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emphasized by Pothier⁴¹ and has been consolidated in France, Quebec and Louisiana. For some reason, the fifth category—obligations which arise from the operation of law—is being overlooked in Louisiana and should be more clearly recognized. On the issue of the appropriate period for liberative prescription, it does make a difference.

*State Lumber & Supply Co. v. Gill*⁴² involved a claim against the owner for supplies furnished on a construction project where the supplier had not fulfilled all the statutory requirements for the preservation of his lien against the property. The statute provides a special one-year prescription for the personal cause of action against the owner but adds that "this shall not interfere with the personal liability of the owner for material sold to or services or labor performed for him or his authorized agent."⁴³ Thus the court succinctly stated the question on which depended the classification of the cause of action as "whether this was a contract job or whether Rousset was hired as an employee or agent by defendant Gill."⁴⁴ On the evidence, the court found that Rousset was employed by Gill and therefore the statutory prescription of one year did not apply. Consequently, the supplier's cause of action was classified as one on open account subject to the three-year prescription of Civil Code article 3538.

MINERAL RIGHTS

*George W. Hardy, III**

MINERAL LEASES

Implied Obligations

The appellate opinion in *Baker v. Chevron Oil Co.*¹ was discussed in last year's *Symposium*.² In that discussion it was noted that the case suggests the possibility that a lessee might be impliedly obligated to a lessor who has granted a lease on a min-

41. POTHIER, OBLIGATIONS no. 2: "The sources of obligations are contracts, quasi-contracts, offenses, quasi-offenses; sometimes the law or equity alone."

42. 259 So.2d 639 (La. App. 1st Cir. 1972).

43. LA. R.S. 9:4812 (1950).

44. 259 So.2d 639, 641 (La. App. 1st Cir. 1972).

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1. 245 So.2d 457 (La. App. 2d Cir. 1971).

2. *Symposium*, 32 LA. L. REV. 254, 261 (1972).

eral servitude to exercise due diligence to secure unitization if formation of the unit would result in an interruption (or suspension) of prescription and thus preservation of the servitude. The Louisiana supreme court has now considered the case on writs and affirmed the judgment of the court of appeal.³ The plaintiffs' claim for damages because of alleged lack of diligence in securing the unitization was denied in both instances. In the supreme court, however, the basis upon which the claim for damages was denied was changed. The court noted that defendant Chevron Oil Co. was not the plaintiffs' lessee and therefore could not be found to be under any obligation to the plaintiffs. The fact that Chevron was not plaintiffs' lessee is not readily discernible from the appellate opinion. However, the supreme court's finding in this regard certainly is more than adequate as a basis for its decision. The court, in disposing of the claim for damages conceded the existence of a duty to secure the unitization with all due diligence only for the purpose of discussion. Thus, the question of whether such a duty might be found to exist as a part of the lessee's obligation to act as a good administrator under article 2710 of the Civil Code or on any other basis remains unanswered. It is certainly an interesting idea.

Drilling Clauses

Plaintiff, in *Allen v. Continental Oil Co.*,⁴ claimed that defendant's lease had expired by the running of the primary term. The lease in question provided that it would not expire at the end of the primary term if lessee was "then engaged in drilling or reworking operations." By the date marking the end of the primary term, the lessee had constructed and gravelled an access road, dug slush pits, laid gas and water lines, moved on a spudder rig which had drilled thirty-five feet of hole and set conductor pipe, and attempted to move the drilling rig onto the site, which it had been prevented from doing by virtue of heavy rains which had washed out a portion of the access road. The operations were subsequently prosecuted to a successful conclusion. Citing several prior decisions, the court applied what it viewed as the general rule in interpreting the phrase "drilling operations" and decided that actual drilling was not necessary under a wording

3. *Baker v. Chevron Oil Co.*, 260 La. 1143, 258 So.2d 531 (1972).

4. 255 So.2d 842 (La. App. 2d Cir. 1971).

of the lease form in question.⁵ The activities engaged in prior to the exploration date of the lease were deemed to constitute "drilling operations." Although the cases cited by the court do not all concern precisely the same wording,⁶ this decision is in keeping with the tenor of the jurisprudence in this and other jurisdictions.⁷

Payment of Royalties

*Alvord v. Sun Oil Co.*⁸ is another in the mounting body of jurisprudence concerning late commencement of royalty payments. The default clause of the lease in question required the giving of notice by the lessor if *operations* were not being conducted in compliance with the lease contract. No notice was given under the clause. Relying on the prior decision of the supreme court in *Boutherie v. Kleinpeter*,⁹ which construed an almost identical clause, the court held that payment of royalty did not qualify as "operations" and that the clause was therefore inapplicable. There is no doubt in the writer's mind that both the *Boutherie* and *Alvord* decisions are correct in the construction of the default clauses in question. The matter reached the court of appeal in *Alvord* by virtue of the fact that the lower court had sustained defendant lessee's exception of prematurity on the ground of failure to comply with the default clause. The impact on that controversy was that the issue of whether a notice of default was required must now be determined under the general

5. *Hilliard v. Franzheim*, 180 So.2d 746 (La. App. 3d Cir. 1965); *Wehran v. Helis*, 152 So.2d 220 (La. App. 4th Cir. 1963); *Crye v. Giles*, 200 So. 155 (La. App. 2d Cir. 1941).

6. *Hilliard v. Franzheim*, 180 So.2d 746 (La. App. 3d Cir. 1965) involved construction of an overriding royalty deed under the terms of which the vendor agreed to "start a well" within ninety days. This case contains a reasonably full summary of the Louisiana jurisprudence and the various types of wording construed in different cases. In *Wehran v. Helis*, 152 So.2d 220, 223 (La. App. 4th Cir. 1963), the lease contained a definition of when operations were deemed to be commenced. Operations were deemed to be commenced "when the first material is placed on the ground." This was interpreted as meaning material to be used in the drilling of the well, and thus presence of a dredge preparing the drill site to receive the drilling barge was held to be insufficient. *Crye v. Giles*, 200 So. 155 (La. App. 2d Cir. 1941), construed the phrase "operations for drilling." None of these phrases is exactly the same as that construed in the decision under discussion, and an argument could be made that each of them is distinguishable from the lease provisions construed in the instant case.

7. See 3 H. WILLIAMS & C. MEYERS, OIL & GAS LAW § 618 (1971).

8. 251 So.2d 659 (La. App. 2d Cir. 1971).

9. 258 La. 605, 247 So.2d 548 (1971).

law of default derived from provisions of the Civil Code and jurisprudential extensions thereof. Ordinarily, failure to pay royalty, construed as a form of rent, would, even in the absence of a default clause, be a passive breach necessitating a putting in default as a prerequisite to an action for cancellation.¹⁰ However, under a body of jurisprudence stemming from *Melancon v. Texas Co.*,¹¹ if the failure to pay royalty is for an appreciable length of time and without justification, what would otherwise be a passive breach of the lease is transmuted into an active breach and failure of the lessor to place the lessee in default will not prevent his assertion of the right to a cancellation of the lease. In view of the fact that the lessee had not commenced payment of royalties for approximately one year after first production, the lessor earned a significant victory by the holding that the express default clause was inapplicable.

Working Interests Transactions

In *Sklar Producing Co. v. Rushing*,¹² a concursus proceeding, one of the claimants to a disputed sum representing the value of production claimed to be due under an overriding royalty agreement appears to have been the victim of an error in documentation. A letter agreement was negotiated under the terms of which Dr. J. S. Rushing agreed to assign certain leases to Sklar. It was agreed that Sklar would, within a specified time, move a rig onto a location other than the leases in question and attempt the recompletion of a gas well. It was further agreed that if the well became productive, the assignments would be executed and that Sklar would assign to Rushing an overriding royalty of one thirty-second of seven-eighths of "all gas and accompanying hydrocarbons that may be recovered" from the recompleted well. The well in question was designated as a unit well for a unit including the leases to be assigned under the agreement. However, as noted, the well was not located on the leases which were the subject of the letter agreement.

The well was completed and there was a subsequent assign-

10. LA. CIV. CODE arts. 1931, 1933.

11. 230 La. 593, 89 So.2d 135 (1956). For an excellent treatment of the development of this body of jurisprudence see Comment, 24 LA. L. REV. 618 (1964). For a brief review of the jurisprudence since the date of publication of that comment, see *Symposium*, 31 LA. L. REV. 263, 271.

12. 262 So.2d 115 (La. App. 2d Cir. 1972).

ment which purported to be in fulfillment of the terms of the letter agreement. However, the assignment reserved an overriding royalty of one thirty-second of seven-eighths of "all gas and/or condensate produced, saved and sold from the lands and formations affected by the leases hereby assigned." Clearly, the letter agreement contemplated an override measured by total unit production. However, the documentation of the assignment limited the override to production from the leases assigned.

Between the date of the letter agreement and the date of the final assignment, Sklar had assigned to Moffatt another overriding royalty. Under the terms of that assignment Moffatt agreed that his overriding royalty would bear "any and all overriding or excess royalties to which the leases" were subject. In its final posture, the contest was between the estate of Dr. Rushing on the one hand and Moffatt and related holders of portions of the interest acquired by him on the other. The Rushing estate attempted to secure the admission of the letter agreement into evidence and a construction of the assignment with the letter agreement. This attempt was based on the fact that the assignment expressly incorporated the unrecorded letter agreement by reference. The Moffatt group, on the other hand, contended that under the public records doctrine they were not bound by any unrecorded letter agreement. Thus, as the override actually reserved in the assignment to Sklar was limited to the "lands and formations affected by the leases" assigned, the Moffatt group contended that they were not burdened by the Rushing override except to that extent. The court agreed with the Moffatt group.

This decision is a proper application of the public records doctrine. Certainly those interested in the Rushing estate are entitled to feel frustrated, if not outraged, under the circumstances. Had the contest been between Rushing and Sklar, the original parties, the incorporation by reference would have been effective and the assignment would have had to be construed in the light of the letter agreement, and if deemed necessary, reformed in accordance with it. However, it is clear that under the public records doctrine in Louisiana, a third party cannot be bound by the contents of such an unrecorded instrument.

Despite the correctness of the holding as to application of the public records doctrine, the case is nevertheless puzzling.

Sklar and Rushing agreed to the creation of an overriding royalty measured by total unit production. Sklar then sold to Moffatt an override, and under the terms of the agreement Moffatt agreed to bear any other outstanding overrides. One wonders whether, by an agreement with Moffatt, Sklar can push around the burden of the Rushing override at will. If the intent of the letter agreement between Sklar and Rushing was that Rushing would have an override out of the leases assigned amounting to one thirty-second of seven-eighths of total unit production, that overriding royalty would seem to be a burden on the entirety of the working interest of the assigned leases. Although Moffatt could certainly agree to assume the burden of Rushing's overriding royalty interest, it seems questionable whether by contracting with someone else Sklar can effectively limit Rushing's right to secure his agreed share of production to the interest created by him in favor of Moffatt. Thus, it seems to the writer that although Moffatt definitely is not bound, Sklar might be considered as continuing to be bound to fulfill the terms of the letter agreement as incorporated by reference in the assignment.

CORPORATIONS

*Milton M. Harrison**

The Louisiana courts only infrequently have disregarded corporateness, pierced the corporate veil, or treated the corporation as the alter ego of even a sole shareholder in order to assess personal liability on the shareholder for corporate obligations. In *Pasternack v. Louisiana & Ariz. Lands, Inc.*,¹ however, the court disregarded the corporateness. The corporation had as its only asset certain immovable property. It was agreed by the corporation, through its sole shareholder as president, that plaintiff would be paid a broker's commission of \$25,000 if optionees exercised their option to purchase the property belonging to the corporation. In lieu of exercising its option, the optionees purchased from the sole shareholder all shares in the corporation and dissolved the corporation with the property distributed to themselves. As part payment for the shares in the corporation the former sole shareholder was given a mortgage on the property, thus becoming a preferred creditor. The corporation after

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1. 254 So.2d 142 (La. App. 3d Cir. 1971).