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Law Relating to Covenants Implied in Oil and Gas Leases, by Maurice H. Merrill

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BOOK REVIEWS

COVENANTS IMPLIED IN OIL AND GAS LEASES.*

Professor Merrill's work on covenants implied in oil and gas leases, is unquestionably a noteworthy contribution to the "law of oil and gas" and should accomplish the purpose expressed by the author in the preface of "bringing aid to the bench and bar in the consideration of such problems."

Despite the fact that the doctrine of implied covenants is of comparatively recent origin, an outstanding feature of the book is the comprehensive survey of the historical background of the doctrine. This is of particular interest in view of the statement of a reviewer of a comparatively recent case-book on the law of oil and gas that the entire subject is too new to have much, if any, historical background. Vol. 38, Harvard Law Review, at p. 705. It is a tribute to Professor Merrill's research that this statement is shown to be not entirely in accord with the facts. True, the doctrine of implied covenants in such leases does not extend back to the colonial period, but a doctrine which has been distinctly developing since 1889 cannot be said to be entirely lacking in historical background.

Of special interest to the Indiana lawyer is the fact that Indiana has taken an important part in the development of implied covenants. Indiana first took the view that a provision for delay rental as an alternative to drilling, does not exclude an implied covenant to explore and that the lessor has the right to refuse the delay rental and demand a well. This doctrine has not been generally accepted elsewhere and is criticized by the author as unsound, ignoring as it undoubtedly does, the fact that the very purpose of inserting the provision for delay rental is to give the option to the lessee rather than to the lessor. This so-called Indiana rule was first announced in the leading case of *Consumers' Gas Trust Company v. Littler*, 162 Ind. 320. In all no less than twenty-one Indiana decisions are cited by Professor Merrill, a very respectable showing indeed for a state not ordinarily placed in the category of "oil and gas" states today, and one which should render the work of real value to Indiana practitioners in portions of the state where such litigation may still arise.

The four-fold classification of implied covenants in oil and gas leases adopted by Professor Merrill is more clear-cut than

**The Law Relating to Covenants Implied in Oil and Gas Leases*, by Maurice H. Merrill, St. Louis, Thomas Law Book Company, 1926, pp. 5, 303.

any to be found elsewhere and in his discussion of each covenant various possibilities such as the effect of a provision for delay rental, express provisions of other types, etc., are analyzed and discussed in such a thorough and comprehensive manner as to leave no doubt of the success of the author's expressed attempt "to get at the principles behind the cases, to determine the validity of the results reached in particular cases, and to weigh the relative value of conflicting rules." The book is far more than the mere statement of rules, with or without a digest of authorities contained in other works on oil and gas.

The chapters on the "Tests of Compliance with the Implied Covenants" and "Remedies for Breach" contain discussions of these topics not approached elsewhere. The summaries contained at the end of each division of the book are helpful, as is the final chapter on "Review and Criticism."

That there is need for such a book is evidenced by the words of Mr. James A. Veasey, an eminent authority on the subject, in a review of the case-book on oil and gas previously referred to. Vol. 23, Michigan Law Review, at p. 930, Mr. Veasey says:

"Another topic requiring more careful attention than is evidenced by this work involves the implied obligations of an oil and gas lessee to drill the property. Cases dealing with that aspect of the law are interspersed throughout the volume, but the subject is of such great practical importance as to merit a separate heading."

Professor Merrill's book admirably satisfies this need.

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Of the Indianapolis Bar.

THE REPRESSION OF CRIME.*

This book is an effort to counteract the present hysteria on the part of many people regarding the problem of crime. Mr. Barnes discusses the general importance of the criminal problem, the evolution of American penal codes, the prison system in America from colonial times to the present, the growth of penology, the development of some phases of criminal law, the jury, and recent literature on crime and prisons. A chapter on prison industry is largely devoted to the history of prison industry. Much of the material which Mr. Barnes has used is to be found in specialized works on various phases of the subject, but his activity on commissions of inquiry in New Jersey and Pennsylvania has naturally resulted in his acquisi-

**The Repression of Crime* (Studies in Historical Penology), by Harry Elmer Barnes, Geo. H. Doran Company, New York, 1926, p. 382.