Louisiana Law Review

Volume 13 | Number 4
May 1953

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Repository Citation

Roy M. Lilly Jr., *Mineral Rights - Servitudes - Prescription - Public Records Doctrine*, 13 La. L. Rev. (1953)
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of application when mineral interests are involved. The previous cases, however, have indicated that the doctrine of after-acquired title is "equally"[19] applicable to the sale of mineral interests.

Carl F. Walker

MINERAL RIGHTS—SERVITUDES—PRESCRIPTION—PUBLIC RECORDS DOCTRINE

Watkins, defendant, sold land to Wise, plaintiff, on July 13, 1929, reserving to himself a mineral servitude. W. T. Gleason sold other land to R. R. Gleason, another defendant, on December 31, 1932, reserving a mineral servitude. On April 6, 1934, R. R. Gleason sold this land to Wise, reserving to himself the minerals previously reserved by W. T. Gleason. On April 30, 1936, Wise and Watkins, and Wise and W. T. Gleason executed mineral leases on both tracts of land. On October 21, 1940, these leases were extended to April 30, 1943. On July 6, 1943, Wise, Watkins, and W. T. Gleason executed another lease in which Wise stated that it was his intention "to admit ownership" of the minerals in W. T. Gleason and Watkins, "and extend the duration thereof." This lease was notarized and recorded. W. T. Gleason sold his mineral interest to R. R. Gleason. Thereafter other defendants purchased portions of R. R. Gleason's mineral interest, relying on the joint lease. Wise brought suits against Watkins, Gleason, and Gleason's vendees alleging slander of title. *Held*, (1) In a sale of land, attempted withholding of mineral rights not then belonging to the vendor is not sufficient acknowledgment to interrupt prescription. (2) A servitude prescribed for ten years non-user is a dead thing, and cannot be revived by the renunciation of prescription. (3) Vendees of mineral rights cannot rely on one instrument of the public records and disregard others showing the lapse of more than ten years since the creation of the servitude. *Wise v. Watkins, Wise & Gleason*, 62 So. 2d 653 (La. 1952).

In *Frost-Johnson Lumber Co. v. Nabors Oil and Gas Co.*,[1] the court held that the expression, "all mineral rights are expressly reserved, having heretofore been sold by the present vendor . . ."[2] was sufficient acknowledgment to interrupt the

19. See note 2 supra.
1. 149 La. 100, 88 So. 723 (1921).
2. 149 La. 100, 105, 88 So. 723, 724.

running of prescription on a mineral servitude. Since that holding, the court has evolved the express acknowledgment-intention doctrine, holding that in order to interrupt prescription, an acknowledgment must be made with the express intent to interrupt.[3] In the instant case, the deed which defendants claimed had interrupted prescription provided that "the Grantor herein reserves one-half of all oil, gas, and other minerals . . . which has heretofore been reserved by W. T. Gleason in sale to this Grantor."[4] The court, in rejecting defendant's contention that the *Frost-Johnson* case was controlling, held, "we do not think it is a sound pronouncement of law and in accord with the later interpretations by this Court of Article 3520 of the Civil Code relating to acknowledgments, and we, therefore, do not choose to follow it even though the reservation is of similar import to the one involved herein."[5]

Defendants also contended that the joint lease, executed after the running of prescription, was a renunciation of prescription.[6] Article 3460[7] of the Civil Code allows the renunciation of prescription once it is acquired, but prohibits the renunciation of prescription in advance. The court has held that the portion of this article which prohibits the advance renunciation of prescription is applicable to mineral servitudes.[8] However, in *Haynes v. King*,[9] the court expressed doubt that a mineral servitude could be revived after prescription had run, even by renunciation of the prescription.[10] In the instant case the court held that since a servitude is *extinguished*[11] by ten years non-user, "it would be

3. Bremer v. North Central Texas Oil Co., 185 La. 917, 171 So. 75 (1936); Lewis v. Bodcaw Lumber Co., 167 La. 1067, 120 So. 859 (1929).

4. 62 So. 2d 653, 654 (La. 1952).

5. Id. at 655.

6. The clause in the joint lease which defendants contended had renounced prescription provided: "C. Baxter Wise in signing this lease with William T. Gleason and R. D. Watkins, recognizes that William T. Gleason is the owner . . . and admits that it is his intention as the owner of the fee simple title, to admit ownership and extend the duration thereof."

7. "One can not renounce a prescription not yet acquired, but it is lawful to renounce prescription when once acquired."

8. Nabors Oil & Gas Co. v. Louisiana Oil Refining Co., 151 La. 361, 91 So. 765 (1921).

9. 219 La. 160, 52 So. 2d 531 (1951).

10. 219 La. 160, 182, 52 So. 2d 531, 539. "The language of the cases indicates that a mineral servitude cannot be revived after it is extinguished by prescription." The court made no holding on this point, however; the decision was that since the purported renunciation had not been recorded, it could not affect the plaintiff's rights.

11. Art. 789, La. Civil Code of 1870: "A right to servitude is extinguished by the non-usage of the same during ten years."

inconsistent to apply this article [3460]. . . ."[12] Citing cases referring to a prescribed servitude as a 'dead thing,"[13] the court con-

12. 62 So. 2d 653, 655 (La. 1952).

The court seemed to feel that the word "extinguished" used in Article 789 precluded the possibility of a revival of the servitude by renunciation of the acquired prescription. It is submitted that the word "extinguished," as applied to a prescribed servitude, is no more final than when used to describe the effect of all prescribed obligations. Article 2130 provides: "Obligations are *extinguished*: . . . By prescription, which shall be treated of in a subsequent title." (Italics supplied.) The court has held that prescription acquired against conventional obligations can be renounced. Levistones v. Marigny, 13 La. Ann. 353 (1858); Gauche v. Gondran, 20 La. Ann. 156 (1868).

Article 3459 describes the effect of prescription as "a *peremptory and perpetual bar* to every species of action, real or personal. . . ." (Italics supplied.) Yet immediately following this strong statement is Article 3460, which allows the renunciation of acquired prescription. Article 3471 provides: "The rules above laid down [among which is Article 3460] are common to prescriptions by which property is acquired and *those by which debts are released.*" (Italics supplied.) The prescription which releases a servient estate is classified as a prescription which operates as a release from debt (Article 3529).

Articles 789 and 2130 are borrowed from the French Civil Code. The redactors of the French Code do not seem to have intended the word "extinguished" to convey a meaning which would prevent the renunciation of acquired prescription. M. Bigot-Preameneu, discussing the articles dealing with prescription before the French legislative assembly, said: *"Les obligations s'eteignent par la prescription, lorsque ceux envers qui elles ont été contractées ont négligé pendant le temps qui la loi a fixé, d'exercer leur droits.*

* * *

"Lorsque le temps necessaire pour prescrire s'est écoulé, on peut renoncer au droit ainsi acquis. . . ." 10 Fenet, Recueil Complet des Travaux Preparatories du Code Civil, Discussions, 573, 576 (1856). (Obligations are *extinguished* by prescription, when those who have contracted the obligation have neglected, during the time which the law has fixed, to exercise their rights.

* * *

When the time necessary to prescribe has past, one is able to renounce the right thus acquired. . . .) (Italics supplied.)

Planiol and Ripert, discussing the reason for allowing the renunciation of acquired prescription, say: *"La loi, qui prohibe les renonciations anticipées, autorise au contraire les renonciations faites après coup, quand la prescription est accomplie* (Art. 2220). *Il n'ya plus alors qu'un intérêt particulier en jeu: celui qu est protégé par la prescription peut, á son choix, ou se servir de ce moyen ou y renoncer; il ne fait que disposer de son droit."* Traité Pratique de Droit Civil Français, t. 3, nº 752 (ed. 1926). (The law, which prohibits the advance renunciation of prescription, authorizes on the contrary, the renunciation after the event, when the prescription is accomplished [Art. 2220] [Art. 3460, La. Civil Code of 1870]. The law no longer has a particular interest: he who is protected by prescription can enjoy its protection or renounce it, as he pleases; he only disposes of his right.)

13. The court cited English v. Blackman, 189 La. 255, 268, 179 So. 306, 311 (1938), in which it was said: "Since they had not been exercised and the running of prescription against them had not been interrupted within the ten-year period after their execution, they expired, became extinct. They were dead things, and the mere acceptance of the benefits of the new lease thereafter did not resurrect them. Accrued prescriptions cannot be 'interrupted' of course." In this case interruption by acknowledgment was pleaded, not renunciation.

The court also cited Porter-Wadley Lumber Co. v. Bailey, 110 F. 2d 974, 976 (5th Cir. 1940). In that case it was said: "The inconsistency of their position is that they claim to have been thus perpetuated in rights of which

cluded that, "since the servitude in this case has become extinct, it cannot be re-created or established anew except by title."[14] This holding seems to indicate that even an express renunciation of acquired prescription, after ten years non-user, would not effectively revest title in the mineral owner.

Defendants who had purchased a portion of Gleason's rights contended that their reliance on the public records estopped plaintiff from denying their ownership. There is some confusion as to what faith can be placed in the public record when dealing with mineral rights. In *Brown v. Sugar Creek Syndicate*[15] the court said, "The mineral and royalty owners who acquired their rights on the faith of the public records after the . . . agreement was registered are obviously protected."[16] However, in subsequent cases the court has used such language as "[a] third person purchasing, on the faith of the public records, . . . *is only required to ascertain* if the recorded owner . . ." has kept the servitude alive (italics supplied),[17] thus indicating that the records could not be relied upon completely. In the instant case the court held that one who purchases mineral rights must determine whether the rights have prescribed when the records show that the servitude has been in existence more than ten years, even if this entails a search behind the records.

Roy M. Lilly, Jr.

PUBLIC UTILITIES—RATE MAKING—PRUDENT INVESTMENT THEORY—NON UTILITY FUNCTIONS

Appellant, Gulf States Utilities Company, applied to the Louisiana Public Service Commission for authority to increase its rates for electric service in the State of Louisiana. The com-

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they have already been irrevocably divested by operation of law. In order to show a renewal of their servitudes, they must prove Bailey's intention to create new rights. . . . Acceptance of rentals under such circumstances does not resurrect mineral servitudes which have become prescribed, either on the theory of tacit renunciation or estoppel." The court in the *Porter-Wadley* case did not give an opinion as to whether such a renunciation could be made.

14. 62 So. 2d 653, 656 (La. 1952).

15. 195 La. 866, 197 So. 583 (1940). In the *Brown* case there was a conflict as to each alleged owner's share of the mineral estate. There was evidence that some of the rights had prescribed. The interested parties executed a pooling agreement which set forth each owner's respective share. This instrument was notarized and recorded, and other parties bought on the faith of this instrument on the record.

16. 195 La. 866, 892, 197 So. 583, 592 (1940).

17. Braswell v. Columbia County Development Co., 153 La. 691, 694, 96 So. 534, 535 (1923).