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Mineral Rights - Prescription Aquirendi Causa

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One can only speculate as to what the Supreme Court will hold when it has occasion to pass on this amendment.[11] In view of past jurisprudence it would seem that the amendment's constitutionality is doomed; however, with the liberal court which we have today, there is a good chance that the statute will be upheld. Undoubtedly the result reached by a decision upholding it would be just; but the question that presents itself in the writer's mind is whether the result will justify the means. Such reasoning could have the effect of extending the jurisdiction of the federal court far beyond its present bounds.

B. R. D.

MINERAL RIGHTS—PRESCRIPTION AQUIRENDI CAUSA—The land in question was sold by the original owner to Sanders, who sold it to Lewis on December 23, 1919, reserving all mineral rights. On November 1, 1920, Lewis sold the land to Goree, the present plaintiff, not mentioning the reservation of mineral rights; and the plaintiffs in good faith took and maintained actual possession of the land to date of suit, July 27, 1942.

Sanders, who had reserved the mineral rights in the land, leased his mineral rights on February 14, 1919, to Smitherman who on April 23, 1921, leased to the Ohio Oil Company. Two wells were drilled by the Ohio Oil Company in 1922 and oil was produced from 1922 until September 1931, after which no drilling took place. The plaintiffs knew of this drilling on the land, but claimed the ownership of the mineral servitude by ten years prescription acquirendi causa under Article 3482. The defendants contended that possession under Article 3487[1] must be *continuous* and *uninterrupted;* that the drilling operations upon the premises from 1922 until 1931 constituted a use of their servitude; that the plaintiff's possession was thereby interrupted; and that therefore the plaintiff's possession was not continuous and uninterrupted

11. It will be noted that the amendment passed April 20, 1940, applied to territories as well as the District of Columbia. At the time this note was written, however, no cases could be found which had passed upon this phase of the act. It could be upheld under the reasoning used in Winkler v. Daniels, 43 F. Supp. 265 (E.D. Va. 1942), since Article 4, Section 3 of the Constitution gives Congress the right to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States." It could be declared unconstitutional under *McGarry v. City of Bethlehem,* however. Therefore, any decision which the Supreme Court may reach as to the District of Columbia would be equally applicable to the territories, and vice versa.

1. Art. 3487, La. Civil Code of 1870.

as required by Article 3487;[2] that when the plaintiff went back into possession in 1931 after the drilling operations had ceased, a new prescription started and since he no longer was in good faith because he knew the ownership of the servitude was in the defendant, the new prescription was bad faith prescription and consequently the plaintiff was able to acquire only by thirty years bad faith prescription. *Held,* plaintiff acquired title to land through ten years prescription acquirendi causa; such prescription started in good faith; subsequent bad faith did not interrupt it. *Goree v. Sanders,* 14 So.(2d) 744 (La. 1943).

The reservation of mineral rights in Louisiana has been termed a servitude[3] and as such is subject to the rules of prescription applicable to servitudes.[4] This is not the first case to apply the rules of acquisitive prescription[5] to mineral rights; although in the past, liberative prescription has been more frequently applied.[6]

The requirements for acquisitive prescription under Article 3478 of the Civil Code are good faith possession for ten years under just title. If possession is started in good faith, subsequent bad faith does not prevent the prescription.[7]

Article 3487 states that possession must be "continuous, and uninterrupted, peaceable, public, and unequivocal."[8] The Louisi-

2. Ibid.

3. Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922); Nabors Oil and Gas Co. v. Louisiana Oil Refining Co., 151 La. 361, 91 So. 765 (1922); Wemple v. Nabors Oil Co., 154 La. 483, 97 So. 666 (1923); Lee v. Giauque, 154 La. 491, 97 So. 669 (1923); Patton v. Frost Lumber Industries, 176 La. 916, 147 So. 33 (1933); Vincent v. Bullock, 192 La. 1, 187 So. 35 (1939).

4. Daggett, Mineral Rights in Louisiana (1939) 38, § 13.

5. Palmer Corp. v. Moore, 171 La. 774, 132 So. 229 (1930); Sample v. Whitaker, 171 La. 949, 132 So. 511 (1930); Childs v. Porter-Wadley Lumber Co., 190 La. 308, 182 So. 516 (1938).

6. Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922); Nabors Oil and Gas Co. v. Louisiana Oil Refining Co., 151 La. 361, 91 So. 765 (1922); Sellington v. Producers' Oil Co., 152 La. 81, 92 So. 742 (1922); Wemple v. Nabors Oil and Gas Co., 154 La. 483, 97 So. 666 (1923); Lee v. Giauque, 154 La. 491, 97 So. 669 (1923); Vincent v. Bullock, 192 La. 1, 187 So. 35 (1939).

7. Art. 3482, La. Civil Code of 1870. Devall v. Choppin, 15 La. 581 (1840); Brewster v. Hewes, 113 La. 45, 36 So. 883 (1904). The Louisiana court goes into much detail to show that the intermediate possessor in bad faith does not stop the running of prescription started in good faith. Barrow v. Wilson, 38 La. Ann. 209 (1886); Wilfert v. Duson, 131 La. 21, 58 So. 1019 (1912); Wheat v. Bayer & Thayer Hardwood Co., 15 La. App. 306, 131 So. 307 (1930). Art. 2269, French Civil Code, corresponds to our Louisiana article. Troplong, Le Droit Civil Expliqué, De la Prescription I (1836) 243, nº 432, says that it is sufficient if good faith had existed at the beginning, and if bad faith follows later that does not corrupt possession. Baudry-Lacantinerie et Tissier, Traité de Droit Civil, De la Prescription (3 ed. 1905) 408, nº 551.

8. Art. 3487, La. Civil Code of 1870.

ana court has recognized that if these requirements are not met prescription will not be upheld.[9]

The corresponding French article contains similar language.[10] Interpreting this article, French authorities have gone into much detail to explain the meaning of the words continuous and uninterrupted.[11] In general, "possession is continuous when it is without cessation and without interruption."[12] Once possession is interrupted prescription stops running,[13] and when possession is regained a new prescription begins to run. Whether it is ten or thirty years prescription depends on whether the possession was in good or bad faith at the time the new possession begins.[14]

Drilling operations on land under a mineral reservation have been deemed sufficient to interrupt prescription both acquirendi causa[15] and liberandi causa.[16] Applying this rule the court admitted that the drilling operations carried on by the defendant from 1922-1931 interrupted prescription.

The question therefore seems to be whether the possession of the plaintiff was interrupted, or whether the plaintiff's possession continued unaffected by the interruption of prescription except that it caused him to be in bad faith, during the period of 1922-1931. If the former is true, according to the French authorities prescription stops and a new prescription begins to run at the time possession is regained. If the latter, the subsequent bad faith had no effect upon the prior good faith and the prescription accrues just as if good faith has been preserved.

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9. Prescott v. Payne, 44 La. Ann. 650, 11 So. 140 (1892); Brewer v. Yazoo and M. V. R., 128 La. 544, 54 So. 987 (1911); Gerrold v. Barnhart, 128 La. 1099, 55 So. 688 (1911); Liles v. Pitts, 145 La. 650, 82 So. 735 (1919).

10. Art. 2229, French Civil Code.

11. Baudry-Lacantinerie et Tissier, op. cit. supra note 7, at 190, nº 238 et seq.; Marcadé, Explication du Code Civil (7 ed. 1874) 115, nº 90 et seq.; Planiol et Ripert, Traité Pratique de Droit Civil Français (1926) 165, nº 153 et seq. (on continuity), 683, nº 721 (on interruption).

12. Baudry-Lacantinerie et Tissier, op. cit. supra note 7, at 191, nº 239: *"La possession et* continue *lorsqu'elle est sans intermittences, sans lacunes. . . ."*

13. Baudry-Lacantinerie et Tissier, op. cit. supra note 7, at 193, nº 241; Marcadé, op. cit. supra note 11, at 118, nº 91; Planiol et Ripert, op. cit. supra note 11, at 683, nº 721, says the effect of interruption is that all the previous possession becomes useless. *"L'effet de l'interruption est que tout le temps de possession antérieur devient inutile."*

14. Baudry-Lacantinerie et Tissier, op. cit. supra note 7, at 404, nº 542; Planiol et Ripert, op. cit. supra note 11, at 690, nº 732.

15. Connell v. Muslow Oil Co., 186 La. 491, 172 So. 763 (1937).

16. Patton v. Frost Lumber Industries, 176 La. 916, 147 So. 33 (1933); Levy v. Crawford, Jenkins and Booth, Ltd., 194 La. 757, 194 So. 772 (1940).

A mineral servitude is an indivisible right.[17] It is admitted that the defendant used the servitude; therefore he was in possession of it; and if he was in possession of it, this possession interrupted the possession of the plaintiff. If this conclusion is adopted, the possession of the defendant was not "continuous and uninterrupted" as required by Article 3487[18] and therefore the prescription was not completed. According to the French authorities, once possession is interrupted, prescription stops running. When possession is regained, a new prescription begins to run. In the instant case, after the possession of the plaintiff had been interrupted by the drilling operations from 1922 to 1931, the plaintiff was no longer in good faith, since he knew the mineral servitude was owned by the defendant; therefore, in view of the French authorities, since the plaintiff was in bad faith, he should have been able to acquire ownership of the mineral rights only through thirty years bad faith prescription.

However, the Louisiana court in the instant case did not so hold, but decided that the possession which was started in good faith continued during the time the drilling and producing operations were carried on, and that the plaintiff was merely in bad faith during this period. The court based its decision upon Article 3482,[19] which states that possession started in good faith, followed by subsequent bad faith, does not prevent the running of ten years good faith prescription.

In view of the fact that the case involved a novel point of prescription and that no cases in point are available in Louisiana jurisprudence—it is submitted that the French authorities could have furnished a basis of a decision more in line with legal principles.

M.E.C.

QUITCLAIM DEED—BASIS OF TEN YEAR PRESCRIPTION ACQUIRENDI CAUSA—Defendant claims title to a twenty acre tract of land by ten years acquisitive prescription, basing his good faith on a quitclaim deed. Plaintiff contends that the unwarranted deed is not enough for acquiring in good faith: the non-warranty being enough to excite the defendant's suspicion, put him on guard, and induce him to make inquiries as to the validity of his title—the defendant remaining in bad faith until such inquiry is made.

17. Sample v. Whitaker, 172 La. 722, 135 So. 38 (1931); Clark v. Tensas Delta Land Co., 172 La. 913, 136 So. 1 (1931). Daggett, op. cit. supra note 4, at 24, § 6.

18. Art. 3487, La. Civil Code of 1870.

19. Art. 3482, La. Civil Code of 1870.