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Civil Code and Related Subjects: Mineral Rights

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However, while the just title is an objective element, the "good faith" requirement is strongly subjective. Thus, where the transferee acquired an undivided interest, or a number of undivided interests and unrelated fractional interests, in a tract of land, he never dealt with any person or group of persons who purported to own the whole property. Therefore, he could not have an honest belief that he was the real owner of the whole tract. In rejecting the plea of prescription, the weight of the decision was placed on the lack of the necessary element of good faith.

MINERAL RIGHTS*

*Harriet S. Daggett***

A suit was filed in *Leaderbrand and Hardy v. Shallow Oil Co.*[1] for the cancellation of an oil and gas sub-lease on ground that the ten shallow wells thereon were not producing in commercial quantities and for damages for removal of certain equipment and for attorney's fees. During the course of the trial defendant abandoned any claim to six of the wells and the lower court gave judgment to plaintiff cancelling the sub-lease except as to five acres around each of four producing wells and refused the demand for attorney's fees. It was stipulated in the record that the lease was paying in commercial quantities as to the landowner, lessor, and the defendant, sub-lessee. The court held that the production could not be governed by the amount received for the small overriding royalty because to do so would be to destroy the rights of the lessor and the operating sub-lessee. This decision is in line with the jurisprudence on the test of production in commercial quantities.[2] The court denied plaintiff's claim for attorney's fees. This result seems eminently correct. The court distinguished the prior jurisprudence[3] where attorney's fees were allowed for partial cancellation on the ground that only partial cancellation was sought and obtained. In the instant case, an entire cancellation was sought and only partial cancellation was obtained.

*Grateful acknowledgment is hereby registered to my student and friend Earl E. Veron for his work in the preparation of these materials.

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1. 234 La. 796, 101 So.2d 673 (1958).

2. Noel Estate, Inc. v. Murray, 223 La. 387, 65 So.2d 886 (1953).

3. Wier v. Grubb, 228 La. 254, 82 So.2d 1 (1955); Nunley v. Shell Oil Co., 229 La. 349, 86 So.2d 62 (1956).

In *Richard v. Sohio Petroleum Co.*,[4] a plaintiff brought suit to be declared the owner of all oil and gas produced from a certain well-site located on his property. Plaintiff's vendor granted a mineral lease on a 91-acre tract and then sold six acres of this tract to plaintiff. Forty-acre drilling units had been established and the defendants were granted a permit to directionally drill a well surfaced on plaintiff's property which was in one unit and bottomholed near the center of another drilling unit. Plaintiff was receiving his share of production from units of which his land formed a part and his vendor was receiving her proportionate share of the unit's production where the well was bottomholed. The court held that plaintiff bought the land subject to the lease and had no greater right than those which would have been available to his vendor. Under the lease granted by plaintiff's vendor, the defendants had the right to drill a well on any portion of the land covered thereby provided that the mineral development secured from the operation would inure in part, at least, to the lessor's benefit. This case is in line with the jurisprudence on the theory of indivisibility of a lease.

In the case of *Monsanto Chemical Co. v. Southern Natural Gas Co.*,[5] plaintiffs and defendants, as owners of oil and gas leases covering the whole of a section, entered into agreements integrating their interests in this section. The contract provided that the leasehold estates would be owned, operated, and developed for the joint benefit of all parties. In 1955, the Conservation Commissioner issued an order severing 126.4 acres from this section and adding them to a 640-acre unit in another section. The area severed was not affected by any of plaintiff's leases but was covered by the leases held by defendants. Plaintiff sued for its proportionate share of the amounts from the new unit that were attributable to the acreage in the section covered by his agreement with defendants. The court held that this was not an attack on the legality of the Commissioner's order, but that the plaintiff was affirming the Commissioner's order and asserting its rights under the conventional agreement which the Commissioner's order did not and could not affect. The court stated that the unitization of tracts under lease has no other effect than to allocate to each tract its pro rata share of the production from the entire unit. Private contractual rights in such leases are only superseded when they are in conflict with the

4. 234 La. 804, 101 So.2d 676 (1958).
5. 234 La. 939, 102 So.2d 223 (1958).

valid orders of the Commissioner of Conservation. The court construed the agreement to be such that each party became a joint owner in all three of the leasehold contracts, and plaintiff was entitled to his proportionate share of the production.

In *Monsanto Chemical Co. v. Hussey*,[6] plaintiff sued to have an order of the Commissioner of Conservation adding acreage to units upon which plaintiff had producing wells declared null and void. The court held that the Commissioner did not abuse his discretion in issuing the order adding such areas to producing units and that this order did not amount to a taking of plaintiff's property and giving it to others in violation of the due process clauses of the Federal and Louisiana Constitutions. The evidence showed that the wells on plaintiff's tracts were draining the products from the added area and the allowables had been proportionately increased so that owners of the added acreage could recover a share of production.

In *Hinchee v. Long Bell Petroleum Co.*,[7] plaintiff instituted suits to compel defendant to furnish him a recordable release of claims asserted by the defendant to mineral rights and for attorney's fees. Plaintiff contended that an instrument executed by the landowner and servitude owner was sufficient to acknowledge and interrupt prescription so that the servitude had not terminated when the landowner sold the land. The court held that the instrument was not sufficient to interrupt prescription. The court stated the general rule for the requirements to acknowledge and interrupt prescription and found that the instrument in the present case failed to meet these requirements. This case is consistent with and follows the prior jurisprudence.

In *Calhoun v. Gulf Refining Co.*,[8] plaintiff brought suit for a declaratory judgment because of conflicting claims of ownership to leasehold rights in a certain tract of land. Defendant held an oil, gas, and mineral lease granted by a former owner of the land. Defendants' lessor had owned only a one-fourth mineral interest when he leased, but in the contract it was stipulated between the parties that any additional or greater mineral interest in the leased premises that might be acquired by purchase or otherwise was also included and leased. Defendants' lessor sold the land to plaintiff before the three-fourths mineral interest outstanding prescribed. Plaintiff leased her interest to the other

6. 234 La. 1058, 102 So.2d 455 (1958).
7. 235 La. 185, 103 So.2d 84 (1958).
8. 104 So.2d 547 (La. 1958).

plaintiffs. Defendants contended that a vendee who takes real property subject to a recorded lease stands in the shoes of the original lessor and is bound by every provision of the lease; that since plaintiff stands in the position of the original lessor, the doctrine of after-acquired title is applicable and the lease now covers the entire mineral interest. The court rejected defendants' contention and held that defendants' lessor did not lease property he did not own. The court stated that the stipulation about additional mineral interest depended on the lessor acquiring any part or the whole of the outstanding mineral interest. This was a personal agreement or warranty and his vendee was under no obligation to carry out this agreement. The court further stated that even if the lessor leased property of which he was not the owner, he could not bind the real owner without his consent. The lessee under a lease contract does not obtain a real right in the sense of absolute dominion, and a lease is not one of those real obligations which attach as a burden to the land. Therefore, when plaintiff acquired the land from defendants' lessor, while the land was subject to the lease, that lease was limited to defendants' lessor's ownership in the minerals. The clause dealing with the outstanding minerals merely evidenced a personal agreement between the parties and was limited to whatever additional ownership in the mineral rights the lessor might acquire and this clause fell when the lessor failed to acquire additional outstanding mineral interests. The outstanding mineral interests became vested in plaintiff, the owner of the land, at the time the servitude was extinguished because of its non-use for a period of more than ten years. On the issue of failure properly to pay delay rentals, the court held the plaintiff estopped to say that the payment was too large. Plaintiff waited some six months before refusing the larger payment. This seems correct in view of the fact that had plaintiff promptly refused the larger payment, defendant might have immediately made separate payment of the amount to retain the lease.

The following cases appeared during the year but contained little that was really pertinent to this section: *Esso Standard Oil Co. v. Jones*,[9] *Esso Standard Oil Co. v. State*,[10] *California Co. v. Price*,[11] and *Hester v. Roberts*.[12]

9. 233 La. 915, 98 So.2d 236 (1957).
10. 233 La. 954, 98 So.2d 250 (1957).
11. 234 La. 338, 99 So.2d 743 (1958).
12. 104 So.2d 158 (La. 1958).