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Mineral Rights - Extension of Prescription by Execution of a Joint Lease

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MINERAL RIGHTS—EXTENSION OF PRESCRIPTION BY EXECUTION OF A JOINT LEASE—Defendants' ancestor sold a tract of land to plaintiff's assignor, reserving an undivided one-half of the mineral rights. Subsequently, defendants' ancestor and plaintiff executed a joint mineral lease[1] in favor of one Cyr. The terms of the lease extended some two years beyond the ten-year prescriptive period of the mineral servitude reserved by defendants' ancestor. Plaintiff sues to cancel the servitude on the ground that it had been lost by nonuser of ten years. Defendants plead that plaintiff's joining their ancestor in executing a mineral lease constituted an acknowledgment of their rights under the servitude which had the effect of interrupting prescription. *Held,* prescription was not *interrupted* but was merely *extended* for the duration of the lease. Acknowledgment will not interrupt prescription of a mineral servitude unless it is clearly shown that such was the result intended. *Achee v. Caillouet,* 1 So. (2d) 530 (La. 1941).

In the case of *Frost-Johnson Lumber Company v. Nabors Oil and Gas Company*[2] it was held that acknowledgment of the rights of the owner of a mineral servitude interrupted the running of prescription. However, the rule has since developed that a "mere acknowledgment" will not have that effect; a clear showing of an intention that prescription be interrupted is now required.[3]

The question of the effect of a landowner's executing a mineral lease jointly with his servitude owner was first presented to the court in *Mulhern v. Hayne.*[4] There it was stated that the landowner, by executing a joint lease which extended beyond the prescriptive period of the servitude, acknowledged the rights of his co-lessor which amounted to "an interruption of the then accruing prescription."[5] The language used in the *Mulhern* case seemed to show quite clearly that by "interruption" the court meant interruption in its true sense—that is, that prescription would commence to run anew.[6] As the court pointed

1. On the original hearing the court found that there was no joint lease, but on rehearing the lease was treated as having been executed jointly.

2. 149 La. 100, 88 So. 723 (1921).

3. 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); Bremer v. North Central Texas Oil Co., 185 La. 917, 171 So. 75 (1936); Hightower v. Maritzky, 194 La. 998, 195 So. 518 (1940). Daggett, Louisiana Mineral Rights (1939) 38-52, c. 2, § 14.

4. 171 La. 1003, 132 So. 659 (1931).

5. 171 La. at 1006, 132 So. at 660.

6. In the *Mulhern* case the court cited Art. 3520, La. Civil Code of 1870,

out in the present case, this view does not accord well with the rule that the intention to interrupt prescription by the acknowledgment must be clear.[7] Later decisions cast considerable doubt upon the *Mulhern* case as authority for the proposition that a landowner's joining the owner of mineral rights in a lease would *interrupt* prescription. In *Bremer v. North Central Texas Oil Company*[8] the court said of the *Mulhern* case: "Manifestly the life of the servitude had to be *extended* to make the five-year lease valid for that length of time." (Italics supplied.) In *Hightower v. Maritzky*[9] there is found a further discussion of the *Mulhern* case as involving an *extension* of the prescriptive period. The holding of the court in the instant case definitely settles the rule that an *extension for the duration of the lease* rather than an *interruption* of prescription results when landowner and servitude owner join in the execution of a mineral lease. The language in the *Mulhern* case to the effect that an *interruption* of prescription would result was held to be mere obiter dicta and not controlling;[10] the court further pointed out that if the *Mulhern* case did hold that interruption resulted from a joint lease the decision had been repeatedly overruled by implication as being utterly inconsistent with the doctrine that in order for an acknowledgment to have the effect of interrupting prescription such interruption must have been clearly intended.

The decision in the present case appears to be unquestionably sound; it should be welcomed in that it clears up a troublesome problem and establishes a rule which gives more accurate effect to the obvious intentions of the parties.[11]

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and quoted with approval the following language from *Nabors Oil and Gas Co. v. Louisiana Oil Refining Co.*: " 'The period of prescription may be interrupted by a written acknowledgment on the part of the obligor; but, when so interrupted, it begins anew from the date of the acknowledgment.' " 171 La. at 1006, 132 So. at 661.

7. See authorities cited in note 3, supra.

8. 185 La. 917, 923, 171 So. 75, 77 (1936). In the *Bremer* case the joint lease did not extend beyond the prescriptive period of the servitude. The court held that there was no intention to interrupt prescription shown and that consequently the mere acknowledgment would not have that effect. Although this case expressly reaffirmed the holding in the *Mulhern* case, the two cases seem irreconcilable in principle.

9. 194 La. 998, 1009-1010, 195 So. 518, 521 (1940), noted in (1940) 2 LOUISIANA LAW REVIEW 755.

10. The court reasoned that it was not necessary to find an interruption in the *Mulhern* case since the lease was still in existence and the servitude thereby kept alive by extension.

11. It would be interesting to see what disposition the court would make of the rights of a minor succeeding to the rights of the servitude owner in the *extended* period. Would the running of prescription be suspended?