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## Mineral Rights - Reversionary Interest

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tion should be made, and that it is only when there has been a clear abuse of that discretion that this court will interfere, and, even then, only when it is shown that the abuse of that discretion will result in irreparable injury to the complaining party."<sup>4</sup> The Supreme Court's failure to overrule specifically the *Marston* case raises questions as to its use in the future. The *Marston* and *Roumain* cases may be distinguished in two important respects. First, as the opinion in the *Roumain* case states, the plaintiff had on two occasions caused a stay of trial proceedings by applying for supervisory writs. The employment of purely dilatory tactics was obvious. Second, the *Marston* case involved a ruling made by the trial judge *before* trial, whereas in the *Roumain* case the ruling was made *during* the trial. It is submitted that the holding of the *Roumain* case should not be restricted to its peculiar facts, but should be interpreted so as to prevent the use of the *Marston* rule for delaying the proceedings, either before or after commencement of trial. The trial judge is in the best position to control the proceedings in his court and his discretion should be left unfettered unless clearly abused.

Neilson Jacobs

#### MINERAL RIGHTS—REVERSIONARY INTEREST

Plaintiffs appealed from a judgment dismissing their suit to be recognized as owners of a one-fourth mineral interest to which they had purchased the right of reversion. Plaintiffs' vendor had purchased the surface of the land concerned subject to an outstanding one-fourth mineral servitude; he then sold the land, plus a one-half interest in the minerals, to the defendant, reserving in the act of sale a present one-fourth mineral interest and the right of reversion to the outstanding servitude. The act of sale contained the stipulation that the right of reversion should prescribe at the same time as the one-fourth mineral interest reserved with it. Plaintiffs alleged that prescription had run against the outstanding servitude, causing it to vest in them as purchasers of the right of reversion. Defendants argued that it reverted to the land which they now own. *Held*, the reservation of the reversionary interest was an attempt to circumvent the public policy of the state that mineral rights should revert

to the land in ten years for nonuser. The stipulation concerning the prescription of the reversionary interest was of no effect. *Hicks v. Clark*, 225 La. 133, 72 So.2d 322 (1954).

The court has in the past recognized by implication a reversionary interest in minerals by stating that it is a "certain object" which can be legally sold;<sup>1</sup> that the ten-year liberative prescription should run from the moment the reversionary interest was sold;<sup>2</sup> and that the sale of the reversionary interest might be handled as the sale of a hope.<sup>3</sup> However, it also stated that a person could not reserve reversionary rights to minerals which he did not own at the time of the reservation.<sup>4</sup> In none of these cases did the court find a reversionary interest at issue. This was recognized by the court in the instant case when it stated: "The question of whether a landowner who has mineral servitudes outstanding against his estate can sell the land and reserve the reversionary rights, or as the owner sell to another the reversionary rights . . . is squarely presented . . . for the first time in this case."<sup>5</sup>

In the decision before us the court rejected the argument that the right of reversion could be sold as a hope, declaring that to enforce such a sale would possibly allow the existence of a mineral interest beyond ten years without user, "contrary

1. *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940). For a discussion and analysis of "reversionary interests," see DAGGETT, *MINERAL RIGHTS IN LOUISIANA* 134, § 25 (rev. ed. 1949); Nabors, *The Louisiana Mineral Servitude and Royalty Doctrines: A Report to the Mineral Law Committee of the Louisiana State Law Institute*, 25 TULANE L. REV. 155, 182 (1951).

2. *Hodges v. Norton*, 200 La. 614, 8 So.2d 618 (1942); *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943).

3. Arts. 2450, 2451, LA. CIVIL CODE of 1870; *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940).

4. *Liberty Farms v. Miller*, 216 La. 1023, 45 So.2d 610 (1950). This case was interpreted as being the court's rejection of the reservation of a reversionary interest. See Professor Daggett's discussion in *The Work of the Louisiana Supreme Court for the 1949-1950 Term—Mineral Rights*, 11 LOUISIANA LAW REVIEW 158 (1951); and Nabors, *The Louisiana Mineral Servitude and Royalty Doctrines: A Report to the Mineral Law Committee of the Louisiana State Law Institute*, 25 TULANE L. REV. 155, 182 (1951).

5. *Hicks v. Clark*, 225 La. 133, 72 So.2d 322, 324 (1954). That a reversionary interest was not at issue in the cases is apparent from the court's disposition of them. In *Gailey v. McFarlain*, 194 La. 150, 155, 193 So. 570, 572 (1940), the court held that an act of sale purporting to convey "the right, title, interest and ownership of the vendor . . . in and to all metals and minerals and metal and mineral rights whatsoever" was not a sale or grant of a reversionary interest. In *Hodges v. Norton*, 200 La. 614, 8 So.2d 618 (1942), the court found there was no intention to convey a reversionary right even though the deed was to "convey . . . entire reversionary right." Similar dispositions were made of *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943) and *Gulf Refining Co. v. Orr*, 207 La. 915, 22 So.2d 269 (1945). See Comment, *The Reversionary Mineral Interest*, 20 TULANE L. REV. 259 (1945).

to the public policy of this state that the right to explore for oil, gas, and other minerals in the absence of use reverts to the land in a period of 10 years."<sup>6</sup> It pointed out that under the provisions of Article 709<sup>7</sup> of the Civil Code a servitude contrary to the public order could not be recognized. It further stated that when the outstanding servitude prescribed, the lands thereunder were relieved of that burden.<sup>8</sup>

According to the plaintiffs' brief on application for rehearing, "The reservation [of the reversionary interest] was written . . . precisely in accordance with the interpretation of the law and the public policy of this state as interpreted in the three cases above referred to."<sup>9</sup> Other similar agreements probably have been made in reliance on the cases discussing the merchantability of a reversionary interest. The instant case leaves little doubt that such agreements will not be enforced by the courts.

Although the major part of the opinion is directed against the theory that the reversionary interest can be sold as a hope, the scope of the court's language is broad enough to be interpreted as an implicit rejection of the concept of a reversionary interest in minerals. It is submitted that a reversionary interest has no place in Louisiana mineral law. As the court pointed out, a sale of mineral rights to land creates a servitude upon the land. The mineral interest therefore cannot revert to a specific person because the expiration of a servitude does no more than

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6. *Hicks v. Clark*, 225 La. 133, 72 So.2d 322, 325 (1954).

7. Art. 709, LA. CIVIL CODE of 1870: "Owners have a right to establish on their estates, or in favor of their estates, such servitudes as they deem proper; provided, nevertheless, that the services be not imposed on the person or in favor of the person, but only on an estate or in favor of an estate; and provided, moreover, that such services imply nothing contrary to public order.

"The use and extent of servitudes thus established are regulated by the title by which they are granted, and if there be no titles, by the following rules."

8. Justice Hawthorne in his opinion gives expression to the basic principle of civil law that the extinction of a servitude only removes a burden from the land. See 3 *PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* n° 352 (2d ed. 1952) and *SOHM, THE INSTITUTES. A TEXTBOOK OF THE HISTORY AND SYSTEM OF ROMAN PRIVATE LAW* 309 (3d ed. 1907), who refers to this principle as "what is sometimes described as 'elasticity' of ownership." To allow the servitude to be possessed by one other than the landowner by enforcing the transfer of a reversionary interest would violate both this principle and the principle expressed in Art. 709 of the Civil Code, that only the landowner can create a servitude upon his land.

9. Brief for Appellants on Application for Rehearing, p. 6, *Hicks v. Clark*, 225 La. 133, 72 So. 322 (1954). The three cases referred to are *Gulf Refining Co. v. Orr*, 207 La. 915, 22 So.2d 269 (1945); *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943); *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940).

relieve the land of the burden of the servitude; the landowner is restored to full ownership.<sup>10</sup> If the mineral interest is to be transferred after prescription to a person other than the landowner, the transfer must be by act of the landowner.

Neither in the instant case nor in any of the previous cases discussing the reversionary interest was the transferor of the interest the landowner at the time when the servitude prescribed. Disposing of such a problem in accordance with the rule of the instant case would mean that a landowner might be allowed to retain possession of valuable mineral rights after he purported to transfer them by sale of a reversionary interest. In view of the sweeping language used in the instant decision, it is an open question whether the doctrine of after-acquired title will be applied to a sale of mineral interests not owned by the vendor. The doctrine was invoked in the past when the court found a bona fide sale of mineral interests not designed to avoid the running of prescription;<sup>11</sup> this seems appropriate even in light of the instant decision.

*William E. Crawford.*

#### OBLIGATIONS—RECOVERY OF PROFITS LOST—CERTAINTY OF PROOF

Plaintiff contractor sued defendant telegraph company to recover profits lost as a result of defendant's failure to transmit and deliver promptly a telegram filed by plaintiff to reduce the amount of his previously submitted bid on a repair work contract. The importance of the message was not made known to defendant and delivery was delayed until after the bids were opened. Plaintiff lost the contract to a competitor. The reduction would have placed his bid lower than that of his nearest competitor, but his contract would have required a longer time for completion. *Held*, plaintiff, even had he proved that his bid would have been accepted, did not prove the amount of his

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10. See Arts. 625, 425, LA. CIVIL CODE of 1870. See also note 8 *supra*.

11. *White v. Hodges*, 201 La. 1, 9 So.2d 433 (1942); *cf.* *Arkansas Louisiana Gas Co. v. Thompson*, 222 La. 868, 64 So.2d 202 (1953); *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943); *Lum Chow v. Board of Com'rs for Lafourche B.L. Dist.*, 203 La. 268, 13 So.2d 857 (1943); *Hodges v. Norton*, 200 La. 614, 8 So.2d 618 (1942); *St. Landry Oil & Gas Co. v. Neal*, 166 La. 799, 118 So. 24 (1928). See the discussion of oversale in *Bates v. Monzingo*, 221 La. 479, 59 So.2d 693 (1952).