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Royalty-Vincent v. Bullock: Louisiana Supreme Court, 1939

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Comments

ROYALTY—VINCENT v. BULLOCK

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On January 10, 1939, the Supreme Court in the case of *Vincent v. Bullock*[1] handed down a landmark decision of an importance as far-reaching as that in *Frost-Johnson Lumber Co. v. Salling's Heirs.*[2] The latter case had definitely declared Louisiana's position to be in accord with the non-ownership theory of minerals in place with the corollary that the right to explore was a servitude prescribable by non-user in ten years. Since that memorable decision, constant efforts have been made to find a method of conveyancing which would, without production, tie up lands favorable for present or future exploration and outwit the wise policy of the state against such practice. *Vincent v. Bullock,* in preserving the rights of free conveyancing set forth by our law and at the same time continuing the prudent land policy of the state without departing from the articles of the Code, is a scholarly treatise and masterful example of juridical art.

The case arose as an action in jactitation, to cancel from the record an instrument wherein a certain mineral interest had been sold and assigned by two of the defendants to a third defendant on March 1, 1937. Plaintiffs alleged that this interest belonged to them and their assignees by virtue of a reservation made by them in a land sale on February 22, 1927. The stipulation upon which the plaintiffs based their present ownership appeared in the following language:

> "It is however, understood and agreed that the vendors herein reserve unto themselves and their heirs and assigns, in perpetuity, a one-sixteenth (1/16th) royalty of all the oil, gas and other minerals produced and saved from said premises; said royalty to be delivered to the vendors or assigns, free of cost of production and a royalty of twenty-five cents per ton for all salt and sulphur mined and marketed off said premises. This royalty reservation forms part of the purchase price."[3]

Defendants pleaded the prescription of ten years *liberandi causa.*

1. Vincent v. Bullock, (La. Sup. Ct., Docket No. 35,088, Jan. 10, 1939).
2. 150 La. 756, 91 So. 207 (1922).
3. Vincent v. Bullock, quoted in opinion of Fournet, J., p. 2 (La. Sup. Ct., Docket No. 35,088, Jan. 10, 1939).

The plaintiffs contended that the reservation made by them was not a servitude subject to the prescription of non-user but was a rent charge or a servitude contingent upon the event of production *or* a real right dependent upon a future happening. In the final alternative interruption of prescription was pleaded. The court *held*:

(1) That the reservation was not a servitude but "a real obligation which passed with the property into the hands of the present owner;"[4]

(2) That the real right imposed upon the land was subject to prescription of ten years under Articles 3528, 3529, 3544, 3549, 3556 of the Civil Code. Further, that the obligation (to pay royalty) was suspensive on condition that the event—production—was to happen within the ten year limit *set by law* for development of a servitude and hence was considered as broken when that time expired under Articles 2013, 2021, 2038 of the Civil Code;

(3) That since the reservation was *not* a servitude, obviously the articles controlling servitude, particularly those dealing with obstacle, et cetera, did not apply;

(4) That the prescription was *not* interrupted or extended by the acts, stipulations and acknowledgments of the defendants.

The loose use of the word "royalty" in Louisiana has resulted in at least four popular concepts of its meaning. It is used erroneously as synonymous with servitude, to mean conveying or reserving the full right to explore for oil and gas. It is correctly used as the equivalent of the word rent[5] to indicate the proportion of oil and gas extracted which belongs to the lessor under a specific lease contract, and this category is further subdivided. It is used to represent an interest sold or reserved by the owner of the land to bear upon any lease that exists or may in the future exist,

4. Id. at 11.

5. Martel v. Jennings-Heywood Oil Syndicate, 114 La. 351, 38 So. 253 (1905); Houssiere Latreille Oil Co. v. Jennings-Heywood Oil Syndicate, 115 La. 107, 38 So. 932 (1905); Goodson v. Vivian Oil Co., 129 La. 955, 57 So. 281 (1912); Hudspeth v. Producers' Oil Co., 134 La. 1013, 64 So. 891 (1914); Baird v. Atlas Oil Co., 146 La. 1091, 84 So. 366 (1920); Rowe v. Atlas Oil Co., 147 La. 37, 84 So. 485 (1920); Pipes v. Payne, 156 La. 791, 101 So. 144 (1924); Logan v. State Gravel Co., 158 La. 105, 103 So. 526 (1925); Board of Commissioners of Caddo Levee District v. Pure Oil Co., 167 La. 801, 120 So. 373 (1928); State v. Standard Oil Co., 164 La. 334, 113 So. 867 (1927); Board of Commissioners of Caddo Levee District v. Pure Oil Co., 167 La. 821, 120 So. 380 (1929); Board of Commissioners of Caddo Levee District v. Pure Oil Co., 173 La. 313, 137 So. 46 (1931); Roberson v. Pioneer Gas Co., 173 La. 313, 137 So. 46 (1931); Shell Petroleum Corp. v. Calcasieu Real Estate and Oil Co., 185 La. 751, 170 So. 785 (1936).

but accompanied by a reservation to the landowner or his vendee of the right to entirely control the leasing of the property.[6] It is used to indicate the consideration paid for a servitude or lease.[7] The inexact use of the word and the fact of its various connotations have caused confusion in the minds of both the profession and the laity and have also offered a fruitful ground for fraud.[8] That Louisiana is not alone in confusion of the concept and lack of exactitude in the use of the word "royalty" clearly appears from commentators upon the practices of other jurisdictions.[9]

Logan v. State Gravel Co.[10] may be said to have definitely fixed the meaning of the word "royalty" in Louisiana when used in a present or in connection with a contemplated lease. A proportionate share of the working interest was held good consideration for the lessor and the lease to be binding. That the "portion is called 'royalty' instead of rent is not of the least consequence."[11] This decision has been firmly adhered to and lawyers, producers and conveyancers are clear in the meaning and legal results of the use of the term in or regarding a lease.

The instant case in holding that in the absence of a lease, the term indicates disposition of a real right imposed on the land and running with it, is eminently correct and well supported by the articles of the Code and also by the case of *Callahan v. Martin*[12] from California, a "qualified ownership" state.[13] The present decision is also in line with the custom and understanding of land owners in a large area of the state. The logic is unanswerable that royalty proceeds out of the right to lease or to explore. It cannot be synonymous with the servitude or lease which is the *basis* of its existence and upon which it depends for life. If it depends upon a lease, it perishes with that contract. If it depends upon a servitude, it dies with that grant to use. If it depends upon full ownership of land, it depends upon title. Again, the court's classification of the contract as being conditional, depen-

6. Mt. Forest Fur Farms of America v. Cockrell, 179 La. 795, 155 So. 328 (1934); Wall v. United Gas Public Service Co., 181 So. 562 (La. App. 1938).

7. Wilkins v. Nelson, 155 La. 897, 99 So. 607 (1924); Waller v. Commissioner of Internal Revenue, 40 F. (2d) 892 (C.C.A. 5th, 1930); Herold v. Commissioner of Internal Revenue, 42 F. (2d) 942 (C.C.A. 5th, 1930); Lucas v. Baucum, 50 F. (2d) 806 (C.C.A. 5th, 1931).

8. Chatman v. Giddens, 150 La. 594, 91 So. 56 (1922); Fontenot v. Ludeau (Docket Nos. 34, 872-3-4-5-6-7, now before La. Sup. Ct.).

9. See particularly Glassmire, Oil and Gas Leases and Royalties (1935) 118.

10. 158 La. 105, 103 So. 526 (1925).

11. 158 La. at 109, 103 So. at 527.

12. 3 Cal. (2d) 110, 43 P. (2d) 788 (1935).

13. Glassmire, op. cit. supra note 9, at 100.

dent upon the suspensive element of production, logically follows. That the rules of conditional obligation should apply is obvious.

The matter of term or life of the condition is the one of crucial interest. Article 2038 cited by the court appears in the following language:

> "When an obligation has been contracted on condition that an event shall happen within a limited time, the condition is considered as broken, when the time has expired without the event having taken place. If there is no time fixed, the condition may always be performed, and it is not considered as broken, until it is become certain that the event will not happen."

The court stated that while "the contract did not designate a time within which the event must happen, nevertheless that time is limited by law and 'the condition is considered as broken, when the time (10 years) has expired without the event having taken place.' (Brackets ours.)"[14] This deduction seems to be postulated on the theory that since a landowner selling land and reserving mineral rights clearly retains but a servitude prescriptible in ten years, that when he sells land and reserves royalty, he is bound to know that this element which is dependent upon the servitude (susceptible of reservation *for only ten years*) must perish with that right. It might be argued that the royalty, being part of the consideration of the land purchase in this deed, was in effect a repurchase of royalty from the vendee, landowner. This would have raised the question of the validity of the perpetuity provision and it is a matter of deep gratification to those who are opposed to such a result that the court closed that door on the question raised by *reservation.*

The problem of term in connection with a *sale* of royalty might be said to remain open. Since royalty proceeds out of the right to explore, whether grounded upon lease or servitude, and is limited in term by the life of those rights, it may be argued that the landowner having inherent in his full ownership a perpetual right of exploration, might grant royalty with unlimited term. When that question is presented, however, the court might well indicate that since the landowner can grant but a ten year servitude under the law, he is also limited to that term in granting a real right having its root in a servitude regardless of wheth-

14. Vincent v. Bullock, Opinion of Fournet, J., p. 14 (La. Sup. Ct., Docket No. 35,088, Jan. 10, 1939).

er the latter right is unlimited to the landowner himself or not. It is the hope of the writer that the court in its wisdom will see fit to adhere to the latter line of reasoning as they did in the decision under discussion. Under the first argument lies the fear that the excellent land policy of the state may be defeated and small holders particularly may be unprotected and led by economic stress to dispose forever of their most valuable possession for relatively small sums. In the reservation question instanced by the case under discussion, the logical application by the court of the rules of suspensive conditional obligation avoided this disaster without departure from the clear rules of civil contract and achieved a perfect legal as well as social result.

The court held with the trial judge that the reservation was *not* a rent charge as there was no "certain sum of money to be paid annually"[15] in perpetuity[16] nor could the "reservation be classified as calling for the delivery of 'fruits' "[17] because oil is not a fruit.[18] Furthermore, the contract was not redeemable,[19] and since the value of minerals in the ground is but "contemplative, speculative and conjectural, not to say fanciful and theoretical"[20] there would be no "method of arriving at the value for redemption purposes"[21] in such a contract. In this conclusion the court was obviously correct and again the reprobated perpetuity idea was avoided.

The plea that the prescription had been interrupted was grounded upon statements by the vendee to his transferee that the reservation was contained in the original act of sale, upon a stipulation in a subsequent donation that the gift was made "subject to the reservation,"[22] and upon a clause in a lease the purpose of which was to insure to the lessee his full 7/8 share. This plea

15. Vincent v. Bullock, Judgment of Simon, J., p. 7 (La. Dist. Ct., 16th Judicial Dist., Docket No. 10,806, Sept. 15, 1938); See Art. 2779, La. Civil Code of 1870.

16. Art. 2780, La. Civil Code of 1870.

17. Vincent v. Bullock, Judgment of Simon, J., p. 7 (La. Dist. Ct., 16th Judicial Dist., Docket No. 10,806, Sept. 15, 1938).

18. Elder v. Ellerbe, 135 La. 990, 66 So. 337 (1914).

19. Arts. 2788, 2789, 2790, La. Civil Code of 1870.

20. Vincent v. Bullock, Judgment of Simon, J., p. 7 (La. Dist. Ct., 16th Judicial Dist., Docket No. 10,806, Sept. 15, 1938) quoting from Wilkins v. Nelson, 155 La. 807, 813, 99 So. 607, 609 (1924).

21. Vincent v. Bullock, Judgment of Simon, J., p. 7 (La. Dist. Ct., 16th Judicial Dist., Docket No. 10,806, Sept. 15, 1938); Arts. 2788, 2789, 2790, La. Civil Code of 1870.

22. Vincent v. Bullock, Opinion of Fournet, J., p. 16 (La. Sup. Ct., Docket No. 35,088, Jan. 10, 1939).

was disposed of under the well accepted test[23] that a "mere acknowledgment" is not enough but must be coupled with "the purpose and intention of the party making the acknowledgment to interrupt the prescription then running."[24]

The case of *Mulhern v. Hayne*[25] was relied upon in urging an extension[26] of the ten year period. In disposing of this point, the court made the following statement:

> " . . . it is conceded that, in order to give a valid lease, it was not necessary for the plaintiffs (royalty owners) to join in the execution thereof, and, consequently, the decision in the Mulhern case is not applicable."[27]

In holding that a right to explore is not granted by a royalty reservation and indicating that consent of mere royalty owners is not necessary to lease, great difficulty in arranging for production may be obviated. Instances are on record in Louisiana where royalty fractions of 119,317/5,000,000 and 3,340,909/11,000,000 were sold. This might well have made leasing a practical impossibility, had the consent of each fractional owner been held necessary.

Thus, in every aspect of the case, the court not only adhered in logic to the legal concepts involved in the problem, but materially expedited free conveyancing in a thoroughly practical manner and preserved the valuable land policy of the state.

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23. Lewis v. Bodcaw Lumber Co., 167 La. 1067, 120 So. 859 (1929); La. Del Oil Properties v. Magnolia Petroleum Co., 169 La. 1137, 126 So. 684 (1930); Arent v. Hunter, 171 La. 1059, 133 So. 157 (1931); Ventress v. Akin, 177 So. 117 (La. App. 1937); Goldsmith v. McCoy, 190 La. 320, 182 So. 519 (1938); McEachern v. Kinnebrew, 184 So. 601 (La. App. 1938).

24. Vincent v. Bullock, Opinion of Fournet, J., p. 15 (La. Sup. Ct., Docket No. 35,088, Jan. 10, 1939) quoting from Bremer v. North Central Texas Oil Co., Inc., 185 La. 917, 922, 171 So. 75, 77 (1936). [This was quoted with approval in Goldsmith v. McCoy, 190 La. 320, 182 So. 519 (1938).]

25. 171 La. 1003, 132 So. 659 (1931).

26. It may be pointed out in passing that the court seemed to emphasize the idea of *extension* rather than *interruption* when a joint lease is confected, the term of which extends beyond the original ten year period. See Coyle v. North Central Texas Oil Co., 187 La. 238, 174 So. 274 (1937).

27. Vincent v. Bullock, Opinion of Fournet, J., p. 18 (La. Sup. Ct., Docket No. 35,088, Jan. 10, 1939).

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