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Burrell J. Carter

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simplicity and therefore aids security in oil and gas conveyancing. A sale or reservation of a reversionary right seems objectionable to this policy because it disturbs title simplicity.

A top lease is analogous to a sale of a reversionary right. However, its validity has never been questioned in the appellate courts. A probable reason for this is the manner in which the lease contract is used. Since mineral leases usually have short terms, the mineral rights normally will not be kept from the land for more than ten years. And since, by its nature, the top lease would not be used as extensively as a sale of a reversionary right, title simplicity would not seem to be disrupted. Therefore, even though it would seem conceptually inconsistent to recognize a top lease while refusing to allow a sale of a reversionary right, such an inconsistency could be justified on practical grounds.

John B. Hussey, Jr.

Mineral Rights and After-Acquired Title

The only person capable of conveying title to property is the owner.¹ However, when a vendor sells property which he does not own and later acquires title, ownership vests in the vendee.² This doctrine, known as after-acquired title, does not appear in the Civil Code, but has been developed in the jurisprudence as a means of enforcing the vendor's warranty against eviction.³ The

1. LA. CIVIL CODE art. 2452 (1870): "The sale of a thing belonging to another person is null; it may give rise to damages, when the buyer knew not that the thing belonged to another person."

2. *St. Landry Oil Co. v. Neal*, 166 La. 799, 118 So. 24 (1928); *Wolf v. Carter*, 131 La. 667, 60 So. 52 (1912); *Bonin v. Eyssaline*, 12 Mart. (O.S.) 185 (1822). See Comment, 23 TUL. L. REV. 533, 541 (1949). See also Comment, 15 TUL. L. REV. 115, 121 (1940).

3. *Wells v. Blackman*, 121 La. 394, 46 So. 437 (1908); *Bonin v. Eyssaline*, 12 Mart. (O.S.) 185 (1822). The jurisprudence heretofore has been concerned only with situations where warranty has been express or implied, but it would seem that the doctrine should apply when there has been an exclusion of warranty, if the purchaser had no knowledge of the danger of eviction. See *Waterman v. Tidewater Assn.*, 213 La. 588, 35 So.2d 225 (1948); *Rapp v. Lowry*, 30 La. Ann. 1272 (1878). See also Comment, 23 TUL. L. REV. 533, 542 (1949), where it is stated: "However, it appears that the doctrine should also be applied where the vendor is liable only for restitution of the purchase price." The doctrine of after-acquired title would also be applicable to a sale where warranty was express or implied even if the purchaser had knowledge of the danger of eviction but did not purchase at his risk and peril. See LA. CIVIL CODE arts. 2500-2519, 2453 (1870).

It has been held that the doctrine of after-acquired title does not apply to a sale by quitclaim deed. *Waterman v. Tidewater Assn.*, 213 La. 588, 35 So.2d 225 (1948). Historically, the purpose of a quitclaim deed was to release any interest the vendor had in the property and any acquisition of title by the vendee was only

purpose of this Comment is to analyze the application of the doctrine of after-acquired title as applied to the mineral servitude and the mineral lease.

After-Acquired Title and the Mineral Servitude

When mineral rights are sold or reserved, a mineral servitude is created.⁴ A mineral servitude may be extinguished by non-usage due to ten-year liberative prescription.⁵ There are several situations in which the doctrine of after-acquired title could be applied to mineral servitudes: when a person who purports to have full ownership of land attempts to sell mineral rights, but does not in fact own the land; when a person who purports to have full ownership of land attempts to sell mineral rights does not in fact own the minerals, although he owns the land; when a person who simply purports to own mineral rights attempts to convey them, but does not in fact own what he attempts to sell.

When a landowner has a defective title to the land, sells mineral rights, and subsequently acquires a valid title to the land and mineral rights, the doctrine applies because when title to the property is perfected, the title to the mineral rights is also perfected.⁶ Logically it would follow that the title would also be perfected in someone purchasing from the original mineral vendee; additionally the doctrine would seem to apply if the original mineral vendee acquired valid title by another means.⁷

incidental. See 16 AM. JUR. § 18 (1938), and cases cited therein. If the parties intend only a release of the vendor's claim to the property, the doctrine of after-acquired title would not be applicable. If, however, the parties intend for title to pass it would seem that an approach consistent with principles of warranty would be more appropriate in Louisiana. See Comment, 23 TUL. L. REV. 533 (1949). The door is open for such an approach, for the denomination of a deed as a quit-claim is not conclusive. See *Waterman v. Tidewater Assn.*, *supra*. See also *Henningren v. Stromberg*, 124 Mont. 185, 221 P.2d 438 (1950).

4. DAGGETT, MINERAL RIGHTS IN LOUISIANA 20 (rev. ed. 1949).

5. LA. CIVIL CODE art. 789 (1870).

6. See *Lum Chow v. Board of Com'rs for Lafourche Basin Levee Dist.*, 203 La. 268, 13 So.2d 857 (1943), where property was acquired from the levee board in 1910 without the necessary certification by the state. In the Constitution of 1921 it was provided that the mineral rights on property sold by the state were to be reserved. In 1935 a transferee of the original vendee acquired good title to the property by state certification. In 1936 the plaintiff acquired the property and the court held that the doctrine of after-acquired title perfected plaintiff's title to the land and the mineral rights.

However, when the landowner sells mineral rights which he does not own, he is liable for a return of the purchase price. *Treat v. Hunt Oil Co.*, 207 La. 539, 21 So.2d 721 (1945); *Martin v. Wilkie*, 24 So.2d 888 (La. App. 1946). See Nabors, *Report on Louisiana Mineral Law*, 25 TUL. L. REV. 155, 163 (1951).

7. In *St. Landry Oil & Gas Co. v. Neal*, 166 La. 799, 118 So. 24 (1928), the landowner created a mineral lease which was assigned to the plaintiff. It was subsequently determined that the landowner did not own the land, but before the

When a landowner sells mineral rights which he does not own, there is some doubt as to when the doctrine of after-acquired title will apply.⁸ Although the Supreme Court has held that the doctrine applies to such a situation,⁹ the court in several cases also stated that the reversionary interest could be sold.¹⁰ The uncertainty in this area stems from a similarity between the effects of the doctrine and the effect of the sale of a "reversionary right." Because of Louisiana's laws of prescription, outstanding mineral rights will return to the land ten years from the date of the sale, absent user, acknowledgment, suspension or extension.¹¹ Since there is always a possibility that mineral rights will return to the landowner, it has been stated that he has a reversionary right.¹² Although early cases tended toward a recognition of this right as an object which the landowner

assignee brought suit against the assignor the latter secured a ratification of the lease and the court held that the plaintiff's lease was perfected by the doctrine of after-acquired title. It would seem that the same principle would control when mineral rights (a mineral servitude) were involved.

It is significant to note that the owner of a mineral servitude who transfers his mineral rights warrants the existence of the servitude, but does not warrant that part of liberative prescription has not run on the mineral rights. *Deas v. Lane*, 202 La. 933, 13 So.2d 270 (1943). See *Nabors, Report on Louisiana Mineral Law*, 25 TUL. L. REV. 155 (1951). See also *The Work of the Louisiana Supreme Court for the 1951-1952 Term — Mineral Rights*, 14 LOUISIANA LAW REVIEW 168, 175 (1953); Comment, 30 TUL. L. REV. 462, 464 (1956); THIRD INSTITUTE ON MINERAL LAW 78 (1955).

8. *Hicks v. Clark*, 225 La. 133, 72 So.2d 322 (1954); *Long Bell Lumber Co. v. Granger*, 222 La. 670, 63 So.2d 420 (1953). See also *The Work of the Louisiana Supreme Court for the 1951-1952 Term — Mineral Rights*, 14 LOUISIANA LAW REVIEW 168, 175 (1953); *The Work of the Louisiana Supreme Court for the 1952-1953 Term — Mineral Rights*, 15 LOUISIANA LAW REVIEW 231 (1954); Comment, 30 TUL. L. REV. 462, 464 (1956); THIRD INSTITUTE ON MINERAL LAW 78 (1955).

9. In *Arkansas-Louisiana Gas Co. v. Thompson*, 222 La. 868, 64 So.2d 202 (1952), the landowner, believing that the outstanding mineral rights had prescribed, sold the mineral rights again. However, prescription had been suspended and the second sale was a nullity. When the outstanding mineral rights prescribed, the court held that the doctrine of after-acquired title perfected the second sale of the mineral rights.

In *Bates v. Monzingo*, 221 La. 479, 59 So.2d 693 (1952), the landowner acquired property in 1927 and his vendors reserved one-half the mineral rights. In 1935, before the outstanding mineral rights prescribed, the landowner sold one-half the mineral rights to one party and one-eighth of his mineral rights (which he did not own at the time) to one Fuller. In 1942, after the minerals reserved by the vendor of the landowner prescribed, the landowner sold the property. The court held that since the landowner reacquired the mineral rights before he sold the land, Fuller's title to one-eighth the mineral rights was perfected.

The case of *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943), presented a similar situation except that the landowner sold the land before the outstanding mineral rights prescribed. Therefore, the doctrine of after-acquired title did not perfect the mineral vendee's title.

10. See *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943). See also *White v. Hodges*, 201 La. 1, 9 So.2d 433 (1942); *Hodges v. Norton*, 200 La. 614, 8 So.2d 618 (1942).

11. DAGGETT, MINERAL RIGHTS IN LOUISIANA 53 (rev. ed. 1949).

12. *Id.* at 134.

could sell or reserve,¹³ the recent case of *Hicks v. Clark*¹⁴ held that such a right was not an article of commerce and could not be reserved. The reason given was that by reserving this right the landowner could burden the land with mineral interests for more than ten years without user or any of the other methods of extending the life of outstanding mineral rights. In the *Hicks* case, the court held that a reservation of the reversionary right would be nonetheless violative of public policy if, as a mineral servitude, it were limited in existence to ten years from the date of the sale.¹⁵ The rationale was that even though the right reserved might not exist for more than ten years, there would be an encumbrance on the property for more than this period. However, it would seem that, since mineral rights can be kept outstanding for a period in excess of ten years by acknowledgment and various other methods, a more fundamental reason for rejection of the reversionary right might exist.¹⁶

In the *Hicks* case the landowner sold mineral rights to X and in a subsequent sale of the land to Y purported to reserve the same mineral rights to himself. It is clear that if the court had upheld the landowner's reservation of the reversionary right, the minerals, rather than reverting to the land as required by classic civilian principles, would have reverted to an individual — *i.e.*, the former landowner. A similar situation may be observed when the landowner sells minerals to X, then purports to sell the same minerals to Y, and thereafter conveys title to the land to Z before the first mineral servitude prescribes. If Y's right to the reversion were upheld, the mineral rights would again be reverting, not to the land, but to an individual other than the landowner. It is felt that this is the real basis for the rejection of the reversionary right as an article of commerce. It is not merely the fact that mineral rights would be outstanding for more than ten years, for such a result may be accomplished by other means; rather, it is the fact that to uphold the landowner's reservation in the first situation and the sale of min-

13. *Layne v. Superior Oil Co.*, 209 La. 1014, 26 So.2d 20 (1946); *Gulf Refining Co. v. Orr*, 207 La. 915, 22 So.2d 269 (1945); *Hodges v. Norton*, 200 La. 614, 8 So.2d 618 (1942); *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940). See also DAGGETT, MINERAL RIGHTS IN LOUISIANA 134 (rev. ed. 1949).

14. 225 La. 133, 72 So.2d 322 (1954), 15 LOUISIANA LAW REVIEW 231.

15. *Ibid.* The court reasoned that the right to create a servitude upon an estate belonged exclusively to the owner; and if the landowner were to be capable of reserving the reversionary interest to the minerals when he sells the land, the mineral rights could be outstanding for more than ten years without exercise of the right to explore.

16. See Comment, 18 LOUISIANA LAW REVIEW 300 (1958).

erals to *Y* in the second would require the creation of a right unknown to Louisiana law.

A similarity of after-acquired title to the reversionary interest may be observed in the fact that if after-acquired title is applicable, mineral rights are outstanding for more than ten years without user, acknowledgment, suspension, or extension. However, if the doctrine of after-acquired title were merely a method of effecting a sale of a reversionary interest by another label, it would be held inapplicable. It is felt that an analysis of the limited situations in which the doctrine of after-acquired title may be applied will demonstrate a fundamental difference between the two concepts.

As opposed to situations involving sale of a reversionary right, there is no attempt to deal with a separate mineral estate when a landowner purports to sell mineral rights which he does not own.¹⁷ The doctrine of after-acquired title merely operates to validate a defective prior sale upon vesting of title in the vendor. Thus, the doctrine would be inapplicable when a landowner, after selling his mineral rights to *X*, attempts to reserve the same interest in a sale of his land to *Y*; or, when the landowner having sold minerals to *X*, purports to sell the same mineral rights to *Y* and then sells the land to *Z*.

In neither of the above instances is there a vesting of title in a mineral vendor which perfects a prior sale of mineral rights not owned.¹⁸ Since application of the doctrine must be limited to those situations in which the vendor of mineral rights not owned remains owner of the land until title to the mineral rights return, or the vendor otherwise acquires title to the mineral rights, any subsequent purchaser of the land would acquire the property subject to only one mineral servitude.¹⁹

Another limitation would be that the prescription on the second sale of minerals would have to run from the date of the sale rather than from the date that the prior servitude lapsed.²⁰ Otherwise a landowner could create a second estate in minerals, to begin running as of the time the first servitude expired. If this situation were allowed, a landowner could set up several estates in the same person and thereby defeat the laws of pre-

17. DAGGETT, MINERAL RIGHTS IN LOUISIANA 140-41 (rev. ed. 1949).

18. See *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943).

19. *Ibid.*

20. *Ibid.*

scription. It would therefore seem imperative to require that prescription run against the purported sale of unowned mineral rights from the date of the sale.²¹

In the case of *Long Bell Lumber Co. v. Granger*²² it was held that the doctrine of after-acquired title would not perfect a second sale of mineral rights to the vendee of the first servitude while that servitude was still in existence. The theory was that a person could not validly purchase that which he already owned. However, it seems that this situation is different from the sale of an object such as land. Where a person attempts to purchase land which he already owns there is no after-acquired title in the vendor. However, in the *Long Bell* case there was an after-acquired title in the mineral vendor because the outstanding mineral rights prescribed and the mineral vendor reacquired the mineral rights within ten years from the date of the sale. Furthermore, it is difficult to distinguish the effect of the *Long Bell* situation from that of an acknowledgment. If a landowner may acknowledge a mineral servitude with intent to interrupt prescription and thereby allow mineral rights to be outstanding for more than ten years, it seems illogical to say that, when he sells again the same mineral rights to the same vendee, and remains the landowner until the outstanding mineral servitude expires, the doctrine of after-acquired title would not apply.²³

21. In the case of *White v. Hodges*, 201 La. 1, 9 So.2d 433 (1942), decided at a time when it was not certain that the reversionary right could not be reserved or sold, the landowner sold mineral rights when mineral rights were outstanding. There was production and the outstanding mineral rights did not prescribe until the lapse of more than ten years from the date of the "second sale." The court held that the outstanding mineral rights were an obstacle preventing prescription from running against the subsequently created mineral rights. Therefore, the court held that upon the expiration of the first mineral servitude, the title of the second mineral vendee was perfected and prescription would commence to run from the date of perfection of the mineral servitude.

However, in *McDonald v. Richard*, 203 La. 155, 13 So.2d 712 (1943), the court held that Article 792 of the Code did not authorize a landowner to impose an interminable series of mineral servitudes upon his land. It was further held that a mineral servitude previously imposed was not an obstacle to the exercise of a mineral servitude subsequently imposed. Article 792 was held to have reference only to those obstacles which the servitude owner could neither prevent nor remove. The court inferred that if the mineral vendee purchased mineral rights when he knew that the mineral rights were outstanding, he would be held to have impliedly consented to the servitude. It would seem that even if the mineral vendee was not aware of the outstanding servitude, purchased mineral rights, and did not sue for a return of the purchase price upon learning of the outstanding servitude, he would also be held to have impliedly consented to the prior mineral servitude.

22. 222 La. 670, 63 So.2d 420 (1953).

23. See Nabors, *Report on Louisiana Mineral Law*, 25 TUL. L. REV. 303, 310-11 (1951) (discussion of *Long Bell Petroleum Co. v. Tritico*, 216 La. 426, 43 So.2d 782 (1949)). See also *The Work of the Louisiana Supreme Court for the 1951-1952 Term — Mineral Rights*, 14 LOUISIANA LAW REVIEW 168, 175 (1953).

The Mineral Lease and After-Acquired Title

Since the lessor-assignor of a mineral lease warrants the lessee against eviction from the thing leased,²⁴ it has been held that the doctrine of after-acquired title generally applies.²⁵ The cases have applied the doctrine to three different situations: (a) when the landowner who executed a mineral lease held a defective title to the land, the lessee assigned the lease, but secured a ratification from the true owner of the land;²⁶ (b) when the "landowner" who executed the lease did not own the land, but subsequently acquired valid title to the land;²⁷ and (c) when the landowner who executed the lease did not own the mineral rights which he purported to lease, but subsequently acquired title to the mineral rights.²⁸

Since its decision in *Hicks v. Clark*²⁹ rejecting the reversionary right as an object of commerce, the Louisiana Supreme Court has not been presented with a situation in which the landowner purports to create a lease upon mineral rights not owned. Although after-acquired title may affect a lease of mineral rights not owned at the time of the lease, the lease would not affect the outstanding mineral rights until they prescribed. Furthermore, the outstanding mineral rights should have to prescribe within

24. The warranty provisions of the Code dealing both with lease and sale have been held applicable to mineral leases. See *Martel v. Hunt*, 195 La. 701, 197 So. 402 (1940); *Cooke v. Gulf Refining Co.*, 135 La. 609, 612, 65 So.2d 758, 761 (1914); *Rives v. Gulf Refining Co.*, 133 La. 178, 182, 62 So. 623, 627 (1913). Although the assignee of a mineral lease acquires an incorporeal real right, the Code articles on warranty against eviction are applicable. *Tomlinson v. Thurman*, 189 La. 959, 181 So. 458 (1938). See also *Lockwood Oil Co. v. Atkins*, 158 La. 610, 613, 104 So. 386, 388 (1925).

25. *St. Landry Oil & Gas Co. v. Neal*, 166 La. 799, 118 So. 24 (1928). See *Jackson v. United Gas Public Service Co.*, 196 La. 1, 198 So. 633 (1940); *Gayoso Co. v. Arkansas Natural Gas Corp.*, 176 La. 333, 145 So. 677 (1933).

26. *St. Landry Oil & Gas Co. v. Neal*, 166 La. 799, 802, 118 So. 24, 25 (1928). The court stated: "Ordinarily, where one sells the property of another and — the rule is equally applicable to the granting or sale of mineral leases — and later acquires title to the property sold by him, the title vests immediately in his vendee."

27. *Jackson v. United Gas Public Service Co.*, 196 La. 1, 198 So. 633 (1940). In this case certain heirs sold an undivided interest in land which they did not own at the time. The purchaser of the land sold some mineral rights and created mineral leases. The court held that when the heirs acquired valid title to the property this inured to the benefit of the purchaser of the land and persons holding rights under the purchaser. Referring to after-acquired title the court stated: "This doctrine is so well established that we deem it unnecessary to discuss it further." *Id.* at 14, 198 So. at 637.

28. *Gayoso Co. v. Arkansas Natural Gas Corp.*, 176 La. 333, 145 So. 677 (1933). In this case the landowner executed a mineral lease when the mineral rights were outstanding. Some one and one-half years later the outstanding mineral rights returned to the land and the court held that the lease was perfected by the doctrine of after-acquired title.

29. 225 La. 133, 72 So.2d 322 (1954).

the term of the lease, and the lessor would have to be the party who acquired the outstanding mineral rights. If a landowner, who purported to lease mineral rights which he did not own, sold the land before the outstanding mineral rights prescribed, the doctrine of after-acquired title would not perfect the lease because there would be no after-acquired title in the lessor.

In the case of *Bazemore v. Whittington*³⁰ the federal court of appeals was presented with a situation in which a landowner purported to lease mineral rights, some of which were outstanding. The facts of the case, although involved, are essentially as follows: Bazemore owned certain land and only one-half the mineral rights. Robertson Stores obtained a lease with warranty from Bazemore which purported to cover all the mineral rights. However, a stipulation in the lease provided that, if the landowner did not own the entire mineral rights, the bonus and rentals would be reduced in proportion to the mineral rights the landowner was capable of leasing.³¹

Prior to the execution of the "Bazemore lease," Robertson Stores had secured a lease of the outstanding mineral rights from the mineral servitude owner. About four years before the outstanding mineral rights were to prescribe, Robertson Stores assigned all of its right, title, and interest in the "Bazemore lease" to one of the plaintiffs.³² When the outstanding mineral rights prescribed, Bazemore executed a lease purporting to cover the newly-acquired mineral rights and the plaintiffs brought suit alleging that their lease, which purportedly covered all the mineral rights, was perfected when Bazemore acquired the outstanding mineral rights. The federal district court held that the plaintiffs' title was perfected under the after-acquired title doctrine.³³ On appeal, the federal court of appeals reversed the lower court and held that the doctrine of after-acquired title did not apply.

30. 245 F.2d 943 (5th Cir. 1957).

31. The lease contract read: "Lessor hereby warrants and agrees to defend the title to said land Without impairment of lessee's rights under the warranty in event of failure of title, it is agreed that if the lessor owns an interest in said land less than the entire fee simple estate, then the royalties and rentals to be paid lessor shall be reduced proportionately." *Id.* at 945, n. 5.

32. The assignment was of "all of its right, title and interest in and to certain leases" which included the Bazemore lease. However, specific reference to the Bazemore lease provided that at the time of the assignment it was only valid as to one-half the mineral rights. The district court held that this was merely a stipulation as to the validity of the lease as of the time of the assignment, but Judge Brown, the organ of the court of appeals, felt that the assignment was meaningless insofar as it purported to cover more mineral rights than the lessor had to lease.

33. See Discussion Notes, 4 Oil & Gas Reporter 1528-29 (1955).

The primary basis for reversing the lower court was that the assignment by the lessee (Robertson Stores) without express warranty and in terms of all its right, title, and interest constituted a quitclaim deed. It is suggested that the court erred on this point, for the Code expressly provides that warranty is implied in the absence of an express provision of warranty.³⁴ Also, in the case of *Tomlinson v. Thurman*³⁵ the Louisiana Supreme Court held that an assignment of mineral rights, without express warranty and in terms of all right, title, and interest, constituted an assignment with warranty.

Judge Brown, the organ of the court in the *Bazemore* case, speaking without the concurrence of the other two judges, stated that, even if the assignment of the lease had not been by quitclaim deed, the doctrine of after-acquired title would not apply. He reasoned that, since the assignor (Robertson Stores) held leases from both Bazemore and the mineral servitude owner, and rent under the Bazemore lease was to be in proportion to the interest Bazemore was capable of leasing, the assignor could neither have rescinded the lease nor recovered the price paid for the lease nor even have recovered damages. Therefore, since after-acquired title would not perfect the assignor's title, it did not perfect the plaintiffs'.

It is suggested that the doctrine of after-acquired title might have been logically applied in spite of the reason given above. When the parties to the "Bazemore lease" provided for a proportionate reduction in royalty and rentals, they were only stipulating what the law would have ultimately required.³⁶ When a lessor leases more property than he owns, the lessor becomes liable for a proportionate reduction in the rent.³⁷ In such a case, whether or not reduction is provided for in the lease contract, the lessor has nonetheless warranted the entire subject matter of the

34. LA. CIVIL CODE art. 2501 (1870) provides: "Although at the time of the sale no stipulations have been made respecting the warranty, the seller is obliged, of course, to warrant the buyer against the eviction suffered by him from the totality or part of the thing sold, and against the charges claimed on such thing, which were not declared at the time of the sale."

35. 189 La. 959, 181 So. 458 (1938).

36. Article 2701 of the Civil Code provides that when a lessor leases more property than he owns, the lessee can claim an abatement of rent according to the provisions of the Code which treat of sales. Article 2492, found in Title VII, which treats "Of Sale," provides that when an immovable is sold with an indication of the extent of the premises at the rate of so much per measure, the vendor is required to deliver to the buyer the quantity mentioned or suffer a proportionate diminution in price. When a sale is involved once the price is reduced, the vendor is no longer under any liability to the vendee. However, when there are periodic payments under a lease, it would seem that a different situation is presented.

37. LA. CIVIL CODE arts. 2701, 2492 (1870).

lease. If, during the term of the lease, he acquired title to the property, this title should inure to the benefit of his lessee. When there is no stipulation for proportionate reduction in the rent, after-acquired title should relieve the lessor of liability for reduction when subsequent rent payments become due. When the parties have so stipulated, as they did in the *Bazemore* case, the operation of the doctrine of after-acquired title should fulfill the lessor's obligation to deliver the entire subject matter of the lease and require the lessee to pay rentals accordingly.

Judge Brown stated that "the intent of Bazemore's unconditional lease was to 'sell' to Robertson Stores, Inc., Bazemore's reversion."³⁸ It was further stated that this was forbidden as an obvious means of defeating Louisiana's codal policy of liberative prescription. It seems that a distinction should be drawn between the sale of a reversionary right and the perfection of a lease through acquisition by the lessor of title to all or part of the mineral rights which he purported to lease, and within the terms of the lease.³⁹ Although the right to explore is the same whether granted by lease or by sale of mineral rights, the legal natures of a lease and a mineral servitude are very different.⁴⁰ A landowner or mineral servitude holder creates a lease for the primary purpose of securing production, whereas the primary purpose for selling mineral rights is generally the initial consideration. Further, the Louisiana Supreme Court has held that the lease provisions of the Code apply to mineral leases.⁴¹ Therefore, it seems that Judge Brown in *Bazemore v. Whittington* erred in stating that a lease of mineral rights not owned was an attempted *sale* of the landowner's reversionary interest.

The writer feels that a "Bazemore type lease" is not a *lease*

38. 245 F.2d 943, 949 (5th Cir. 1957).

39. In *Hicks v. Clark*, 225 La. 133, 72 So.2d 322 (1954), the reversionary right was held to be the hope that the mineral rights would return to the land. If this object were allowed to become an object of commerce, the fulfillment of the hope would be a valid mineral servitude. Since the reversionary right has been held not to be an object of commerce, there could not be a lease of the reversionary right as such. However, it would seem that a landowner could execute a lease which provided that any mineral rights which the lessor acquired within the terms of the lease would be subject to the lease. This type of lease was upheld in the case of *Dees v. Hunt Oil Co.*, 123 F. Supp. 58 (W.D. La. 1954). See Discussion Notes, 3 Oil and Gas Reporter 1865-66 (1954).

40. DAGGETT, MINERAL RIGHTS IN LOUISIANA 12-17 (rev. ed. 1949).

41. *Coyle v. North American Oil Consolidated*, 201 La. 99, 9 So.2d 473 (1942); *Tyson v. Surf Oil Co.*, 195 La. 248, 196 So. 336 (1940). See also DAGGETT, MINERAL RIGHTS IN LOUISIANA 17 (rev. ed. 1949): "As a matter of ordinary civil contract, however it is the opinion of the writer that the life term of an unproductive lease . . . should be, and that it is the intention of the Court that it will be, confined to the same term of ten years."

of reversionary rights in the sense that the lease would be extended beyond its primary term in the absence of production; or, that the lease would be valid if the mineral rights returned to the land within the primary term of the lease when the lessor had previously sold the land.⁴² For these reasons, it is suggested that, when the doctrine of after-acquired title perfects a lease of mineral rights not owned at the time of execution but subsequently acquired, there is no violation of the policy considerations adhered to by the Louisiana Supreme Court.⁴³

Burrell J. Carter

Negotiable Instruments Law—"Close Connexity" and the Finance Company as a Holder in Due Course

Basic to the concept of negotiability is the immunity of the holder in due course¹ from defenses founded on defects not apparent on the face of the instrument and of which he has no knowledge.² In such a case, the holder in due course is not subject to all the defenses and equities available between the original parties to the instrument. It is this right of the holder in due course to rely on the face of the instrument that gives it much of its commercial usefulness. Maximum negotiability would be achieved by protecting the holder in due course from all defects not apparent on the face of the instrument. However, the exigencies of commercial intercourse neither require nor permit such complete negotiability.

Although problems concerning the status of a party as a holder in due course are by no means new, with the advent of post-war prosperity and the marked increase in installment purchasing of consumer goods, the courts have been faced with an increasing number of situations involving finance companies which deal in installment paper.

Ordinarily, notes on which finance companies seek to recover

42. See note 39 *supra*.

43. See *Hicks v. Clark*, 225 La. 133, 72 So.2d 322 (1954); *Long Bell Lumber Co. v. Granger*, 222 La. 670, 63 So.2d 420 (1953); *Liberty Farms v. Miller*, 216 La. 1023, 45 So.2d 610 (1950); *Long Bell Petroleum Co. v. Tritico*, 216 La. 426, 43 So.2d 782 (1949). See also Discussion Notes, 4 Oil and Gas Reporter 1528-29 (1955).

1. See, generally, BRITTON, HANDBOOK OF THE LAW OF BILLS AND NOTES 353 *et seq.* (1943).

2. *Id.* at 407, § 100 *et seq.*