The court held the lease to have mutuality, notwithstanding what in effect was a unilateral right to terminate (although confined to the end of each year). The lessee’s obligation to mine and to pay minimum royalties so long as he held the lease provided mutuality. To the same effect was *Quality Materials of Tangipahoa, Inc. v. Labarama, Inc.*,<sup>7</sup> where a lessee’s right to continue a lease indefinitely (or terminate it unilaterally) did not invalidate it.<sup>8</sup>

A right to surrender need not be stated in so many words in order to be found present in a lease. In *Stonega Coke and Coal Co. v. Price*,<sup>9</sup> the lease

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<sup>1</sup> *Cowan v. Radford Iron Co.*, 3 S.E. 120 (Va. 1887).

<sup>2</sup> *Kentucky Coke Co. v. Smith*, 269 S.W. 558 (Ky. 1925).

<sup>3</sup> 269 S.W. at page 560.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Taylor v. Kingman Feldspar Co.*, 18 P.2d 649 (Ariz. 1933).

<sup>6</sup> *Iafolla v. Douglas Pocahontas Coal Corp.*, 250 S.E.2d 128 (W. Va. 1979).

<sup>7</sup> *Quality Materials of Tangipahoa, Inc. v. Labarama, Inc.*, 361 So.2d 1285 (La. 1978).

<sup>8</sup> In *Clintwood Coal Corp. v. Turner*, 114 S.E. 117 (Va. 1922), the lessee had an express