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Notes

CIVIL LAW PROPERTY—BEDS OF NAVIGABLE WATERS— SUSCEPTIBILITY OF PRIVATE OWNERSHIP

The California Company instituted a concursus proceeding¹ to ascertain the ownership of royalty funds derived from oil wells located in Grand Bay under separate leases from the state and the "Beckwith group." Grand Bay, a body of water navigable in 1812 and presently navigable, is situated within lands conveyed by a state patent in 1874 to John Beckwith, from whom defendants claimed title. The state argued that Grand Bay, a navigable body of water in 1812 when Louisiana attained statehood, was owned by the state in its inherent sovereignty and therefore was insusceptible of private ownership.² The Beckwith group contended that the state's right to attack the patent had prescribed under Act 62 of 1912,³ requiring the state to file all suits to annul and vacate patents issued by the state within six years from the date of their issuance or the date of the act. *Held*, on rehearing, with three justices dissenting, under Act 62 of 1912, the inaction of the state tacitly confirmed the patent and rendered it unassailable. *California Co. v. Price*, 74 So.2d 1 (La. 1954).

The title to the beds of navigable bodies of water has traditionally been regarded as being vested in the state since its admission to the Union in 1812.⁴ This view finds support in the Civil Code, which distinguishes between common, public, and private things. Article 450⁵ defines common things as those belonging to no one in particular, such as "air, running water, the sea and its shores." Public things are distinguished from common things in Article 453⁶ as property belonging to the "whole nation" for the use and benefit of all its members. Article 482⁷ makes it clear that these things were not intended

1. LA. R.S. 13:4811-4827 (1950).

2. *State v. Bozeman*, 156 La. 635, 101 So. 4 (1924); *State v. Capdeville*, 146 La. 94, 83 So. 421 (1919); *State v. Richardson*, 140 La. 329, 72 So. 984 (1916); *State v. Bayou Johnson Oyster Co.*, 130 La. 604, 58 So. 405 (1912).

3. La. Acts 1912, No. 62, p. 73; LA. R.S. 9:5661 (1950).

4. See note 2 *supra*.

5. Art. 450, LA. CIVIL CODE of 1870.

6. Art. 453, LA. CIVIL CODE of 1870.

7. Art. 482, LA. CIVIL CODE of 1870: "Among those which are not susceptible of ownership, *there are some which can never become the object of it; as things in common, of which all men have the enjoyment and use. . .*" (Italics supplied.)

to be susceptible of private ownership. A further expression of the same legislative policy is found in the Louisiana Constitution, which, since 1921, has contained a prohibition against the alienation of the beds of navigable streams, lakes and bodies of water.⁸ It was equally clear from the jurisprudence that common and public things, dedicated to public use and benefit, cannot be privately owned.⁹ The leading case of *Miami Corp. v. State*¹⁰ seemed to resolve forever the question of their insusceptibility of private ownership. In recognizing the state's title to lands which had become part of the bed of a navigable lake through erosion, the court stated: "It is the rule of property and of title in this State, and also a rule of public policy that the State, as a sovereignty, holds title to the beds of navigable bodies of water."¹¹ (Italics supplied.) The decision in *Humble Oil v. State Mineral Board*¹² was a sharp departure from this policy. That case held that, under Act 62 of 1912, the state's failure to annul within the prescribed delay a patent which conveyed a tract of land containing a navigable lake barred it forever from claiming title to the bed of that lake.

The instant decision followed *Humble Oil v. State Mineral Board*. The net effect of the two decisions is to resurrect the rule announced in *State v. Erwin*¹³ that beds of navigable bodies of water are susceptible of private ownership. It seems apparent that the *Humble* and *Price* decisions do violence to the traditional concepts of property embodied in the Civil Code and restated in the *Miami* case. In a vigorous dissent in the *Price* case, Justice Hawthorne isolated what seems to have been the core of the dispute. He argued that by enacting Act 62 of 1912, the legislature intended to ratify only those patents which conveyed lands susceptible of private ownership and not patents which conveyed the beds of navigable bodies of water. He noted that the majority opinion, if correct, recognized that the Mississippi River, Lake Pontchartrain, and the Port of New Orleans, are susceptible of private ownership, "provided the

8. LA. CONST. ART. IV, § 2.

9. Louisiana Navigation Co. v. Oyster Commission of Louisiana, 125 La. 740, 51 So. 706 (1910); Burns v. Crescent Gun & Rod Club, 116 La. 1038, 41 So. 249 (1906); Zeller v. Southern Yacht Club, 34 La. Ann. 837 (1882); Milne v. Giroudeau, 12 La. 324 (1838).

10. 186 La. 784, 173 So. 315 (1936). The *Miami* case overruled the case of *State v. Erwin*, 173 La. 507, 138 So. 84 (1931), which held that the bed of Calcasieu Lake was susceptible of private ownership.

11. *Miami Corp. v. State*, 186 La. 784, 807, 173 So. 315, 322 (1936).

12. 223 La. 47, 64 So.2d 839 (1953).

13. 173 La. 507, 138 So. 84 (1931).

State, prior to the Constitution of 1921, issued through error . . . a patent thereto."¹⁴ His dissent further indicated that the interpretation given Act 62 of 1912 by the *Price* case repealed by implication Articles 450, 451, 453 and 482 of the Civil Code. Chief Justice Fournet, also dissenting, felt that the result reached in the *Price* case will lead to nothing but confusion when attempts are made to distinguish property rights of individuals from property rights of the people in general.

The instant case almost immediately provoked legislation to curb its effect. Act 727 of 1954¹⁵ is a direct legislative effort to overrule the *Humble* and *Price* cases. The act reiterates the public policy against alienation of beds of navigable bodies of water and states that the purpose of the 1912 statute was to ratify patents conveying lands susceptible of private ownership. The act also declares null and void any patent purporting to transfer to private individuals lands including the beds of navigable bodies of water. In view of Act 727 of 1954, and what Chief Justice Fournet termed the "public policy that is established by codal articles that have been interpreted and reaffirmed in an unbroken line of jurisprudence for more than a century,"¹⁶ it is submitted that future disputes involving similar questions should be given careful examination.

William C. Hollier

COMMUNITY PROPERTY—LIABILITY OF WIFE FOR DAMAGES CAUSED
BY HER WHILE DRIVING THE COMMUNITY AUTOMOBILE

Plaintiff sued both the community and the wife to recover damages resulting from an automobile accident which occurred while the defendant wife was driving the community automobile on a community errand. Defendant wife filed an exception of misjoinder of parties defendant and exceptions of no right or cause of action, alleging she was not a proper party defendant in a suit against the community. From the judgment sustaining the defendant's exception of no cause of action, the plaintiffs appealed. *Held*, since the wife was on a community errand and driving the community automobile an action cannot be maintained against her separate property for a community debt. The

14. 74 So.2d 1, 17 (La. 1954).

15. La. Acts 1954, No. 727; LA. R.S. 9:1107-1109 (Supp. 1954).

16. California Co. v. Price, 74 So.2d 1, 15 (La. 1954).