

[J-118-2012][M.O. – Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JOHN E. BUTLER AND MARY	:	No. 27 MAP 2012
JOSEPHINE BUTLER,	:	
	:	
Appellants	:	Appeal from the Order of the Superior
	:	Court entered on 09-07-2011 at No.
	:	1795 MDA 2010 which
	:	reversed/remanded the order of
v.	:	Susquehanna County Court of Common
	:	Pleas, Civil Division, entered on 01-27-
	:	2010 at No. 2009-1141
	:	
CHARLES POWERS ESTATE, BY	:	
CHARLES A. WARREN,	:	
ADMINISTRATOR OF THE ESTATE OF	:	ARGUED: October 16, 2012
CHARLES POWERS, AND CHARLES	:	
POWERS, INDIVIDUALLY, HIS HEIRS	:	
(WILLIAM PRITCHARD AND CRAIG L.	:	
PRITCHARD) AND ASSIGNS	:	
GENERALLY, EXECUTORS,	:	
ADMINISTRATORS, LEGATEES,	:	
GRANTEES, AND ALL OTHER	:	
PERSONS CLAIMING BY OR THROUGH	:	
THE SAID PARTIES AND ALL OTHER	:	
PERSONS INTERESTED IN SAID	:	
PROPERTY,	:	
	:	
Appellees	:	

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: April 24, 2013

I join the majority opinion.

That said, I find the original, nineteenth-century rationale for the Dunham Rule to be cryptic, conclusory, and highly debatable. Cf. Murray v. Allard, 43 S.W. 355, 359 (Tenn. 1897) (applying the majority rule holding that petroleum is a mineral and

criticizing this Court’s Dunham decision as contrary to the great weight of authority; “proceed[ing] upon false principles”; and reflecting only an “assumed general view of the bulk of mankind,” unsupported by conventional sources such as “dictionaries and other similar authorities”). Nevertheless, since Dunham has effectively served to establish a governing rule of property law in Pennsylvania for over a century,¹ too many settled expectations rest upon it for the courts to upset it retroactively. Accordingly – while, at least in the abstract, Appellees make a good case for fairer rules tied more closely to the general intentions of parties to land-interest conveyances, and, elsewhere, the Dunham Rule is recognized to be a very strict and idiosyncratic one -- I join the majority in determining that the rule should pertain in the present scenario.

Finally, I note that, in terms of modern conveyances, the parties certainly have the ability to negate the impact of the Dunham decision by making their intentions clear on the face of the written instrumentation. This lessens the need for this Court to consider fashioning a new, prospective rule.

¹ In this regard, on account of Dunham’s shortcomings, I find the “rule of property law” denominator more accurate than a characterization of Dunham as a sustainable effort to assess the actual intentions of the parties to a conveyance. Accord 1A SUMMERS OIL AND GAS §7:16 (3d ed. 2012) (explaining that the Pennsylvania post-Dunham decisions have “adhered to that view, not so much because the court was sure that in its ordinary sense the term ‘minerals’ did not include oil and gas, but because the previous decision had become a rule of law on which land titles in that state were based”).