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become accustomed, it may rank in the same high place given to other work of the court in its painstaking creation of the law of mineral rights.

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LONG-TERM LEASES AFFECTING MINERALS

There has recently materialized a new type of contract affecting minerals, which on its face purports to be a sale and long-term lease of timber, but in actuality entails far-reaching consequences upon the mineral future of the state. This hybrid contract falls into the category of neither sale nor lease but partakes of the nature of both, while embodying many extraneous elements. The fate of such an agreement is uncertain since the courts have as yet had no occasion to pass upon its validity. However, the nature and extent of the problem and the possible means of coping with it can be appreciated beforehand.

Any attempt to categorize this new contract should be preceded by an understanding of its provisions and of the general procedure followed. A typical situation involves extensive tracts of land originally purchased primarily for the purpose of timber cuttings. After the timber has been cut one or more times, the corporate landowner in order to derive revenue from the land grants long-term leases thereon, conveying at once a sale of the standing timber and the right to repeated cuttings during a period ranging from sixty to ninety-nine years. The primary purpose of the lessee might be otherwise than for timber cuttings and may involve cultivation of the soil, cattlegrazing or trapping. The lessor, however, derives manifold benefits from the contract—he not only secures a considerable revenue from the transaction, but he is relieved from the responsibility of paying taxes on the property, retains the title to the land and, most important of all, exerts the greatest precautions to reserve all minerals and mineral rights unto himself, including the paramount rights of ingress, egress, construction and operations. The corporate holder may retain these minerals, either for prospective user, speculation on the mineral market, or an indefinite holding; or he may transfer them to subsidiary companies organized solely for the purpose of securing the mineral development of these lands. In the latter case, in the event of nonuser during the statutory or prescribed

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period, the minerals simply revert to the parent company, and new servitudes or leases may be granted. Thus it can readily be seen that (1) ordinarily if these holders were to purchase or lease mineral rights, they would be compelled by law, under penalty of forfeiture, to development within the statutory period in the case of servitudes¹ or within some clearly defined or reasonable period² (probably a maximum ten-year period³) in the case of leases; but (2) under this new scheme, through purchase of the ownership of the land and subsequent long-term leases, they remain landowners and are, therefore, under no compulsion whatsoever to the user of the mineral rights. This accomplishes circuitously what the law prohibits directly.

The validity of these provisions affecting minerals in relation to the nature of the contract and to the whole letter and spirit of mineral law is the substance of this paper. First to be considered is the nature of the contract with an eye to its proper identification and classification. It is declared to be a sale and lease of timber, with the retention of title and minerals in the landowner. But the courts have previously declared that they will look beyond the form of the instrument and the descriptive terms used and will focus attention upon the substance of the contract before determining the applicable body of laws.⁴ For this reason, the contract under consideration could conceivably fall into the category of sale, conditional sale, lease, lease with an option to buy, or rent-charge.

As to sale, there is no dispute that the creation of a separate timber estate has received the express approval of the legislature and the courts,⁵ so that phase of the contract conveying a sale of the

1. Art. 789, La. Civil Code of 1870; *Palmer Corporation of Louisiana v. Moore*, 171 La. 774, 779, 182 So. 229, 230 (1930), and long line of cases cited therein.

2. Art. 2674, La. Civil Code of 1870, requiring that every lease have a definite term; *Martel v. Jennings-Heywood Oil Syndicate*, 114 La. 351, 38 So. 253 (1905); *Cooke v. Gulf Refining Co. of Louisiana*, 127 La. 592, 593, 53 So. 874, 876 (1911).

3. *Daggett, Louisiana Mineral Rights* (1939) 98; *Arent v. Hunter*, 171 La. 1059, 1072, 1073, 133 So. 157, 161 (1930, 1931), stating, "Thus, a mineral lease conveys to the lessee nothing more than a servitude upon the lands covered thereby," and "... the only right granted by Hunter and McCormick in the lease to the Producers' Oil Company and in the act of sale to Shackelford, Brown and Irvine, was the right to extract the minerals from the soil and reduce them to possession; which right was subject to extinguishment by the prescription of ten years liberandi causa."

4. *Grapico Bottling Works v. Liquid Carbonic Co.*, 163 La. 1057, 113 So. 454 (1927); *Bohanon v. Stewart*, 4 La. App. 150, 153 (1926); *Long v. Sun Oil Co.*, 132 La. 601, 61 So. 684 (1913).

5. La. Act 188 of 1904 [Dart's Stats. (1939) § 6548]; *St. Louis Cypress Co. v. Thibodaux*, 120 La. 834, 45 So. 742 (1908); *Kemper v. Albert Hanson Lumber Co.*, 134 La. 816, 64 So. 760 (1914); *Gray v. Edgar Lumber Co.*, 138

present timber and a sale of the future timber production of the land⁶ during a specified period is invulnerable. This, however, is no ordinary conveyance of a timber estate, for its duration of ninety-nine years is unprecedented in the jurisprudence.⁷ It also contains an unusual abridgement of the lessee's timber rights, which, in case of conflict, must yield to the superior rights of the lessor for use and operations, as well as redemption of any desired lands at any time during the contract. On the other hand, it would be virtually impossible to classify this instrument as an outright sale of the land, since it is specifically declared to be in the nature of a limited grant of rights in and to the property described, with all rights not specifically granted or necessarily implied reserved to the vendor.

The provision in some of the contracts for an option to purchase the land during a designated period toward the close of the ninety-nine year term brings to mind the conditional sale of the common law which has been transplanted by way of the bond-for-deed agreement into the civil law and declared enforceable by the courts.⁸ While this contract contains some of the elements of a conditional sale,⁹ it is not believed that the courts will so classify it or deem the sale to be translative of ownership from the beginning because, despite the considerable amount paid for the original grant of rights, provision is made for the appointment of three arbitrators who will later fix the purchase price and the indications are that another large sum is contemplated by the parties.¹⁰

La. 906, 70 So. 877 (1916); *Brown v. Hodge-Hunt Lumber Co., Inc.*, 162 La. 635, 110 So. 886 (1926).

6. Arts. 2448-2451, La. Civil Code of 1870; *Losecco v. Gregory*, 108 La. 648, 32 So. 985 (1901).

7. *St. Louis Cypress Co. v. Thibodaux*, 120 La. 834, 45 So. 742 (1907, 1908) (five years); *Globe Lumber Co. v. Sheriff*, 106 La. 414, 30 So. 902 (1901) (fifteen years); *Shepherd v. Davis Bros. Lumber Co.*, 121 La. 1011, 46 So. 999 (1908) (no time stated); *Gray v. Edgar Lumber Co.*, 138 La. 906, 70 So. 879 (1916) (no term); *Simmons v. Tremont Lumber Co.*, 144 La. 719, 81 So. 263 (1919) (no term); *Big Pine Lumber Co. v. Hunt*, 145 La. 342, 82 So. 363 (1919) (six years); *Kavanaugh v. Frost-Johnson Lumber Co.*, 149 La. 972, 90 So. 275 (1921) (ten years); *Ward v. Hayes-Ewell Co.*, 155 La. 15, 98 So. 740 (1924) (five years); *Brown v. Hodge-Hunt Lumber Co., Inc.*, 162 La. 635, 110 So. 886 (1926) (no term).

8. La. Act 169 of 1934 [Dart's Stats. (1939) §§ 5021.9-5021.16]; *Pruyn v. Gay*, 159 La. 981, 106 So. 536 (1925); *Heeb v. Codifer & Bonnabel*, 162 La. 139, 110 So. 178 (1926); *The Conditional Sale in Louisiana*, 2 LOUISIANA LAW REVIEW 344 (1940).

9. The contract in *Pruyn v. Gay*, 159 La. 981, 106 So. 536 (1925) provided for "(1) immediate possession by the vendee; (2) monthly payments of the purchase price; (3) payments of taxes and insurance by the vendee; and (4) conveyance of a deed upon full payment, provided, that in case of default, the vendor might keep all prior payments as liquidated damages and fair rental." Comment (1940) 2 LOUISIANA LAW REVIEW 338, 344.

10. As illustrative of the court's reasoning in distinguishing between leases and sales, and of the importance attributed to a stipulation for an option to

The instruments read more like a lease of land for lumbering purposes than like any other form of contract; but the long term of the lease is uncommon¹¹ and the lessee's rights are unusually curtailed. Although the lessor is legally bound to maintain his lessee in peaceable possession during the life of the lease¹² and is answer-

buy at a substantial amount, see the cases of *Doullut v. Rush*, 142 La. 443, 77 So. 110 (1917), and *Grapico Bottling Works v. Liquid Carbonic Co.*, 163 La. 1057, 113 So. 454 (1927).

11. The Civil Code contains no express language acknowledging or regulating the long-term lease. Art. 2684, La. Civil Code of 1870, merely provides that "the duration and the conditions of leases are generally regulated by contract, or by mutual consent," but Art. 2474, La. Civil Code of 1870, expressly requires that leases be granted "during a *certain time*." (Italics ours) Apparently, then, so long as the term of the lease is certain, it is in keeping with the law. The long-term lease has been frequently used in urban areas for leasing business establishments and has occasionally served rural communities in farming and timber leases. The absence of litigation on the subject speaks for its untroubled existence in Louisiana legal history. Unlike Louisiana law, the French law has been interpreted to fix ninety-nine years as the extreme duration of a lease, as well as to prohibit perpetual leases: "447. A.—*Extreme duration of the lease of immovables—Interdiction of perpetual leases.*—Article 1709 [the French equivalent of our Article 2474] is limited to declaring that the letting-out imposes on one of the parties the obligation of 'permitting the enjoyment of a thing by another during a certain time,' but from this language the conclusion has been reached that the perpetual leases so frequent in our former law are prohibited. This solution rather finds its justification in the provisions of a decree of December 18-29, 1790, which assigned as an extreme limit for the duration of a lease the figure of ninety-nine years and, if it pertained to leases for life, to three successive generations. These provisions are, still in force, but apply only to immovables. The sanction of the law is not merely to reduce the lease to a ninety-nine year duration, as certain authors contend, but to strike the contract with nullity as contrary to public policy." 10 *Planiol et Ripert, Traité Pratique de Droit Civil Français* (Paris, 1926) 520, § 447.

12. Article 2692(3), La. Civil Code of 1870; *Martel v. Hunt*, 195 La. 701, 197 So. 402 (1940). Query whether a stipulation surrendering this legal right of the lessee would be held valid by the courts, particularly when the interference with possession is caused by the act of the lessor himself. The French attitude is as follows: "517. *Clauses reserving certain rights to the lessor.*—The obligation of doing nothing to interfere with the enjoyment of the lessee comprises, for the lessor, certain restraints. The extent of the obligation can be appreciably narrowed or restricted by the agreement of the parties. It is thus that a clause of the lease can recognize the lessor's right to avoid the lease in case he should sell a part of the leased premises, or for any other cause, if he should, for example, change his profession or come to inhabit the locality of the leased immovable. Likewise, the lessor can validly stipulate for the right of making certain modifications of form to the leased immovable, of increasing the height of the house, for example, or making certain constructions in the yard, of demolishing certain parts of the house, or planting crops on a portion of the land. On the other hand, he could not stipulate in a general manner that he would not guarantee the lessee against any interference with his enjoyment by his [the lessor's] personal act, because the obligation of the lessor would then be null for default of cause (Article 1131), the lessor being thus able to deprive the lessee of all enjoyment and even to expel him." 10 *Planiol et Ripert*, op. cit. supra note 11, at 622-623, § 517. As to the extent of the lessor's right to penetrate on the leased premises, the French law has been interpreted to mean "that the lessor could not claim the right to penetrate at his liking and arbitrarily on the immovable leased, to ride across it, for instance, if it concerns a rural domain, or to traverse the land on his way to another of his properties, or to cut down certain trees belonging to him on the leased lands." *Id.* at 612, § 512.

able for damages and losses sustained by eviction or an interruption of the lease,¹³ here the lessee has surrendered such rights, agrees to submit to the lessor's paramount rights of ingress, egress, operations, et cetera, and pledges himself to guard the land against trespass and adverse possession, to conduct and defend suits concerning the property in his own name and to accept a very limited warranty in case of eviction or disturbance in his possession. The lessor's burden of paying all taxes, rents and dues imposed on the thing leased¹⁴ has also been shifted to the lessee's shoulders, with the exception of taxes levied solely on the mineral value of the property. The optional purchase of the land at some future date lends support to the contention that these contracts are leases with options to buy. The extremely long term of the lease,¹⁵ almost amounting to a grant in perpetuity, resembles an important feature of the rent charge, but as there is no provision in the contract ceding title to the lands and no stipulation for an annual rent or percentage of the fruits,¹⁶ it is not believed that this category fits.¹⁷

Hence, it is seen that, strictly speaking, this hybrid falls into no one category, but may be said to be *sui generis*, most resembling a sale of present timber along with a long-term lease for future timber operations, coupled with an option to buy at some specified future date. But the sequence of transactions is more important than the contract itself, for the long range effect is to deprive the original small landowners of valuable ownership and mineral rights and to transfer such rights for possible monopoly and perpetual control in the hands of a few holders. The imminent danger of such a course of events is all too obvious. Even before the advent of mineral rights, the policy of the state was dedicated to the idea of keeping

13. Art. 2696, La. Civil Code of 1870.

14. Art. 2702, La. Civil Code of 1870.

15. Planiol and Ripert distinguish the emphyteusis from the ordinary lease in the following manner: "In default of the clearly expressed intention of the parties or precise terminology, the judge considers the following elements which, taken together and not singularly, characterize the emphyteusis—the long duration of the lease, the moderateness of the rent, the charge of making improvements or constructions, with the possibility of demolishing or modifying the state of the premises, and especially the right of disposition and the right of acceding real rights on the estate leased." 3 Planiol et Ripert, *op. cit. supra* note 11, at 941, § 1002.

16. Arts. 2779-2792, La. Civil Code of 1870.

17. There are three types of perpetual rent-charges or leases under French law, known as the "*bail à rente, à colonage, ou à locatairie perpétuelle*." All three effect "an alienation of the property of an immovable in consideration for the payment of a perpetual rent, termed ground-rent, which has the character of a simple right of credit and is essentially redeemable." The rent may also consist of a percentage of the fruits, as under Art. 2779, La. Civil Code of 1870. 10 Planiol et Ripert, *op. cit. supra* note 11, at 903-906, §§ 712-715.

property interests fluid,¹⁸ and this policy is exemplified even more definitely in the courts' attitude toward mineral rights. From the very beginning of the mineral history of the state, the policy of the law has been steadfastly opposed to the indefinite or perpetual tie-up of mineral interests in all others save the true landowner.¹⁹ Heretofore, the courts have been concerned with curtailing the rights of holders of servitudes and leases in order to prevent perpetual control of these rights and to compel their reversion to the landowner in the absence of reasonably diligent development. Now, however, the problem is presented in reverse, and what was not allowed directly is being undertaken indirectly. The risks encountered by the purported vendors or lessors under such contracts can hardly be exaggerated.

Of much importance in any prediction of the fate of this new contract is a brief summary of the manner in which the courts have treated previous devices violating its prohibition against perpetuating mineral rights in other persons than the landowners. A ninety-nine year lease was stricken with nullity only four years after its inception in *Martel v. Jennings-Heywood Oil Syndicate*,²⁰ because of failure of consideration and the fact that the obligation to perform was optional with the lessee. The court ruled: "It is therefore evident that, unless the lessee obligates himself to commence operations within a certain or reasonable time, the lessor is not bound for want of mutuality and consideration."²¹ In *Brown v. Producers' Oil Company*,²² a twenty-year lease on the entire property and a twenty-five year lease as to a specific tract were declared cancelled due to the lessee's abandonment of his rights some five years after the granting of the leases. The court in *Bristo v. Christine Oil & Gas Company*²³ declared positively that a contract purporting to give a perpetual option to hold land under a mineral lease is null. Similar perpetual leases have been stricken with nullity.²⁴ In 1933, the

18. Succession of McCan, 48 La. Ann. 145, 19 So. 220 (1896); Female Orphan Society v. Young Men's Christian Ass'n, 119 La. 278, 44 So. 15 (1907); Queensborough Land Co. v. Cazeaux, 136 La. 724, 67 So. 641 (1915); Union Producing Co. v. Parkes, 40 F. Supp. 163 (W. D. La. 1910).

19. *Martel v. Jennings-Heywood Oil Syndicate*, 114 La. 351, 38 So. 253 (1905); Union Producing Co. v. Parkes, 40 F. Supp. 163 (W. D. La. 1910); Palmer Corporation of Louisiana v. Moore, 171 La. 774, 132 So. 229 (1930); Vincent v. Bullock, 192 La. 1, 187 So. 35 (1939).

20. 114 La. 351, 38 So. 253 (1905).

21. 114 La. 351, 358, 38 So. 253, 256 (1905).

22. 134 La. 672, 64 So. 674 (1914).

23. 139 La. 312, 71 So. 521 (1916).

24. In *Calhoun v. Christine Oil & Gas Co.*, 139 La. 316, 71 So. 522 (1916); *Dunham v. McCormick*, 139 La. 317, 71 So. 523 (1916); *Nervis v. McCormick*, 139 La. 318, 71 So. 523 (1916); *Norris v. Snyder & McCormick*, 139 La. 316,

court²⁵ declared by way of dictum that "the lease in perpetuity reprobated by law is the mere holding by the lessee, indefinitely, of an option to exploit the property, without production of any kind, since the lessee must either develop with diligence or give up the lease."²⁶ in *Lewis v. Bodcaw Lumber Company*,²⁷ an attempted fifteen-year mineral reservation was reduced by the court to the maximum ten-year period. This decision reinforced the court's holding in *Bodcaw Lumber Company v. Magnolia Petroleum Company*²⁸ that parties cannot consent under Article 3460 for a mineral grant or reservation not to be subject to the ten year prescription, since the obligor is unable to renounce the benefit of prescription liberandi causa in his favor before it is acquired. Another device for avoiding the ten-year prescription was invalidated in *Childs v. Porter-Wadley Lumber Company*²⁹ where the court found "no merit in the defense that the reservation of minerals for thirty-five years, with the obligation on the part of the vendor to pay the vendee or assigns one-half of the net revenues derived from the sale of the minerals, constituted a mandate coupled with an interest and therefore was imprescriptible."³⁰ The case reaffirmed the rule that "a mineral reservation for a longer period of time than ten years cannot extend the life of the reservation beyond the prescriptive period of ten years, if the servitude created by the reservation is not exercised within ten years."³¹ An attempted royalty reservation in perpetuity was attacked in *Vincent v. Bullock*,³² the court's reasoning was that since the royalty was grounded upon a right to explore, which could be retained without exercise for only ten years, the royalty also was lost after that period of time. Two recent cases³³ presented a situation somewhat analogous to the one under consideration. These two suits were actions for slander of title brought against the

71 So. 522 (1916); *Parrott v. McCormick*, 139 La. 318, 71 So. 523 (1916); *William v. McCormick*, 139 La. 319, 71 So. 523 (1916).

25. In *Sam George Fur Co., Inc. v. Arkansas-Louisiana Pipe Line Co.*, 177 La. 284, 148 So. 51 (1933).

26. 177 La. 284, 289, 148 So. 51, 52 (1933).

27. 167 La. 1067, 120 So. 859 (1929).

28. 167 La. 847, 120 So. 289 (1929).

29. 190 La. 308, 182 So. 516 (1938).

30. 190 La. 308, 315, 182 So. 516, 517 (1938).

31. 190 La. 308, 315, 182 So. 516, 518 (1938).

32. 192 La. 1, 187 So. 35 (1939). The holding of this case has been affirmed in two very recent cases, *St. Martin Land Co. v. Pinckney*, La. Sup. Ct. Docket No. 38,163 (November, 1947); and *Humble Oil and Refining Co. v. Guillory*, La. Sup. Ct. Docket No. 37,862 (November, 1947), which are discussed by *Daggett*, *Sequels to Vincent v. Bullock* (1948) 8 LOUISIANA LAW REVIEW 173.

33. *International Paper Co. v. Louisiana Central Lumber Co.*, 202 La. 639, 12 So. (2d) 659 (1943); *Lenard v. Shell Oil Co., Inc.*, 211 La. 265, 29 So. (2d) 844 (1947).

lumber company-landowner by subsequent purchasers of parts of the original large tract. No long-term leases were involved; and it was because of the extensive operations of the lumber company's lessees that the mineral rights were held to be retained by user, despite the lapse of some twenty years since the sale of the land to plaintiffs with reservation of mineral rights. In a case³⁴ decided in 1910 the federal district court held that a sale of land containing an agreement whereby the vendee obtained the right to begin mineral explorations on an adjacent fifty-acre tract for a thirty year period, coupled with a lease of all the land then under cultivation to the vendor for farm purposes, was unenforceable beyond the ten-year statutory period. The court insisted that "it is not possible to circumvent the law, as has been apparently attempted here, for to sustain such an agreement would make it possible for parties willing to do so to tie up the minerals for fifty or a hundred years."³⁵ Therefore, both parties were "presumed to have known that the law limited the period in which the servitude could be exercised to a period of ten years."³⁶

Thus, it is seen that the courts have been adamant from the very beginning in opposing any circumvention of the clearcut rules governing the duration of mineral rights. Regardless of the nature of the device, whether a fifteen-year mineral reservation, a lease in perpetuity or a mandate coupled with an interest, and regardless of the expressed intention of the parties so to contract notwithstanding "any construction that the courts may hereafter place upon this paragraph," the courts have rigidly adhered to their established policy. In light of this jurisprudential law,³⁷ it is believed that this new device will not stand judicial scrutiny and is fraught with dangers for the purported lessors. A continuation of such a chain of events as is here noted would not only upset prior mineral jurisprudence but might convert Louisiana for all practical purposes to the ownership theory of mineral rights prevailing elsewhere. The long-term lease per se and its use for legitimate rural and urban purposes are open to no criticism. Nor is there justification for prohibiting the owners of small tracts from granting long-term leases thereon for purposes of timber cuttings, cattlegrazing, trapping, et cetera, with an automatic retention of minerals. But the danger lies in the pos-

34. *Union Producing Co. v. Parkes*, 40 F. Supp. 163 (W. D. La. 1910).

35. *Id.* at 167.

36. *Ibid.*

37. Attention is called to the possibility of the court's utilizing the constitutional prohibition against the retention of real estate by a corporation for a longer period than ten years "except for legitimate corporate purposes." La. Const. of 1921, Art. XIII, § 1.

sibility of a widespread, organized effort to accumulate extensive tracts of land and thereby hold mineral interests in perpetuity without user. A preservation of the land policy of the state would seem to dictate an effort to arrest any trend towards such a movement before it could gain momentum.

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CONSTITUTIONAL LAW—DENIAL OF EQUAL PROTECTION—DISCRIMINATION IN SELECTION OF JURIES

In the recent case of *State v. Perkins*,¹ a negro was convicted of aggravated rape of a white woman. On appeal he contended that members of the negro race had been arbitrarily and systematically excluded from jury service solely because of race and color.² The general venire list, containing the names of five negroes, had been selected from the rolls of registered voters which contained the names of approximately thirty-four thousand white persons, and five hundred forty negroes.³ One negro had served on the grand jury, and one had been included on the petit jury panel. It was held that appellant had been granted an opportunity to have members of his race serve upon the grand and petit juries, and had thus been afforded his full constitutional rights.⁴

Since the emancipation of the negro, the question of exclusion of negroes from juries has been considered numerous times by the United States Supreme Court.⁵ Prior to the decision of *Pierre v.*

1. 211 La. 993, 31 So. (2d) 188 (1947).

2. Exclusion from grand or petit jury service because of race or color is forbidden by the equal protection clause of the Fourteenth Amendment to the United States Constitution, by an Act of Congress of March 1, 1875 (18 Stat. 336-337, 8 U. S. C. A. § 44 [1940]), by Article I, Section 2, of the Louisiana Constitution of 1921, and by Article 172 of the Louisiana Code of Criminal Procedure of 1928.

3. In the 1940 census the population of the parish was 54,744 or 62% white and 33,634 or 38% colored. The 1940 literacy figures were not available, but the 1930 census showed the colored population to be 43.1% of which 20.7% were illiterate, while only 1% of the whites were illiterate.

4. Chief Justice O'Niell dissented tersely, on the ground that ". . . the selecting of the general venire list entirely from the roll of registered voters is not, in the circumstances of this case, a correct method of selection." 211 La. 993, 1007, 31 So. (2d) 188, 193 (1947).

5. For example: *Neal v. Delaware*, 103 U. S. 370, 26 L. Ed. 567 (1880); *Smith v. Mississippi*, 162 U. S. 592, 16 S. Ct. 900, 40 L. Ed. 1082 (1896); *Carter v. Texas*, 177 U. S. 442, 20 S. Ct. 687, 44 L. Ed. 839 (1900); *Thomas v. Texas*, 212 U. S. 278, 29 S. Ct. 393, 53 L. Ed. 512 (1909); *Norris v. Alabama*, 294 U. S. 587, 55 S. Ct. 579, 79 L. Ed. 1074 (1935); *Pierre v. Louisiana*, 306 U. S. 354,