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Private Law: Mineral Rights

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competence of the court.[22] Lack of diversity of citizenship[23] caused the dismissal of that suit, and it was therefore not a court of competent jurisdiction, so that the timely *filing* alone did not create an interruption of the prescription.

Choice of Cause of Action

In some kinds of situations, a person may have a choice of two causes of actions, and if his claim for damages results from breach of contract, he can avoid the one-year prescription against torts. Sometimes a person may have two distinct claims with an independent separate prescription running against each. A decision which could create many hardship cases was rendered in *Williamson v. S.S. Kresge Co.*[24] An injured employee accepted a permanent disability compensation award for a certain length of time until it was discovered that these payments were being made in error since the occupation and the business were not hazardous. The ensuing suit in tort was dismissed on the ground of one-year liberative prescription which had meanwhile lapsed. It may be technically correct to say that ignorance of the law is no excuse and that the employee has slept on his right. Therefore, since a suit in tort is precluded where a claim is covered by the workman's compensation act,[25] it may be necessary for an injured person to get a judicial determination in order to protect himself against the risk of an erroneous award.

MINERAL RIGHTS

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MINERAL SERVITUDES

Minority Suspension

The writer has already discussed at considerable length the Supreme Court's decision in *Mire v. Hawkins*,[1] in which the

22. LA. CIVIL CODE art. 3518 (1870); LA. R.S. 9:5801 (1950).
23. One of the defendants as well as the plaintiffs were citizens of Louisiana.
24. 186 So. 2d 696 (La. App. 4th Cir. 1966), *writ refused*, 249 La. 580, 187 So. 2d 741 (1966).
25. LA. R.S. 23:1032 (1950).

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1. 249 La. 278, 186 So. 2d 591 (1966). The court's decision on the issue on which writs were granted is thoroughly discussed in Hardy, *Comments on Mire v. Hawkins*, 27 LA. L. REV. 5 (1966).

application of the obstacle concept first articulated in *Boddie v. Drewett*[2] was overruled and the court concluded that unit drilling operations conducted on a compulsory unit but off the servitude tract would have the effect of interrupting prescription. The extent of any such interruption in the case of partial inclusion of a servitude tract in such a unit has not been definitively determined. However, prior jurisprudence regarding the extent of a use by unit production[3] suggests the conclusion that the interruption would be limited to the included acreage.

The *Mire* case was accepted on writs by the Supreme Court only on the question of the obstacle rule.[4] However, another extremely important aspect of the case was dealt with by the court of appeal.[5] This concerned the interpretation and application of R.S. 9:5805, which abolished suspensions of liberative prescription in favor of minors and others under disability insofar as mineral interests are concerned. The record disclosed that when the servitudes in question were created in 1946 and 1947, the plaintiffs were minors. At that time in history the minority suspension was still operative. Two of the plaintiffs, however, reached majority in 1948, and the third became a major in 1950, the year in which the act became effective. The 1950 enactment provided in part that it was "intended to and does affect presently existing mineral or royalty rights; however, any minor or other person under legal disability whose rights are affected hereby, shall have a period of one year from the effective date hereof within which to exercise such rights." Counsel for the plaintiffs argued that as the provision giving the one-year period in which to exercise existing and affected rights applied only to "any minor or other person under legal disability," this should be read as meaning that the statute affected only persons under disability and enjoying the benefit of a suspension at the time of the effective date of the act. It was urged on behalf of the defendants that the act should be applied retroactively to wipe out all suspensions the benefits of which any parties might have been enjoying on the effective date of the act, even though their disability might have terminated previously.

2. 229 La. 1017, 87 So. 2d 516 (1956).

3. *E.g.*, Jumonville Pipe & Machinery Co. v. Federal Land Bank, 230 La. 41, 87 So.2d 721 (1956); Childs v. Washington, 229 La. 869, 87 So. 2d 11 (1956). The *Jumonville* decision was cited with approval by the majority in the *Mire* case. Thus it seems that there is at least some basis for prediction that the earlier cases regarding the effect of unit production will be followed.

4. Mire v. Hawkins, 248 La. 367, 178 So. 2d 657 (1965).

5. 177 So. 2d 795 (La. App. 3d Cir. 1965).

The court of appeal determined that the act was retroactive in the manner urged by defendants and, therefore, that even though the suspensions which at least two of the plaintiffs enjoyed had begun and terminated prior to the effective date of the act, the retroactive effect of the act was to deprive them of the benefit of any such suspensions.

In evaluating the decision, one may consider five alternative fact situations: (1) *A*, an owner of mineral rights, who was a minor on the effective date of the 1950 enactment and whose interest had been outstanding for less than ten years at that time; (2) *B*, an owner of mineral rights, who was a minor on the effective date of the 1950 enactment and whose interest had been outstanding in excess of ten years as of that date; (3) *C*, an owner of mineral rights, in whose favor a suspension had commenced and terminated by reason of attainment of majority prior to the effective date of the act but whose mineral rights had been outstanding as of that date for less than ten years; (4) *D*, an owner of mineral rights, in whose favor a suspension of prescription had commenced and terminated by attainment of majority prior to the effective date of the act but whose interest had been outstanding for more than ten years as of that date; (5) *E*, an owner of mineral rights, in whose favor a suspension of prescription had commenced and terminated by reason of the attainment of majority prior to the effective date of the act but in whose favor prescription had been interrupted or suspended for some other cause by reason of which it was still outstanding as of the effective date of the act.

It seems clear that in the first and second cases the statute was clearly intended to deny to minors or others under disability as of the effective date of the act the benefit of any then existing suspension of prescription by reason of such disability. In this respect, there can be no question as to the correctness of the court's decision. There is, however, difference between the two cases. In the first case, that of an interest outstanding for less than ten years as of the effective date of the act, it seems clear that the original prescriptive date will still be applicable if that date was more than one year from the effective date of the act. If that date was less than one year from the effective date of the act, it seems that the interpretation given to the statute requires that the minor or other disabled person be given one year from the effective date of the act.

Insofar as the third and fourth cases are concerned, the decision means that the act is applicable retrospectively to deprive the minor or other previously disabled person of a previously accrued suspension of prescription. There are, however, differences in application, similar to those as between the first and second cases. If the interest had been outstanding for less than ten years as of the effective date of the statute and the prescriptive date was more than one year from that date, the original prescriptive date would apparently apply. If, however, the interest had been outstanding for more than ten years as of the effective date of the enactment or if the prescriptive date was less than one year from the effective date, the owner of the mineral rights in question would have had one year from the effective date in which to exercise his rights.

Deferring for a moment discussion of the fifth fact situation, evaluation of this portion of the decision is somewhat difficult, but it can be said that the plaintiffs whose interests were affected adversely by this interpretation certainly had a reasonable position in the matter. In the first place, their argument that the statute by its own terms expressed the intent that it be applicable only to those who were minors or otherwise disabled *at the time of the enactment* seems well founded. Further, it seems that logical arguments can be made to the effect that the benefit of the prior rule of property had already vested in that the suspension had begun and terminated and that to deprive them of the rights so vested might be unconstitutional.

On the other hand, the court's position is not entirely without logic. It may be argued, by way of example, that if the legislature passed a statute altering the prescriptive term of all mineral servitudes by decreasing it to seven years, the act would not be struck down as unconstitutional as the statute is merely remedial or procedural in nature,[6] and as long as persons affected are protected by giving them a reasonable period in which to exercise their rights, no constitutional argument can be successfully asserted. Similarly, the interpretation given R.S. 9:5805 might be said to mean that mineral interests existing solely by reason of a disability suspension as of the effective date of the act, regardless of whether the suspension is still existent or has previously terminated, may validly be affected

6. United States v. Nebo Oil Co., 190 F.2d 1003 (5th Cir. 1951); Whitney National Bank v. Little Creek Oil Co., 212 La. 949, 33 So. 2d 693 (1947).

by the statute as long as a reasonable time for protection is allowed.

Yet, the interpretation given the statute may, perhaps, be more closely analogous to saying that if *X* used a mineral servitude in 1940 and again in 1949, the legislature may validly say that the prescriptive period is only five years and that the second use, therefore, was of no effect in preserving the servitude interest. In short, the commencement and termination of the suspension might be viewed as creating a vested right. Certainly, the court's decision is deserving of sober consideration by the Supreme Court at some future date, and it was somewhat of a surprise that the grant of writs did not include a review of this portion of the opinion.

The fifth fact situation set out above envisions the possibility that a suspension of prescription might have been operative at some time prior to the effective date of the act but that during or subsequent to the period of the suspension the rights in question were used on behalf of the minor or other disabled person prior to the date of the act.

Although the court was not called upon to decide this question, its decision leaves some room for doubt concerning it if read literally. Thus, it seems appropriate to observe that an interpretation of this statute to deprive any mineral owner who had enjoyed the benefit of a suspension in the past or was enjoying it at the time of the act of the benefits of a prior use would unquestionably be wrong.

Servitude — Royalty Distinction

The decision in *Uzee v. Bollinger*[7] is one of two decided during the past term concerning which comment by the writer might be unseemly because of participation in the litigation. In view of this fact, no discussion will be undertaken. The reader is referred to the discussion of this case by Mr. Marlin Risinger in the 1966 Mineral Law Institute[8] for his evaluation of the decision, which involves important determinations regarding the servitude-royalty distinction and the relationship of executive and non-executive mineral interests.

7. 178 So. 2d 508 (La. App. 1st Cir. 1965).
8. THIRTEENTH INSTITUTE ON MINERAL LAW 133 (1966).

Severance Damages

In *State, Sabine River Authority v. Salter*,[9] land belonging to plaintiff had been expropriated for use in construction of the Toledo Bend Dam and reservoir project. The mineral rights were reserved to defendant.[10] In addition to contesting the valuation of the land expropriated, defendant sought damages to the reserved mineral rights allegedly caused by the ultimate inundation of the property and the imposition of certain restrictions by the Sabine River Authority on exercise of the reserved mineral rights. Initially, the court of appeal, harmoniously with the district court, concluded that the rights reserved by defendant were not in the nature of a separate mineral estate. Rather they constituted a "perpetual servitude." The authority urged that as only a servitude rather than ownership of the minerals in place had been reserved, the value of the servitude was too speculative to permit an award for damages. Further, the authority urged that although damages might be allowable if oil or gas were presently being produced on the land, no damages were allowable as there was no production, and the nearest wells were several miles away. Thus, the authority concluded that the present value of the mineral servitude was too speculative to permit proof of damages.

Defendant, on the other hand, contended that the mineral rights in question had a present market value for leasing and that such value would be destroyed as a result of the inundation of the land and imposition of restrictions on operations by the authority. The evidence demonstrated rather clearly that the plaintiff's position as to a present value for leasing was correct. Regarding the question of whether the expropriation proceedings would destroy that value, the evidence further revealed that oil and gas production in the Sabine Parish area is from a very "tight" chalk formation at a relatively shallow level with low per well production. Expert testimony was to the effect that the great cost of barges and other equipment for water bottom operations would render the drilling or production of such wells economically unfeasible. Additional costs might be incurred as a result of restrictions by the authority in an effort to keep the waters of the reservoir free of waste oil and other residue.

9. 184 So. 2d 783 (La. App. 3d Cir. 1966).
10. LA. CONST. art. 14, § 45.

The court of appeal found that the present lease value of the mineral rights was $11.00 per acre and held that defendant was entitled to be compensated accordingly. In fixing the damages, the court expressed a preference for the notion that the appropriate method was a determination of the value of the mineral rights prior to the expropriation and the value subsequent to expropriation. As the whole of the then market value would be destroyed by the expropriation, the full amount of $11.00 per acre was awarded. However, it was observed that as a practical matter in that particular case it made no difference whether the $11.00 per acre were figured as a part of the value of the land as a whole or merely computed as severance damages to the retained mineral rights.

The court was clearly correct in its preference for the severance damages method of computing the award. As a theoretical matter, the lease value of mineral rights is not necessarily the value of the mineral rights themselves on an open market. Although in an individual case such a method of valuation might be reasonable, there is a clear conceptual distinction to be made. What was lost by the expropriation was not the entire value of the mineral rights but the loss of the present leasing value for exploitation of known producing horizons in the area. This is an item of severance damage. Conceivably, in the future deeper discoveries may be made and drilling techniques may be evolved which would make exploration of different, more productive sands economically feasible. This prospective value is, of course, speculative, but the defendant clearly had not been deprived of any such prospective value. All that was lost was the chance of exploitation of known producing horizons in the area under present conditions.

Unlawful Agreement To Extend Servitude

In *Kirkland v. Faulhaber*,[11] plaintiff sued for specific performance of a contract to sell 160 acres of land adjoining lands of his own. Defendant had written plaintiff offering to sell the property for $75.00 per acre with a "reservation of mineral rights for ten years plus a ten year extension." Plaintiff accepted the offer by mail as it had been made. However, ten days after the offer was written, defendant wrote that she had accepted another offer. Defendant testified that she did not

11. 175 So. 2d 917 (La. App. 2d Cir. 1965).

"think" she would have sold the property unless she could have obtained the ten-year extension of the mineral reservation and that she would not have sold the property for cash because she wanted payment on a long-term interest bearing basis. The district court ordered specific enforcement of the contract to sell, and defendant appealed.

The Second Circuit Court of Appeal affirmed the judgment of the lower court. Under the facts, the conclusion was deemed inescapable that the extension of the mineral reservation, as proposed by the defendant and accepted by plaintiff, had not been established as a principal cause for making the contract. Thus, the contract could not be avoided for error of law. Defendant also contended that she had not consented to the cash payment of the price. Common usage and ordinary rules of interpretation were said to indicate that an offer to sell property at a designated price per acre contemplates payment in cash. It appeared obvious that in making the offer defendant did not consider terms of credit as being a principal cause. Otherwise she would have specified such a provision. Further, this was not deemed to be a real factor inasmuch as defendant later purported to sell the property for cash. The court therefore ordered specific performance of the agreement exactly as written, with the provision for extension of the reservation of the mineral rights. The extension was not deemed illegal, void, or prohibited, but simply unenforceable by law. Despite the fact that plaintiff would be under no legal obligation to comply with the agreement for extension, it could not be said that he could not voluntarily grant the extension.

Considering the facts of the case, there can be no quarrel whatsoever with the result achieved. As a matter of strict theory, however, it does seem that the agreement to permit a ten-year extension of the mineral rights to be reserved by the vendor should be considered as being a nullity rather than merely unenforceable. The unenforceable obligation is usually one which is, nevertheless, supported by a natural obligation.[12] Such, how-

12. Planiol observes that natural obligations do not ordinarily survive a null act because nullities are usually founded on moral reasons and natural obligations are similarily founded on a moral imperative. Thus, as a basic proposition, it is illogical that the law would for moral reasons consider an act null and at the same time find any surviving natural or moral obligation. See 2 PLANIOL, TREATISE ON CIVIL LAW, (TRANSLATION BY LOUISIANA STATE LAW INSTITUTE) no. 342 (1959) [hereinafter cited as PLANIOL].

In the category of unenforceable obligations, the principal examples are con-

ever, does not appear to be the case with an obligation attempting to avoid the application of the prescription of nonuse to a mineral servitude. This is against established public policy.[13] In discussing the theory of nullities, Planiol divides nullities into two categories, the "null" act and the "annullable" act.[14] He states that the "nullity by operation of law is the true nullity, which results from what the law forbids."[15] Such a nullity may result solely from the spirit of the law even where there is no specific text.[16] It is null as regards everybody because its nullity is based upon a consideration of general interest.[17] Louisiana jurisprudence clearly suggests that agreements of the kind in question are contrary to public policy and should be regarded as nullities rather than mere unenforceable obligations.[18]

As noted, the criticism levelled at the court's reasoning is purely a matter of theory because a conclusion that the attempted extension agreement was a nullity would not have required a different result. Under the facts of the case, it appears that the court was clearly justified in its determination that the ten-year extension of the mineral rights was not a principal or motivating cause of the vendor. Therefore, even though that particular portion of the contract might be regarded as a nullity, there would be no basis for regarding the entire contract as a nullity.

Use By Unit Operations

The decision in *Trunkline Gas Co. v. Steen*[19] is one of the most important in recent years. It disposes of a question which has lurked in the mineral property law since the courts began

tracts by those incapable of acting when executed in full possession of their faculties, such as a minor, and obligations on which liberative prescription has accrued. In both instances the obligation is merely unenforceable, but a natural obligation survives. 2 PLANIOL § 343.

13. *E.g.*, Hicks v. Clark, 225 La. 133, 72 So. 2d 322 (1954) (dealing with reversionary right); Roy O. Martin Lumber Co. v. Hodge-Hunt Lumber Co., 190 La. 84, 181 So. 865 (1938) (deliberate transfer to minor to avoid prescription); Patton's Heirs v. Moseley, 186 La. 1088, 173 So. 772 (1937) (transfer to minor).

14. See 1 PLANIOL §§ 326-335. particularly § 335. In the cited discussion Planiol also goes into the theory of the "inexistent act." However, he maintains that the so-called "inexistent act" is not really a nullity and that the dual concept of "null" and "annullable" acts has survived in France. For an analysis of acts null by operation of law ("null" acts) see 1 PLANIOL §§ 336-339. Regarding "annullable acts" see I PLANIOL §§ 340-344.

15. 1 PLANIOL § 336.

16. *Id.* at § 337.

17. *Id.* at § 339.

18. See authorities cited in note 13 *supra.*

19. 249 La. 520, 187 So. 2d 720 (1966). See also the appellate decision in 179 So. 2d 546 (La. App. 3d Cir. 1965).

wrestling with the problem of the effect of unit operations on the prescription of nonuse accruing against mineral servitude tracts included in unitized areas. Briefly, the issue of note was whether drilling operations conducted on a compulsory unit including only a portion of a mineral servitude tract but from a location *on the tract in question* would have the effect of interrupting prescription only as to that portion within the unit or as to the entire servitude. The court of appeal and the Supreme Court both gave full effect to the use. This accords with the writer's previously expressed views and seems sound in every respect.[20]

In terms of theory, the decision lays to rest, at least substantially, the question raised by certain earlier decisions regarding use by unit operations as to whether the *issuance* of a unitization order has the technical legal effect of "dividing" a partially included servitude in the fullest sense of that word as a term of legal art.[21] The *Trunkline* decision certainly indicates that this is not the case. The decision should further illustrate the validity of the writer's expressed thesis that the unitization cases have dealt with problems of rules of use applicable to unit operations and not with conflicts between conservation orders and private contracts or with any actual division of servitude tracts affected.[22] In rationalizing the result the Supreme Court, through Chief Justice Fournet, held that the rule of use applicable to operations conducted on the servitude premises has been clearly established for many years. To deny the servitude owner the benefit of this rule, which would clearly have been applicable but for the question raised by the unitization order, would, in the Chief Justice's mind, have raised serious constitutional problems.[23]

20. Hardy, *Ruminations on the Effect of Conservation Laws and Practices on the Louisiana Mineral Servitude and Mineral Royalty*, 25 LA. L. REV. 824, 855 (1965).

21. Jumonville Pipe & Machinery Co. v. Federal Land Bank, 230 La. 41, 87 So. 2d 721 (1956); Childs v. Washington, 229 La. 869. 87 So. 2d 111 (1956); Frey v. Miller, 165 So. 2d 43 (La. App. 3d Cir. 1964), *writs denied*, 246 La. 844, 167 So. 2d 669.

22. Hardy, *Ruminations on the Effect of Conservation Laws and Practices on the Louisiana Mineral Servitude and Mineral Royalty*, 25 LA. L. REV. 824, 848-49 (1965).

23. "Clearly, therefore, any order of the Commissioner not necessary for the conservation of oil and gas resources of this State or to prevent their waste or one that would unnecessarily deprive an owner of his rights to property, as owner or under contract, would be illegal and unconstitutional for the Constitution of 1921 clearly provides that (1) 'private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid,' (Article I, Section 2) and prohibits the passing of any law impairing the obliga-

It is noteworthy that the record of the case presented a means by which the issue of major importance could have been avoided. The evidence clearly reveals that the drilling operations in question had been conducted for the purpose of, and had resulted in, the testing of nonunitized sands as well as that which was unitized. Thus, it could have been held that the operations in the nonunitized sands had clearly effected an interruption of prescription as to the entire tract. It is significant that the court chose to grapple with the case on the more difficult, and meaningful, issue of the effect of the unit operations.

The *Trunkline* decision has been criticized recently by one able practitioner[24] on the ground that the result will force operators to consider well locations based upon property lines rather than giving geological considerations their proper determinative force. The writer has some doubts concerning this point of view. It is difficult to conceive that in contemplating expenditures of the kind required for development today property lines will play an undue part in determining well location. True, if one of two equally desirable locations, judged from the technical side, will have the effect of permitting an interruption of prescription on the entirety of a tract under lease to the operator and the other will not, the choice would obviously be in favor of the greater effect on prescription if the operator's rights were truly dependent upon continued life of the servitude interest in question. However, it seems unlikely that any *major* risk in completion of a producing well will be undertaken solely on

tion of contracts, or the divestiture of 'vested rights * * * unless for purposes of public utility, and for just and adequate compensation previously paid.' (Article IV, Section 15). Such order would also be in violation of the Constitution of the United States, which prohibits the states from passing any law impairing the obligation of contracts, (Article I, Section 10) as well as the taking of private property without just compensation, (the Fifth Amendment)." Trunkline Gas Co. v. Steen, 187 So. 2d 720, 724 (La. 1966).

24. Duvieilh, *Recent Jurisprudence I*, FOURTEENTH ANNUAL INSTITUTE ON MINERAL LAW (1967). Mr. Duvieilh states: "It is difficult to see how where the unit well is actually located should influence any policy which would require either a division or a nondivision of a mineral servitude, or royalty, by a forced unit. Any such policy seemingly should result in either a division or nondivision regardless of where the unit well is located. Otherwise, where the unit well is located would produce different legal effects on the nonunitized portions of mineral servitudes and the corresponding duration of mineral leases affecting such nonunitized portions." With all due respect to Mr. Duvieilh's experience and undoubted ability, it is submitted that he makes the mistake of failing to perceive that the unitization cases involve problems of rules of use and not problems of "division or nondivision," as he puts it. This is precisely the error into which the courts originally fell and which has caused such a great deal of difficulty. See Hardy, *Ruminations on the Effect of Conservation Laws and Practices on the Louisiana Mineral Servitude and Mineral Royalty*, 25 LA. L. REV. 824, 855 (1965).

the ground that operations will have a greater effect on prescription if conducted from another site. The problems suggested may cost particular operators some additional money in attempting to acquire lease rights from the expectant landowner, but this type of problem is not uncommon under previously existing conditions.

The expressed view that the *Trunkline* case is wrongly decided because it brings undue consideration of property lines is subject to further criticism in that it fails to consider the possibility that *Trunkline* is right and those decisions limiting the effect of unit operations solely to acreage included in a compulsory unit[25] may be wrong. If operations affecting prescription were given the uniform effect of interrupting prescription on the entirety of any servitude tract affected by the unitization order, there would be no reason whatsoever for considering property lines in choosing optimum well locations in the absence of special contractual provisions. The writer has also previously suggested that if unit operations are to be given any effect on prescription, that effect should be a full interruption of prescription on the entire tract.[26] This is not to say that such effect *must* be given to both drilling operations, regardless of location, and to production, but great benefits in terms of simplicity of titles and of judicial administration of the property system as well as harmony with property rules affecting mineral leases and the conservation act would accrue from adoption of the basic principle that any interruption of prescription is an interruption as to the whole of the tract in question unless the landowner and servitude owner expressly agree to the contrary. Power to vary this rule restrictively by convention should clearly lie within the range of freedom of contract.

MINERAL LEASES

Damages

Roy O. Martin Lumber Co. v. Pan American Petroleum Corp.[27] involved a claim for damages to land and timber by an oil and gas lessee. The lease in question contained an express

25. See the authorities cited in note 21 *supra*.

26. Hardy, *Ruminations on the Effect of Conservation Laws and Practices on Louisiana Mineral Servitude and Mineral Royalty*, 25 LA. L. REV. 824, 858, 871 (1965).

27. 177 So. 2d 153 (La. App. 3d Cir. 1965).

clause making lessee responsible for all damages to land, crops, timber, and improvements caused by its operations. The court awarded damages for saw logs and pulpwood and for restoration of the surface where disturbed by well locations and roads. The land in question was for the most part low timberland subject to the overflow and was cut by bayous, lakes, ravines, and log-roads, and the court observed that the amount of damages claimed by plaintiff for cost of restoration might actually exceed the value of the land and indicated doubt that plaintiff would use any award of damages to restore such property. Thus, it did not fully satisfy the plaintiff's claim. The court also denied damages for loss of future growth of small timber and for the fees of expert appraisers used to estimate the damage to timber. Insofar as the damage to future timber growth was concerned the court held that the lease contract did not contemplate damage payments for anything but merchantable timber. Future growth was considered too speculative, complicated, and conjectural.

The court's decision appears to be sound, and there is no unusual aspect of the case warranting further comment.

Right To Remove Equipment

Silberman v. Beaubouef[28] concerned a suit by an oil operator against his erstwhile lessor for an injunction prohibiting defendant from obstructing or embarrassing plaintiff's efforts in removing certain drilling equipment and casing from the location of a depleted well. Plaintiff obtained a temporary restraining order. However, on the hearing for the preliminary injunction, the lower court denied injunctive relief. The court of appeal affirmed the lower court, noting that the defendant disclaimed any objection to the removal of any equipment at the time of trial. The dispute involved a contention by defendant that plaintiff was obligated to fill in certain pits on defendant's land. However, in denying injunctive relief, the trial judge commented that it did not appear that there would be any further interference, if in fact there had been previous interference. The court had for consideration the question whether the trial judge had abused his discretion in refusing injunctive relief and quite properly found no abuse of discretion under the circumstances.

28. 175 So. 2d 873 (La. App. 3d Cir. 1965).

Unit Operations

The plaintiff in *Auzenne v. Lawrence Oil Co.*[29] sought cancellation of a mineral lease for failure to pay royalty, which in this instance was actually a shut-in payment under a lease treating such payments as "production" within the meaning of the habendum clause. The circumstances giving rise to the dispute were that a portion of the lease premises was included in a drilling unit for a potential oil sand. Operations were conducted on the unit but off the leased premises. The unitized oil sand was found unproductive. However, the well was completed as a gas condensate well in another sand which was later unitized. Prior to the second unitization, however, defendant lessee tendered delay rentals. Plaintiff refused the payment, contending that lessee should have made a shut-in royalty payment. The court reasoned that at the time the payment was tendered, the lease was not being maintained by drilling operations or by actual production. The well had been completed in a sand and at a location which was not at that time unitized to include any of the lease premises. Therefore, no shut-in payment was due, and the lease could only have been maintained by means of the delay rental payment. There appears to be no question as to the correctness of this analysis.

Operating Agreements

In *Southwest Gas Prod. Co. v. Creslenn Oil Co.*[30] plaintiff instituted a concursus proceeding seeking distribution of proceeds from production attributable to certain tracts within a fieldwide unit. The principal issue in the case arose from the fact that two groups of claimants had, prior to establishment of the fieldwide unit, executed an operating agreement covering a described half-section of land. In the agreement, claimants expressed an expectation that the tract in question would be unitized by the Commissioner of Conservation and provided that in the event some other unit area should be established for the unitized sand, the provisions of the agreement would be applicable to the other unit area. Although the half-section in question was unitized, the originally formed unit was later reformed to exclude a portion of the half-section. By the terms of the fieldwide unitization order the well located in the area cov-

29. 179 So. 2d 533 (La. App. 3d Cir. 1965).
30. 181 So. 2d 63 (La. App. 2d Cir. 1965).

ered by the operating agreement was shut in and that area of the half-section included in the fieldwide unit was assigned participation according to a formula weighing productive acre feet and surface acreage. Basically, the opposing claims centered around a determination of whether the tract participations assigned under the conservation order in some manner superseded the provisions of the operating agreement. The lower court held that the provisions of the operating agreement regarding the sharing of production were not abrogated by the conservation order.

The Second Circuit Court of Appeal affirmed. The action of the Commissioner was purely conservatory in nature. His allocation of production was necessary for the protection of landowners and was not intended to affect the validity and enforcement of private agreements previously entered into. At the time the operating agreement was executed there could be no assurance that all of the tract would be productive. All parties were experienced operators familiar with the possible hazards and benefits involved in the proposed operations. Implicit in the agreement was recognition of the fact that the distribution of costs upon the basis of surface acreage was, in the opinion of the parties to the agreement, equal to the proceeds which might result from sharing production upon the same basis. The change in position evidenced by the claim in this suit simply demonstrated the infallibility of hindsight as opposed to the unknown and imponderable elements which lie outside the realm of ascertainable knowledge at the time of the negotiation of any contract.

It had been urged that the parties to the operating agreement contracted only with reference to the well drilled on the tract in question, which was later shut in as a part of the field unit operations, with production being allocated to the portion of the tract covered by the operating agreement from other wells. The court rejected this contention, applying R.S. 30:10(A)(1)(b), providing that the portion of the production allocated to the owner of each tract included in a drilling unit formed by a pooling order shall, when produced, be considered as if it had been produced from his tract by a well drilled thereon. Although the statute specifically relates to drilling units formed under R.S. 30:9, the court stated it could find no ground for distinction in its application to a field-wide unit such as that created by the Commissioner in this case.

In terms of the legal principles applied, the writer has no criticism of this case to offer. Conceivably, the facts of the case might be arguable. However, the decision ultimately turned upon a question of construction of the operating agreement in accordance with the "intent of the parties." The court's reliance on the prior decision in *Monsanto Chemical Co. v. Southern Natural Gas Co.*,[31] which relied in turn on *Arkansas-Louisiana Gas Co. v. Southwest Natural Production Co.*[32] appears to have been well placed under the circumstances.

Division Orders

In *Kaufman v. Arnaudville Co.*[33] plaintiff lessor sought cancellation of a mineral lease on the ground that a declared unit including a portion of the lease premises had not been validly formed, resulting in expiration of the lease. The pooling clause of the lease in question provided that "any unit formed by Lessee hereunder may be created either prior to the drilling or after the completion of the unit well." Lessee executed and filed the unit declaration during the time the well was being drilled. Plaintiff therefore contended that under the terms of the pooling clause and in accord with prior decisions of the Louisiana Supreme Court interpreting and applying such clauses strictly,[34] the unit was invalid. Therefore, the unit operations, conducted on the unit but off the lease premises, were alleged not to have maintained the lease. Sporadic unit operations attempting to achieve completion were conducted beyond the end of the primary term. Prior to abandonment of operations in the first unit, but after the end of the primary term, a second unit was formed by declaration in a manner which plaintiff admitted was in accordance with the terms of the pooling clause and would have been valid had the lease remained in force. A third unit including a portion of the plaintiff's property was formed. Both of these unit wells were completed as dual producers of oil. A division order was circulated to plaintiff providing, in part, that in consideration of the execution of the order by other royalty owners in the unit and in consideration of the payments to be made to the royalty owners under the terms of the division order, each roy-

31. 234 La. 939, 102 So. 2d 223 (1958).
32. 221 La. 608, 60 So. 2d 9 (1952).
33. 186 So. 2d 337 (La. App. 3d Cir. 1966), *writs denied*, 249 La. 575, 187 So. 2d 739.
34. See Mallet v. Union Oil & Gas Corp., 232 La. 157, 94 So. 2d 16 (1957); Wilcox v. Shell Oil Co., 226 La. 417, 76 So. 2d 416 (1954).

alty owner, including plaintiff, acknowledged that the lease executed by him and accurately described in the order was fully effective at the time the order was executed and that each signatory party ratified the unit. The record revealed that the plaintiff was an able and experienced oil man and that prior to execution of the division order plaintiff had made rather extensive inquiries concerning the formation of the units, including the first one, and the operations conducted on them. Defendant contended that in view of these facts, plaintiff executed the division order acknowledging the validity of the lease and ratifying the establishment of the first producing unit with full knowledge of the facts and should be held estopped to deny the validity of the lease. The trial court sustained the position of the defendant, holding that the division order had the effect of estopping plaintiff from denying the validity of the mineral lease.

The Third Circuit Court of Appeal affirmed the lower court. In so holding, it did not admit the validity of plaintiff's argument that the lease had expired because the first unit was improperly formed but held that the estoppel resulting from plaintiff's execution of the division order made it unnecessary to decide the issues raised by plaintiff's arguments.

In its opinion on original hearing, the court dealt with the argument of plaintiff that the division order was by its express terms revocable and that as plaintiff had repudiated it, it could not have any effect on the issue of the validity of the lease. In disposing of this argument, the court remarked that the provisions of the order concerning revocation applied only to the right of the plaintiff lessor to take production in kind if he so desired, thus permitting the inference that the order could be revoked only in the event plaintiff desired to take production in kind by exercising the option to do so provided in the lease. In a *per curiam* opinion denying the application for rehearing, the court took notice of the fact that plaintiff urged that the court's remarks had wide and damaging effect on the law regarding division orders. The court apparently went to some trouble to indicate that it did not intend to be changing the law concerning the legal effects of division orders, concluding with a re-emphasis of the facts upon which it based its finding of an estoppel.

Sale of Working Interests

In *Williams v. Morgan*,[35] plaintiffs sued on a contract to sell certain working interests to defendant under the terms of which funds were placed in escrow and were to be delivered to plaintiffs if valid assignments were delivered to the escrow agent by a specified date. Defendants entered into possession of the leases and operated them during the escrow period. On the specified date, defendants refused to consummate the sale and demanded immediate return of the amount in escrow, claiming that plaintiffs were guilty of fraud and misrepresentation regarding the production characteristics of the wells. The case principally involved a determination of fact as to whether defendants had been misled. The court cited abundant evidence of the precautions taken by defendants against any probability of a bad investment, including inspections of conservation department records, inspections of the wells themselves, and other precautionary measures. All of the facts allegedly misrepresented were open and available to defendants, who were experienced in oil operations. The court concluded that not only had defendants failed to meet the high standard of proof required to support allegations of fraud and misrepresentation but that defendants had not been misled and had not, in fact, relied on the representations in question as a basis for execution of the escrow agreement. Viewing the facts as recited in the opinion, there can be no quarrel with the decision. The inference to be drawn from the opinion is that the court felt defendants had discovered an error in business judgment and were simply attempting to extricate themselves from their predicament, which the court properly chose to prohibit.

"Starting a Well"

The proper interpretation of the phrase "start a well" was at issue in *Hilliard v. Franzheim*.[36] Defendant had agreed to purchase an overriding royalty interest from plaintiff on condition that plaintiff "start a well" within ninety days of the agreement. The price was to be paid on notice that the well "had been spudded." Within the ninety-day period, plaintiff had staked the location, moved lumber onto it, levelled the site, installed a culvert and cattle guard, begun construction of a board road and entered into a drilling contract. The rig was not on location

35. 180 So. 2d 11 (La. App. 2d Cir. 1965).
36. 180 So. 2d 746 (La. App. 3d Cir. 1965).

and drilling was not begun until more than ninety days from the agreement. On the date the rig was moved on, plaintiff sent defendant an executed royalty deed. Defendant retained the deed without action until after the well was found to be dry and then refused to pay the purchase price, arguing that the phrase "start a well" as used in the agreement meant spudding in. The Third Circuit Court of Appeal properly refused to sustain defendant's argument and compelled payment of the purchase price.

Although no criticism can be levelled at the result of this case, the court does fall into error in making its interpretation of the phrase "start a well" by stating that that phrase has the same meaning in the industry as "commence to drill." Actually, the latter phrase is synonymous with "spudding in" of a well — that is, the first penetration of the bit. It seems that the court may have fallen into some confusion in that many commonly used lease forms use the phrase "commence operations for the drilling of a well." This, of course, *is* synonymous with "starting a well," the term involved in the instant case. It is to be hoped that this confusion will not be the source of misinterpretation in the future.

PUBLIC LANDS

School Lands

By this time it is difficult to view the decision in *Terrebonne Parish School Board v. Texaco, Inc.*[37] as being a "recent decision." However, it is nevertheless one of considerable note and disposes of a question which has been troublesome to the state and the industry for some years. The controversy essentially revolved around title to navigable water bottoms in school (or "16th Section") lands. The Terrebonne Parish School Board and the Louisiana State Mineral Board had granted conflicting leases on a "16th Section." The First Circuit Court of Appeal determined that title to all navigable water bottoms in the state passed to the State of Louisiana on admission to the Union,[38] whereas title to the school lands did not pass from the federal government until after the making and approving of surveys.[39]

37. 178 So. 2d 428 (La. App. 1st Cir. 1965), *writs denied*, 248 La. 465, 179 So. 2d 640, *cert. denied*, 384 U.S. 950 (1966).

38. The court relied upon Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845).

39. In reliance upon United States v. Wyoming, 331 U.S. 440 (1946).

Accordingly, although under R.S. 30:152 school boards are authorized to lease "16th Section" and school indemnity lands for the development and production of minerals, they are not entitled to lease the beds of navigable waters within those areas for such purposes. Extended discussion would contribute little in the way of enlightenment regarding this decision. It is sufficient to say that the result seems eminently sound.

Water Bottoms

Comment on the merits of the decision rendered by the First Circuit Court of Appeal in *State v. Scott*[40] is proscribed by the fact that the author entered the case as counsel for the Scott group, the losing parties, prior to becoming a member of the law school faculty and continued to serve in that capacity until final disposition of the case. The decision is briefly treated by Professor Dainow in the portion of this symposium dealing with civil law property and was discussed by Mr. Phillip Wittmann in the 1967 Mineral Law Institute, the proceedings of which will be published in the near future. It is sufficient to say that the decision is of considerable significance in that it is the first successful engagement in a long and determined war by the State of Louisiana on the decision rendered in *California Co. v. Price*.[41] It thus has rather far-reaching effects as it gives the state a much stronger bargaining position in a number of presently outstanding disputes with private landholders who have up to this time been relying on the *Price* case. That decision, of course, had given private claimants a man-sized stick to wield in bargaining with the state for settlement of claims to minerals in water bottom areas. For those who take the position that it is better policy that the natural resources in these areas be diverted to the state and thus to public use, the *Scott* case represents a substantial victory. Private landholding interests seem to have been put in a defensive position for the first time in a number of years.

40. 185 So. 2d 877 (La. App. 1st Cir. 1966). Judge Lottinger submitted a strong dissenting opinion in which Judge Landry concurred, *id.* at 886.
41. 225 La. 706, 74 So. 2d 1 (1954).

REAL ACTIONS AND OTHER PROCEDURAL MATTERS

Real Actions — Necessary Parties

In *LeSage v. Union Producing Co.*,[42] plaintiff, apparently feeling that previously granted mineral leases on two certain tracts of land had expired, purchased a one-half mineral interest from the owner of one of the tracts and secured a full interest mineral lease from the owner of the other tract. A detailed statement of the facts would be surplusage in the context of this discussion as the Supreme Court did not reach the merits of the case. It is sufficient to note that plaintiff brought an action seeking to be declared owner of the mineral servitude and mineral lease interests in question and to have the previously granted mineral leases cancelled. Defendants filed exceptions of no cause of action, no right of action, and nonjoinder of indispensable or necessary parties. Regarding the exception of no cause of action, the Supreme Court held that, liberally construed, plaintiff's petition set forth a petitory action even though it sought relief above and beyond that normally granted in a petitory action. The exception was, therefore, overruled.

Regarding the exception of no right of action, defendants urged that plaintiff stood in the position of a "top" mineral purchaser and a "top" lessee. Thus, it was contended, plaintiff had only personal rights and was not entitled to assert a real action. The Supreme Court correctly held that plaintiff's petition reflected his claim to be more than a mere "top" mineral owner or lessee but showed his claim that he was, as of the dates of the mineral purchase and lease, the owner of those particular interests free of the prior leases. As alleged owner of a mineral servitude interest, plaintiff was clearly entitled to assert a petitory action. Regarding his position as a mineral lessee, the court correctly ruled that plaintiff was similarly entitled to assert the petitory action. The court's discussion reflects some doubt, apparently stemming from the decision in *Reagan v. Murphy*,[43] that plaintiff as mineral lessee was the owner of a "real right" entitled to bring a real action. However, even under the law existing at the time of the decision in *Reagan v. Murphy*,[44] prior to the adoption of article 3664 of the Code of Civil Procedure,[45]

42. 249 La. 42, 184 So. 2d 727 (1966). For the decision by the court of appeal on the merits see 176 So. 2d 777 (La. App. 2d Cir. 1965).

43. 245 La. 529, 105 So. 2d 210 (1958).

44. *Ibid.*

45. LA. CODE OF CIVIL PROCEDURE art. 3664 (1960): "A mineral lessee or sub-

there could have been no doubt as to the plaintiff's right as a mineral lessee to bring the real actions. Doubt regarding the status of a mineral lessee as the owner of a real right has arisen in numerous contexts, but there has been no question since the passage of Act 205 of 1938,[46] overruling *Gulf Refining Co. v. Glassell*,[47] that a mineral lessee is entitled to assert the real actions.

The objection of nonjoinder was based upon the contention that the landowner owning the other half of the minerals on one tract and the lessor from whom plaintiff obtained the lease on the other were indispensable or, at least, necessary parties to the action. Plaintiff urged that under R.S. 9:1105[48] and article 3664[49] of the Code of Civil Procedure he was entitled to assert the real actions "without the concurrence, joinder, or consent of the owner of the land." However, the court ruled that the landowner and lessor were at least necessary parties to the action, sustained the exception, reversed the judgments of the court of appeal and district court, and remanded the case for trial.

Insofar as the landowner who had retained ownership of one-half of the mineral rights on one of the two tracts is concerned, the court's decision is questionable. The purchaser of a fractional mineral servitude does not become a co-owner of the mineral rights with the landowner who retains the remainder.[50]

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lessee. owner of a mineral interest in immovable property, owner of a mineral royalty, or of any right under or by obligation resulting from a contract to reduce oil, gas and other minerals to possession, is the owner of a real right. These rights may be asserted, protected and defended in the same manner as the ownership or possession of immovable property, and without concurrence, joinder, or consent of the owner of the land."

46. Amended by La. Acts 1950 (2 E.S.), No. 6, now LA. R.S. 9:1105 (1950).

47. 186 La. 190, 171 So. 846 (1936).

48. LA. R.S. 9:1105 (1950): "Oil, gas, and other mineral leases, and contracts applying to and affecting these leases or the right to reduce oil, gas, or other minerals to possession, together with the rights, privileges, and obligations resulting therefrom, are classified as real rights and incorporeal immovable property. They may be asserted, protected, and defended in the same manner as may be the ownership or possession of other immovable property by the holder of these rights, without the concurrence, joinder, or consent of the landowner, and without impairment of rights of warranty, in any action or by any procedure available to the owner of immovable property or land. This Section shall be considered as substantive as well as procedural so that the owners of oil, gas and other mineral leases and contracts within the purpose of this Section shall have the benefit of all laws relating to the owners of real rights in immovable property or real estate."

49. See note 45 *supra*.

50. Starr Davis Oil Co. v. Webber, 218 La. 231, 48 So. 2d 906 (1950); Clark v. Tensas Delta Land Co., 172 La. 913, 136 So. 1 (1931).

Such a servitude owner acquires a separate and independent right of exploration. Admittedly, it might be argued that when a mineral servitude purchaser acquires an interest subject to a previously granted lease he in effect becomes a co-lessor with the landowner.[51] If the obligations of the lease are to be regarded as indivisible,[52] it might therefore be said that joinder of the landowner is necessary. However, the position of the plaintiff in this case was that as of the date of his purchase of the one-half mineral servitude the lease in question had expired by its own terms. This being the case, it seems that the exception of nonjoinder of the landowner might have been overruled.

Insofar as the exception of nonjoinder affected the landowner from whom plaintiff had acquired a full interest mineral lease, it is also questionable whether the ruling was correct. The court stated that before suit, the lessor "had a fully operative lease on his land and contractual relations with defendants, who owed him a duty to fulfill the lease obligations. If plaintiff has judgment, this lease will be decreed of no effect, and lessor's rights will be extinguished, despite the express subordination. The lessor will receive a different lease obligor under another lease the court will have decreed operative. That the substitute lease coincidentally provides for identical royalties to the lessor does not prevent his interest from being affected."[53] If the landowner in question had become lessor by purchase of the land from the original lessor subsequent to the time plaintiff acquired his lease, the court's analysis might be sound. However, it seems that any right or interest which the lessor might have had arising from the fact that judgment in favor of plaintiff would substitute a new lessee might have been regarded as waived in this particular case. The lease agreement unquestionably reveals that the lessor contemplated that if no valid, outstanding lease existed, he was perfectly willing to accept plaintiff as lessee.

In view of these considerations, it seems that the ruling by the Supreme Court did little more than delay a decision on the merits. The court of appeal had rendered judgment on the merits, noting that it was presented "with a record of a case made up after trial of all the issues between the parties which is complete in every respect,"[54] and further observing that a decision upon

51. See Coyle v. North Central Texas Oil Co., 187 La. 238, 174 So. 274 (1937).
52. Hunter Co. v. Shell Oil Co., 211 La. 893, 31 So. 2d 10 (1947).
53. LeSage v. Union Producing Co., 184 So. 2d 727, 731 (La. 1966).
54. 176 So. 2d 777, 781 (La. App. 2d Cir. 1965).

the merits of the case "will, therefore, serve to prevent additional delays and expenses without prejudice to the rights of the parties."[55] Decision on the exception of no cause of action was pretermitted and the exceptions of no right of action and nonjoinder were overruled. Even though some question as to the correctness of pretermitting an exception might have been raised,[56] on balance the approach of the court of appeal seems preferable.

When this case ultimately reaches the point of decision on the merits, if it climbs back up the appellate ladder, it should prove interesting as it will require consideration of when unit operations affecting unitized tracts not including the drill site are terminated and non-unit operations exploring other sands have commenced.

Collateral Estoppel

Shell Oil Co. v. Texas Gas Transmission Corp.[57] presented an extremely interesting question of procedure arising out of a gas contract dispute. Shell and Texas Gas entered into a contract in 1951 by which Shell agreed to sell gas at a specified price but with the protection of a "most favored nation" clause under which Texas Gas was obligated to escalate the price paid Shell if, subsequent to execution of the Shell contract, it executed a contract for the purchase of gas within fifty miles of the Shell delivery point at a higher price. In 1943 a wholly owned subsidiary of Texas Gas had executed a contract with Atlantic Refining Co. for the purchase of gas within fifty miles of the Shell delivery point. The 1943 contract provided for renegotiation of the price at five-year intervals or, if negotiation should fail, arbitration. In 1953, at the end of the second interval, Texas Gas and Atlantic executed a letter agreement providing for a price higher than that paid Shell under its 1951 contract. Shell contended that it was owed the higher Atlantic price for sales during the period between the 1953 letter agreement and the date in 1954 when the Federal Power Commission was compelled by the United States Supreme Court to assume jurisdiction over field prices for interstate sales by independent producers of gas.[58]

55. *Ibid.*

56. In his dissenting opinion Judge Ayres raised the question of the correctness of this practice. *Id.* at 785.

57. 176 So. 2d 692 (La. App. 4th Cir. 1965).

58. Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954).

In compliance with FPC regulations requiring submission of all rate schedules, Shell had submitted its schedule for the field in question with a statement concerning the escalation accompanied by a sample billing under which Texas Transmission was making its payments under the old contract and a sample as Shell contended payment should be made based on its contention that the 1953 letter agreement between Atlantic and Texas Gas was a "new contract." The outcome of the commission proceeding was ultimately a holding that the letter agreement was not a "new contract" entitling Shell to the higher rate.[59]

In the present state court action, Texas Gas pleaded collateral estoppel. The Fourth Circuit Court of Appeal held that although the doctrine of collateral estoppel is not a part of the Louisiana law of res judicata,[60] Louisiana is required under 28 U.S.C. § 1738[61] to give the same effect to the judgments of state and federal courts as those judgments have in the jurisdictions where rendered. As the effect of federal judgments in non-diversity cases is governed by federal law, the doctrine of collateral estoppel had to be applied. On original hearing, it was held that application of the doctrine required a determination that Shell was forbidden from relitigating the issue as part of its claim for the higher rate during the 1953-54 period.

On rehearing, the court held that the prior determination in federal court rested on the assumption that the 1943 Texas Gas-Atlantic contract would be valid as a matter of Louisiana law. The federal decision held the contract binding even though it did not establish a definite price but only provided for negotiation or arbitration. Shell contended that the question whether such a contract would be valid under Louisiana law was one *of*

59. Shell Oil Co. v. Federal Power Comm'n, 292 F.2d 149 (3d Cir. 1961), *cert. denied*, 368 U.S. 915.

60. Citing LA. CIVIL CODE art. 2286 (1870); Quarles v. Lewis, 226 La. 76, 75 So. 2d 14 (1954) and other authorities.

61. ". . . Acts, records and judicial proceedings [of the legislature of any State, Territory or Possession of the United States] or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possesssions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

In support of the proposition that the quoted statutory provision requires each state to give the same effect to the judgments of state *and* federal courts as those judgments have in the jurisdictions where rendered, the court cited Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943); Stoll v. Gottlieb, 305 U.S. 165 (1938) and numerous other authorities. In support of the principle that collateral estoppel is included within the full faith and credit mandate of the statute, the court cited United States v. Silliman, 167 F.2d 607 (3d Cir. 1948), *cert. denied*, 335 U.S. 825.

law, to which the doctrine of collateral estoppel was not applicable. This contention was sustained, and the case was remanded for proceedings consistent with the court's decision. As the litigation is not terminated, comment on the merits of the question would be inappropriate. The procedural determination, however, appears to be correct.[62]

Parol Evidence

The stream of recent jurisprudence regarding suits on oral contracts involving mineral leases was at least negatively involved in *Fontenot v. Fontenot*.[63] Plaintiffs sued to enforce an alleged oral contract under which defendants, mineral lease brokers, induced plaintiffs to lease to defendant's principal for $5.00 an acre by promising that if more was paid to any other lessor "in the block," defendants would personally pay plaintiffs the difference. Counsel for defendants urged that under *Hayes v. Muller*[64] and other similar cases, parol evidence was inadmissible in proof of the claim. However, the court held that this suit did not involve a claim of an interest in a mineral lease disputed among parties thereto. The case was analyzed as one involving a disclosed agent who exceeded his authority and thereby became personally bound. Thus, it was held that parol evidence was admissible in proof of the claim. However, the triumph on the legal issue proved to be a Pyrrhic victory for plaintiffs as the court held that the evidence did not support the alleged oral agreements. Thus the judgment rendered by the lower court in favor of defendants was affirmed.

Considering the facts of the case as recited by the court, there seems little question as to the correctness of the result.

INSURANCE

*J. Denson Smith**

In the case of *Gunter v. Lord*,[1] the Supreme Court denied double recovery to a passenger in an insured vehicle, claimed

62. This decision is noted with approval in 40 TUL. L. REV. 934 (1966).
63. 175 So. 2d 910 (La. App. 3d Cir. 1965).
64. 245 La. 356, 158 So. 2d 191 (1963).
*Professor of Law, Louisiana State University.
1. 242 La. 943, 140 So. 2d 11 (1962), noted in 23 LA. L. REV. 353.