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Substantive Law - Private Law: Mineral Rights

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entitled to compensation" and making the contract of insurance a direct obligation in favor of such person. The court was undoubtedly pursuing the spirit of the law, but Justices LeBlanc and Hamiter dissented on the theory that R.S. 22:658 was not applicable to workmen's compensation insurance and that the provision in question, being penal in nature, should be strictly construed.

LEASE

*J. Denson Smith**

The court had to deal with only two cases involving leases of immovable property.[1] Both of these cases presented problems of interpretation, and in each instance the opinion was well reasoned and adequately supported by the provisions of the contract of lease.

MINERAL RIGHTS

Harriet S. Daggett†

Taylor v. Kimbell[1] was a suit for cancellation of a lease, the primary term of which had expired. The suit was successful, since the proof adduced convinced the court that gas could not be produced in paying quantities. Had the preponderance of evidence on this point been to the contrary and facilities for marketing gas been unavailable, then the clause of the lease pleaded by defendants for continuation of the life of the lease by payment of shut-in gas well royalties would have been availing.

In *Oil Well Supply Company v. Independent Oil Company*[2] Act 68 of 1942[3] was held to give a furnisher of supplies a privilege upon an oil and gas lease, when the supplies in question had actually been used on the lease in connection with drilling, even though no contractual relation had been proved between the furnisher on the one hand and the owner, operator, producer or driller, on the other.

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1. Dean v. Pisciotta, 220 La. 725, 57 So. 2d 591 (1952); Loraine, Inc. v. DiMartino, 221 La. 571, 59 So. 2d 887 (1952).

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1. 219 La. 731, 54 So. 2d 1 (1951).
2. 219 La. 936, 54 So. 2d 330 (1951).
3. La. R.S. 1950, 9:4861-4867.

The case of *Milling v. Collector of Revenue*[4] has recently been treated at length in this REVIEW.[5] A second discussion would be inappropriate after such a short interval. But the importance of the decision, if it be carried forward into the many areas upon which it touches, may warrant many future studies. Provisions of the Civil Code dealing with ordinary leases have been invaluably employed as a convenient legal vehicle to regulate mineral leases. However, to place minerals in the category of recurring returns from land or money appears to be unrealistic and fraught with potentially dangerous legal consequences.

Pearce v. Southern Natural Gas Company[6] held that payment of delay rentals under a mineral lease to a party other than the then owner of the land did not give the right to cancel the lease when there had been no compliance with a specific clause in the lease contract requiring that the lessee be notified of a change in ownership. The lessee was not required to take notice of public records showing the transfer.[7]

In *Superior Oil Company v. Case*[8] an alleged transfer of a mineral interest which would have vested in minors was found to have been simulated and to be of no effect. The case of *Roy O. Martin Lumber Company v. Hodge-Hunt Lumber Company*[9] was cited with approval for the statement that the court was not being called upon to protect minors, but instead was being asked to honor a maneuver made for the sole purpose of continuing a servitude.

In *Placid Oil Company v. George*[10] a proposed agreement to unitize lands for production purposes had been confected in which a paragraph appeared stating that drilling or production on any part of the area would constitute an interruption of prescription of any mineral rights in any of the lands covered by the lease. Since this paragraph had been stricken by certain landowners, they obviously were not bound by it.

In *Ware v. Baucum*[11] plaintiffs, having brought a jactitation action, raised the question of possession only. They showed their actual possession as owners of the land and the passage of more

4. 220 La. 773, 57 So. 2d 679 (1952).
5. See Note, 12 LOUISIANA LAW REVIEW 491 (1952).
6. 220 La. 1094, 58 So. 2d 396 (1952).
7. Atlantic Refining Co. v. Shell Oil Co., 217 La. 576, 46 So. 2d 907 (1950).
8. 221 La. 126, 58 So. 2d 733 (1952).
9. 190 La. 84, 181 So. 865 (1938).
10. 221 La. 200, 59 So. 2d 120 (1952).
11. 221 La. 259, 59 So. 2d 182 (1952).

than ten years without exploration since a title to a mineral servitude on the land had been recorded. The court said that plaintiffs had established a presumption of lapse of servitude and were permitted to maintain their action in jactitation based on possession of the land and right to seek possession of minerals thereon. The rebuttal of this presumption could only be made in revendication. Such rebuttal would constitute trial of title, an issue which may not be raised in a jactitation action.

In *Arkansas Louisiana Gas Company v. Southwest Natural Production Company*[12] plaintiff sought a declaratory judgment determining the proper method of dividing shares of production owing to royalty and mineral owners. The sole question as stated by the court was as follows:

> "Are the royalty owners throughout the unit entitled to be paid on the basis of the return from the sale of all gas and distillate produced from the unit, or only on the basis of the amounts realized by their own lessees from the sale of the proportion of the production allocated to the tract in which they have an interest?"[13]

After a thorough analysis of statutes and contracts the court found the latter method of computation to be correct. Conservation statutes and their purpose were emphasized, and particular stress was laid upon the fact that no recasting of ownership was involved or would be valid. Royalty owners were not parties to the contract involved and were not affected by it.

Horn v. Skelly Oil Company[14] was remanded because of a failure to join a party which the court thought necessary. A question arose concerning the interpretation of an instrument providing for a "reservation" of minerals. The instrument was in connection with the sale of land by the Federal Land Bank and contained the stipulation that the vendee of the land was to have full leasing power. If the document established a servitude, it would have reverted to the present landowner, since no interruptions, suspensions or extensions had occurred. If royalty of the *Vincent-Bullock* type had been created, this interest too had lapsed. But it was maintained by subsequent lessees and servitude owners that reversion in such a case was to them, for it was contended that the royalty was "an appendage to the mineral

12. 60 So. 2d 9 (La. 1952).
13. Ibid.
14. 60 So. 2d 65 (La. 1952).

interest."[15] Provisions of the lease agreement are not set forth in the opinion.

PERSONS

*Robert A. Pascal**

MARRIAGE, SEPARATION, AND DIVORCE[1]

The attempts of a husband to have his wife committed to an institution, or his use of "deceit and physical force" in attempting to confine her, do not amount to cruelty warranting separation from bed and board unless the action is taken without probable cause. This is the conclusion in *Kalpakis v. Kalpakis*.[2] The court reasoned that in some instances it may be the duty of a spouse to seek the commitment or confinement of the other, and that often a person in need of mental treatment must be tricked or forced to accept it. Consistent with this view, the court concluded that the plaintiff's petition failed to state a cause of action because it did not affirmatively allege the unjustifiable character of the defendant's conduct. The case is a novel one in Louisiana, but there should be no doubt that such conduct, if actually unjustifiable, constitutes cruelty under the jurisprudence applying Article 138 of the Civil Code.[3]

Eals v. Swan[4] affirmed the judicial practice of applying the doctrine of *comparative rectitude* in separation and divorce cases. In our jurisprudence, as the decisions cited in the *Eals* case show, our legislation allowing divorce or separation for cause has been regarded as measures "for the relief of the oppressed party," and judgments have not been rendered in favor of either in instances in which each party has given cause to the other and neither can

15. Id. at 67.

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1. Decisions treating of questions of fact or settled legal questions relating to marriage, separation, or divorce and not discussed herein are Succession of Allen, 220 La. 365, 56 So. 2d 577 (1951)—proof of marriage, requirements for putative marriage; Meyer v. Hackler, 219 La. 750, 54 So. 2d 7 (1951)—standard of proof and sufficiency of evidence of adultery and reconciliation, and reconventional demands in divorce and separation suits; and Massa v. Thompson, 220 La. 278, 56 So. 2d 422 (1952), Kieffer v. Heriard, 221 La. 151, 58 So. 2d 836 (1952), and Clay v. Clay, 221 La. 258, 59 So. 2d 182 (1952) —evidence or proof of adultery.

2. 60 So. 2d 217 (La. 1952).

3. Extreme cases on what may be considered cruelty are Spansenberg v. Carter, 151 La. 1038, 92 So. 673 (1922) and Moore v. Moore, 192 La. 289, 187 So. 670 (1939).

4. 221 La. 329, 59 So. 2d 409 (1952).