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Civil Code and Related Subjects: Mineral Rights

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rate property might be recovered by the community from the separate estate, if an enhanced value by virtue of the expenditure could be shown at the time of dissolution of the community.

MINERAL RIGHTS

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The case of *State v. Evans*[1] has been noted in this journal[2] and, hence, a discussion of the material would be largely repetitious.

The majority of the court in *H. H. Transportation Company, Incorporated v. Owens*[3] concurred with the finding of the district judge "that Act No. 68 of 1942 did not contemplate nor did it require recordation of a vendor's lien covering the sale of an entire drilling rig which is moved into a parish for the drilling of wells and that it contemplated only the furnishing of supplies to a well already commenced."[4] Act 68 of 1942 reads: "That as to movable property said vendor's lien and privilege must exist and be filed for record within seven days after said property, subject to the vendor's lien and privilege, is delivered to the well or wells."[5] Justice McCaleb did not subscribe to this view, finding the section "clear and unambiguous" and the majority interpretation narrow, in that it failed to include the site within the words "well or wells" and hence took the position that an entire rig delivered before a well was commenced was not covered by Section 2-B of the statute. Justice McCaleb's view seems the sounder one under the language of the statute, the intendment of the legislature and the statutory history and trend in connection with this and other legislation dealing with protection of laborers and materialmen.

Ownership of royalty interests was involved in *Continental Oil Company v. Fuselier.*[6] The record owner had made a contract under the terms of which he transferred his interest to another person and himself as trustees for a corporation subsequently to be formed. One of the provisions of the agreement was that in case the corporation was not formed within ten years, the trustees would cancel the contract. Since the condition was not

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1. 214 La. 472, 38 So.(2d) 140 (1948).
2. Note (1949) 9 LOUISIANA LAW REVIEW 561.
3. 214 La. 985, 39 So.(2d) 441 (1949).
4. 214 La. 985, 991, 39 So.(2d) 441, 443 (1949).
5. La. Act 68 of 1942 [Dart's Stat's. (Supp. 1949) §§ 5101.6-5101.12].
6. 214 La. 1009, 39 So.(2d) 596 (1949).

fulfilled, the agreement was dissolved and the "parties were restored to the positions which existed prior to its confection." Articles 2045, 2046, and 2047 were cited.

The question in *Continental Oil Company v. Landry*[7] was whether or not the doctrine of contiguous estates developed in the law of mineral servitudes would apply in connection with royalty per se as evolved in *Vincent v. Bullock*[8] and subsequent cases. Royalty had been sold on three non-contiguous tracts on August 21, 1935. The lands were leased in 1943. Production was obtained preceding August 21, 1945, on one of the tracts. After August 21, 1945, production was obtained on another of the non-contiguous tracts. The court held that the event, production, on the first tract within the ten year period did not prevent the running of prescription on the other tracts whereon production had not occurred until after the ten year period. The court pointed out that a royalty right having no user power is a lesser right than that of servitude, and furthermore that the public policy of the state would be adversely affected if royalty rights were permitted to be held on non-contiguous estates by production on one.

The ownership of oil well equipment was in contest in *Donnell v. Gray*.[9] The court found that the equipment had not been abandoned by its owner as he had asserted ownership by selling the property to the plaintiff less than nine months after he had ceased to operate the well on defendant's land because the well no longer produced in paying quantities. Furthermore, even conceding that the original owner had abandoned the equipment, defendant had not claimed the property as owner and hence did not acquire it under Articles 2312 and 2313.

An interesting discussion of the meaning of the phrase "production in paying quantities" appears in the case of *Vance v. Hurley*.[10] The court reached the conclusion under the terms of the lease involved that the quantity was a "paying" one and hence refused to cancel the lease. Plaintiffs were awarded judgment for a certain "production payment" promised as "an added consideration for the execution of the lease."[11]

The principles of lesion[12] were applied to a "giving in payment" in *Jones v. First National Bank, Ruston*.[13] In determining

7. 41 So.(2d) 73 (La. 1949).
8. 192 La. 1, 187 So. 35 (1939).
9. 41 So.(2d) 66 (La. 1949).
10. 41 So. (2d) 724 (La. 1949).
11. Id. at 728.
12. Art. 1861, La. Civil Code of 1870.
13. 41 So.(2d) 811 (La. 1949).

the value of the property in the condition that it was at the time of the sale, the mineral value was very properly considered in this case. That value was definitely proved, as leases had been given by defendant less than a month after they had acquired title to the property and other conclusive evidence was available. Justice Hawthorne, dissenting on the application of lesion[14] rules to a "giving in payment," expressed no opinion on the question of considering mineral value in determining price.

The court overruled an exception of no cause of action in *Wier v. Grubb*.[15] Under the provisions of the original lease and the sublease, defendants were obligated to develop further the lease, and the existence of one producing well did not satisfy this clause. Under Act 205 of 1938,[16] "remedial and procedural in character,"[17] a mineral lessee may protect or defend his interest without the "concurrence, joinder, or consent of the landowner."[18]

PERSONS

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Marriage

Marriage in Violation of Article 99. Article 92 of the Civil Code forbids priests, ministers, and magistrates to officiate at the marriage of males under eighteen years of age and females under sixteen years of age. Four years ago this article was interpreted to impose merely a prohibition against the celebration of such marriages, but not to render null such marriages as might be celebrated in violation of its provisions.[1] By Act 312 of 1948, Article 99 of the Civil Code was amended to prohibit priests, ministers, and magistrates from celebrating marriages before seventy-two hours had elapsed from the issuance of the marriage license. The language used in Article 99 as amended is similar to that found in Article 92, and in *In re State in Interest of Goodwin*[2] the supreme court applied to Article 99, by analogy, its previous interpretation of Article 92.

14. Arts. 1862, 1863, La. Civil Code of 1870.
15. 41 So.(2d) 846 (La. 1949).
16. Dart's Stats. (1939) §§ 4735.4-4735.5.
17. 41 So.(2d) 846, 847 (La. 1949).
18. Ibid.

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1. State v. Golden, 210 La. 347, 26 So. (2d) 837 (1946), discussed in Symposium, The Work of the Louisiana Supreme Court for the 1945-1946 Term (1947) 7 LOUISIANA LAW REVIEW 165, 217 and noted in (1947) 7 LOUISIANA LAW REVIEW 442.
2. 214 La. 1062, 39 So. (2d) 731 (1949).