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ASSURED CLEAR DISTANCE DOCTRINE IN LOUISIANA

In the early case of *Lauson v. Fond du Lac*,¹ the Wisconsin Supreme Court formulated the rule that later became known as the assured clear distance doctrine. Roughly stated, the doctrine maintains that an automobile operator is negligent as a matter of law if he drives the vehicle at a speed greater than will permit him to stop or otherwise avoid an object or obstruction within the range of his vision.² The rule is said to have resulted from the once prevalent night accidents between automobiles and unlighted horsedrawn carriages.³ The doctrine was quickly accepted by the Louisiana courts,⁴ and although it has become so riddled with exceptions that "it serves little more purpose in the law than the appendix does in the human body,"⁵ it is still regarded as well established.⁶ This Comment examines the application of this doctrine by the courts and draws some conclusions as to the status and desirability of the rule in Louisiana today. For clarity, the various factual circumstances in which the doctrine might be applicable will be analyzed.

Rear End Collisions

For convenience, this category will be further subdivided into cases where a parked or standing auto protrudes onto the highway, and cases where a preceding auto stops suddenly.

Parked or Standing Vehicle

An application of the assured clear distance doctrine seems to indicate that a motorist must arbitrarily be able to stop to avoid a vehicle which has obstructed the highway by being parked on the thoroughfare. Many early cases in Louisiana held this to be the rule even when the obstruction was without lights or warnings.⁷ Fairly typical is the case of *Sexton v. Stiles*⁸ in which the defendant left his unlighted hay truck on a dark

1. 141 Wis. 57, 123 N.W. 629 (1909).

2. This rule is also known as the "radius of lights" or "length of vision" doctrine.

3. Nixon, *Changing Rules of Liability in Automobile Accident Litigation*, 3 LAW & CONTEMP. PROB. 476 (1936). The author points out that the California Supreme Court once upheld a statute prohibiting traveling by any motor vehicle between dusk and dawn.

4. *Henican v. Baldwin*, 1 La. App. 281 (Orl. Cir. 1924).

5. *The Work of the Louisiana Supreme Court for the 1955-1956 Term—Torts and Workmen's Compensation*, 17 LA. L. REV. 345 (1957).

6. *Day v. Allstate Ins. Co.*, 223 So.2d 461 (La. App. 1st Cir. 1969); *Arceneaux v. German*, 207 So.2d 244 (La. App. 1st Cir. 1968).

7. *E.g.*, *Louisiana Power & Light Co. v. Saia*, 173 So. 537 (La. App. Orl. Cir. 1937), and cases cited therein.

8. 130 So. 821 (La. App. 2d Cir. 1930).

night in the middle of the highway, midway up a hill. Plaintiff, whose automobile was proceeding down the preceding hill, did not see the truck until he was almost upon it and a collision resulted. The court of appeal held that even though plaintiff was given no warning and could not see the truck due to the contour of the road, he was negligent in traveling so fast that he could not stop within his range of vision. Relying on *Lauson*, the court reasoned that plaintiff should have slowed to such a speed that he could have halted, presumably just because he was crossing a hill. The effect of this type decision was to exculpate the negligent, open highway obstructor and to cast a duty on the motoring public to avoid him. Thus a motorist who proceeds forward reasonably believing that the highway is unobstructed would be barred from recovering from the irresponsible individual who, knowing others would be using the highways, left his auto in a dangerous position.

If the assured clear distance doctrine were consistently applied, the moving motorist arbitrarily would be precluded from recovery no matter how careful his driving, simply because of the courts' adherence to an easily applied formula. The injustice of such a situation was recognized and courts soon began to modify the doctrine. For example, the same court which handed down the *Sexton* decision held the following year that if the sudden appearance of bright lights of oncoming vehicles prevents a motorist from seeing a parked vehicle, and thus creates an emergency, the assured clear distance doctrine does not apply.⁹ Later cases,¹⁰ while purporting to recognize the rule that one must be able to stop within his range of vision, held that no hard and fast rule can be formulated because the surrounding facts and circumstances of each particular case must be considered. Therefore, what has actually happened in this area is that the courts, looking at all the facts, judge the case on a reasonable care formula while paying lip service to the assured clear distance doctrine.¹¹ This is amply illustrated in the Supreme Court decision of *Suire v. Winters*:¹²

9. *Waters v. Meriwether Transfer Co.*, 137 So. 578 (La. App. 2d Cir. 1931).

10. *Gariennie v. Cooperative Produce Co.*, 196 La. 417, 199 So. 377 (1940); *Louisiana Power & Light Co. v. Sala*, 173 So. 537 (La. App. Orl. Cir. 1937).

11. See *The Work of the Louisiana Supreme Court for the 1957-1958 Term—Torts and Workmen's Compensation*, 19 LA. L. REV. 334 (1959); *The Work of the Louisiana Supreme Court for the 1956-1957 Term—Torts and Workmen's Compensation*, 18 LA. L. REV. 63 (1957); *The Work of the Louisiana Supreme Court for the 1955-1956 Term—Torts and Workmen's Compensation*, 17 LA. L. REV. 345 (1957). In each of the above, Professor Malone suggests that the courts recognize the modifications of the doctrines.

12. 233 La. 585, 97 So.2d 404 (1957).

"Although it is the duty of a motorist to have his car under such control that he can bring his vehicle to a stop within his range of vision, the standard the law gives us to apply is that to be expected by a reasonably prudent motorist under a given set of facts and circumstances then prevailing and not that exercised by imaginary ideal motorists."¹³

If the general rule is that a motorist must be able to stop within his range of vision, and if it is nevertheless possible for a violator of this rule to recover, it can certainly be argued that Louisiana courts have somewhat espoused a theory of comparative negligence without so admitting.

The courts simply weigh and balance all facts and circumstances involved. They will not accept defendant's arguments that plaintiff has violated the assured clear distance rule and is thus contributorily negligent when defendant illegally obstructs the highway.¹⁴ It is submitted that the real reason the courts do not accept such arguments is that it is reasonable, not unreasonable, for a motorist to assume that the highway is clear.

Sudden Stop or Slowing by Preceding Vehicle

Where a following motorist collided with a preceding vehicle that had come to a sudden stop or had slowed suddenly, the early Louisiana cases were consistent¹⁵ with the assured clear distance rule in holding the following driver negligent as a matter of law simply because he could not stop. Arbitrary application of the rule in this situation also would be unjust. Under the early cases one would not be able to presume that the preceding vehicle would continue to move forward under normal conditions. Instead the following driver would be forced to follow at such a distance that he could stop regardless of the unreasonable actions of the preceding driver. Here again, however, the courts began to find exceptions. Thus where the preceding vehicle had just passed the defendant and was required to stop suddenly before regaining its proper place on the road, the plaintiff was allowed to recover.¹⁶ Situations such as this make

13. *Id.* at 593, 97 So.2d at 406.

14. LA. REV. STAT. 32:141 (1950) prohibits any person from parking a vehicle on the highway.

15. *See, e.g.,* Henican v. Baldwin, 1 La. App. 281, 282 (Orl. Cir. 1924), where the court said: "It is evident that he should have kept at such a distance behind Henican . . . as would have permitted him to stop before colliding with the car in front when the latter stopped." For a collection of these early cases *see* Annot., 85 A.L.R.2d 613 (1962).

16. Dupuy v. Godchaux Sugars, Inc., 184 So. 730 (La. App. Orl. Cir. 1938).

the arbitrary range of vision rule unworkable. The courts have simply been forced to recognize that a driver who stops suddenly in a long line of traffic may be a greater hazard¹⁷ than one who follows so close that he cannot always stop unexpectedly.

Present Louisiana statutory law requires that:

"The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway."¹⁸

This provision would seem to eliminate the range of vision rule and substitute a test of ordinary negligence, *i.e.*, the driver's actions must be reasonable and prudent under the circumstances. In interpreting the duty credited by the statute, however, the courts have refused to repudiate the language of the assured clear distance rule. They persist in saying that the well-established rule is that a following driver should remain far enough behind the lead vehicle to be able to stop in the event the preceding vehicle stops.¹⁹ The courts then find exceptions to the "rule." Thus they have said that the rule does not apply when "a sudden not to be anticipated emergency is created by the forward vehicle."²⁰ The question of whether a sudden emergency is to be anticipated appears to be determined by ordinary rules of negligence—whether or not a reasonable man would anticipate a stop under the circumstances. Compare, for example, the case of *Lafleur v. Genuine Parts Co.*,²¹ in which the court held that the following driver had no duty to anticipate that a dog would jump from a passing vehicle and run into the path of the preceding vehicle causing it to stop, and *Self v. State Farm Mut. Auto. Ins. Co.*,²² where the following driver was held negligent in not anticipating that the lead vehicle might abruptly stop after observing state troopers stretching a rubber hose across the highway. The court in *Lafleur* felt a reasonable man would not have anticipated a stop under the circumstances whereas the *Self* court felt the reasonable man would have expected a stop. The basis for this sensible approach would appear to be the courts'

17. Annot., 29 A.L.R.2d 5 (1953).

18. La. Rev. Stat. 32:81(A) (1950).

19. *Arceneaux v. German*, 207 So.2d 244 (La. App. 1st Cir. 1968).

20. *Id.* at 251.

21. 192 So.2d 241 (La. App. 4th Cir. 1966). This case contains an excellent summary of cases showing instances in which a driver has been held to anticipate a stop and when he had not been under such a duty.

22. 183 So.2d 68 (La. App. 3d Cir. 1966).

recognition that in today's high speed traffic it would be impractical to require a motorist to keep such a distance between himself and the preceding motorist that he could stop at any time regardless of the reason.²³ If such were the rule, a driver at 65 miles per hour would be forced to follow the preceding car at a distance of 150 yards,²⁴ an unrealistic burden in view of today's congested highways. Therefore, the courts have adopted the pragmatic approach of allowing a following driver to rely on the forward driver to observe the rules of the road when any reasonable driver would. It is suggested that the courts should recognize the actual rule instead of clinging to an antiquated doctrine that is, in fact, no longer valid.

Collision With Other Obstructions by Driver Unable to Stop

In cases involving stationary objects, the Louisiana Supreme Court recognized an exception to the *Lauson* rule as early as 1917 in *Jacobs v. Jacobs*.²⁵ In that case a motorist, when sued by a guest passenger, was held to be non-negligent in failing to stop his car where a canal suddenly intersected the street. The court recognized that a motorist has a right to presume that the way is safe for ordinary travel, and it reasoned that the doctrine "cannot apply to a case where an object or obstruction which the driver of an automobile has no reason to expect appears suddenly immediately in front of his automobile."²⁶ This case is particularly interesting because of its treatment of the *Lauson* case. The *Jacobs* court refused to impose any arbitrary duty on a driver to stop within his range of vision, and instead stated that the driver in *Lauson* was negligent because of his speed under the *conditions prevailing* (dark rainy night, strange road).

The Louisiana courts certainly could have followed this lead and could have handled each case on its facts without reliance on any strict rule. Thus where a properly lighted barricade obstructs the roadway and a motorist exercising ordinary care could have avoided it, a driver who strikes it is clearly negligent under the normal standard of a reasonable man. Instead of taking this approach, however, the court under such facts in *Carriere v. Aetna Cas. Co.*²⁷ stated that the driver was negligent

23. In fact, it would appear to be *impossible* in rush hour expressway traffic.

24. See R. HOFFMAN, *MURDER ON THE HIGHWAYS* 39 (1966).

25. 141 La. 271, 74 So. 992 (1917).

26. *Id.* at 284, 74 So. at 996.

27. 146 So.2d 451 (La. App. 4th Cir. 1966).

under the "general rule" that a driver is guilty of negligence in driving at a rate of speed greater than will permit him to stop within his range of vision. The real distinction between these cases is that in *Jacobs* the sudden appearance of a canal without warning was not to be anticipated by a reasonable man. But in *Carriere* the obstruction was such that a driver operating at a reasonable speed could have stopped. Thus the test again becomes one of what a reasonable motorist would or would not recognize as a hazard.²⁸

Similarly, in cases involving pedestrians, the Louisiana courts have held that a driver is not negligent where a pedestrian suddenly appears without warning even though the motorist cannot stop within his range of vision.²⁹ Although a full consideration of the special duty of a motorist to small children is beyond the scope of this paper,³⁰ it is important to note that the courts seem to apply principles similar to the assured clear distance doctrine in these cases. Thus, where a driver observes or should observe small children in the area, it is generally stated that he must exercise extraordinary care³¹ and slow to such a speed that he can stop in time to avoid an accident. Because of the high degree of care required in such situations, this is true even where a child suddenly darts in front of him.³² Therefore, it would appear to be the law in Louisiana that where small children are known to be present, a motorist whose view is obstructed must stop until he has a clear view of the situation and can safely proceed forward. Where a truck driver's vision was blocked by another auto, and he had seen other children crossing the highway, the court stated in *Moreau v. Southern Bell Tel. & Tel. Co.*,³³ that "he was at fault and negligent in starting forward before he was sure that the highway was clear and that all the children had passed."³⁴ It is arguable therefore that the

28. Compare the case of *Stein v. Missouri Pacific R.R.*, 166 So.2d 381 (La. App. 3d Cir. 1964), in which the court found that the truck driver was negligent in running into the side of a train, with the case of *Warner v. Millers Mut. Fire Ins. Co.*, 110 So.2d 842 (La. App. 1st Cir. 1959), where the defendant was held not negligent in failing to avoid a pedestrian. In both cases the court applied ordinary standards of care and prudence in determining whether the driver was negligent.

29. *Flowers v. Morris*, 43 So.2d 917 (La. App. 2d Cir. 1950).

30. For full coverage of this duty see Annot., 30 A.L.R.2d 5 (1953).

31. There are numerous Louisiana cases stating such a rule, e.g., *Kimball v. Southern Farm Bureau Cas. Ins. Co.*, 161 So.2d 307 (La. App. 3d Cir. 1964).

32. This also is a well-established principle in Louisiana. For a leading case see *Peperone v. Lee*, 160 So. 467 (La. App. Orl. Cir. 1935).

33. 158 So. 412 (La. App. 2d Cir. 1935).

34. *Id.* at 414.

assured clear distance doctrine is still operative in such situations, because the driver is arbitrarily required to stop within the range of his vision. Upon analyzing this type of case, however, one can just as forcefully assert that due care requires a recognition that small children are not aware of the danger imposed by an automobile, and that the driver is required, therefore, as an ordinary reasonable man to operate his vehicle in such a way as to guard against this hazard. In this view he would not be charged with any "arbitrary" or "extraordinary" duty, but merely with a duty to take cognizance of the dangerous propensities of children, and to drive as any reasonably prudent driver would in such circumstances.

Deviation From Path to Avoid Obstruction

When a driver, unable to avoid an obstruction, turns out of his lane of travel and strikes a nearby object or oncoming vehicle, the problem takes on another aspect. If, under the previously stated rules, the driver should have reasonably anticipated the obstruction, there is no difficulty because he is clearly negligent whether he turns and strikes an object or continues forward and collides with the obstruction. But what if the object is a sudden, unanticipated one which the driver could not be held to expect? If he refuses to turn and hits the highway obstruction, the courts hold that he is not negligent. Such was the case of *Gros v. United States Fid. & Guar. Co.*,³⁵ which held no cause of action against the defendant who hit an obstructing parked vehicle rather than veer and hit a pedestrian. Suppose, however, he veers suddenly to the left and strikes an innocent oncoming vehicle? In such a case, he has become an obstructor of the other lane of the highway, and will be treated as such. In the leading case of *Rizley v. Cutrer*,³⁶ the defendant collided with an oncoming vehicle when he veered sharply into the opposite lane to avoid an obstruction in his lane. The court of appeal excused the defendant under the exception to the range of vision rule that a driver is not negligent when a sudden obstacle which he has no reason to expect appears in the roadway.³⁷ The Louisiana Supreme Court reversed,³⁸ noting that the defendant, having caused the accident by leaving his own traffic lane, must show

35. 183 So.2d 670 (La. App. 1st Cir. 1966).

36. 232 La. 655, 95 So.2d 139 (1957).

37. *Mershon v. Cutrer*, 85 So.2d 639 (La. App. 1st Cir. 1956).

38. 232 La. 655, 95 So.2d 139 (1957).

that he was not guilty of any dereliction, however slight. The court stated:

"[I]t seems only reasonable to resolve that a motorist owes to the traveling public the duty of remaining in his own lane of traffic, and when he undertakes to enter the lane devoted to approaching traffic, he must be held strictly accountable for all damages resulting therefrom unless he clearly exhibits that his conduct in no wise contributed to the accident."³⁹

The original obstructor should be held ultimately responsible, but the driver who deviates from his lane of traffic in such a situation should be liable for whatever damage he does to innocent third parties or even to his own passengers.⁴⁰ This, of course, applies *a fortiori*, when the following driver veers from his path to avoid an object he should have seen and hits a ditch⁴¹ or a pedestrian.⁴²

Effect of Atmospheric Conditions

There is, however, one set of circumstances in which the courts have generally continued to apply the range of vision rule almost invariably. This is when the motorist's vision is impaired by atmospheric conditions:⁴³

"A motorist should reduce his speed to such an extent and keep his car under such control as to reduce to a minimum the possibility of accident from collision; and as an extreme measure of safety, it is his duty, when visibility ahead is not possible or greatly obscured, to stop his car and remain at a standstill until conditions warrant going forward."⁴⁴

The courts have consistently applied this rule to fog,⁴⁵ dust,⁴⁶

39. *Id.* at 663, 95 So.2d at 142. *See also* Lejeune v. State Farm Mut. Auto. Ins. Co., 107 So.2d 509 (La. App. 1st Cir. 1959).

40. Benenate v. Brooks, 95 So.2d 757 (La. App. Or. Cir. 1957).

41. Gunter v. Lord, 132 So.2d 488 (La. App. 3d Cir. 1961).

42. Cottone v. Jones, 7 So.2d 401 (La. App. Or. Cir. 1942).

43. *See generally* Annot., 42 A.L.R.2d 13 (1955).

44. Demerest v. Travelers Ins. Co., 234 La. 1048, 1054-55, 102 So.2d 451, 454 (1958), quoting Hogue v. Akin Truck Line, 16 So.2d 366, 368 (La. App. 2d Cir. 1944).

45. Neames v. Fidelity Gen. Ins. Co., 206 So.2d 575 (La. App. 1st Cir. 1968).

46. Castille v. Richard, 157 La. 274, 102 So. 398 (1924).

rain,⁴⁷ smoke,⁴⁸ mist,⁴⁹ an icy windshield,⁵⁰ and the rising sun.⁵¹ The tenacity with which the courts have clung to the doctrine in this area is illustrated by the case of *Hernandez v. State Farm Mut. Auto. Ins. Co.*⁵² where the driver of an auto in thick fog was held negligent when he collided with an unlighted auto stalled on a bridge at 2 a.m. This and other cases present a general rule that anyone who operates a vehicle when his vision is obscured by atmospheric conditions will be held negligent if he strikes another object.⁵³ But in this area, too, it can be argued that the courts are actually applying ordinary reasonable care concepts, since the standard of care as defined by the *Restatement of Torts (Second)* is that of a "reasonable man *under like circumstances*."⁵⁴ (Emphasis added.) The various atmospheric conditions listed are continuous for a time at least, and thus any prudent operator could appreciate in advance that special danger is created so that adjustment could be made to the conditions. A driver of an automobile has a duty to assure the safety of the public by the exercise of the degree of care commensurate with the circumstances—whatever those circumstances might be.

Primary or Contributory Negligence

A further aspect of the doctrine that merits discussion is the fact that the courts are more likely to find the driver liable when *primary* rather than *contributory* negligence is alleged. When a driver who collides with an object in his lane in violation of the range of vision rule is charged with primary negligence as a defendant, the courts in the past have occasionally allowed recovery under both the last clear chance⁵⁵ and *res ipsa loquitur*⁵⁶ doctrines. Most of the cases mention neither doctrine, and today the general rule would appear to be that a rear-end collision merely creates a presumption that the following driver is at fault.⁵⁷

47. *Sawyer v. United States*, 224 F. Supp. 678 (E.D. La. 1963).

48. *Ardoin v. Southern Farm Bureau Cas. Ins. Co.*, 133 So.2d 129 (La. App. 3d Cir. 1961).

49. *Standard Cas. Co. v. Fidelity Cas. Co.*, 162 So.2d 26 (La. App. 1st Cir. 1964).

50. *Moses v. Mosley*, 146 So.2d 263 (La. App. 3d Cir. 1962).

51. *Brown v. Rousseve*, 163 So.2d 849 (La. App. 4th Cir. 1964).

52. 192 So.2d 679 (La. App. 3d Cir. 1966).

53. For a discussion of cases involving head-on collisions in smoke, fog, and dust, see Note, 28 LA. L. REV. 674 (1968).

54. RESTATEMENT (SECOND) OF TORTS § 283 (1965). Thus one could say that the circumstances, i.e., rain, fog, etc., require a generally higher standard than ordinary driving conditions.

55. *O'Rourke v. McConaughy*, 157 So. 598 (La. App. Or. Cir. 1934); *Parlongue v. Leon*, 6 La. App. 18 (Or. Cir. 1927).

56. *Loprestie v. Roy Motors, Inc.*, 191 La. 239, 185 So. 11 (1938).

57. *Arceneaux v. German*, 207 So.2d 244 (La. App. 1st Cir. 1968).

However, in most cases where a motorist strikes an obstruction in his own lane, the usual situation is for him to be charged with contributory negligence when he seeks to recover from the highway obstructor. If there were a strict reliance on the assured clear distance rule, such plaintiff would automatically be denied recovery despite the dangerous hazard created by the defendant. Instead of blindly following the rule, however, the courts have created the various exceptions noted above. Thus, it may be argued⁵⁸ that the various exceptions reflect the courts' dissatisfaction with the rule barring recovery when the plaintiff is contributorily negligent. In comparing the negligence of the range of vision violator and the thoroughfare obstructor, the courts have chosen the latter as the more serious offender by exonerating the plaintiff of *any* negligence in some situations. This is certainly justified when we consider that an obstructing vehicle creates one of the most serious perils in modern driving.

When, however, the driver who suddenly finds his path blocked is charged with *primary* negligence for leaving his lane and striking an oncoming vehicle—the above reasons for finding liability are no longer paramount. Instead one party may be *entirely* innocent and the other has, in turn, become a highway obstructor. Thus the courts will find that although the driver's failure to stop is "excusable in a suit against the tortfeasor who has created the risk by blocking traffic, nevertheless, it may be held actionable negligence in other situations."⁵⁹ In effect, then, the courts are comparing the relative negligence of the various parties while purporting to base the decisions on the assured clear distance doctrine and its exceptions.

Utility of the Doctrine Today

Although many states originally accepted the assured clear distance doctrine even to the point of enacting it into statute,⁶⁰ an increasing number have rejected it in favor of ordinary negligence principles.⁶¹ The reasons for this are sound. First, the rule is out of line with modern conditions of automobile traffic. It may have been true in the early days of the automobile when roads were bad and obstructions were frequent and when mo-

58. *The Work of the Louisiana Supreme Court for the 1954-1955 Term—Torts and Workmen's Compensation*, 16 LA. L. REV. 267 (1956).

59. *Noland v. Liberty Mut. Ins. Co.*, 89 So.2d 428, 434 (La. App. 1st Cir. 1956), dissenting opinion.

60. Comment, 23 CALIF. L. REV. 498 (1935).

61. *Id.*

torists did not drive at a speed greater than their range of vision permitted. But on today's superhighways this is simply not the case. Furthermore, an examination of the cases demonstrates that such an arbitrary rule is generally unworkable because of the vast array of possible circumstances in each case. Thus, the courts still speak of the doctrine as a general rule, but in fact the rule is that a driver must exercise reasonable care and prudence under the circumstances.

It is submitted that the assured clear distance doctrine is obsolete. The courts would clarify the law in this area a great deal by abandoning it as the so-called general rule laced with exceptions and counter-exceptions. It has been argued that many attorneys shy away from rear-end collision and similar cases because they feel that the motorist who is unable to stop is automatically liable. If this is the case, the courts could remedy the situation by recognizing the fact that the applicable principles are those of ordinary negligence.

Winston R. Day

IMPLIED DUTIES AND THE EXECUTIVE RIGHT

There are several interests contained in the mineral right which have become objects of commerce. The most important of these are:

- (1) The exclusive leasing privilege or executive right;
- (2) Bonus interest;
- (3) Royalty interest; and
- (4) Interest in rentals.

Separation of these interests, especially royalty from the others, is not uncommon. It is necessary to distinguish between separation of these incidents and the creation of a full mineral right to a fraction of the minerals. A fractional mineral interest vests all the rights of a mineral servitude in the holder, whereas a separated incident carries only those rights of the particular interest held. The impact of this distinction becomes apparent upon consideration of the relative positions of these two types of interest holders. Whenever the executive right is separated from any of the other incidents, all those rights which accompany the leasing privilege are stripped from the newly created non-