relieve the land of the burden of the servitude; the landowner is restored to full ownership.\textsuperscript{10} If the mineral interest is to be transferred after prescription to a person other than the landowner, the transfer must be by act of the landowner.

Neither in the instant case nor in any of the previous cases discussing the reversionary interest was the transferor of the interest the landowner at the time when the servitude prescribed. Disposing of such a problem in accordance with the rule of the instant case would mean that a landowner might be allowed to retain possession of valuable mineral rights after he purported to transfer them by sale of a reversionary interest. In view of the sweeping language used in the instant decision, it is an open question whether the doctrine of after-acquired title will be applied to a sale of mineral interests not owned by the vendor. The doctrine was invoked in the past when the court found a bona fide sale of mineral interests not designed to avoid the running of prescription;\textsuperscript{11} this seems appropriate even in light of the instant decision.

\textit{William E. Crawford.}

\textbf{OBLIGATIONS—RECOVERY OF PROFITS LOST—CERTAINTY OF PROOF}

Plaintiff contractor sued defendant telegraph company to recover profits lost as a result of defendant's failure to transmit and deliver promptly a telegram filed by plaintiff to reduce the amount of his previously submitted bid on a repair work contract. The importance of the message was not made known to defendant and delivery was delayed until after the bids were opened. Plaintiff lost the contract to a competitor. The reduction would have placed his bid lower than that of his nearest competitor, but his contract would have required a longer time for completion. \textit{Held}, plaintiff, even had he proved that his bid would have been accepted, did not prove the amount of his

\textsuperscript{10} See Arts. 625, 425, \textit{La. Civil Code} of 1870. See also note 8 \textit{supra.}

\textsuperscript{11} White v. Hodges, 201 La. 1, 9 So.2d 433 (1942); cf. Arkansas Louisiana Gas Co. v. Thompson, 222 La. 869, 64 So.2d 202 (1953); McDonald v. Richard, 203 La. 155, 13 So.2d 712 (1943); Lum Chow v. Board of Com'rs for Lafourche B.L. Dist., 203 La. 268, 13 So.2d 867 (1943); Hodges v. Norton, 200 La. 514, 8 So.2d 618 (1942); St. Landry Oil & Gas Co. v. Neal, 166 La. 799, 118 So. 24 (1928). See the discussion of oversale in Bates v. Monzingo, 221 La. 479, 59 So.2d 693 (1952).
alleged loss with the required certainty. *Western Union Telegraph Co. v. R. J. Jones & Sons*, 211 F.2d 479 (5th Cir. 1954).

The Louisiana Civil Code provides that the party who violates his contractual obligation is liable in damages¹ and that the obligee may recover the "loss he has sustained, and the profit of which he has been deprived"² by the breach. It further provides that "the debtor is liable only to such damages as were foreseen, or might have been foreseen at the time of contracting."³ Article 2765, which allows such damages "as the nature of the case may require,"⁴ has often been applied in building contract cases involving recovery of future profits lost.⁵ Pothier says such recovery should be limited to damages that were "contemplated in the contract,"⁶ but adds: "The debtor however is not to be subjected to indemnify the creditor indiscriminately for all the loss which may have been occasioned by the non-performance of the obligation, and still less is he answerable for all the gain which the creditor might have acquired, if the obligation had been satisfied."⁷ The Louisiana courts have held that to recover profits lost, plaintiff must prove he has sustained a loss⁸ susceptible of proof with reasonable certainty.⁹ The loss must not be vague,¹⁰ conjectural,¹¹ speculative¹² or remote,¹³ but must have been within the contemplation of the parties at the time.

1. Art. 1930, LA. CIVIL CODE of 1870.
7. Id. at 181.
If circumstances are present which could cause unusual or special damages, plaintiff must warn defendant of their existence.\(^1\) Damages allowed under Article 2765\(^2\) have been the profits a contractor shows he would have made had he been allowed to finish the contract.\(^3\) To prove profits lost plaintiff can show the profit he made on similar past transactions, or that customarily made by others in like enterprises; profits lost have also been figured at a certain percentage of the total cost.\(^4\) The Louisiana courts, though requiring a high degree of proof, have allowed recovery in some suits to recover profits lost,\(^5\) holding that an approximate estimate will suffice for proof and that plaintiff need not prove the damages "exactly."\(^6\) Usually, however, they have found that plaintiff's proof of profits lost was insufficient to justify his recovery of damages.\(^7\) The common law rules concerning the recovery of future profits lost are on the whole in accord with the Louisiana rules.\(^8\) In dealing with a factual situation similar to that of the

instant case, a North Carolina court said that the rule of the
leading English case Hadley v. Baxendale,\(^{26}\) requiring that dam-
ages be those within the contemplation of the parties, "will not
justify the imposition of remote and speculative damages upon
a public service corporation."\(^{27}\)

In the instant case plaintiff was attempting to prove that
defendant, in breaching his obligation, had caused plaintiff to
lose his contract, a consequence defendant should have foreseen;
and further, that had he been awarded the contract he would
have made a profit estimable with reasonable certainty. In
denying recovery, the court laid primary stress on the fact that
plaintiff had failed to prove the amount of his alleged loss with
the required certainty. It found also that plaintiff had not proved
that the contract would have been awarded to him even had
the telegram been delivered promptly. By concluding that plain-
tiff had failed to prove he had sustained a loss, the court was
able to give judgment for defendant without going deeply into
the difficult matter of whether the damages sought were "fore-
seeable" in the contract with defendant. It is significant to note
that plaintiff sued for profits he would have made from a con-
tract collateral to the one breached. The court expressed its
doubt that the defendant company had been given ample notice
of the importance of the message, thus raising the issue of fore-
seeability. One common law jurisdiction has allowed recovery
in such a case, although the notice defendant received there was
seemingly clearer than that given here.\(^{28}\)

\(^{26}\) Hadley v. Baxendale, 9 Ex. 341 (1854).
\(^{27}\) Newsome v. Western Union Telegraph Co., 153 N.C. 153, 69 S.E. 10
(1910).
\(^{28}\) Pfiester v. Western Union Telegraph Co., 282 Ill. 69, 118 N.E. 407
(1917).
It is submitted that the instant case was correctly decided. Plaintiff did not prove that he had suffered a loss in consequence of the delay in the delivery of the telegram, nor did he show with certainty that he would have been awarded the contract had defendant not breached his obligation. The court's treatment of the issue of foreseeability is not equally clear. It may be that in the instant case the warning to the telegraph company of the importance of the message was not clear enough to justify the award of consequential damages arising from a collateral contract. Since there was a technical breach of the contract by defendant, in light of past decisions plaintiff could well have been awarded nominal damages.29

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