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Mineral Lease - Warranty - Damages for Eviction

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Loewe v. Lawlor, Duplex Printing Press Co. v. Deering,[8] and *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n.*[9] In those cases it does not clearly appear that the court found, or considered it necessary to find, that the union was undertaking to prevent the interstate sale of the particular product in competition with the product of union producers. Yet, such a basis of distinction was employed in the present case.[10] A fair inference is that those cases can no longer safely be depended upon as rendering interstate union cooperation unlawful, in the absence of a finding that there was an intent to restrain competition in the marketing of goods or services.[11]

H. W. W., JR.

MINERAL LEASE—WARRANTY—DAMAGES FOR EVICTION—Plaintiffs sued to have themselves declared owners of an undivided one-fourth interest in a tract of land and to cancel a mineral lease thereon, insofar as it affected their interest. The lease, covering an undivided one-half interest in the tract, had been granted to the defendant Texas Company by the defendant Hunt. It contained the customary warranty of title clause. Upon a finding in favor of the plaintiffs, the lessee called his lessor in warranty, praying for a judgment for the amount of one-fourth of the expenses of drilling a well.[1] *Held,* the expense of drilling should not be included as an item of "damage and loss" for which the lessor is answerable. *Martel v. Hunt,* 197 So. 402 (La. 1940).

By warranting title to the land leased, the lessor obligated

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8. 254 U.S. 443, 41 S.Ct. 172, 65 L.Ed. 349 (1921).

9. 274 U.S. 37, 47 S.Ct. 522, 71 L.Ed. 916 (1927).

10. *Loewe v. Lawlor* was distinguished from Apex Hosiery Co. v. Leader, 60 S.Ct. 982, 998 (1940). In the latter case the court stated that in *Loewe v. Lawlor* the "restraint alleged was not a strike or refusal to work in the complainants' plant, but a secondary boycott by which, through threats to the manufacturer's wholesale customers and their customers, the Union sought to compel or induce them not to deal in the product of the complainants *and to purchase the products of other unionized manufacturers.*" (Italics supplied.) Similar language was employed in distinguishing the *Duplex* case and the *Bedford* case.

11. In reviewing the history of the Sherman Act the court emphasized the fact that protection of the consuming public from practice in restraint of free competition was the primary aim of the act. Presumably, the interest of purchasers and consumers was not sufficiently at stake under the circumstances of the instant case to warrant the invocation of the anti-trust law.

1. Warranty claims were also made for one-half of cash bonuses paid lessor for the lease and for one-half of the royalty paid him out of the oil produced. Both these claims were allowed.

himself to maintain the lessee in peaceful possession;[2] having defaulted on that obligation he became liable in damages.[3] Since the articles of the Louisiana Civil Code of 1870 on lease do not specify the measure of damages in case of eviction, we must rely on the rules as to the obligations of warrantors in case of breach of contracts generally.[4] Under paragraph (1) of Article 1934[5] a debtor in good faith is liable only for such damages as were contemplated, or may reasonably be supposed to have entered into the contemplation of the parties at the time of the contract. The court found no indication that either party contemplated that the lessor was to be answerable for drilling expenses in case of the lessee's eviction.[6]

The court distinguished the present case from *Slack v. Riggs*,[7] where an evicted lessee had recovered the amount of expenses incurred in his drilling. The most valid distinction[8] was the fact that in the *Riggs* case the lessee paid nothing for the lease but obligated himself to drill within a fixed period. Since the obligation to drill was the agreed upon equivalent of the privilege granted by the lessor, the value of the privilege can be measured by the value of the equivalent which is the cost of drilling.[9] In the present case, the Texas Company did not bind itself to drill but paid a cash bonus for the lease. Using the same formula the value of the privilege would equal the cash bonus. Consequently,

2. Art. 2692, La. Civil Code of 1870: "The lessor is bound from the very nature of the contract, and without any clause to that effect:"

"3. To cause the lessee to be in peaceable possession of the thing during the continuance of the lease."

3. Art. 2696, La. Civil Code of 1870: "If the lessee be evicted, the lessor is answerable for the damage and loss which he sustained by the interruption of the lease."

4. Knapp v. Guerin, 144 La. 754, 81 So. 302 (1919).

5. La. Civil Code of 1870.

6. The court stated that it is unbelievable that any sane person would, for an insignificant cash bonus and one-eighth of the minerals (which was what the lessor received in this case), lease his land for mining purposes if he thought by so doing he was assuming an obligation which might result in his becoming answerable to the lessee for drilling expenses in case his title should be found to be defective.

7. 177 La. 222, 148 So. 32 (1933).

8. The court found two distinguishing characteristics in addition to the principal one discussed above. (1) The lessee in the *Riggs* case had relied solely on the lessor's warranty without making any independent investigation; in the principal case there was no such reliance. There seems to be no real merit to this distinction. (2) The principle that a lessee is entitled to recover only such damages as were contemplated by the parties—the major issue before the court in this case—was not raised in the *Riggs* case. This implies that the *Riggs* case might have been decided differently if this view had been urged upon the court. However, the decision there seems correct under the views expressed above.

9. Fite v. Miller, 192 La. 229, 187 So. 650 (1939).

by holding the lessor in each case liable for the loss the parties should have contemplated, i.e., the value of the thing given in exchange, the court properly allowed the claim for drilling expenses in the *Riggs* case, and with consistency denied it here.

The foregoing analysis should not be affected by the fact that oil is found. Although a lessee evicted from a portion of the property will lose a proportionate part of the production, is he entitled to a refund of a like part of the cost of drilling? Certainly, if a lessee, having paid a cash bonus for the privilege of drilling, fails to find oil, and is subsequently evicted, it cannot be said that the eviction occasioned his loss of drilling expenses; the loss would have been the same had he not been evicted. If we suppose that such a lessee is successful in finding oil and is then evicted, it appears that the only loss he will suffer because of the eviction depends upon a contingency—the future production of oil. Thus, any loss from eviction other than the thing given in exchange for the privilege of drilling would depend upon an uncertain event, and because of its speculative character, it cannot be supposed that it was within the contemplation of the parties.

J. T. B.

THEATERS AND SHOWS—RES IPSA LOQUITUR—SUFFICIENCY OF PLEADINGS—Plaintiff, while proceeding up a flight of stairs to the exit of defendant's theater, caught her foot between the floor carpet and the steps, and was thrown against a seat and injured. Plaintiff alleged in her petition that the carpet was not firmly attached and that it bulged from the riser. She also alleged that the defect had existed for some time, but that she was unable to state truthfully for exactly how long. She stated further that the circumstances surrounding the accident were peculiarly under the control of the defendant, and since ushers used the stairway regularly, defendant either knew or should have known of the defect. The district court sustained defendant's exception of no cause of action. On appeal to the court of appeal, *held,* the facts alleged constitute a prima facie case of negligence, and the burden of exculpating himself from blame devolves upon defendant. *Bentz v. Saenger-Ehrlich Enterprises, Inc.,* 197 So. 659 (La. App. 1940).

Although the question arose with respect to the sufficiency