The direct operation or literal meaning of the words used do not measure the purpose or scope of its provisions. Under the principles established and applied by this Court, the Fourth Amendment safeguards against all evils that are like and equivalent to those embraced within the ordinary meaning of its words. That construction is consonant with sound reason and in full accord with the course of decisions since *McCulloch* v. *Maryland*. That is the principle directly applied in the *Boyd* case.

When the facts in these cases are truly estimated, a fair application of that principle decides the constitutional question in favor of the petitioners. With great deference, I think they should be given a new trial.

MR. JUSTICE STONE, dissenting.

I concur in the opinions of MR. JUSTICE HOLMES and MR. JUSTICE BRANDEIS. I agree also with that of MR. JUSTICE BUTLER so far as it deals with the merits. The effect of the order granting certiorari was to limit the argument to a single question, but I do not understand that it restrains the Court from a consideration of any question which we find to be presented by the record, for, under Jud. Code, § 240(a), this Court determines a case here on certiorari "with the same power and authority, and with like effect, as if the cause had been brought [here] by unrestricted writ of error or appeal."

KINNEY-COASTAL OIL COMPANY ET AL. *v.* KIEFFER ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 64. Argued October 25, 1927.—Decided June 4, 1928.

1. The Acts of July 17, 1914, 38 Stat. 509, and February 25, 1920, 41 Stat. 437, read together, disclose an intention to divide public oil and gas lands affected into two estates for the purposes of dis-

posal, viz., a dominant estate including the underlying oil and gas deposits, and a servient estate, including the surface. P. 504.

2. Where one person has a homestead patent and another an oil and gas lease covering the same land and both drafted in keeping with these Acts, the lessee has the right to extract and remove the oil and gas, and the appurtenant right to use the surface so far as may be necessary to that end; these rights are excepted and reserved from the estate granted by the homestead patent; their exercise involves no taking of anything granted thereby; the owner of the surface is not entitled to compensation for the minerals taken or the use of the surface pursuant to the lease, and, though he may rightfully demand compensation for the damages caused by the mining operations to his crops and agricultural improvements, he cannot include improvements placed on the land after the mining operations are under way, for purposes plainly incompatible with the right of the lessee to proceed, with due care, until the oil and gas are exhausted. P. 504.
3. *Semble* that the lessee would be liable for any damage to the surface estate caused by negligence in conducting mining operations. P. 505.
4. Lessees under the Act of 1920, *supra,* of a tract within the producing structure of an oil field, entered, drilled a producing well, and were preparing to continue and extend operations under the lease, necessitating use of practically the entire surface, all with the knowledge and acquiescence of the owner of the surface under the Act of 1914, *supra,* when the surface-owner platted part of the land as a town-site and began selling lots to purchasers who erected dwellings for residential and business purposes, and, was contemplating like action as to the other part. Interference with the mining operations and irreparable damage to the lessees was thus threatened. *Held:* That the lessees were entitled to an injunction to prevent the threatened occupancy and use of the premises for purposes incompatible with their right to continue mining and their necessary use of the surface. P. 505.
5. The condition imposed by the Act of 1914, *supra,* that the mining lessee shall pay the damages to crops and agricultural improvements of the surface-owner, caused by the lessee's entry, occupancy of surface and mining, or shall give a bond therefor in an action instituted in any competent court to ascertain and fix such damages, is not satisfied by the bond approved by the Secretary of the Interior at the issuance of the lease, but may be complied with by giving bond and ascertainment and settlement of damages in the

injunction suit. A separate action at law to assess such damages is not necessary. P. 506.

6. A court of equity, in a suit of which it has taken cognizance, may administer complete relief, even though this involve determination of legal rights not otherwise within the range of its authority; and in awarding relief to one party, may impose conditions protecting and giving effect to correlative rights of the other. P. 507.

9 F. (2d) 260, reversed; 1 F. (2d) 795, modified.

This case presents a controversy over the relative rights conferred by an oil and gas lease and by a homestead patent for the same lands—both issued by the United States and each containing a reservation of the rights conferred by the other.

The lands in question are two adjoining forty-acre tracts within the Salt Creek oil field, in Natrona County, Wyoming, which became a producing field, widely known as such, before any step was taken to secure either the lease or the patent.

By executive order issued July 2, 1910, under the act of June 25, 1910, c. 421, 36 Stat. 847, these lands—being then public lands of the United States—were withdrawn from settlement, location, sale or entry under the existing public land laws and were reserved as being valuable for oil to await further legislation respecting the disposal of lands of that character. The contemplated legislation came in part in the Act of July 17, 1914, c. 142, 38 Stat. 509, and in part in the act of February 25, 1920, c. 85, 41 Stat. 437.

The act of 1914 looks to the severance and separate disposal of the surface and the underlying minerals. It provides that lands of the United States withdrawn, classified or reported as valuable for oil, gas or other designated mineral deposits shall be subject to disposal under the non-mineral land laws, but that the disposal shall be with "a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect

for, mine and remove the same," and that such deposits shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." The act further provides:

"Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reënter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages."

The act of 1920 relates particularly to the disposal of oil, gas and other designated mineral deposits in the lands of the United States, including those specified in the act of 1914. In the main it provides that the disposal of such deposits shall be through leases entitling the lessees to extract and remove the deposits and to make such use of the surface as may be necessary for that purpose, and requiring the lessees to pay fixed royalties, and in some instances a further compensation, to the United States. The parts of the act having a present bearing are as follows:

"Sec. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a pro-

ducing oil or gas field . . . , not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding . . . , such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, . . . Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods. . . .

"SEC. 29. . . . . *Provided,* That said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further,* That if such reservation is made it shall be so determined before the offering of such lease: . . .

"Sec. 32. That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purpose of this act, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this act: . . .

"Sec. 34. That the provisions of this act shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits."

April 2, 1920, the Secretary of the Interior, pursuant to § 32 of the act of 1920, determined the boundary lines of the known oil structure or deposit in the Salt Creek field. The lines so determined included the two forty-acre tracts in question.

December 29, 1921, as a result of competitive bidding invited under § 17 of that act, and in consideration of a bonus of $51,750 paid to the United States, the Secretary of the Interior, conformably to existing regulations,[1] awarded and issued to Oscar W. Rohn a lease of the oil and gas in these tracts and in another forty-acre tract in the same field. The lease was given for a term of twenty years, with a conditional privilege of renewal under § 17, and granted to the lessee the exclusive right to drill for, extract and remove the oil and gas deposits in the three tracts, together with the right to construct and maintain on the surface "all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations or other structures" needed in such mining operations. It required the lessee to exercise reasonable diligence in drilling and operating wells for oil and gas and to pay to the United States a royalty of 25% on the oil produced and a royalty varying from 12½% to 16⅔% on the gas; and it reserved to the United States the right to dispose of "the surface of the lands" under existing or future laws "in so far as said surface is not necessary for the the use of the lessee in the extraction and removal of the oil and gas." It also required the lessee—

"To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas."

[1] Regulations of March 11, 1920, §§ 13–17, 47 L. D. 446.

At the time the lease was issued the lessee, pursuant to the existing regulations,[2] executed, with approved surety, a bond to the United States in the amount of $5,000—"for the use and benefit of the United States and of any entryman or patentee of any portion of the land . . . heretofore entered or patented with a reservation of the oil and gas deposits to the United States"—conditioned on the lessee's faithful compliance with "all the provisions" of the lease.

August 9, 1922, that lease was consolidated with others into a new lease of like character and tenor issued by the Secretary of the Interior to the Kinney-Coastal Oil Company, and a bond like that above described was given by the company, with approved security, to secure its faithful compliance with all the provisions of the consolidated lease.

In 1918 Michael F. Kieffer made application at the local land office to make a preliminary homestead entry of the two forty-acre tracts in question and other contiguous lands. He knew the lands were within the executive withdrawal of July 2, 1910, and the Salt Creek oil field; and he assented that if his application was granted the oil and gas deposits should be reserved by the United States for disposal under future laws as contemplated in the act of 1914. The preliminary homestead entry was allowed with that reservation (see Regulations of March 20, 1915, paragraphs 5–8, 44 L. D. 32, 34) and in due course was carried to a final entry, on which a homestead patent was issued to Kieffer October 12, 1923. The patent was for 320 acres, including the two forty-acre tracts in question, and contained the following exception and reservation:

"Also excepting and reserving to the United States all the oil and gas in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine

[2] Regulations of March 11, 1920, §§ 16, 17, 47 L. D. 447, 451.

and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914."

After his preliminary homestead entry was allowed, Kieffer constructed a residence and several outbuildings on part of the lands included therein other than the tracts in question, and resided there with his family. He enclosed the tracts in question with a barbed wire fence and in each of two years planted and harvested about seven acres of oats thereon, but in no other way did he improve or cultivate these tracts.

The Kinney-Coastal Oil Company, soon after receiving its lease, entered on one of the tracts in question, stored thereon equipment and supplies required in operations under the lease, erected buildings needed for its employees and began drilling for oil and gas. Kieffer knew of the lease and acquiesced in these operations under it. One well was completed in the latter part of 1923 at a cost of $32,152.66, and oil and gas were produced therefrom in paying quantities. The company proceeded with the extraction of oil and gas from that well, and also made preparation for drilling others. Stakes were driven marking places for eight more distributed over the tract in accordance with applicable regulations.

In January, 1924, Kieffer, without any concurrence by the United States or by the company, platted that tract as a townsite—with blocks, lots, streets and alleys—and caused the plat to be filed and recorded in the office of the clerk of the county. Although knowing of the producing well and that the company was intending to proceed with further drilling and operations under the lease, Kieffer began selling and contracting to sell lots in the townsite and encouraging purchasers to build thereon. Several lots were sold or contracted to be sold and the purchasers began hastily to place buildings thereon for residential and business purposes.

Thereupon the lessee company and another company which had acquired an interest in the lease—one a corporate citizen of Maine and the other of Colorado—brought a suit in the federal district court for Wyoming against Kieffer and others—all citizens of that State—to prevent the sale and use for townsite purposes of the tract on which operations under the lease were proceeding, to prevent a contemplated platting and disposal of the other tract as a townsite, and to enforce the plaintiffs' right to use all the surface of both tracts in the operations under the lease—the use of all being alleged to be necessary. There was also a prayer for general relief. The prayers for specific relief were limited to the term of the lease.

The defendants answered jointly. The material portions of the answer were to the effect (a) that the court was without jurisdiction, in that the value of the matter in controversy was less than the jurisdictional requisite; (b) that the bill was without equity, in that there was an adequate if not exclusive remedy at law; (c) that a large portion of the lands in question was without oil or gas content; (d) that the platting, sale and use of the lands for townsite purposes would not interfere with the full enjoyment of the plaintiffs' rights or operations under the lease; and (e) that the defendants "have at all times been ready and willing that plaintiffs have the full, beneficial use of their lease upon their complying with the law, and defendants are now ready and willing to enter into negotiations with plaintiffs with the view of fixing the amount of damages which may be done by plaintiffs to defendants' improvements, or submit said question to a court of competent jurisdiction as provided in the Act of July 17, 1914."

The district court, after a full hearing on the issues, gave a decree awarding the plaintiffs, by way of injunction, most of the relief sought in their bill. 1 F. (2d)

795. The court found, as recited in the decree, that the value of the matter in controversy was in excess of the jurisdictional requisite; that the lands in question "are practically all within the producing structure of the Salt Creek oil field"; that use of "practically the entire surface" is necessary "for the full development" of the underlying oil and gas deposits and for "reasonably economical, efficient operations" under the lease; that the buildings constructed and intended to be constructed as part of the townsite venture will "take up space required by plaintiffs in their lawful operations"; that the occupancy and use of the lands as a townsite will interfere with such operations, will increase the expense of conducting them, and will enhance the danger of explosion and fire which otherwise attends the production of oil and gas, and that the plaintiffs will thus be subjected to continuing and irreparable injury and damage.

On an appeal by the defendants the circuit court of appeals said:

"There is substantial evidence in support of the court's finding that the tract is within the producing structure of the oil fields, and that the entire surface will be necessary for the use of plaintiffs in its development and in the production and removal of the oil and gas that will be found. There was testimony to the contrary, but the court's findings of fact have ample support. It had better opportunity to weigh the evidence than we have, and we accept those findings."

Then coming to the equitable remedy invoked by the plaintiffs that court held that the act of 1914 prescribes a mode of procedure for enforcing the lessee's right to use the surface; that this procedure is intended to be exclusive and in the nature of a condemnation proceeding, which is regarded as a proceeding at law rather than in equity; and that by the course taken in the district court Kieffer

and his grantees were denied a constitutional right to have the issues tried by a jury. Accordingly the decree was reversed with a direction to dismiss the bill and leave the plaintiffs to their statutory remedy. 9 F. (2d) 260.

Mr. Edward M. Freeman, with whom *Mr. Paul P. Prosser* was on the brief, for petitioners.

The remedy provided by the Act of 1914 is not a legal action in the nature of condemnation proceedings by the oil and gas lessee against the surface owner to condemn the surface required for mineral exploitation; on the contrary, it is an action by the surface owner against the lessee (and his surety on the bond required) to recover judgment for the damages caused by the mineral exploitation to the crops and improvements of the surface owner. The remedy is for the sole benefit of the surface owner and is not available to the lessee. The lessee may take possession of the surface to the extent from time to time required, and the surface owner may then avail himself of this remedy against the lessee.

Under the construction of the Circuit Court of Appeals the lessee would be prevented from taking possession until the damages, if any, to be caused the surface owner by the mineral exploitation had been ascertained. Such a scheme would work great injury not only to the lessee but also to the United States, as the owner of the oil and gas, because of its royalty interest, and to the State, because of its share of the royalty. The oil might be lost meanwhile through drainage.

Again, the procedure indicated by the Circuit Court of Appeals is highly objectionable in that a jury would be asked to speculate upon damages which had not yet occurred, and the ascertainment of which would rest largely, if not entirely, upon conjecture. Moreover, it is possible that the surface owner might not be entitled to recover any damages whatsoever. No one would seri-

ously argue that the lessee would have to pay him for the mineral content; apparently the only damages recoverable would be for injury to crops and improvements. There might be no crops or improvements.

The suggestion that the United States or its lessee must purchase the surface or pay the surface owner compensation for its use is wholly untenable.

Upon the exhaustion of the oil and gas in the leased land, the estate of the United States and its lessees will terminate, including their incidental estate in the surface, since their only interest in that relates to the mining of the oil and gas. *Chartiers Block Coal Co.* v. *Mellon,* 152 Pa. 286; *Moore* v. *Indian Camp Coal Co.,* 75 Oh. St. 493.

Upon the grant or reservation of the mineral rights in land, even in the absence of an express provision, the owner of the mining right is entitled, as an appurtenant to such grant or reservation, to the use of the surface reasonably necessary to extract and remove the minerals. 2, Snyder on Mines, 848 et seq.; Mills-Willingham, Law of Oil and Gas, 250; 40 C. J., 984; *Marvin* v. *Brewster Iron Mining Co.,* 55 N. Y. 538; *Chartiers Block Coal Co.* v. *Mellon, supra; Porter* v. *Mack Mfg. Co.,* 65 W. Va. 636; *Lovelace* v. *Southwestern Petroleum Co.,* 267 Fed. 513. Congress was merely acting from abundance of caution in expressly providing for the use of the surface.

The Department of the Interior has followed this construction. Compare the procedure prescribed by the Stockraising Homestead Act, 39 Stat. 862.

The conduct of the respondents was wrongful and in violation of petitioners' rights; the petitioners had no plain, adequate and complete remedy at law; the alleged statutory remedy provided by the Act of 1914 was doubtful; therefore, the District Court, sitting as a court of equity, had jurisdiction and its decree was proper.

Mr. C. D. Murane, with whom *Messrs. G. R. Hagens* and *R. H. Nichols* were on the brief, for respondents.

A person cannot be enjoined from doing a lawful act unless the act is being done unnecessarily and maliciously to vex, annoy and injure another. There can be no contention that the respondents were acting maliciously or otherwise than in the honest belief that they were exercising a legal right. They own the fee simple to this land, they have a right to cultivate it, build houses upon it, sell it as a whole or in part; the only restriction placed upon them by their patent is that others shall have the right to occupy so much of the surface as is actually necessary to prospect for, mine and remove the oil and gas "upon payment of damages caused thereby to the owner of the land." The Court will not, by its injunction, deprive respondents of any of the beneficial rights granted to them by their patent.

An injunction will not be granted when a greater injury will be done thereby to defendant than would be done to the plaintiff by denying it. The statutes provide for an action at law in cases of this character; the mine lease owner must pay the damage caused; and if the parties cannot agree upon the amount of damages, then the matter should be tried by a jury in a court of law, competent to ascertain and fix them.

If we were to assume that petitioners had the right to this land without compensation, they offered no evidence to show that they had ever made a demand for possession of any portion of it and been refused. Respondents, moreover, proved that possession was never denied and that respondents never had any intention of denying it—their only intention being to require petitioners to pay such reasonable damage as they may cause to respondents' lands and improvements. A court of equity will not interpose to protect a person from a groundless fear.

There are two distinct situations contemplated in the Act of July 17, 1914, and the Leasing Act of February 25, 1920, was enacted with those two conditions in mind. The first condition is where a prospecting permit is issued upon lands patented with the oil rights reserved to the Government. This permit is issued for a period of two years and is temporary in character. It was not contemplated that, under it, actual appropriation of any of the land would be necessary but only a temporary possession for the drilling of one or two wells, and that just compensation to the owner of the surface would be made for the damage done to crops or improvements by the holder of the permit. The other situation contemplated a lease which was to extend for a period of twenty years, and subject to renewal for ten-year periods. The possession would be for so long a time that it amounted to an appropriation of the amount of land actually necessary for drilling operations, production, and the removal of oil and gas. Therefore, the oil and gas lessee is required to pay for the actual damage done to the owner of the land.

He has an election, after his discovery, as to whether it will be to his advantage to mine and remove the oil, and pay the damages caused to the surface owner, or the "owner of the land," as said in the statute, or abandon his oil and gas lease. The owner of the land has no election except that he may require the lessee to designate what portion of his land will be necessary for the use of the oil lessee in mining and removing, and to pay him all such damages as he may sustain, before he will be permitted to use the surface. In both of these cases an adequate means is provided for ascertaining the damage.

If the injunction were reinstated as granted by the trial court, Kieffer's patent would be a "scrap of paper," conferring no beneficial rights, despite payments to the Government for the lands and his outlay for improvements. So far as these lands are concerned, under this decree, re-

spondents' only right is the privilege of paying county and state taxes for the next twenty years.

Petitioners' contention during the trial of the cause, and the findings of the court, were to the effect that respondents can only use the land for agricultural purposes. They introduced testimony to show that they needed all of the surface for their drilling, development and production of oil, and the court made a finding that all was necessary for that purpose. If this be true, no part of the land would be available for crops; the entire tract would be appropriated by petitioners, and the exclusive possession, without any compensation whatsoever to the owner of the fee.

How can the surface owner be advised of the amount of land required for drilling and production purposes? Must he stand by for the twenty-year period with the pleasure of paying the taxes upon the land, to ascertain the needs of the lessee? A more reasonable interpretation of the statute is that the lessee must negotiate with the surface owner as to the value of the land, quantity required, and quantity required for drilling, etc., and that if they cannot agree, then the lessee must bring his action as indicated in the law of 1914, alleging the quantity of land which he requires, and asking a court of competent jurisdiction to call a jury to assess the damage that the surface owner will sustain.

By the decree which petitioners desire to have reinstated a Bank has been enjoined from receiving payments upon contracts of sales of portions of this land, the County Clerk has been enjoined from receiving deeds, town plats or other conveyances or evidences of title, a Utilities Company has been enjoined from laying pipe lines, with the permission of Kieffer, over his land for the purpose of conducting water and gas. In what way do these acts hinder or prevent drilling for the production of oil? The Utilities Company is even commanded to remove its pipe lines already laid, and there is not one

word of testimony that it has in any way interfered with operations of the petitioners. Cf. *Brookshire Oil Co.* v. *Casmalia Ranch and Oil Development Co.,* 156 Cal. 211; Lindley, Mines, 3d. ed., § § 814, 827; *Chartier's Block Coal Co.* v. *Mellon,* 152 Pa. 286; *Williams* v. *South Penn Oil Co.,* 52 W. Va. 181; *Globe Newspaper Co.* v. *Walker,* 210 U. S. 356; *Haycraft* v. *United States,* 22 Wall. 81; *The Harrisburg,* 119 U. S. 199; *Van Norton* v. *Morton,* 99 U. S. 378; *New Orleans* v. *Construction Co.,* 129 U. S. 45.

The right of Kieffer to have his damages determined by a jury and paid or secured as the statute directs, is a legal right given him by the Act of July 17, 1914. If the parties cannot agree, the surface owner in possession has a constitutional right to a trial by jury before his possession could be disturbed. *Singer Sewing Machine Co.* v. *Benedict,* 229 U. S. 481; *Travelers Protective Ass'n* v. *Gilbert,* 111 Fed. 269; *Union Pacific R. R. Co.* v. *Board of Comm'rs,* 222 Fed. 651; *Traction Co.* v. *Mining Co.,* 196 U. S. 239; *Kohl* v. *United States,* 91 U. S. 367; *Filbin* v. *United States,* 265 Fed. 354.

A court of equity has no jurisdiction where a "plain, adequate and complete remedy may be had at law." Rev. Stats., § 723; Comp. Stats., § 1244; *United States* v. *Bitter Root Co.,* 200 U. S. 451.

We desire to call the Court's attention to the specific provision of the statute which says "upon paying the damage caused to the owner." That is a condition precedent to his right to operate, and justly so. *Courtright* v. *Deeds,* 37 Ia. 503; *Sands* v. *McClelan* (N. Y.) 6 Cow. 582; *Little* v. *Wilcox,* 119 Pa. St. 439; *Appeal of Conrow* (Pa.) 3 Atl. 13.

Mr. Justice Van Devanter, after making the foregoing statement of the case, delivered the opinion of the Court.

The findings of fact by the district court before described have such support in the evidence that they should

be accepted by us. Two were accepted by the circuit court of appeals, as shown in the quotation before made from its opinion, and the others were not considered. Those not considered are equally well supported.

The chief question presented is whether the act of 1914 prescribes an exclusive remedy at law applicable to the situation disclosed and thus prevents the plaintiffs from suing in equity, as held by the circuit court of appeals.

The acts of 1914 and 1920 are to be read together—each as the complement of the other. So read they disclose an intention to divide oil and gas lands into two estates for the purposes of disposal—one including the underlying oil and gas deposits and the other the surface—and to make the latter servient to the former, which naturally would be suggested by their physical relation and relative values. The act of 1914, in providing for the disposal of the surface, directs that there be a reservation of the oil and gas deposits, " together with the right to prospect for, mine and remove the same," meaning, of course, the right to use so much of the surface as may be necessary for such operations. And the act of 1920, in providing for the leasing of the oil and gas deposits, provides (§ 29) for a reservation of the surface " in so far as said surface is not necessary for the use of the lessee in extracting and removing the deposits." In effect therefore a servitude is laid on the surface estate for the benefit of the mineral estate to the end, as the acts otherwise show, that the United States may realize, through the separate leasing, a proper return from the extraction and removal of the minerals.

The lease held by the plaintiffs and the homestead patent issued to Kieffer were drafted in keeping with the acts thus understood. In both the required reservations are plainly expressed. Under the lease the plaintiffs have the right to extract and remove the oil and gas, as also the appurtenant right to use the surface so far as may

be necessary. In the homestead patent these rights are distinctly excepted and reserved from the estate thereby granted. Their exercise involves no taking of anything granted by the patent. Nor is the one who under the patent owns the surface, with those rights reserved, entitled to compensation for the minerals taken or the use made of the surface. The only compensation which he rightfully may demand is, as the act of 1914 says, for "damages caused" by the mining operations. The sentence next preceeding that in which these words occur makes it fairly plain that they refer to damages to "crops and improvements," and the title to the act, coupled with the reference to "crops" shows that "agricultural" improvements are the kind intended. Certainly it is not intended to include improvements placed on the land, after the mining operations are under way, for purposes plainly incompatible with the right to proceed with those operations until the oil and gas are exhausted. It well may be that, if the operations are negligently conducted and damage is done thereby to the surface estate, there will be liability therefor. But such liability will ensue, not from admissible mining operations and use of the surface, but from the inadmissible negligence causing the damage.

By this suit the plaintiffs are not seeking to acquire a right to use the surface but to protect from wrongful obstruction and impairment the right which they already have. Nor are they seeking to enforce their right to enter and begin mining operations. More than a year before the suit was begun they entered, took in mining equipment and supplies, erected houses for their workmen, began drilling for oil and gas and at large cost completed a producing well—all with the knowledge and acquiescence of Kieffer, then the sole surface claimant. After their operations were thus under way, Kieffer platted as a townsite the forty acres where they were operating and began

actively to sell and contract to sell the lots as platted; and the purchasers began to erect buildings thereon for residential and business purposes. Kieffer was also contemplating taking like action as to the other forty acres. It was then that the suit was begun. It is directed chiefly against the sale and use of the surface for townsite purposes and is based on the theory—sustained by the findings made on the proofs submitted at the trial—that practically the whole eighty acres is within the producing structure of the oil field, that use of practically the entire surface is necessary for conducting reasonably efficient operations under the lease and that the sale and occupancy of the surface for townsite purposes will seriously interfere with the plaintiffs' right to use the same in their mining operations and will obstruct and impede the further prosecution of those operations and thereby subject the plaintiffs to continuing and irreparable injury.

With this understanding of the situation and of the chief object of the suit, we think it plain that the plaintiffs were entitled to the interposition and aid of a court of equity to prevent the threatened occupancy and use of the surface for purposes incompatible with their right to continue the mining operations under the lease and to make any necessary use of the surface. Certainly they were without the plain, adequate and complete remedy at law which under § 267 of the Judicial Code precludes resort to a suit in equity.

The circuit court of appeals based its decision on the part of the act of 1914 which—after directing that the patent for the surface estate shall contain a reservation of the underlying oil and gas deposits, with the right to prospect for, mine and remove the same—provides that lessees of the United States may enter, occupy so much of the surface as may be required, and mine and remove the minerals, "upon payment of damages caused thereby to the owner of the land, or upon giving a good and suffi-

cient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages."

The plaintiffs take the position that the bond given by the lessee and approved by the Secretary of the Interior when the lease was issued satisfied that provision. In this the plain words of the provision are neglected. They call for a bond to be given in a judicial proceeding wherein the damages may be ascertained and fixed. The circuit court of appeals so regarded them.

But we are unable to agree with that court's ruling that the provision requires that the bond be given and the damages assessed only in an action at law. The words of the provision are " an action instituted in any competent court;" and we think the matter is one which the district court was and is competent to deal with in this suit.

It is a general rule that a court of equity, in a suit of which it has and takes cognizance, may administer complete relief between the parties even though this involves the determination of legal rights which otherwise would not be within the range of its authority, *Camp* v. *Boyd,* 229 U. S. 530, 552; *McGowan* v. *Parish,* 237 U. S. 285, 296; *United States* v. *Union Pacific Ry. Co.,* 160 U. S. 1, 50, *et seq.* And under that rule a court of equity in awarding relief to one party may impose conditions protecting and giving effect to correlative rights of the other. *Walden* v. *Bodley,* 14 Pet. 156, 164; *Lynch* v. *Burt,* 132 Fed. 417, 432; *Burnes* v. *Burnes,* 137 Fed. 781, 791.

So, while the provision on which the decision of the circuit court of appeals rests cannot be held to be an obstacle to the maintenance of this suit in a court of equity, we think it shows a need for modifying the decree of the district court by providing therein for an ascertainment in this suit of any damages which the plaintiffs' entry and operations under the lease may have caused to the agricultural improvements or crops of the owner of the surface estate, and also by conditioning the relief awarded

the plaintiffs upon their giving a good and sufficient bond or undertaking to pay such damages within a limited time after the same are ascertained.

The evidence appears not to have been taken with a view to an ascertainment of the damages, but there is testimony tending to show that the owner of the surface is asserting a claim for damages done at the time the plaintiffs entered or soon thereafter. It of course is admissible to fix the damages by agreement. But if this be not done there will be need for a hearing on that question.

We conclude that the decree of the circuit court of appeals should be reversed and that the cause should be remanded to the district court with directions to modify its decree in accordance with what is said in this opinion.

Decree of circuit court of appeals reversed.
Decree of district court modified.

NATIONAL LIFE INSURANCE COMPANY *v.* UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 228. Argued April 12, 1928.—Decided June 4, 1928.

The Revenue Act of 1921 provides that the gross income of a life insurance company shall be the gross amount of income received during the taxable year from interest, dividends, and rents, and that the net income upon which its income tax is to be assessed shall be the gross income less specified deductions, among which are (1) the amount of interest received during the taxable year from tax-exempt securities, and (2) an amount equal to 4% of the company's mean reserve funds, diminished, however, by the amount of the first deduction, the interest from tax-exempt securities. In the case at bar, the petitioner company, though allowed the first deduction, comprising the interest from its exempt state, municipal and United States bonds, was not advantaged thereby; for, since the same amount was subtracted in computing the second deduction,