Louisiana Law Review

Volume 8 | Number 2
The Work of the Louisiana Supreme Court for the 1946-1947 Term
January 1948

Civil Code and Related Subjects: Mineral Rights

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MINERAL RIGHTS

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The lessee in *Hunt Trust v. Crowell Land & Mineral Corporation*[1] paid cash for a lease and kept it alive under its terms for over twenty years by paying one dollar per acre. The lease had a stipulated term of twenty-five years and at the close of this period four wells were producing on the property. Three more wells were completed when suit was brought to have the lease declared terminated by virtue of its twenty-five year term. The lease also contained the production in paying quantities clause and was upheld by the interpretation placed upon the lease by the majority of the court. The Chief Justice dissented.

The alleged rule that leases must be construed most strongly against the lessee was said by the court to be contrary to the articles of the Civil Code and not to have been used in Louisiana decisions.

No discussion appears in regard to the long life of this lease without use of the right to search but other cases with similar facts have been grounded on doctrines of estoppel and ratification which would seem to be applicable here on that point had it been raised.

Noxon v. Union Oil Company of California[2] ratifies the long line of cases finding oil leases void when the instrument is unsupported by consideration, penalty, or performance and the promise to do depends solely on the will of the lessee. No new thoughts on the potestative condition appear.

Lenard v. Shell Oil Company[3] was an action for slander of title of a tract of land of which the plaintiff had possession as owner. Plaintiff had maintained possession under the requisites of acquirendi prescription for ten years. The defendants claimed the mineral rights in the thirty acres in question under a reservation of these rights from a sale of some eighty thousand acres of land. This servitude had been kept alive by drilling wells which met the fair test required for interruption by user.

The lower court and the supreme court rejected four pleas made by plaintiff:

"(1) that it is against public policy to permit the reservation or creation of a mineral servitude on so vast an area of land as

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1. 210 La. 945, 28 So. (2d) 669 (1946).
2. 210 La. 1074, 29 So. (2d) 67 (1946).
3. 211 La. 265, 29 So. (2d) 844 (1947).

> 80,000 acres; (2) that the well drilled by the lessee, Zeigen, which was commenced on December 20, 1935, was not drilled to a depth sufficient to constitute evidence of good faith in the exercise of the mineral servitude reserved by the Louisiana Central Lumber Company in its transfer of the land to the Brown Paper Mill Company on March 15, 1926; (3) that the drilling of the wells by the defendants or their lessees did not constitute an exercise of their mineral servitude on the plaintiff's 30 acres of land because the wells were drilled too far away to affect any oil or gas that might be beneath the surface of the plaintiff's 30-acre tract; (4) that, even if the defendants acquired possession of the servitude or mineral rights on any portion of the 80,000 acres of land by the drilling of the wells referred to, they did not acquire possession of the servitude or mineral rights on the 30 acres of land owned by the plaintiff, because his possession of the land itself existed from a time previous to the drilling of the wells."[4]

Principles of indivisibility, continuous tract and fair tests were set forth. As to the argument that maintenance of a servitude on such a large tract was against public policy because it tended to keep the mineral interests out of commerce the court said:

> "On the contrary, as everyone knows, the production of mineral oil or gas is such an expensive operation that it cannot be done profitably on a small scale. No one would undertake to drill for oil or gas in unproven territory—what is called a wildcat well—without owning or controlling the mineral rights on a vast area surrounding the prospective well."[5]

Cases in which servitudes on large tracts had been upheld were cited. Thirty thousand acres were involved in *Patton v. Frost Lumber Industries.*[6] Fifty-two thousand five hundred acres were covered in *Mt. Forest Fur Farms of America, Incorporated v. Cockrell.*[7]

The lower court had decided in favor of the plaintiff on a fifth point, namely, "that his possession of the surface of his 30 acres of land gave him possession also of the mineral rights in the land, notwithstanding the defendants' drilling operations on other parts

4. 211 La. 265, 271, 29 So. (2d) 844, 846.
5. 211 La. 265, 274, 29 So. (2d) 844, 847.
6. 176 La. 916, 922, 147 So. 33, 34 (1933).
7. 179 La. 795, 155 So. 228 (1934).

of the large area covered by their servitude."[8] The supreme court reversed on this ground and gave judgment for the defendants. Reliance was placed upon *Connell v. Muslow Oil Company*,[9] *Allison v. Maroun*,[10] *In re Mt. Forest Fur Farms of America, Incorporated*,[11] *International Paper Company v. Louisiana Central Lumber Company*[12] the second paragraph of Article 3432 of the Civil Code which appears as follows: "The possession of incorporeal rights, such as servitudes and other rights of that nature, is only a quasi possession, and is exercised by the species of possession of which these rights are susceptible."

The first paragraph of Article 3432 states that "Possession applies properly only to corporeal things, movable or immovable." Article 3436 of the Civil Code reads: "To be able to acquire possession of property two distinct things are requisite:

1. The intention of possessing as owner.
2. The corporeal possession of the thing."

These statements and other pertinent articles dealing with possession were not discussed.

Logical thought flows easily for the reader of the opinion until the matter of possession of an incorporeal arises. To exercise a right would seem to be a very different matter than to possess one in the sense hitherto understood from previous examples. The converse of this proposition is interesting. Could one acquire a mineral servitude by possession evidenced by exercise of the right? Article 766 and all of the jurisprudence would seem clearly to answer in the negative.

Another question of interest was suggested which would have arisen if the landowner had searched for himself. Oil is not a fruit but an integral part of the land itself. That seems to be a settled doctrine legally and geologically. Thus the landowner does possess corporeally the minerals in his land and presumably the right to search for them. The distinction between cases of acquisition and non-acquisition by the landowner is grounded purely on non-exercise versus exercise of the outstanding right. The court had to decide and again they had the difficult task of having to attempt to store safely new wine in old bottles.

8. 211 La. 265, 272, 29 So. (2d) 844, 846 (1947).
9. 186 La. 491, 172 So. 763 (1937).
10. 193 La. 286, 190 So. 408 (1939).
11. 122 F. (2d) 232 (C. C. A. 6th, 1941).
12. 202 La. 621, 12 So. (2d) 659 (1943).

The facts in *State v. Texas Company*[13] were that an error in description had been made by newspapers in a published notice advertising for bids for a mineral lease from the state. None of the parties relied upon the error and all proper procedures for leasing state lands were observed. The governor corrected the error and it is now pleaded that he had no power to do so under the doctrine of *State v. Texas Company*.[14] The cited case was distinguished as being one where the "governor attempted to enlarge the area covered under a lease by including therein property which had not been advertised or described." In the instant case he merely corrected a "simple clerical error,"[15] which, as Chairman Ex Officio of the State Mineral Board, he had a right to do under the broad powers of that Board as created by Act 93 of 1936.[16]

Continental Oil Company v. Tate[17] arose as a concursus proceeding to determine distribution of royalty. Albert Tate had granted a priest title to the land involved and had reserved certain royalty to himself with recitation of one outstanding fraction. It developed that other fractions had been sold by Tate so the question was whether the unmentioned recorded sales should come out of Tate's reserved portion or from that which would have passed to the priest. The transfer from Tate, while framed as a sale, was found to have been a gratuitous donation as the claims of the priest that the transaction had been to remunerate him failed. The court stated that the nature of the services, undisclosed by the opinion, were "not such as could be the consideration for a contract without violating public policy—if not the law itself." The warranty in the transfer being a part of the simulation and without consideration was not binding on the transferor. Therefore, the previously sold fractions were subtracted from the gift to the priest instead of from the reserve of the donor. Had the transaction been an actual sale, the reverse would have been true.

Davidson v. Midstates Oil Corporation[18] decided that "an agreement to purchase or sell oil, gas, and mineral leases must be in writing"[19] and cannot be proved by parol evidence. Act 205 of 1938[20] was cited. This statute declares that not only mineral leases but

13. 211 La. 326, 30 So. (2d) 107 (1947).
14. 205 La. 417, 17 So. (2d) 569 (1944).
15. 211 La. 326, 338, 30 So. (2d) 107, 111 (1947).
16. Dart's Stats. (1939) §§ 4725.1 to 4725.21.
17. 211 La. 852, 30 So. (2d) 858 (1947).
18. 31 So. (2d) 7 (La. 1947).
19. 31 So. (2d) 7, 10.
20. Dart's Stats. (1939) §§ 4735.4, 4735.5.

"contracts applying to and affecting such leases" are "real rights and incorporeal immovable property" which may be protected in the same manner as land.

The very important question to be answered in *Hunter Company, Incorporated v. Shell Oil Company, Incorporated*[21] was clearly set forth in the opinion as follows:

> "When an oil and gas lease covers land both within and without a drilling unit pooled by order of the Commissioner of Conservation during the primary term of such lease, and when production in paying quantities is secured while such lease is in effect by payment of delay rentals from a well within the pooled unit but not on any portion of the leased land, does such production maintain the lease in effect beyond its primary term as to the part of the land leased which lies outside such unit?"[22]

The majority opinion answered this question in the affirmative. The court seemed to ground their decision on the principle of the indivisibility of the obligations of a lease, which the division of the land covered by the lease accomplished by the Commissioner's order did not affect. A further statement was made that the same royalties were received from the well without the boundaries of the lease but within the unit as would have been due had the well been drilled upon the leased land, so the production clause had been satisfied. Justice Hamiter vigorously dissented from these views and also from the refusal to grant a rehearing. In his opinion, he pointed out that the technical matter of indivisibility as a criteria resulted in an interpretation of the commissioner's order which had not been intended and as applied was unconstitutional as it effected a deprivation of property without due process or consideration. He stated that:

> "Under such an interpretation, the present lessees would hold under lease indefinitely plaintiff's acreage located outside the unit without the payment therefor of any royalty or other compensation, not even delay rentals, notwithstanding that the contracted primary terms of the leases have expired."[23]

It appeared that the conservation department had not indeed intended this type of result from the order and also that they were

21. 31 So. (2d) 10 (La. 1947).
22. 31 So. (2d) 10, 12.
23. 31 So. (2d) 10, 15.

aware of the probable reactions. They were quick to suggest at the meeting of the Mineral Section of the Louisiana Bar Association meeting in session immediately after the issuance of the decision in this case that remedial legislation should be passed. The following passage from the dissenting opinion is interesting:

> "My views accord thoroughly with the following observations contained in the brief of plaintiff's counsel: 'The only basis for sustaining these Conservation Orders is that they are fair and reasonable and do justice and equity to all parties concerned. Under the defendant's contention, if a lease contained 1000 acres and only one acre happened to be placed within a unit and no well was drilled on that particular acre, nevertheless, the entire 1000 acres would be held indefinitely beyond the primary term but would share in only 1/640 x 1/8, or 1/5120th of the production from the unit. Such a result as this makes it obvious that neither the Legislature nor the Commissioner intended any such thing.' "[24]

The court suggested that the lessors might find relief under the development clause, an expensive and circuitous route to an end which in the writer's judgment might well have been accomplished in the instant litigation.

PERSONS

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Marriage

The good faith of the wife in an alleged putative marriage was at issue in *Succession of Chavis*.[1] Counsel contended the wife had not been in good faith at the time of the marriage because she knew of the husband's previous marriage, had only his statement that he had been divorced, and had failed to investigate the truth or falsity of this statement. In an extremely well considered opinion, adopted and quoted by the supreme court, the trial judge declared that the extent of the obligation to investigate "to ascertain whether there exists any legal impediment . . . will depend upon the facts and circumstances in each individual case." The relative (and subjective) quality of good faith is noted and the manner in which a trial judge

24. 31 So. (2d) 10, 17.

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1. 211 La. 313, 29 So. (2d) 860 (1947).