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language directed against the validity of the short form indictment that it cast doubt upon the validity of the specific short forms under Article 235 as originally written. However, the court stated that it would not overrule the prior cases which upheld the original Article 235.[14] In the 1958 case of *State v. Elias*[15] the Supreme Court appears to have put to rest further speculation on the extent to which the short form may be used. In this case the short form indictment was used to charge attempted murder[16] — an offense for which a specific short form is provided by Article 235. The accused was convicted of attempted manslaughter,[17] and the Supreme Court, without dissent, held that the indictment sufficiently informed the accused of the nature and cause of the accusation. The *Straughan* case was distinguished on the ground that the charge in that case was made under the 1944 amendment to Article 235. The Supreme Court reiterated its ruling that the *ultra-short* forms[18] for all crimes in the Criminal Code as provided for in the 1944 amendment are unconstitutional, but clearly held that the specific short forms for well understood crimes, as provided for in Article 235, are sufficient to meet the requirements of the Constitution.

Burrell J. Carter

MINERAL RIGHTS — GOOD FAITH USER — WELL DRILLED FOR INCOME TAX PURPOSES

Plaintiffs, owners of an undivided one-half of the minerals, granted an oil and gas lease to an oil company one month before the mineral servitude was to expire by prescription. The com-

the evidence sought to be introduced, (2) it must inform the accused of the nature and cause of the offense charged so that the accused can properly prepare his defense, and (3) it must be sufficient on its face to support a plea of former jeopardy in the event there is a subsequent attempt to try the accused for the same offense. See also State v. Ledent, 230 La. 780, 89 So.2d 299 (1956) (resisting an officer); State v. McQueen, 230 La. 55, 87 So.2d 727 (1955) (gambling).

14. 229 La. 1036, 87 So.2d 523 (1956).

15. 234 La. 1, 99 So.2d 1 (1958).

16. The charge in the indictment was that the accused "Attempted to murder Warnest Thibeaux." The court stated: "Certainly, if it is sufficient to charge a defendant in the short form for murder, it is sufficient to charge the short form for an attempt of this same crime." *Id.* at 2, 99 So.2d at 2.

17. Article 386 of the Code of Criminal Procedure, as amended, provides that a verdict of attempted manslaughter is responsive to an indictment for attempted murder. LA. R.S. 15:396, as amended (1950). Article 27 of the Criminal Code provides that "an attempt is a separate but lesser grade of the intended crime." LA. R.S. 14:27 (1950).

18. See note 8 *supra*.

pany immediately began drilling, and completed a dry well after prescription had run. Plaintiffs contended that the drilling was a good faith user of the servitude and, therefore, interrupted prescription. Defendants, the landowners, denied that the well was a good faith user, claiming that the company had drilled it for income tax purposes. The lower court held for plaintiffs. On appeal, *held*, affirmed. The drilling of a well can amount to good faith user sufficient to interrupt prescription on a mineral servitude although the spending of excess taxable profits was one of the motives for drilling the well. *Taylor v. Dunn*, 233 La. 617, 97 So.2d 415 (1957).

Under Louisiana law, a sale or reservation of minerals constitutes a real right in the nature of a servitude, which is subject to the prescription of ten years.[1] This ten-year prescription may be interrupted by good faith user, which results when a well is drilled with the reasonable expectation that it will be a producer.[2] In determining what constitutes a good faith user, the courts consider primarily well depth in relation to other wells in the area.[3] In addition to well depth, other facts such as geology,[4] surrounding production,[5] drilling time and costs,[6] and

1. Long-Bell Petroleum Co. v. Tritico, 216 La. 426, 43 So.2d 782 (1949); Patton's Heirs v. Moseley, 186 La. 1088, 173 So. 772 (1937); Louisiana Petroleum Co. v. Broussard, 172 La. 613, 135 So. 1 (1931); Lee v. Giauque, 154 La. 491, 97 So. 669 (1923); Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922). See DAGGETT, MINERAL RIGHTS IN LOUISIANA 9 (1949).

2. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949); Louisiana Petroleum Co. v. Broussard, 172 La. 613, 135 So. 1 (1931). This prescription may also be interrupted by acknowledgment. Mere acknowledgment, however, is insufficient unless it clearly shows that its purpose and intent is to interrupt prescription. Haynes v. King, 219 La. 160, 52 So.2d 531 (1951); James v. Noble, 214 La. 196, 36 So.2d 722 (1948); Nabors Oil & Gas Co. v. Louisiana Oil Refining Co., 151 La. 361, 91 So. 765 (1922).

3. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949); Hunter Co. v. Ulrich, 200 La. 536, 8 So.2d 531 (1942); Lynn v. Harrington, 193 La. 877, 192 So. 517 (1939); Louisiana Petroleum Co. v. Broussard, 172 La. 613, 135 So. 1 (1931).

4. Hunter Co. v. Ulrich, 200 La. 536, 8 So.2d 531 (1942). The court considered among other things that the well was drilled at a time when outlines of the dome were not known to any degree of certainty.

5. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949) (considered among other facts was that closest production was from another zone and two miles distant); Hunter Co. v. Ulrich, 200 La. 536, 8 So.2d 531 (1942) (court considered among other things that several wells were producing within 1200 feet at depths of 3200 feet and 4500 feet—subject well drilled to 5340 feet); Lynn v. Harrington, 193 La. 877, 192 So. 517 (1939) (court considered among other things the fact that of the hundreds of wells drilled in subject field, only one was drilled deeper and it was a non-producer).

6. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949) (among other things, court considered that 253 feet of 10 3/4 inch casing had been set, when one or two joints of 8 inch would have sufficed, therefore must have intended to go deeper); Hunter Co. v. Ulrich, 200 La. 536, 8 So.2d 531 (1942) (lease cost $6400, well cost $48,000 and took eight months to drill); Lynn v. Harrington, 193 La. 877, 192 So. 517 (1939) (by drilling straight ahead depth could have

coring of formations are examined.[7] Possibly none of these facts alone would indicate good faith, but good faith may be found on a combination of them. If it is found, the well need not be a producer, as it is the good faith user and not production which interrupts prescription.[8] If a well is completed after expiration of the servitude by prescription, it has been held to be a good faith user so long as it is begun in good faith before prescription has run, and is completed at a depth[9] at which it would be reasonable to expect production.[10]

In the instant case, the court was presented with the contention that the drilling was in bad faith because it was done merely to avoid paying excess profits taxes. The court based its finding of good faith on the following facts. It was shown that it was a common practice among oil companies enjoying a successful year to spend excess taxable profits in search for oil and gas reserves, as the present company was doing. In its effort to spend these excess profits, the company had employed a special group of respected and experienced men in the oil business who were geologists and independent oil producers to choose locations on geological surveys. The formation to which the well was drilled had proved productive in other wells both north and south of the subject well at distances of two miles or more, but the presence of this particular formation at this location and its productivity when found were unpredictable. Testimony for the defendants that the adjoining lands were unleased and no attempt had been made to lease them was excluded as immaterial by the court.[11] Viewing the above facts, the court found that

been reached in three days); Keebler v. Seubert, 167 La. 901, 120 So. 591 (1929) (cost of well was considerable).

7. Hunter Co. v. Ulrich, 200 La. 536, 8 So.2d 531 (1942) (considered among other things that 220 cores were taken and a log of them was carefully kept); Lynn v. Harrington, 193 La. 877, 192 So. 517 (1939) (considered among other things that 14 cores were taken in 4 different sands).

8. Mays v. Hansbro, 222 La. 957, 64 So.2d 232 (1953); Hunter Co. v. Ulrich, 200 La. 536, 8 So.2d 531 (1942); Keebler v. Seubert, 167 La. 901, 120 So. 591 (1929).

9. "Completed" at a depth here means total depth and not completion depth in the technical sense of the word.

10. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949); Harrison v. Grandison Co., 51 F. Supp. 768 (E. D. La. 1943) (prescription was interrupted notwithstanding that at the time operations commenced it was physically impossible to drill the well to a depth where one might reasonably expect production within the ten-year period).

11. Since the court allows testimony as to surrounding production in determining good faith, it would seem reasonable to extend this and allow testimony as to the leasing of adjoining acreage. Although an absence of leases on adjoining acreage would not be an indication of bad faith, it might be considered as one fact, among others, indicating one's confidence in finding production.

the well did constitute good faith user sufficient to interrupt prescription.

This decision confirms the prior jurisprudence holding that good faith is required in drilling which interrupts prescription, and further holds that good faith can be found even if the avoidance of paying excess profits tax is one of the motives for drilling the well. The decision also confirms a prior holding that a well begun before but completed after prescription has run can still be a good faith user if it is drilled to a depth at which it would be reasonable to expect production.[12]

Robert F. LeBlanc

PROPERTY — RIGHTS OF RIPARIAN OWNERS TO ALLUVION FORMED AS A RESULT OF THE WORKS OF MAN

The plaintiff provoked concursus proceedings to determine ownership of royalties from oil wells draining reservoirs beneath accretion on the Mississippi River. The accretion formed on a horseshoe bend of the river when a cut-off channel was dug across the open end of the bend. The cut-off took most of the flow, but some water continued to flow around the bend depositing large amounts of silt. The riparian owners claimed the accretion as alluvion.[1] The state contended that, because the works of man were the primary cause of the formation, the accretion did not constitute alluvion. The district court held that the accretion was alluvion and thus belonged to the riparian owners. On appeal and rehearing, the Supreme Court *held*, affirmed. So long as accretion is successive and imperceptible the laws of alluvion apply, and it makes no difference that the works of man were the cause. *Esso Standard Oil Co. v. Jones*, 233 La. 915, 98 So.2d 236 (1957).

The beds of navigable bodies of water belong to the state,[2] but Article 509 of the Civil Code of 1870 provides that the land built up successively and imperceptibly by deposits of soil along the bank of a river or stream is called alluvion and belongs to

12. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949).

1. LA. CIVIL CODE art. 509 (1870).

2. *Id.* art. 453; State v. Bozeman, 156 La. 635, 101 So. 4 (1924); State v. Capdeville, 146 La. 94, 83 So. 432 (1919); State v. Richardson, 140 La. 329, 72 So. 984 (1916); State v. Bayou Johnson Oyster Co., 130 La. 604, 58 So. 405 (1912).