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# Private Law: Mineral Rights

Harriet S. Daggett

ing that the company did not intend to rely on the clause. Granting that the offer might have led the insured so to believe, such a belief, coming months after the period had expired, could hardly have been prejudicial.

Co-insurance clauses are not valid in Louisiana unless the particular clause has been approved by the fire insurance division and a consideration allowed in the rate of premium charged, and then to be effective there must be stamped on the face and back of the policy a statement showing that the policy is issued subject to the conditions of the attached co-insurance clause.[4] In *Jonesboro Lodge No. 280 of Free and Accepted Masons v. American Central Insurance Company*[5] the court refused to enforce such a clause on the ground that the required notice was not clearly stamped on the face of the policy. The court permitted recovery of a twelve per cent penalty, refusing to apply the provisions of the Insurance Code,[6] which became effective subsequent to the occurrence of the loss and tender by the insurer. Under the Insurance Code the company's failure to pay must now be arbitrary, capricious and without probable cause to justify imposition of the penalty.

Only a question of evidence was involved in *Picone v. Marine Fire Insurance Company of New York*[7] and this was resolved against the insurer. The facts were adequate in support of the court's opinion.

## MINERAL RIGHTS

*Harriet S. Daggett**

Since the case of *Arnold v. Sun Oil Company*[1] had been in court for some five years, it was decided on rehearing not to remand for elicitation of further facts concerning possession and prescription. The court held that a mineral lessee does not acquire the right of reliance upon the public records by virtue of Act 205 of 1938[2] because this statute is merely procedural, and does not alter the substantive nature of the lease, under the articles of the civil code. Therefore, mineral lessees may not "by

4. La. R.S. (1950) 22:694.
5. 218 La. 403, 49 So. 2d 740 (1950).
6. La. Act 195 of 1948.
7. 218 La. 546, 50 So. 2d 188 (1950).
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1. 218 La. 50, 48 So. 2d 369 (1949) (on rehearing 1950).
2. See La. Act 6 of 1950 (2 E.S.), amending to include substantive rights.

reliance upon the public records, acquire a greater right than an ordinary lessee could acquire and a greater right, in fact, than their lessor possessed."[3] Even if the mineral lessee had been entitled to rely upon the public records, they showed in this instance that his lessor had a defective title.

*Waller v. Midstates Oil Corporation*[4] is concerned with interpretation of a lease in regard to conditional overriding royalty payment, whether lessor or lessee should pay certain amounts of severance tax, et cetera. No useful purpose would be served in setting forth the instruments involved here. Prevailing rules and customs of the oil industry were used to guide interpretation of certain clauses.[5]

Accepted principles of servitude are reiterated in *Starr Davis Oil Company, Incorporated v. Webber*,[6] wherein it was held that a mineral servitude owner entitled to search the land and keep one-half of what he found and the landowner entitled to the other half of the minerals are not co-owners of the minerals, and hence the action for partition does not lie.

*LeBlanc v. Danciger Oil & Refining Company*[7] reaffirmed the decision of *Hunter Company v. Shell Oil Company*[8] in a similar factual situation, and held that "production in paying quantities during the primary term of a mineral lease on a portion of an integrated pooling unit established by the Commissioner of Conservation, although not on the leased property, maintains the lease in effect beyond the primary term as to that part of the leased land lying outside the unit. . . ." [9] The decision was again grounded on indivisibility of the lease contract, against which it was indicated the parties might have contracted. The plea for cancellation for lack of proper development was denied because the plaintiff failed to produce sufficient proof and because the lessee had not been placed in default. Justice Hamiter did not concur on the grounds so ably expressed in his dissenting opinion in *Hunter Company v. Shell Oil Company, Incorporated*.[10]

On rehearing in *Sanders v. Flowers*,[11] it was decided that the

3. 218 La. 50, 150, 48 So. 2d 369, 403 (1949).
4. 218 La. 179, 48 So. 2d 648 (1950).
5. 218 La. 179, 191, 48 So. 2d 648, 652 (1950).
6. 218 La. 231, 48 So. 2d 906 (1950).
7. 218 La. 463, 49 So. 2d 855 (1950).
8. 211 La. 893, 31 So. 2d 10 (1947).
9. 218 La. 463, 469, 49 So. 2d 855, 857 (1950).
10. 211 La. 893, 31 So. 2d 10 (1947).
11. 218 La. 472, 49 So. 2d 858 (1950).

Commissioner of Conservation was not a necessary party to this suit, wherein the commissioner's order to unitize was attacked by one claiming that he had no notice of the hearing called by the commissioner. The court found further that the plaintiff, having but a reversionary interest in the minerals involved, had no right to question the order. Moreover, the method of notice being within the discretion of the commissioner and publication having been proved, his duty had been fulfilled. In the per curiam, it is observed that the case did not necessitate a ruling on whether the order of the commissioner suspended prescription or whether the successful drilling on the unit in which the defendant's property was included interrupted prescription, as the court found that prescription had not run on the servitude on other grounds.

In *Everett v. Phillips Petroleum Company*,[12] in accord with established jurisprudence, a contract providing for royalty in lieu of drilling within the primary term and in lieu of an offset well was held to have been fulfilled rather than breached under unitization orders of the State Commissioner of Conservation. A clause of the contract providing for a bonus in oil was held to mean at market price without deduction for severance tax.

In *Haynes v. King*[13] on first hearing it was held that a paper labelled "Declaration of Interest," confected by the landowner and one-time servitude owners after the mineral servitudes had prescribed and recorded only after sale of the land to plaintiff, was a tacit renunciation of prescription by the landowner giving a new ten year term and that recordation of the original servitude was sufficient notice to plaintiff, purchaser, because the burden was then on the buyer to find out whether prescription on the servitude had been suspended or interrupted or renounced. The Chief Justice strongly dissented, and on rehearing the court held that a renunciation, if possible at all, was equivalent to a new agreement or grant of servitude and obviously must be recorded to affect third parties with or without actual knowledge. Justice Hamiter dissented, adhering to his majority opinion on the first hearing and again voicing his dissatisfaction with application of servitude principles to mineral rights, in any case.

*Bond v. Midstates Oil Corporation*[14] held that when overriding royalty, which is considered as rent under Louisiana jurisprudence, is retained in disposing of an interest in a mineral

12. 218 La. 835, 51 So. 2d 87 (1950).
13. 219 La. 160, 52 So. 2d 531 (1950).
14. 219 La. 415, 53 So. 2d 149 (1951).

lease, a sublease and not an assignment has been confected, regardless of other provisions in the instrument purporting to relinquish control to the transferee. Thus, the criteria of *Stacy v. Midstates Oil Corporation*[15] in the original hearing on exceptions did not stand.

A great deal of evidence was examined in *Texas Company v. Leach*,[16] and the court found that the lessors desiring cancellation had not sustained their burden of proof of breach. The court refused to insert the word uninterruptedly into a phrase of the lease calling merely for *continued* production.

## PERSONS

*Robert A. Pascal**

Most of the decisions in the field of family law were on separation, divorce, and alimony issues. None is of great importance. A few involved questions of fact only, such as whether the alleged grounds for separation[1] or divorce[2] were indicated by the evidence, or whether the changed circumstances of the parties warranted a decrease in alimony previously allowed.[3] Some applied previously accepted interpretations of law. Thus "cruelty" again was said to include the wilful refusal of the husband to provide a home for his wife separate and apart from that of his family who mistreat her.[4] Act 24 of 1930 (now Revised Statutes 13:4452), which limits to thirty days the time for appeal from separation and divorce judgments, again was interpreted not to apply to appeals from those parts of separation or divorce judgments not pertaining to the separation or divorce issue proper.[5] The wife's right to alimony pendente lite regardless of the outcome of the suit for separation or divorce was reemphasized.[6] And, finally,

15. 214 La. 173, 36 So. 2d 714 (1947).
16. 219 La. 613, 53 So. 2d 786 (1951).
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1. Pugh v. Pugh, 218 La. 395, 49 So. 2d 738 (1950).
2. Creel v. Creel, 218 La. 382, 49 So. 2d 617 (1950) and Savin v. Savin, 218 La. 754, 57 So. 2d 41 (1951).
3. Graham v. Graham, 218 La. 928, 51 So. 2d 392 (1951).
4. Bonvillion v. Papa, 218 La. 203, 48 So. 2d 897 (1950). See the previous decision in Cormier v. Cormier, 193 La. 158, 190 So. 365 (1939) and the cases therein cited.
5. Scott v. Scott, 218 La. 211, 48 So. 2d 899 (1950), involving an appeal from the alimony portion of the decree. See also Cressione v. Millet, 212 La. 691, 33 So. 2d 198 (1947) and Cure v. Tobin, 217 La. 713, 47 So. 2d 329 (1950) (custody and community property aspects of the decree granting the divorce or separation).
6. St. Martin v. Messersmith, 218 La. 239, 48 So. 2d 909 (1950).