Louisiana Law Review

Volume 11 | Number 1
November 1950

LOUISIANA MINERAL RIGHTS, rev. ed., by Harriet Spiller Daggett.* Baton Rouge: Louisiana State University Press. 1949. Pp. xxi, 616. $8.50.

E. Leland Richardson

Repository Citation

E. Leland Richardson, *LOUISIANA MINERAL RIGHTS, rev. ed., by Harriet Spiller Daggett.* Baton Rouge: Louisiana State University Press. 1949. Pp. xxi, 616. $8.50.*, 11 La. L. Rev. (1950)
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol11/iss1/15

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

Book Reviews

LOUISIANA MINERAL RIGHTS, rev. ed., by Harriet Spiller Daggett.* Baton Rouge: Louisiana State University Press. 1949. Pp. xxi, 616. $8.50.

The corpus juris of oil and gas, still in its early stages, grows and develops rapidly, while the legal mind, learning by trial and error, seeks to comprehend and account for the manifest changes in its structure. Ten years elapsed from the date of Mrs. Daggett's first book on Louisiana Mineral Rights to the date of the present excellent work. During that period, countless new oil fields have been discovered and are being developed within the state, and Louisiana has become one of the foremost oil producing areas in the nation.

Oil and gas has been a prolific source of litigation. The difficulty which arises whenever a res nova is attempted to be fitted into an old law has been manifest. Thus far, the courts have done an excellent job of fitting the pieces of the new picture into the old frame, but for every new piece that is worked into the pattern, there are ten pieces yet to be found and arranged.

Some points upon which the court had earlier timidly felt its way have been firmly established.[1] On other points, apparently well-settled law has been cast into doubt.[2]

Thus, Mrs. Daggett's revised edition is a welcome and much needed work.

The new edition brings the topics of the first edition up to date,[3] and many new sections have been added, with stress on jurisprudential development of basic concepts. Fuller treatment has been given the chapters on "The Nature of the Right in Mineral Contracts," "The Servitude," "The Lease," and "Royalty" than was given in the earlier edition, and an excellent chapter on "Conservation" has been added.

---

* Professor of Law, Louisiana State University.

1. See Humble Oil & Refining Co. v. Guillory, 212 La. 646, 33 So. 2d 182 (1947) and St. Martin Land Co. v. Pinckney, 212 La. 605, 33 So. 2d 169 (1947), which firmly establish the rule of Vincent v. Bullock, 192 La. 1, 187 So. 35 (1939).

2. For instance, see Ohio Oil Co. v. Ferguson, 213 La. 183, 34 So. 2d 746 (1946). While the court staunchly declared that it had not, could not and would not divide a servitude, it nevertheless held that the mineral servitude on forty acres of a two hundred and forty acre tract had prescribed by non-user, although there had been user on the remainder of the tract.

3. Through 35 Southern Second Series.

The present work is of particular value to the legal draftsman who is confronted not only with the problem of conforming to past decisions but also with the task of avoiding pitfalls hidden in the future. Unsettled points are raised, and considerable space is devoted to the discussion of new and relatively new developments arising from the unceasing creativeness of an oil and gas bar which has become self confident with experience.

Thus, there is a section on the reversionary interest—a new facet in the oil and gas business with which experimentation is just beginning.[4] In connection with the reversionary interest, the author has also pointed up and reflected upon the problem of prescription.[5]

Evolution of the royalty concept is given extended treatment; rent royalty and *Vincent-Bullock* royalty[6] are discussed in two clear and concise sections.

An interesting question is raised in connection with the *Vincent-Bullock* decision on the point of prescription. In that case the court, having rejected both the rent and servitude theories, settled upon the contract or royalty-deed theory of royalty per se. In conformity with the contract theory, the decision proceeds logically until prescription is dealt with, at which point there is an intellectual break, obviously grounded upon public policy. The ten year prescription applied by the court was a ten year debtor-creditor prescription, and this departure from the articles of the code[7] on conventional obligations dealt a considerable jolt to the otherwise logical application of the contract theory.

In his concurring opinion in *St. Martin Land Company v. Pinckney*,[8] Justice Hamiter felt that the idea of ten year prescription could better be squared with the concept of royalty as the sale of a hope. This latter idea is worthy of serious consideration, but, as Mrs. Daggett points out,[9] does not provide a logical solution to the problem of prescription, inasmuch as pre-

4. There is some basis for the argument that the sale of a reversion might well be cast out as the sale of a thing not owned. In recent cases, the court has coupled this idea with the suggestion that such a sale is against the land tenure policy of the state. Long Bell Petroleum Co. v. Tritico, 216 La. 426, 43 So. 2d 782 (1949); McMurray v. Gray, 216 La. 904, 45 So. 2d 73 (1949); Liberty Farms v. Miller, 216 La. 1023, 45 So. 2d 610 (1950).

5. P. 286.

6. Vincent v. Bullock, 192 La. 1, 197 So. 35 (1939).

7. La. Civil Code of 1870.

8. 212 La. 605, 33 So. 2d 169 (1947).

9. P. 286.

scription on the sale of a hope would appear to begin to run only from the time "the net is cast."

Another weakness in the *Vincent-Bullock* idea of royalty which is closely connected to the prescription concept is the court's treatment of the argument of potestative condition. If there is no duty on the part of the vendor of royalty per se, who has exclusive leasing power to lease the land for oil and gas development or to otherwise cause it to be developed, it would appear that the royalty contract clearly contains a potestative condition.

The court in the *Vincent-Bullock* decision based its rebuttal of this idea upon the doctrine of legal detriment. The logic of this disposal meets with serious question in a case where the landowner has sold all or nearly all of his royalty. In such an instance, it is obviously to his benefit to allow the prescriptive period to run without user.

The chapter on lease has been lengthened considerably, and this most important subject is adequately covered in sixty-two pages.[10] Several new sections have been added to this chapter, among them an interesting section on warranty. The section devoted to assignment and sublease is particularly well done, and should alleviate a good amount of the confusion existing in connection with these two dangerously interchanged devices.

The reviewer found the author's discussion of usufruct under Article 552 of the Civil Code[11] enlightening and enjoyable.[12] If the article is applicable to oil and gas wells, the question yet to be answered is, when is an oil well "opened"?

One situation which will eventually confront the court in such a manner that it will have to be squarely disposed of is a situation in which the head of the community, who has given an oil and gas lease on the property of the community, dies intestate, leaving a widow and children, and thereafter there is development and production under the lease. Clearly, the widow in community is entitled to a share in production in proportion to her share of the community.[13] But the court has not yet answered the question as to whom the remaining portion of the

10. The chapter on lease covered only 37 pages in the earlier volume.

11. Art. 552, La. Civil Code of 1870: "The usufructuary has a right to the enjoyment and proceeds of mines and quarries in the land subject to the usufruct, if they were actually worked before the commencement of the usufruct; but he has no right to mines and quarries not opened."

12. This discussion is to be found in the chapter on community property. See p. 325 et seq.

13. Art. 552, La. Civil Code of 1870.

lessor's share should be paid—to the naked owners of the land or to the usufructuary under Article 916.[14]

The Supreme Court of Louisiana had the opportunity to answer the question in *Gulf Oil Refining Company v. Garrett*,[15] in connection with a testamentary usufruct, but chose to decide the case on the basis of testamentary intention, and remanded it for further evidence. The case is discussed by Mrs. Daggett on page 339.

Another valuable addition to the revised edition is the chapter on conservation. This chapter contains nineteen sections, covering about ninety pages in all, and each section of this chapter encompasses a wealth of information.

The history of the conservation movement is reflected upon in detail, and the work of the practitioner will greatly be lessened by a detailed collection of decisions arising under the conservation acts of 1924-1936, as well as a collection of cases interpreting the 1940 act.[16]

The chapter also contains a well written and easily understood section on the perplexing concept of economic waste, as well as a somewhat longer discourse on the gas-conservation doctrine of end use. While the end use doctrine has been shelved, at least temporarily, in Louisiana, the section is highly informative and should not be ignored by the would-be practitioner of mineral law, who cannot afford to ignore any phase of the conservation movement.

The author has very wisely included in the conservation chapter sections on administrative procedure, on the hearing, on orders and regulations, and on the proration order. This unique feature will lessen the busy practitioner's time by many hours, which would otherwise have to be spent in tiresome research in masses of statutory and administrative materials.

In general, Mrs. Daggett's revised edition on Louisiana Mineral Rights is a highly informative and refreshing work, done in a scholarly manner.

The style of the book is excellent, and the selection of topics and arrangement could not be better. While the book does not purport to be an encyclopedia of mineral law, it serves as an indispensable guide to the law of oil and gas.

14. La. Civil Code of 1870.
15. 209 La. 674, 25 So. 2d 329 (1946).
16. La. Act 157 of 1940.

Mrs. Daggett is a pioneer in the field of mineral law, and her writings in that field and in others have won for her the reputation of being Louisiana's foremost commentator on the law.

The value of the present work may best be summarized in the following two statements:

(1) Daggett on Louisiana Mineral Rights may be cited with confidence as authority on the subject in any court of any level within the state; and

(2) Daggett on Louisiana Mineral Rights is and should continue to be a part of the library of any lawyer within the state who engages in the practice of oil and gas law, as well as upon the shelves of every large oil concern doing business in Louisiana.

E. LELAND RICHARDSON†

BUREAUCRACY IN A DEMOCRACY, by Charles S. Hyneman.* New York: Harper & Brothers, 1950. Pp. xv, 586. $4.50.

This is the kind of cool target-shooting which I find welcome as an antidote to the shotgun blasts usually aimed at the federal bureaucracy. The author has consistently been an advocate of shooting with a rifle. Professor Hyneman's purpose, as he states it, is to analyze and judge the operations of bureaucracy on the basis of the way the power which it possesses is exercised: his analysis is concerned with the question of whether that power is presently allocated in such a manner that it can and will be exercised within limits acceptable to the American people.

His conviction, that power in a crazy quilt bureaucracy such as ours can and does get misused, is, I am sure, more firmly held as a result of a half dozen years in Washington. His antidote, that more and primary reliance must be placed on elected officials to guard against abuse of power, is novel only in the fresh arguments and modes for interweaving elective power into bureaucratic operations which are suggested in the book.

The argument is that governmental organization can be made more responsive to what the American people want and that the key to such responsiveness is a greater voice in administration by elected officials. The theme running throughout the book is

† Member, Baton Rouge Bar; Chairman, Mineral Rights Section, Louisiana State Bar Association.
* Professor of Government, Northwestern University.