

Problems in Descriptions of Land in Louisiana

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SUMMARY AND CONCLUSION

Since terminability and remedies available to the aggrieved party to a lease of personal services are dependent on the types of contract involved, the most important problem facing the courts is determining whether the contract is for a term, by a term, or at will. When the agreement sets definite or ascertainable dates for commencement and termination, this task is not difficult. If there is no set term, that the salary is fixed at so much per designated period does not alone raise a presumption that the term is *for* or *by* that designated period; it is necessary to consider other terms of the contract, the circumstances surrounding the employment, and the nature of the work to determine the type of contract involved.

Employment *by* the term is terminable only at the expiration of each agreed term; if neither party terminates the contract at that time, employment continues to be by the term. Employment *for* a term is terminated upon expiration of the agreed term; if the parties continue the relationship beyond the term without a new agreement the employment becomes one at will. Either party to an employment *at will* may recede at any time without cause.

An employee hired *for* or *by* the term and who is either discharged without cause or leaves with just cause before expiration of the term is entitled to salary for the unexpired term of the contract. An employer whose employee leaves without cause before expiration of the term should be entitled to retain unpaid wages and to a return of all wages paid "in advance" of services. The employer who discharges an employee for cause before expiration of the term may recover damages to compensate for the alleged wrong and the resulting inconvenience of finding another employee.

Frank Fontenot

PROBLEMS IN DESCRIPTIONS OF LAND IN LOUISIANA

The Civil Code requirement that all sales of immovable property be in writing appears to recognize the untrustworthiness of oral testimony, which may be affected by various factors such as insufficient understanding, poor memory, and bad faith.¹

1. LA. CIVIL CODE art. 2275 (1870): "Every transfer of immovable property

The property description, being an integral part of a sale, must be in writing, thus assuring that it be, as far as possible, independent of individuals' morality and of the difficulties brought about by the passage of time.

The written act of sale normally provides an adequate description; but borderline cases occur in which it is doubtful whether the instrument is sufficiently complete to identify the object of the sale. If the description is so incomplete that the property the parties had in mind cannot be identified, the purpose of the requirement that the sale be in writing is not satisfied; the very dangers underlying the requirement of proof in writing arise: lack of understanding, poor memory, bad faith. Only when the writing does identify the property to the exclusion of any other may parol evidence be used to locate the property with reference to other property.²

Ambiguous or incomplete and erroneous descriptions are to be distinguished. Ambiguity may require reference to other writings, since the "writing" used to identify property need not be the recorded act of sale. If, however, the property is clearly identified, but erroneously describes land belonging to another, the act of sale conveys nothing.³

Questions of the sufficiency of an ambiguous or incomplete description may arise in actions to enforce contracts, in problems of prescription, or in problems involving notice to third parties.⁴ The terms employed by the parties as well as references to other sources of information are important to establish identity. In the last situation the question is usually not whether the writing or writings restrict the object to some certain property, but whether the object is sufficiently identified by the recorded instrument to put third parties on notice of prior transactions involving the property.

must be in writing; but if a verbal sale, or other disposition of such property, be made, it shall be good against the vendor, as well as against the vendee, who confesses it when interrogated on oath, provided actual delivery has been made of the immovable property thus sold."

2. *Walker v. Ferchaud*, 210 La. 283, 26 So.2d 746 (1946); *Barfield v. Saunders*, 116 La. 136, 40 So. 593 (1906).

3. LA. CIVIL CODE art. 2452 (1870): "The sale of a thing belonging to another person is null . . ." This article applies to judicial sales. *Taylor v. General Gas Corp.*, 87 So.2d 220 (La. App. 2d Cir. 1956); *Magnolia Petroleum Co. v. Keller*, 22 So.2d 65 (La. App. 2d Cir. 1945); *Guidry v. Sigler*, 21 So.2d 232 (La. App. 1st Cir. 1945).

4. This discussion will be devoted to these problems. Verbal sales will not be discussed.

RIGHTS BETWEEN THE PARTIES

The property intended to be conveyed by a sale must be so identified in the written act or other instrument made part of the act by reference that the object is certain. The following descriptions have been held to identify sufficiently the object: "Prudhomme Place,"⁵ "a certain 80-acre tract of land laying broadside with the 160-acre tract that he now lives on,"⁶ "124 Stella Street, on grounds measuring about 60 x 150 as per title,"⁷ and "all my land in Lafourche Parish."⁸ The following have been held insufficient to satisfy the requirement that contracts for the sale of real estate must be in writing because the property was inadequately identified: "Received from Mr. Clifton Lemoine \$35.00 for payment on place,"⁹ a declaration on a note that it was given as "the price of certain lands in the Parish of St. Tammany,"¹⁰ and "Received from Archie Jackson in full payment of land (\$600) Six Hundred Dollars."¹¹ In each of these cases parol evidence was held inadmissible to show that the landowner had contracted to transfer certain real property. Comparison of the cases in the first group with those in the second indicates that a writing will be held sufficient when it identifies the particular property intended to be conveyed, although the description is incomplete; it will be held insufficient when parol evidence is required to identify the object, even though an intent to transfer may be clearly indicated. One description identifies particular property; the other does not. The

5. *Barfield v. Saunders*, 116 La. 136, 141, 40 So. 593, 595 (1906). The court said: "The place was as well known under that name, 'Prudhomme Place', as other places whose boundaries are well defined in a deed." The court then proceeded to describe clearly the property in question by terminal points and angles. In *Saunders v. Bolden*, 155 La. 136, 140, 98 So. 867, 868 (1924), where the property was described as "the Judie Lewis place," the court said: "There is no question about the 'thing sold or intended to be sold.'" In this case both identity and location were apparently well known.

6. *Guice v. Mason*, 156 La. 201, 100 So. 397 (1924). The sale was verbal, but the written receipt for it was held to satisfy the requirement of a writing for the transfer of immovables. The question of sufficiency of the description in the receipt to identify the property was not raised. It is obvious from the reported facts that identity was no problem.

7. *Walker v. Ferchaud*, 210 La. 283, 26 So.2d 746 (1946).

8. *Williams v. Bowie Lumber Co.*, 214 La. 750, 758, 38 So.2d 729, 731 (1948), 25 TUL. L. REV. 424 (1951). Although it did not mention the question of identity, the court stated: "Indeed, the act transferred title to Downman in accordance with the clear and expressed intent of Martin. True enough, defendant could have demanded from Martin a precise description of the tract to protect itself from claims of third persons and it would have been entitled to a reformation if Martin had refused the request."

9. *Lemoine v. Lacour*, 28 So.2d 784 (La. App. 2d Cir. 1946); see Note, 21 TUL. L. REV. 706 (1947).

10. *Ducre v. Milner*, 165 La. 433, 115 So. 646 (1928).

11. *Jackson v. Harris*, 136 So. 166 (La. App. 2d Cir. 1931).

difference is striking when "all my land in Lafourche Parish" and "certain lands in the Parish of St. Tammany" are contrasted.

The courts do not always make clear that parol evidence is admitted only to determine the exact location and measurements of property already identified, and not to identify the property itself. In *Walker v. Ferchaud*, in which the property was described as "124 Stella Street, on grounds measuring about 60 x 150, as per title," the court said: "We concede that the property which is the object of the contract is not sufficiently described in the written contract to identify it with certainty, but we think the district judge erred in sustaining the exception in this case, for the reason that on a trial of the case on its merits parol evidence is admissible for the purpose of making such an identification."¹² Later in the opinion the court quoted from another case, "'What we do is ascertain where 6 Washington Place is. We locate this street number in a given place by oral proof,'"¹³ thus indicating that the description was adequate to identify and the parol evidence was admitted to locate the property more specifically.¹⁴ It has been said that "parol evidence to establish identity is allowable . . . but this is only in cases where there is a sufficient body in the description to leave the title substantially resting on writing, and not essentially on parol."¹⁵ This language should not be taken to mean that parol is admissible to identify an object that cannot be identified by the written evidence. So to construe it would contravene the requirement that a contract for the sale of an immovable be in writing. If the object is not identified by written evidence, the agreement to transfer must fall for lack of an essential element of the contract; if it is so identified, the agreement may be augmented by parol to show locations. Thus, the courts have not strictly construed the Code's admonition that "neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them, or since,"¹⁶ for parol evidence is admissible to resolve uncertainty in the property's description.

12. 210 La. 283, 286, 26 So. 2d 746, 747 (1946).

13. *Id.* at 290, 26 So. 2d at 748.

14. In *Lemoine v. Lacour*, 28 So. 2d 784, 785 (La. App. 2d Cir. 1946), the court said that "parol evidence is admissible to make certain the identification of the property, provided the written agreement contains some description which can be identified."

15. *Kernan v. Baham*, 45 La. Ann. 799, 810, 13 So. 155, 159 (1893) (property described as tract of 659 acres on Tangipahoa River).

16. LA. CIVIL CODE art. 2276 (1870). The courts have not construed this

Aids Within the Instrument That Clarify Descriptions

The common sense of the Civil Code rescues the unwary vendee from the consequences of faulty descriptions to some extent by the provision that the "seller is bound to explain himself clearly respecting the extent of his obligation: any obscure or ambiguous clause is construed against him."¹⁷ This article has been applied when parol evidence was held admissible to clarify or reform a description.¹⁸ The Civil Code does not, however, provide specific attributes of an adequate description.¹⁹

When it has been determined that the description, though incomplete, identified the property, other aids are available for determining the boundaries or locations of a land line.²⁰ In order of importance, they are natural monuments, artificial monuments, distances, courses, and quantity, with the controlling consideration being intention of the parties.²¹ Thus,

strictly, but have admitted parol evidence to locate property that has been sufficiently identified. *Close v. Rowan*, 171 La. 263, 130 So. 350 (1930); *Kernan v. Baham*, 45 La. Ann. 799, 13 So. 155 (1893); *Jackson v. Harris*, 18 La. App. 484, 136 So. 350 (2d Cir. 1931), reinstated on rehearing, 18 La. App. 484, 137 So. 655 (2d Cir. 1931). Further, in *Walker v. Ferchaud*, 210 La. 283, 26 So. 2d 746 (1946), parol evidence was admitted to locate real property described in a written contract to purchase. For further discussion of consequences of the rule that title to immovable property cannot be established by parol, see Notes, 18 LA. L. REV. 746 (1958), 17 LA. L. REV. 197 (1956); cf. Comment, *Parol Evidence To Vary a Recital of Consideration*, 3 LA. L. REV. 427 (1941), particularly at 431, where the French rule of "commencement of proof in writing" is discussed.

17. LA. CIVIL CODE art. 2474 (1870). *Id.* arts. 854, 2491-2499 deal with discrepancies between the quantity of land sold and that delivered. They perhaps also clarify art. 2474; according to one French writer they do. See 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1457 (1959). Although Articles 2491-2499 seem to protect from the consequences of faulty descriptions, they relate to quantity and not to specificity. The value of Article 2474 lies in its application to situations where there is not necessarily discrepancy in measure but ambiguity in description.

18. *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940); *Birch v. Watson*, 23 So. 2d 345, 347 (La. App. 1st Cir. 1945), in which the court said: "Where the description in a deed is ambiguous and subject to two or more interpretations, the intention of the parties is to be sought, and the intention may be shown by parol evidence and by the acts and conduct of the parties with reference to the property sold." The court did not, however, deal with Article 2474.

19. The legislature attempted to remedy this situation by passing acts providing for the Louisiana Coordinate System in describing property. Although this may be of assistance in the future, the timidity with which it was proposed is reflected in the provision: "Nothing contained in this chapter requires any purchaser or mortgagee to rely on a description any part of which depends exclusively upon the Louisiana Coordinate System." LA. R.S. 50:9 (1950).

20. These aids are also in use in other American jurisdictions. See 11 C.J.S. *Boundaries* § 50 (1938). See generally C.J.S. *Vendor and Purchaser* § 39 (1955) for a discussion of problems in description of property.

21. *City of New Orleans v. Joseph Rathborne Land Co.*, 209 La. 93, 24 So. 2d 275 (1946); *Dufrene v. Bernstein*, 190 La. 66, 181 So. 859 (1938); *Administrators of Tulane Educational Fund v. Stair*, 148 La. 11, 86 So. 595 (1920); *Meyer*

identification of land by acreage or quantity is the weakest of the enumerated guides in describing property; and, in the absence of additional specific and definite calls which identify and locate the property, they are not descriptions adequate to transfer title.²² Further, an acreage description does not enlarge or restrict a grant described by specific bounds, but only conveys the property within such bounds.²³

Aids Without the Instrument That Clarify Descriptions

Maps and plats are particularly useful in identifying property and often control when land is sold with reference to them.²⁴ If they are annexed to the deed, they become part of the description,²⁵ and their control is certain. If merely referred to, their efficacy is questionable.²⁶ Maps and plats are subject to the same kind of construction to resolve error or ambiguity that governs the remainder of the description.²⁷ Thus, a plat made from field notes yields to the latter in case of discrepancy,

v. Comegys, 147 La. 851, 86 So. 307 (1920); *Carlisle v. Graves*, 64 So. 2d 456 (La. App. 2d Cir. 1953). BLACK, LAW DICTIONARY 256 (4th ed. 1951) defines call as "a visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond."

22. *Blevins v. Manufacturers Record Pub. Co.*, 235 La. 708, 105 So. 2d 392 (1958); *City of New Orleans v. Joseph Rathborne Land Co.*, 209 La. 93, 24 So. 2d 275 (1945); *Nelson, Curtis & Nelson v. Bridgeman*, 152 La. 190, 92 So. 855 (1922); *Bender v. Chew*, 129 La. 849, 56 So. 1023 (1911).

23. *Molichek v. Perriloux*, 231 La. 849, 93 So. 2d 190 (1957); *City of New Orleans v. Rathborne*, 209 La. 93, 24 So. 2d 275 (1945); *Romero v. Rader*, 160 La. 40, 106 So. 667 (1925).

24. *Christina v. Gutreaux*, 12 Orl. App. 357 (La. App. Orl. Cir. 1915).

25. *Werk v. Leland University*, 155 La. 971, 99 So. 716 (1924); *Gray v. Cocco*, 113 La. 33, 36 So. 878 (1904).

26. *Isacks v. Deutsch*, 114 So. 2d 746 (La. App. 1st Cir. 1959) indicates that a map referred to controls. The survey was recorded, and the map or plat of the subdivision showed none of the lots fronted literally on Bayou Rouville. To give effect to defendant's contention that his lot fronted on the bayou would have been to approve as controlling four words in the descriptions, "fronting on Bayou Rouville," rather than the plat of the subdivision. The court followed the plat. *But see Gauthier v. Lovas*, 35 So. 2d 874, 878 (La. App. 1st Cir. 1948), in which the court stated: "The deed specifically states that the plat of survey is annexed for reference, therefore not constituting a part of the deed. The description of the property then controls." In *Burt v. Valois*, 144 So. 2d 196, 209 (La. App. 1st Cir. 1962), the court seemed to resolve this problem when it said that "in the event of conflict between the worded description of real property appearing in a deed and a map to which reference in the deed is made for further identification of the property intended to be conveyed, the map controls." Careful reading of the description will show that the plat was attached to the description and recorded with it.

27. *Mahaffey v. Miller*, 159 La. 610, 105 So. 731 (1925). Inconsistencies are harmonized by eliminating the features of lower rank in evidence and giving effect to those of higher rank. Note 22 *supra*.

on the rational basis that the latter are the better evidence of where the line was run in the field.²⁸

Competent evidence of what was originally transferred will aid in establishing the validity of subsequent transfers because of the code provision of preference for the title of most ancient date.²⁹ On the other hand, if the description in a deed is clear, language indicating the vendor intended to convey the identical real estate conveyed by a former deed does not necessarily affect the description in the present deed.³⁰

Reformation is a device useful in curing both ambiguous and erroneous descriptions.³¹ Its purpose is to reform the deed to conform to the true intent of the parties; it is well settled in Louisiana that an error in the description of land in a deed can be corrected as long as no third person has acquired any rights which would be prejudiced by the correction.³² However, reformation cannot be had when the grantor has failed to set out in writing calls, boundaries, and directives that identify the prop-

28. *Louisiana Central Lumber Co. v. Stephenson*, 13 La. App. 671, 128 So. 696 (2d Cir. 1930).

29. LA. CIVIL CODE art. 847 (1870).

30. *Bender v. Chew*, 129 La. 849, 56 So. 1023 (1912). See also *Nelson, Curtis & Nelson v. Bridgeman*, 152 La. 190, 203, 92 So. 855, 860 (1922) in which the court said: "In the sale of real property, a strong presumption obtains that the deed, as executed, properly describes and conveys all of the land intended to be conveyed." This does not conflict with the theory that a written act of sale that does not sufficiently identify the property may be enlarged by reference to other writings. References to other writings are unnecessary when the property is adequately identified in the deed.

31. Comment, *Reformation of Instruments in Louisiana*, 30 TUL. L. REV. 486 (1956). On the usefulness of parol in reformation, the court said in *Waller v. Colvin*, 151 La. 765, 771, 92 So. 328, 331 (1922): "In such cases, the attempt is not to prove by parol a sale of immovable property, nor to contradict a valid existing written instrument, but to show that the instrument does not express the meaning and intention of the contracting parties." As to the use of parol in reformation see *Birch v. Watson*, 23 So. 2d 345, 347 (La. App. 1st Cir. 1945): "Where the description in a deed is ambiguous and subject to two or more interpretations, the intention of the parties is to be sought, and the intention may be shown by parol evidence and by the acts and conduct of the parties with reference to the property sold."

32. *Blevins v. Manufacturers Record Pub. Co.*, 235 La. 708, 105 So. 2d 392 (1958); *Broussard v. Succession of Broussard*, 164 La. 913, 114 So. 834 (1927); *Giovanovich v. Breda's Widow and Heirs*, 149 La. 402, 89 So. 251 (1921); *Brown v. Glass*, 3 La. App. 38 (2d Cir. 1925). *But see Bender v. Chew*, 129 La. 849, 856, 56 So. 1023, 1026 (1911): "The decisions of this court are not favorable to the remodeling of deeds in which third persons, as in this instance, have an interest as owners. There is a long line of pertinent decisions on the subject, the reading of which will give rise to the conclusion that an action, such as this, cannot, as a general proposition, be maintained against a stranger to the deed, who becomes the owner." When the purpose of reformation is to remove land belonging to another from the description, the court has available the logical presumption that the vendor did not intend to convey land which he did not own. However, omissions and inclusions of the vendor's land present a

erty sought to be conveyed.³³ If it were otherwise, parol would be used to identify property not identified by the writing rather than to show that the writing does not express the intention of the parties, which is the sole function of reformation.

PRESCRIPTION

The requirements for ten years' acquisitive prescription of land set forth in the Civil Code include good faith on the part of the possessor, a just title, and possession of the property in question.³⁴ To determine whether the description in a deed is adequate for just title, the courts have apparently employed the same criterion used to determine its adequacy as a conveyance between the parties — the description can support prescription if the land can be identified by the deed or written instruments referred to in the deed.³⁵ In *Leader Realty Co. v. Taylor*,³⁶ defendant set up his chain of title by comparing prior deeds with each other and with government surveys. He was permitted to refer to written documents other than his deed to identify the property in question as that included in his deed. In *Harrill v. Pitts*,³⁷ the court clarified the rule that identification is permissible by reference to writings other than the deed.

The rule allowing extrinsic evidence to sustain a deed for ten years' acquisitive prescription is inapplicable if the deed rests only on unauthorized or illegal surveys.³⁸ Nor can a defendant claiming title by prescription use the description, or

different and more difficult problem. *E.g.*, *W. B. Thompson & Co. v. McNair*, 199 La. 918, 7 So. 2d 184 (1942).

33. *Blevins v. Manufacturers Record Pub. Co.*, 235 La. 708, 105 So. 2d 392 (1958).

34. LA. CIVIL CODE arts. 3478-3498 (1870). See also Comments, *Just Title in the Prescription of Immovables*, 15 TUL. L. REV. 436 (1941), 32 TUL. L. REV. 150 (1957).

35. *Texas Co. v. O'Meara*, 228 La. 474, 82 So. 2d 769 (1955); *Leader Realty Co. v. Taylor*, 147 La. 256, 266, 84 So. 648, 651 (1920): "As authority for the doctrine that, when such error in the description in a deed are explained, the deed will support the prescription of 10 years in defence of the title intended to be conveyed by the deed, see *Frantom v. Nelson*, 142 La. 850, 77 South. 767."

36. 147 La. 256, 84 So. 648 (1920).

37. 194 La. 123, 134, 193 So. 562, 565 (1940): "The rule that the description in a deed will be sustained whenever the instrument affords any description by which the property can be identified, either through the description in the deed itself or by means of extrinsic, competent evidence, has been frequently approved by this court." The court indicated that a deed which is sufficient between the parties is likewise sufficient as a basis for ten-year prescription.

38. *Bergeron v. Babin*, 167 La. 833, 120 So. 384 (1929); *Mahaffey v. Miller*, 159 La. 610, 105 So. 731 (1925); *City of Shreveport v. Simon*, 132 La. 69, 60 So. 795 (1913); *Melancon v. Bringer*, 13 La. Ann. 206 (1858).

errors therein, of another's deed; he must stand on the description in his own deed.³⁹

NOTICE TO THIRD PARTIES

Concerning rights of third parties, the primary question is not whether the writing restricts the object to some certain property, but whether the object is identified sufficiently by the recorded instrument to put third parties on notice of any prior transactions involving the property. In the case of ambiguous or inaccurate descriptions, there is still no jurisprudential criterion for the sufficiency of a description to constitute notice.⁴⁰ If, for example, a third party bought property described by terminal points and angles from a vendor who had previously sold the same property under the description "Prudhomme Place," the third party would not necessarily be put on notice, even though the description sufficiently identifies the property between the parties. The phrase, "also all other lands, tenements and real estate of every description not heretofore particularly described . . . to which he is legally entitled in the State of Louisiana,"⁴¹ has been held not adequate notice to third parties, although it may suffice as identification of the property between the parties. If the instrument describes land other than that intended to be conveyed, it does not give notice to third persons. Thus, an error in the range number will not put third parties on notice although the vendor owned but one tract of land.⁴² Nor

39. *Allen v. Butler*, 60 So.2d 314 (La. App. 1st Cir. 1952). For a later stage of this litigation, see *Allen v. Butler*, 119 So.2d 153 (La. App. 1st Cir. 1960). See also *Blevins v. Manufacturers Record Pub. Co.*, 235 La. 708, 747, 750, 105 So.2d 392, 405, 407 (1958), in which the dissenting members of the court attacked the majority decision that plaintiff had recovered on the strength of his own title.

40. *Daigle v. Calcasieu Nat'l Bank*, 200 La. 1006, 9 So.2d 394 (1942); *White v. Ouachita Natural Gas Co.*, 177 La. 1052, 150 So. 15 (1933); *Consolidated Ass'n of Planters v. Mason*, 24 La. Ann. 718 (1872); *Hargrove v. Hodge*, 9 La. App. 434, 121 So. 224 (1928). In the *White* case the court said: "Of course where the description in the recorded deed is so *misleading* that it actually describes accurately some other property than that mortgaged or sold, a purchaser is not only not put on his guard thereby, but is actually put off his guard, and in such case a resort to outside evidence would have the effect not merely of making the description certain, but of actually changing the record; and this cannot be allowed." *Id.* at 1060, 150 So. at 17. See Comment, *Registration of Title to Immovables in Louisiana*, 32 TUL. L. REV. 677 (1958), in which it is stated that a property description, although incomplete or incorrect, constitutes notice if it raises a doubt in the third party's mind, in which case he will have to go beyond the public records to determine the identity of the property.

41. *Green Brothers v. Witherspoon*, 37 La. Ann. 751 (1885).

42. *Quatre Parish Co. v. Beauregard Parish School Board*, 220 La. 592, 57 So.2d 197 (1952).

can third parties be held to know that an error has been made in the number of the section or of the square.⁴³

Generally parol evidence may not be introduced to the prejudice of third-party purchasers who have purchased on the strength of the public records.⁴⁴ Third-party purchasers have, on the other hand, been permitted to introduce parol evidence to show mistake or error.⁴⁵ Also, when the description in a deed to a third party contains an obvious mistake, as a stenographic error in copying a range number, the correct description in a prior deed may be introduced on the plea of error.⁴⁶ But when a vendee relies on prescription, it has been held that opposing third persons who acquired in good faith have only to look to their act of sale itself and are not required to refer to other documents or proceedings to support their claims.⁴⁷

CONCLUSION

In sales of real property problems concerning description of the land conveyed perennially occasion both litigation and research. A solution to some of the problems lies in recognizing that as to transactions between the parties and the basis for prescription the requirement of identification of the property in writing does not refer to the written act of sale alone. If the identity of the object is established with sufficient certainty by the writing in the act of sale or by other writings referred to in

43. *Haas v. Fontenot*, 132 La. 812, 61 So. 831 (1913); *Roussel v. Railways Realty Co.*, 132 La. 379, 61 So. 409 (1912).

44. *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1909). Of course, parol is not admissible between the parties to establish identity, but only to locate property identified in the writing. However, in *McDuffie*, where the rule was enunciated, the problem was not that identity was uncertain, but that the identifying description was not recorded.

45. LA. CIVIL CODE art. 847 (1870); *Smith v. Chappell*, 177 La. 311, 148 So. 242 (1933); *Blackwell v. Nagy*, 122 So. 2d 903 (La. App. 1st Cir. 1960).

46. *Ducre v. Milner*, 169 La. 819, 126 So. 72 (1930); *Broussard v. Succession of Broussard*, 164 La. 913, 114 So. 834 (1927); *Nelson, Curtis & Nelson v. Bridgeman*, 152 La. 190, 203, 92 So. 855, 860 (1922). In the last case, the court said: "While the law recognizes that error may creep in, and that land may be omitted that it was the intention to transfer, and in proper instances will grant relief, yet the evidence, to justify the granting of it, must be clear and convincing, and not leave the matter to grave doubt, or make it merely probable that land was erroneously omitted."

47. *Dawidoff v. Roxana Petroleum Corp.*, 2 F.2d 370 (W.D. La. 1924); *Smith v. Taylor*, 226 La. 235, 75 So. 2d 850 (1954). In the last case, Taylor, an abstractor, discovered an error in the recorded description, the error being that plaintiff's petition did not affirmatively show that the obligation sued on had matured prior to the time citation was waived and judgment confessed against the original vendee. Smith bought the property at a sheriff's sale. Taylor, after discovering the error, bought from the original vendee. The court disallowed plaintiff's plea of prescription, holding prescription inapplicable to an absolute nullity.

it, parol evidence is admissible to locate the property. With respect to intervening rights of third parties, the problem is whether the description in the recorded act of sale sufficiently identifies the property to put third parties on notice of prior transactions involving the property. The identifying description required for this purpose must often be more specific than that required between the parties. The attributes of a written description which identifies the property sufficiently to meet each of these situations cannot be conclusively stated; the situation has apparently not changed since 1872 when the Supreme Court said: "We are not prepared to fix the line between valid and invalid or sufficient and insufficient descriptions, which shall serve as a guide in all future cases. Each case must depend on its own circumstances."⁴⁸

Leila O. Cutshaw

ROYALTY DIVISION ORDERS

INTRODUCTION¹

Complex division in the ownership of petroleum production is the rule rather than the exception. The speculative value of undeveloped minerals; the prevalence of the oil and gas lease, with its provision for the lessor's royalty, as the means by which the developer acquires his interest; the use of the overriding royalty and the production payment as vehicles for profit in lease brokerage and as means of obtaining financing for development; all contribute to the difficult problem of apportioning the revenue from mineral production in the petroleum industry.² The instruments by which various parties have acquired their respective interests in the production should, of course, govern the apportionment of the revenues of production. But the un-

48. *Consolidated Ass'n of Planters v. Mason*, 24 La. Ann. 518, 520 (1872).

1. For purposes of this paper any party entitled to a share in production revenues is considered a royalty owner. "Seller" and "purchaser," unless otherwise indicated, refer to the royalty owner as seller and the pipeline owner as purchaser under the royalty division order. "Lessor" will be substituted for "seller" when referring to royalty payment rights under a lease.

2. *E.g.*, divided ownership may result from a lessor's 1/8 lease royalty (*Cheek v. Metzger*, 116 Tex. 356, 291 S.W. 860 (1927)), subsequent conveyances (*Texas Co. v. Leach*, 219 La. 613, 53 So.2d 786 (1951)), or unitization (*Dobbins v. Hodges*, 208 La. 143, 23 So.2d 26 (1945); *Robinson v. Horton*, 197 La. 919, 2 So. 2d 647 (1941)). One oil property in the Oklahoma City Field is reportedly shared by 750 royalty owners. *GLASSMIRE, OIL AND GAS LEASES AND ROYALTIES* 312, § 83 (2d ed. 1938).