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Mineral Rights - Recital of Oustanding Mineral Rights in a Deed of Sale as a Reservation - Error of Law

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the other hand, it is generally held that where the communication is sent on request to an interested person, it is qualifiedly privileged.[4]

In the opinion of the instant case, however, the court ignored the question of privilege mentioned in the syllabus and rested the decision on the basis of negligence. The rule stated was as follows:

> "With reference to these companies, the rule is that publishing of a tradesman that he has been sued, if true, is not actionable; but, if untrue, *and is owing to negligence,* it may give rise to an action." (Italics supplied.)

The above statement seems to require a finding of negligence. But, since the communication was sent to subscribers generally, therefore not privileged, there should have been no necessity to find negligence.[5]

In view of the conflicting language employed in the syllabus and the opinion, the present status of the Louisiana law cannot be regarded as settled.[6] It is suggested, however, that in subsequent cases Louisiana will follow the prevailing American rule as stated in the syllabus.

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MINERAL RIGHTS—RECITAL OF OUTSTANDING MINERAL RIGHTS IN A DEED OF SALE AS A RESERVATION—ERROR OF LAW—The vendor bank owned certain property which it sold under a deed containing a recitation to the effect that all minerals had been sold from the tract before acquisition thereof by the vendor, and that therefore they were excluded from the conveyance. However, prescription had run on the mineral servitude, and though the vendor was ignorant of the fact, the minerals had reverted to its ownership prior to the sale. Subsequently, the vendee learned of this and

4. Erber and Stickler v. R. G. Dun and Co., 12 Fed. 526 (C.C. Ark. 1882); Trussell v. Scarlett, 18 Fed. 214 (C.C. Md. 1882); Pollasky v. Mincher, 81 Mich. 280, 46 N.W. 5 (1890); Omsky v. Douglas, 37 N.Y. 477 (1868); Bradstreet Co. v. Gill, 72 Tex. 115, 9 S.W. 753, 2 L.R.A. 405 (1888).

5. See Fitzpatrick v. Daily States Publishing Co., 48 La. Ann. 1116, 1135, 20 So. 173, 180 (1896). Cooley, op. cit. supra note 2, at 519, § 149; Prosser, op. cit. supra note 1, at 815.

6. Where expression in syllabus prepared by the court is modified by opinion, the opinion must be looked to for the authority of the decision. See Cabral v. Victor and Provost, 181 La. 139, 146, 158 So. 821, 823 (1934). See also Burdick v. Ernst, 232 U.S. 162, 165, 34 S.Ct. 299, 301, 58 L.Ed. 551, 554 (1914).

had an officer of the vendor, who was unaware of the prescription of the mineral servitude, sign a quit-claim to the mineral rights for a purported consideration of one dollar. The vendor brings this action to have the quit-claim declared null and void for want of consideration. *Held,* that there was ample consideration (if any were needed) in the deed. Even though the quit-claim be disregarded, the intention of the vendor was to sell all right and title which it possessed in the land, and the only purpose of the recitation was to guard against warranty. Therefore, the vendor's mistake was one of law from which it can get no relief, and the deed alone has transferred the mineral rights to the vendee. *Commercial National Bank in Shreveport v. Herrick,* 3 So. (2d) 449 (La. 1941).

It has frequently been urged that recitations similar to that in the principal case in deeds of sale constitute acknowledgments of existing servitudes in such manner as to interrupt prescription[1] under Article 3520 of the Civil Code.[2] The court has, however, with few exceptions,[3] refused to allow this contention to prevail, and has interpreted the recitations as "mere"[4] acknowledgments of something which the vendor was compelled to notice and could not deny.[5] But a vendor has the right to deal with his reversionary interest.[6] Therefore the court looks to the intention of the vendor at the time of sale to determine what dealings with the reversionary interest were actually contemplated by the parties.[7] In the final analysis, intention is the basis for decision. If a recitation of outstanding mineral rights is regarded as a reservation, the vendor's so-called "mistake of law"[8] would operate to the prejudice of the vendee.

1. Frost-Johnson Lumber Co. v. Nabors Oil & Gas Co., 149 La. 100, 88 So. 723 (1921); Sellington v. Producers Oil Co., 152 La. 81, 92 So. 742 (1922); Lewis v. Bodcaw Lumber Co., 167 La. 1067, 120 So. 859 (1929); Louisiana Del Properties, Inc. v. Magnolia Petroleum Co., 169 La. 1137, 126 So. 684 (1930); Patton v. Frost Lumber Industries, Inc., 176 La. 916, 147 So. 33 (1933).

2. Art. 3520, La. Civil Code of 1870: "Prescription ceases likewise to run whenever the debtor, or possessor, makes acknowledgment of the right of the person whose title they prescribed."

3. Frost-Johnson Lumber Co. v. Nabors Oil & Gas Co., 149 La. 100, 88 So. 723 (1921); Sellington v. Producers Oil Co., 152 La. 81, 92 So. 742 (1922).

4. "Acknowledgment per se, as set forth in Article 3520, does not apply, having been eliminated by the word 'mere'!" Daggett, Louisiana Mineral Rights (1939) 63.

5. Lewis v. Bodcaw Lumber Co., 167 La. 1067, 120 So. 859 (1929).

6. Gailey v. McFarlain, 194 La. 150, 193 So. 570 (1940), noted in (1940) 2 LOUISIANA LAW REVIEW 752.

7. Lewis v. Bodcaw Lumber Co., 167 La. 1067, 120 So. 723 (1929); Louisiana Del Oil Properties, Inc. v. Magnolia Petroleum Co., 169 La. 1137, 126 So. 684 (1930).

8. Art. 1822, La. Civil Code of 1870: "He is under an error of law who

The court's reluctance to pronounce a mere recitation of an existing mineral servitude an interruption of prescription is obviously founded on the belief that the vendor would not care to extend the servitude over a longer period of time without some sort of remuneration from the holder.[9] When a vendor parts with his land and makes no reservation in his own behalf, it is only natural that the court in determining whether there has been an *acknowledgment* should look to his intention for the interpretation of the recitation because of his unbiased position. He can neither lose nor gain, regardless of what the court construes his intention to be.[10] That particularly important element is lacking where the question is whether there has been a *reservation* for, whether or not the vendor knows it, he stands to lose a valuable right by the interpretation the court gives in recitation in the deed of sale. Has the court then gone too far in applying the "vendor's intent" test to the principal case, when by adhering more closely to contractual principles and interpreting the contract according to the "mutual understanding of the parties"[11] the just expectations of the parties could be more fully realized?

Viewed abstractly, and from a purely contractual standpoint, the offer held out by the vendor[12] was one to sell the surface rights to the particular tract of land in question; included was the expectancy[13] that the mineral rights would revert to the vendee if there were a subsequent prescription by non-user of the servitude.[14] The vendor could not have intended to offer more, for it did not know that it owned more. And, as the court recognized,[15] had the vendor known it owned the mineral rights, it would not have sold but one-half its interest in them. Does it not,

is truly informed of the existence of facts, but who draws from them erroneous conclusions of law."

9. "The term of the right sold or reserved is bound to enter justly into the minds of the contracting parties and a 'mere acknowledgment' without consideration should not be allowed to prolong this term." Daggett, op. cit. supra note 4, at 48.

10. If the court construed the recitation to constitute an interruption of prescription, such a decision would enure to the benefit of the owner of the servitude. If the court did not so construe the recitation, it would enure to the benefit of the vendee of the land.

11. Arts. 1945, 1950, 1965, La. Civil Code of 1870.

12. The vendee insisted that his original offer to buy the land was accepted by the vendor, but the fact that the vendor qualified his acceptance by refusing to sell the minerals would amount to a cross offer. See Arts. 1805, 1806, La. Civil Code of 1870.

13. See note 5, supra.

14. Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1920).

15. Commercial Nat. Bank in Shreveport v. Herrick, 3 So. (2d) 449, 455 (La. 1941).

therefore, require a stretch of the imagination to assume that the vendee is entitled to more than he was offered, more than he bargained for, more than he paid for, regardless of why it was not offered to him?

In dealing with that question sight must not be lost of the fact that the case is not one of dealing with two separate and distinct estates,[16] but rather with a landed estate upon which a real right in the nature of a servitude may be imposed.[17] Unless that servitude is expressly established, sale of land with no mention whatsoever of the minerals conveys both interests.[18] When both land and minerals are held by a single owner, the interests are confused[19] or merged and constitute a single estate. Therefore, a sale of the land includes a sale of the minerals, nothing to the contrary appearing.

In the principal case, the recitation in the deed should clearly rebut any presumption that the mineral rights were included in the sale of the land. If the present interest in the mineral rights was not bargained for, then no part of the consideration paid for the land was payment for them. The principal channel through which consideration might flow is closed, leaving but that portion of the price which may be said to have been paid for the hope of acquiring the mineral rights by a subsequent reversion due to non-use plus the dollar recited in the quit-claim. To maintain that that is a sufficient consideration is to declare that mineral rights are practically worthless. In *Murray v. Barnhart*[20] the court held that a one dollar consideration paid for a lease to drill in one year was insufficient, and would be looked upon as no consideration at all. The same might be said for the purported consideration in the principal case. The vendor had no intention of selling the minerals; the vendee had no reason to assume he was buying them; no consideration was paid for them. Principles of natural justice should demand that they remain vested in the vendor. Although the requirement of an express reservation should be rigidly enforced in cases involving acknowledgment

16. Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1920); Wemple v. Nabors Oil and Gas Co., 154 La. 483, 97 So. 666 (1923); Lee v. Giauque, 154 La. 491, 97 So. 669 (1923).

17. Ibid.

18. Powell v. Roy, 14 La. App. 663, 130 So. 629 (1930); George v. Manhattan Land & Fruit Co., 51 F. (2d) 28 (C.C.A. 5th, 1931).

19. Sample v. Whitaker, 171 La. 949, 132 So. 511 (1930). See also Art. 805, La. Civil Code of 1870.

20. Murray v. Barnhart, 117 La. 1023, 42 So. 489 (1906).

of an existing mineral servitude, no such express reservation should have been necessary to reserve title in the vendor in the *Herrick* case.

E. L. L.

SALES—RESCISSION FOR MISREPRESENTATION—DUTY OF VENDEE TO DISCLOSE VALUE—Action to recover possession of a diamond ring, wherein one Sims, a negro, intervened, claiming ownership. Sims found the ring and took it to a jewelry store, where the plaintiff was employed. Upon examination of the ring, another employee told Sims that the ring had bubbles in it; the employer stated that it was not worth more than $130 and expressed a willingness to buy it for that sum. He apparently made a fruitless effort to get the money. Sims was about to leave the store when he was engaged in conversation by plaintiff, who had not theretofore participated in the meeting; plaintiff bought the ring for $130. In reality it was worth $1,250. *Held,* the entire staff of the jewelry store, including plaintiff, was in a fiduciary relationship with Sims, and hence each member of the staff was under a duty to disclose all he knew about the ring. Plaintiff was standing nearby at the time and knew of the previous conversation. He failed to disclose information which he was in justice bound to reveal to the other party to the contract who was not on an equal footing with him. Since the negro was led to believe that the value of the ring was $130, he was thereby led into an error of fact, which "comes under the head of" fraud, and the contract should be rescinded. *Griffing v. Atkins,* 1 So. (2d) 445 (La. App. 1941).

It is common knowledge that each party to a sales transaction will try to secure the greater advantage for himself and drive the harder bargain. The law recognizes that in the haggling of the marketplace some leeway from the standard of strict truth must be allowed for "sales talk."[1] This idea is epitomized in the old expression, *caveat emptor.*[2] On the other hand, courts are unwilling to permit one party to take unfair advantage of the other. Consequently, misrepresentation in order to secure a better deal will not be permitted in certain restricted cases where

1. Harper, A Treatise on the Law of Torts (1933) 463, § 223; Anson, Principles of the Law of Contracts (1930) 249, § 210.
2. "Let the buyer beware." Black's Law Dictionary (1933) 294.