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Civil Code and Related Subjects: Mineral Rights

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of the illicit relationship since there was no marriage and no putative marriage. The court stated that while concubines may assert legal claims arising out of business transaction between them, "strict and conclusive proof"[32] must be established which was lacking to support plaintiff's plea.

In *Cotton v. Wright*[33] the court pointed out that a judgment for separation of bed and board dissolves the community which is not reconstituted upon reconciliation of the spouses unless the spouses reestablish it by notarial act under Act 200 of 1944 amending Article 155 of the Revised Civil Code.

The court held in *Parker, Seale & Kelton v. Messina*[34] that when a suit by a wife for separation of bed and board is unsuccessful and the community of course is not dissolved, the attorney for the wife has a cause of action against the husband, head of the community, for fees upon a quantum merit basis, as the obligation is one which the community must assume.

MINERAL RIGHTS

*Harriet S. Daggett**

Servitude

The court held in *Ober v. Williams*[1] that a conditional promise to sell did not have the effect of a sale even after the conditions were performed by the prospective buyer nor until the deed translative of title was passed. Neither did the eventual sale have retrospective effect. Thus, the mineral servitude involved was not created until the title was transferred and prescription did not begin to run until that date.

Public policy was urged against the decision and fears expressed that minerals would be held in this fashion by contracts to sell. The court stated that if and when the contract was used for this purpose, it would be dealt with.

The effect of an acknowledgment was at issue in *James v. Noble.*[2] The intent and purpose of the paper was clearly to interrupt prescription against a mineral servitude. Since minors were holding the servitude, counsel for the plaintiff, landowner, and maker of the acknowledgment pleaded that the acknowledgment

32. 212 La. 685, 689, 33 So. (2d) 196, 197 (1947).
33. 36 So. (2d) 713 (La. 1948).
34. 36 So. (2d) 724 (La. 1948).
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1. 213 La. 568, 35 So. (2d) 219 (1948).
2. 36 So.(2d) 722 (La. 1948).

was rendered null by the passage of Act 232 of 1944,[3] which was specifically applicable to existing rights and denied suspension of prescription to the major co-owner of persons enjoying it because of a legal disability. The court found that the statute had no application to this issue since the rights were in effect by virtue of the acknowledgment which started a new period of prescription and the rights of the parties were not presently dependent upon interruption of prescription. The court found the acknowledgment valid without consideration under Article 3520 of the Civil Code which provides that prescription is interrupted when the debtor or possessor acknowledges the right of the person whose title they prescribe.

It would seem that a distinction might be made between acknowledgment of debt and ordinary title, and of a mineral servitude. Where the arbitrary rule of the law of prescription merely cuts off the right of the creditor and true owner to complain, the acknowledgment is supported by the consideration of the natural obligation involved to pay the still existing debt or return the property to the still existing true owner. Also, in the second case, the acknowledgor has relief against his vendor. Acknowledgment of a mineral servitude creates another ten year term within which the owner of the right may take the most valuable part of the realty. No natural obligation rests upon the landowner to grant the right for a second time, when the grantee has had ample opportunity to exert it within the originally purchased period. It is illogical to assume that a grantor would care to make a gift of such a valuable possession. Certainly the suggested distinction would have to be made on the basis of the peculiar nature of the mineral servitude as the instant decision on acknowledgments in general and indeed, for mineral servitudes, expresses the rule as presently evolved.

The court held in *Holcombe v. Superior Oil Company*[4] that the owner of a mineral servitude, a real right, is entitled to damages for an invasion of this right by an unauthorized geophysical survey of the lands subject to the servitude. Compensatory damages, in the sum of five dollars an acre were found reasonable, based on leasing values in the area paid by the defendant, since the leases were found to have been in reality for the purpose of surveys. The land in question was nearer to known oil lands and hence entitled in damages, to the highest price paid

3. Dart's Stats. (Supp. 1947) §§ 4826.3-4826.4.
4. 213 La. 684, 35 So.(2d) 457 (1948).

for leases. The matter of disclosure of information was not discussed.[5]

An extended discussion of *Byrd v. Forgotson*[6] and *Ohio Oil Company v. Ferguson*[7] appears in a previous issue of this journal.[8] Space does not allow a second resumé of the materials.

Royalty per se

In *Gulf Refining Company v. Goode*[9] the following excerpt from a deed was interpreted to be a reservation of *Vincent-Bullock* type royalty: " 'Said Mrs. Edna Gibson retains 1/64th royalty in all oil, gas and mineral rights in the above described lands'."[10] This right to production had prescribed. Opponents unsuccessfully attempted to prove that the reservation created a mineral serviture and various documents were produced as evidence of the intention of the parties.

An extended discussion of the most interesting materials contained in *St. Martin Land Company v. Pinckney*,[11] *Union Sulphur Company, Incorporated v. Longnion*,[12] and *Humble Oil & Refining Company v. Guillory*[13] appears in a previous issue of this journal[14] hence space will not be used here for repetitious statements.

Lease

The suit in *Carter v. Arkansas Louisiana Gas Company*[15] was to cancel a lease for failure to develop adequately the area. The defense attempted to make a distinction between development and exploration. They produced evidence of a fault and had relied upon the advice of their geologist in *not* drilling the acreage on the down-throw side of the fault as the *probabilities* were against production. Evidence by various geologists did not disclose that there was by any means a certainty that production

5. See La. Act 205 of 1938; Art. 1934, La. Civil Code of 1870; Layne La. Co. v. Superior Oil Co., 209 La. 1014, 26 So.(2d) 20 (1946); Angelloz v. Humble Oil & Refining Co., 196 La. 604, 199 So. 656 (1940).

6. 213 La. 276, 34 So.(2d) 777 (1945).

7. 213 La. 183, 34 So.(2d) 746 (1946)(on rehearing 1947).

8. Byrd v. Forgotson, 213 La. 276, 34 So.(2d) 777 (1945), noted in (1948) 8 LOUISIANA LAW REVIEW 536, and Ohio Oil Co. v. Ferguson, 213 La. 183, 34 So.(2d) 746 (1946), noted in (1948) 8 LOUISIANA LAW REVIEW 536.

9. 212 La. 502, 32 So.(2d) 904 (1947).

10. 212 La. 502, 504, 32 So.(2d) 904, 905.

11. 212 La. 605, 33 So.(2d) 169 (1947).

12. 212 La. 632, 33 So.(2d) 178 (1947).

13. 212 La. 646, 33 So.(2d) 182 (1947).

14. Daggett, Sequels to Vincent v. Bullock (1948) 8 LOUISIANA LAW REVIEW 174.

15. 36 So.(2d) 26 (La. 1948).

might not occur in the undeveloped area. A producer's agreement was in effect and only about a third of the area of plaintiff's lease was receiving the allocation by acreage. Obviously plaintiffs were not bound by this contract. No orders of the conservation department had been issued regarding the area. The court pointed out that no definite rule could be laid down concerning diligent development clauses and each case had to be decided on its facts. The decision was that the lessee had no right to hold acreage indefinitely without regard to the lessor's interest and the lease was cancelled except for the twenty-five acres to be retained by the lessee around each producing well as specifically provided by the lease. The idea that there is an implied obligation to develop or test every part of the area was stressed.[16]

In *Jones v. Southern Natural Gas Company*[17] the lessor sued for cancellation and attorney's fees under Act 168 of 1920. After careful review of lengthy testimony, the majority of the court found that the failure of the lessee to pay delay rentals in proper amount had been due to a mutual mistake and one "which was very apt to occur" and hence the lower court was reversed and the lease was not cancelled. The leading opinion by Chief Justice O'Niell stated that in some respects the decision was at variance with statements made in *LeRosen v. North Central Texas Oil Company*[18] and so far as the inconsistencies existed the *LeRosen* case was overruled. Justice Fournet concurred, grounding his opinion on estoppel. Justice Hawthorne dissented, maintaining that the majority had failed to distinguish between the "drill or pay" type and the "unless" type of lease, a classification into which the instant case fitted. Furthermore, Justice Hawthorne felt that the mistake was not "pardonable" in that the lessee could have controlled it and that it was not "mutual" as the lessor did not know that the lessee believed the payment to have been sufficient.

Justice McCaleb also dissented feeling that equitable abhorrence of forfeiture should not have guided the court as the terms of the instrument were clear and the lease was dissolved under its own provisions. He further believed that an undue burden of knowledge and action, not found in the contract, had been placed on the lessor.

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16. See Sauder, Administratrix v. Mid-Continent Petroleum Corp., 292 U. S. 272, 54 S.Ct. 671, 78 L.Ed. 1255, 93 A.L.R. 454 (1933), rehearing denied 292 U. S. 613, 43 S.Ct. 856, 78 L.Ed. 1472 (1934).

17. 36 So.(2d) 34 (La. 1948).

18. 169 La. 973, 126 So. 442 (1930).

A lease had expired under its own terms, no drilling operations having commenced within the period stipulated. However, the lessee dealt with the lease and a well was drilled which was unproductive. In *Matheson v. Placid Oil Company*[19] the land owner sued for damages and the court awarded the value of the lease plus a sum for physical damage to the land.

Most interesting procedural questions were raised in *Stacy v. Midstates Oil Corporation*[20] and are discussed elsewhere in this resumé of jurisprudence.[21] The point of importance in mineral rights was the statement regarding the test of differentiation between an assignment and a sublease. On the first hearing the court recognized the established rule that retention of control by the original lessee when he transfers part of the area under his lease, stamps the transaction as a sublease. Finding a specific clause in the instrument relinquishing all control by the original lessee, the court declared the transaction to be an assignment, even though an overriding royalty had been retained. This matter was not discussed on the rehearing as the suit was dismissed because the majority of the court found that the petition failed to state a cause of action. The Chief Justice, author of the opinion on the first hearing, adhered to his view that the petition, together with the documents made a part thereof, did disclose a cause of action.

Justice McCaleb thought that while the petition did not state a cause of action, the plaintiffs should have been permitted to amend their pleadings rather than have their suit dismissed, as the exception was in reality but one of vagueness, since insufficiency of allegations was the defect. It would seem that the use of Justice McCaleb's suggestion would go far toward mitigating the hardships of expense and delay, a major criticism by the public of legal processes.

The Nebo Oil Company leased certain lands to the Little Creek Oil Company. In *Whitney National Bank of New Orleans v. Little Creek Oil Company, Incorporated,*[22] the Little Creek Oil Company asked for cancellation of lease and return of consideration, contending that the lessor's mineral rights had prescribed. The contention of the lessor was that the rights were not prescriptable under Act 315 of 1940, which purported prevention of acquisition of minerals by the United States by reversion to lands

19. 212 La. 807, 33 So.(2d) 527 (1947).
20. 36 So.(2d) 714 (La. 1948).
21. See p. 235, infra.
22. 212 La. 949, 33 So.(2d) 693 (1947).

acquired by the United States both before and after the passage of the act, and in which mineral rights had been reserved. Pleas of unconstitutionality of the act were entered. Should the statute be given a retroactive effect, the United States would be injured and hence was a necessary party in the court's judgment. Since the title to the minerals was "clearly suggestive of litigation"[23] the court felt that it would be inequitable to force title on the Little Creek Company as the constitutional point could not be passed upon. The suit therefore was dismissed for non-joinder of necessary parties. Justice McCaleb dissented, believing with the majority that the Little Creek Company was without interest to question the constitutionality of the act, but concluding that since the Little Creek Company had not refused title on the ground of its being suggestive of litigation, they should take the lease.

PERSONS

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Marriage

The appeal in *Villa v. LaCoste*,[1] a suit for declaration of nullity of marriage on the ground of miscegenation, was easily disposed of by affirmance of the negative finding of the lower court on this issue. It is interesting to note, however, that the "white" plaintiff not only sued for a declaration of nullity, but also sought "to disclaim the paternity and legitimacy" of the issue of the marriage. Inasmuch as he apparently did not set forth "bad faith" on the part of himself and his spouse, the plaintiff's prayer must have been based on the assumption that a miscegenous union cannot be putative. The writer cannot agree with this position. Article 94 of the Civil Code states that "such celebration carries with it no effect and is null and void,"[2] but these words should not be interpreted to exclude the *effects*, including legitimacy of offspring, which flow *because of the good faith of* the parties rather than from the "marriage" itself.[3] The

23. 212 La. 949, 962, 33 So. (2d) 693, 697.

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1. 213 La. 654, 35 So(2d) 419 (1948).

2. Art. 94, La. Civil Code of 1870, sentence 3 (added by La. Act 54 of 1894): "Marriage between white persons and persons of color is prohibited, and the celebration of all such marriages is forbidden and such celebration carries with it no effect and is null and void."

3. Arts. 117 and 118, La. Civil Code of 1870:

Art. 117. "The marriage, which has been declared null, produces never-