Louisiana Law Review

Volume 27 | Number 1
December 1966

Mineral Rights - Title Controversies with the State and Its Agencies - Sovereign Immunity from Suit

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stantive right has been violated. In the present case the sale of the land for less than two-thirds the appraised price is an informality, unless considering all the circumstances a so-called just price is not obtained. To complicate this matter, the case was remanded to determine if the estate was solvent. If the estate was insolvent, no prejudice occurred to the plaintiff, and the basic element of an absolute nullity disappears. This information could not be gleaned from the public records. Therefore the purchaser of property that shows a defect of title resulting from a judicial sale takes a title which is clouded until a judge decides such questions as just price and prejudice of substantive rights.

The rule does, however, cast some light on the question whether ten- or thirty-year prescription should apply. The cases on this point are inconsistent,[21] but it is a logical corollary to the instant case that when article 3543 is inoperative because of the adjudicatee's bad faith or a radical error or absolute nullity on the face of the records, thirty-year prescription should be the proper rule to apply. In *Bordelon*, since two-thirds the appraised value was not received and the inadequacy of the price was on the face of the records, the plaintiff would not lose his right of action for over fifty-one years.[22] On the other hand, if from an examination of the records there appears only a relative nullity or informality, and it is subsequently discovered that a substantive right had been prejudiced, the purchaser who bought on the faith of the public records has a just title for purposes of ten-year prescription. Such a rule would give some standard to a good-faith third purchaser to estimate his right and to calculate his risks of loss.

Benjamin F. Day

MINERAL RIGHTS — TITLE CONTROVERSIES WITH THE STATE AND ITS AGENCIES — SOVEREIGN IMMUNITY FROM SUIT

The common-law maxim — the King can do no wrong — has been transposed in most states, including Louisiana, into a simi-

21. Pearlstine v. Mattes, 223 La. 1032, 67 So. 2d 582 (1953); Hicks v. Hughes, 223 La. 290, 65 So. 2d 603 (1953). *But cf.* Arceneaux v. Cormier, 175 La. 941, 144 So. 722 (1932).

22. Prescription would have been suspended by the minority of the posthumous child for more than twenty-one years. Only after this could the running of the thirty-year prescription begin to accrue. Tillery v. Fuller, 190 La. 586, 182 So. 683 (1938).

lar doctrine — the state can do no wrong. This sovereign immunity makes it difficult for a private landowner to prevent encroachment by mineral lessees of the state when the latter claims ownership adversely. Prior to creation of the State Mineral Board, Louisiana as sovereign sued in its own name in matters pertaining to mineral interests.[1] The legislature then established the Mineral Board to supervise the state's mineral activities,[2] and vested it with the usual powers incident to corporations, including the right to sue and be sued.[3] Title to the lands and mineral rights remained in the state.[4] Having given the Mineral Board power to sue and be sued, the legislature waived the state's immunity in certain disputes over mineral rights,[5] affording the landowner some relief when the state claims title adversely. However, the extent of this relief depends on the action instituted by the landowner: whether adjudication of ownership is necessary or mere possession is at stake.[6] The petitory action,[7] possessory action,[8] and action to remove cloud from title[9] are available to determine ownership or possession

1. See State v. Texas Co., 205 La. 417, 425, 17 So. 2d 569, 572 (1944): "Unquestionably before the passage of Act 93 of 1936 there existed in the state the right to sue or be sued in its own name on matters pertaining to its mineral interests; all suits of that nature then were in the name of the state proper, whether as plaintiff or defendant."

2. LA. R.S. 30:129 (1950).

3. *Id.* 30:121.

4. See Walmsley v. Pan American Petroleum Corp., 244 La. 513, 526, 153 So. 2d 375, 379 (1963); Daigle v. Pan American Prod. Co., 236 La. 578, 587, 108 So. 2d 516, 519 (1958); State v. Texas Co., 205 La. 417, 426, 17 So. 2d 569, 572 (1944); St. Mary Parish Land Co. v. State Mineral Board, 167 So. 2d 509, 516 (La. App. 1st Cir. 1964).

5. LA. R.S. 30:121 (1950).

6. See Walmsley v. Pan American Petroleum Corp., 244 La. 513, 519, 153 So. 2d 375, 376 (1963): "The State is an indispensable party if this is a petitory action as defendant contends. The State is not an indispensable party if this is an action to remove a cloud from title as plaintiffs contend." Daigle v. Pan American Prod. Co., 236 La. 578, 588, 108 So. 2d 516, 519 (1958): "As observed above, a suit against the mineral board seeking the cancellation of a mineral lease granted by the board is not an action against the state without its consent . . . . [B]ut this principle does not apply to an action wherein the sole purpose is the determination of title." See also St. Mary Parish Land Co. v. State Mineral Board, 167 So. 2d 509, 512 (La. App. 1st Cir. 1964): "In the case of Louisiana Navigation Co., Ltd., v. Oyster Commission . . . our Supreme Court made an appropriate observation: '[T]he contention that this action [possessory action] indirectly involves the title to lands of the State which cannot be sued without its consent is obviously untenable. Possessory actions can be maintained against agencies of the State. There are other defenses than setting up titles to possessory actions.'"

7. LA. CODE OF CIVIL PROCEDURE art. 3651 (1960).

8. *Id.* art. 3655.

9. See Daigle v. Pan American Prod. Co., 236 La. 578, 585, 586, 108 So. 2d 516, 518 (1958): "The action to quiet title is clearly one to remove a cloud therefrom. It is neither petitory nor possessory, nor is it one in jactitation nor one to try title . . . . Having no codal or statutory background, it is an innovation of our jurisprudence." See also Note, 33 TUL. L. REV. 895 (1959).

of land. This Note examines these actions and the relief afforded when a private landowner seeks adjudication of ownership to mineral lands the state claims adversely.

Petitory Action.[10] The petitory action seeks recognition of ownership. It is brought by one not in possession of immovable property or a real right against another who is in possession or who claims ownership adversely.[11] Under the Louisiana Constitution, consent of the legislature is required to sue the state if ownership of real rights is at issue.[12] Therefore a petitory action against the Mineral Board, if decided in favor of the private landowner, would not bind the state because the Board does not have title[13] and the very nature of this action is adjudication of ownership. When the plaintiff is *not* in possession and seeks adjudication of ownership in a petitory action, he is without relief if the state does not waive immunity.

Possessory Action.[14] In the possessory action, the possessor of immovable property seeks to be maintained in or restored to possession if he has been disturbed or evicted.[15] To succeed, the plaintiff must allege and prove: possession of the immovable at the time of disturbance; uninterrupted or quiet possession for a year prior thereto; disturbance in law or fact;[16] and institution of suit within one year after disturbance.[17] While ownership is not at issue, evidence of ownership is admissible to prove

10. Under the new Code of Civil Procedure, two actions were marged into today's broader petitory action: the old petitory action of La. Code of Practice art. 43 (1870) and the action to establish title which was the former LA. R. S. 13:5062 (1950).

11. LA. CODE OF CIVIL PROCEDURE art. 3651 (1960).

12. LA. CONST. art. III, § 35. See also Walmsley v. Pan American Petroleum Co., 244 La. 513, 153 So. 2d 375 (1963); Daigle v. Pan American Prod. Co., 236 La. 578, 108 So. 2d 516 (1958); Cobb v. Louisiana Board of Institutions, 229 La. 1, 85 So. 2d 10 (1956); Texas Co. v. State Mineral Board, 216 La. 742, 44 So. 2d 841 (1949); Begnaud v. Grubb & Hawkins, 209 La. 826, 25 So. 2d 606 (1946); O'Brien v. State Mineral Board, 209 La. 266, 24 So. 2d 470 (1945); Lewis v. State, 207 La. 194, 20 So. 2d 917 (1945); Realty Operators v. State Mineral Board, 202 La. 398, 12 So. 2d 198 (1942); State v. Liberty Oil Co., 154 La. 267, 97 So. 438 (1923); State *ex rel.* Cunningham v. Lazarus, 40 La. Ann. 856, 5 So. 289 (1888).

13. See Daigle v. Pan American Prod. Co., 236 La. 578, 588, 108 So. 2d 516, 519 (1958): "As pointed out above, the mineral board does not have title to land or mineral rights, title thereto remaining in the state."

14. Under the new Code of Civil Procedure, two actions were merged into today's possessory action: the old possessory action of La. Code of Practice art. 49 (1870) and the jactitory action which is discussed in Comment, 12 TUL. L. REV. 254 (1938).

15. LA. CODE OF CIVIL PROCEDURE art. 3655 (1960).

16. *Id.* art. 3659.

17. *Id.* art. 3658.

the nature and extent of possession,[18] and a successful plaintiff may have the court order defendant to assert whatever title he has or forever be precluded from doing so.[19]

The possessory action, unlike the petitory action, may be maintained against the Mineral Board as it has juridical capacity to sue and be sued[20] and ownership is not at issue. The relief afforded is limited, however, as the Board has no title[21] and an order to assert title is useless. An order for the state to assert title is futile since this would be tantamount to a petitory action against the sovereign without its consent. Further, validity of such a decree is doubtful since the state is not a party to the action. This distinction between a suit against the state and one against its agent has been recognized. In two cases, lessees of the Mineral Board called the Board in warranty to maintain their peaceable possession.[22] The state and the Board argued that since the Board was agent for the state, it could not be called in warranty, and the state as sovereign could be sued only with its consent. Both exceptions were overruled, the court reasoning that the Board, by statute, was a corporate body which could sue and be sued, and that the state, in allowing the Board to execute leases, was not acting in its capacity as sovereign but in a proprietary or quasi-private manner for the advantage of the citizens of the state; having accepted benefits under the leases, the state could not escape its obligations under them, one of which is warranty. To hold the lessees bound under the contracts yet deny them enforceable rights would allow the state to escape its just obligation. More recently in *Daigle v. Pan American Prod. Co.*,[23] the Supreme Court stated in dictum that although the Mineral Board was agent of the state for developing its land for mineral purposes, the state had not given the Board title to lands or mineral rights, and a suit against the Board for cancellation of a mineral lease was not a suit against the state.[24] These cases seem to recognize that plaintiff would be in a difficult situation if no relief whatever were available against the state or the Mineral Board. However, more recent

18. *Id.* art. 3661.
19. *Id.* art. 3662.
20. LA. R.S. 30:121 (1950).
21. See note 13 *supra*.
22. Texas Co. v. State Mineral Board, 216 La. 742, 44 So. 2d 841 (1949); Begnaud v. Grubb & Hawkins, 209 La. 826, 25 So. 2d 606 (1946).
23. 236 La. 578, 108 So. 2d 516 (1958).
24. *Id.* at 587, 108 So. 2d at 519.

decisions illustrate the inadequacy that still exists owing to state immunity.

In *St. Mary Parish Land Co. v. State Mineral Board*,[25] plaintiff instituted a possessory action against the Mineral Board and its lessee, seeking recognition of plaintiff's possession of certain lands, and asking that defendant be required to institute a petitory action within sixty days.[26] Plaintiff introduced patents from the state as evidence of title to the lands and water bottoms in question. The Mineral Board contended that both it and the state must consent to the possessory action and that the state was an indispensable party.[27] In disposing of the Board's claim that title to the water bottoms was in the state owing to their navigability in 1812,[28] the court said that the state might have lost title by the divesting patent and by failure to claim title within six years.[29] Finding that plaintiff had shown its possession to the lands, the court gave proper recognition to the rule that a possessor is presumed to possess according to title and the full extent of his lands.[30] The contention that the state must be joined as an indispensable party to a possessory action against the Mineral Board was rejected in accordance with prior jurisprudence.[31] The court recognized that if this action were not available, property owners might have no remedy, and the state could record mineral leases on property at will.[32] The court ordered the Mineral Board to assert the state's claim to ownership within sixty days, but the Supreme Court recognized, in refusing writs, that the Board could not bind the state to assert title, because the state could not be so compelled without its

25. 167 So. 2d 509 (La. App. 1st Cir. 1964), *writs refused*, 246 La. 908, 168 So 2d 821 (1964).

26. See LA. CODE OF CIVIL PROCEDURE art. 3652 (1960).

27. 167 So. 2d 509, 511 (La. App. 1st Cir. 1964).

28. See *id.* at 514, wherein it is explained that the state was claiming title on the basis of its sovereignty when admitted to the Union in 1812.

29. La. Acts 1912, No. 62, now LA. R.S. 9:5661 (1950).

30. See LA. CIVIL CODE arts. 3498, 3437 (1870).

31. O'Brien v. State Mineral Board, 209 La. 266, 24 So. 2d 470 (1945); Realty Operators v. State Mineral Board, 202 La. 398, 12 So. 2d 198 (1942).

32. 167 So. 2d 509, 512 (La. App. 1st Cir. 1964): "Clearly plaintiff's action does not involve the title to the property. . . . If the State claims title to the property it should be compelled to assert it and these proceedings are the proper vehicle therefor. And if it does not claim title, then it should not grant mineral leases on it. After all, what is a property owner to do when the State records mineral leases on Property he possesses as owner?

"If this action is not available to a plaintiff in such cases, it is uncertain that property owners have any remedy and the State may record mineral leases on any property within its boundaries at its will, while the owners have to remain helpless."

consent.[33] Even though the mineral lease from the state was cancelled and plaintiff's possession maintained, the issue of ownership remained undetermined. It is submitted that determination of ownership is a right which should not be denied a landowner with an obviously meritorious claim, and this case illustrates that the possessory action is an empty remedy when the state claims ownership adversely. In an attempt to cure this inadequacy, resort to a third action has taken place with unfortunate results which break the bounds of Louisiana's procedural system of real actions.

Action to Remove Cloud from Title.[34] This action has no statutory base. After early decisions casting doubt on its existence, it was recognized in 1924 by the Louisiana Supreme Court in *Exchange National Bank v. Head.*[35] The action may be invoked if a recorded instrument interferes with enjoyment of one's ownership. At common law, possession by the plaintiff is necessary, but in some states this rule has been changed by statute.[36] In Louisiana both parties can be out of possession, and title can be tried;[37] thus the action assumes aspects of the action to try title and the petitory action, but falls into neither category.[38] Prior to adoption of the Code of Civil Procedure, it was uncertain whether this was a fifth real action, and legislation was suggested to clarify the situation.[39] The new Code unfortunately left this question unanswered, and the result has been that in the past two years both state and federal courts have made use of the action to achieve "justice" where a private landowner was faced with state immunity in a dispute over mineral

33. St. Mary Parish Land Co. v. State Mineral Board, 246 La. 908, 168 So. 2d 821 (1964).

34. For jurisprudential and historical background of this action see JOHNSON, LOUISIANA REAL ACTIONS 67 (1961); Note, 33 TUL. L. REV. 895 (1959).

35. Exchange Nat'l Bank v. Head, 155 La. 309, 314, 99 So. 272, 273-74 (1924). In speaking of the action to remove a cloud from title the court stated: "The relief sought is, not that the defendants be ordered to disclaim title or to make good the asserted title. . . .

"But even where the plaintiff, claiming ownership, is not in actual possession of the property, he may yet have his action against a party out of possession for the cancellation of a recorded deed and to remove a cloud on his title."

36. See Note, 33 TUL. L. REV. 895 (1959).

37. See Daigle v. Pan American Prod. Co., 236 La. 578, 108 So. 2d 516 1958); Exchange Nat'l Bank v. Head, 155 La. 309, 314, 99 So. 272, 273-74 (1925). See also Note, 33 TUL. L. REV. 895 (1959).

38. See Note, 33 TUL. L. REV. 895, 896 (1959).

39. Zengel, *The Real Actions — A Study in Code Revision*, 29 TUL. L. REV. 617, 634 n.59 (1955); Note, 33 TUL. L. REV. 895 (1959). The four real actions existing at the time were the old petitory and possessory actions as well as the action to establish title and the jactitory action.

lands. While these decisions may appeal to one's sense of fair play, they do extreme violence to Louisiana's system of real actions.[40]

This action is available to a plaintiff, either in or out of possession, against a party not in possession.[41] In *Walmsley v. Pan American Petroleum Corp.*[42] defendant, the state's lessee, contended it was in possession of certain lands and claimed that possession was being maintained by production of oil, gas and other minerals. Defendant asserted that since plaintiff was claiming ownership, he must bring a petitory action, as he could not do unless the state consented. The court was thus confronted with a plaintiff who could bring neither a possessory nor a petitory action,[43] and if defendant's possession were upheld, prior jurisprudence would preclude an action to remove a cloud from title.[44] Thus plaintiff, holding record title to lands, might be completely without remedy because defendant's claim to possession and ownership was on behalf of the state. This harsh result was avoided by an extremely technical construction of defendant's allegations, the court reasoning that defendant had not alleged it was in possession and therefore its *claim* of possession by production was inadequate.[45] The decision has been soundly criticized for extending the action to remove cloud from title to include the case of a defendant in possession,[46] which under

40. See *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Mineral Rights*, 24 LA. L. REV. 215, 231, 233 (1964).

41. This view was upheld in dictum in Daigle v. Pan American Prod. Co., 236 La. 578, 585-86, 108 So. 2d 516, 518 (1958): "In an action to remove a cloud possession is not necessary in either plaintiff or defendant."

42. 244 La. 513, 153 So. 2d 375 (1963).

43. The possessory action was not available to plaintiff because under LA. CODE OF CIVIL PROCEDURE art. 3658 (1960) the possessory action must be instituted within one year from the time of the disturbance. In this case, defendant claimed possession for more than one year by the production of oil and gas. The petitory action was not available because defendant-lessee held a lease granted by the Mineral Board as agent for the state, and the latter would be immune to suit as a sovereign.

44. Parish of Jefferson v. Texas Co., 192 La. 934, 189 So. 580 (1939); Bodcaw Lumber Co. v. Kendall, 161 La. 337, 108 So. 664 (1926); Exchange Nat'l Bank v. Head, 155 La. 309, 99 So. 272 (1924).

45. Walmsley v. Pan American Petroleum Corp., 244 La. 513, 524, 153 So. 2d 375, 378-79 (1963): "Paragraph 16 sets forth a reservation for a claim for production that 'may' have been removed. This means nothing, for it neither alleges that oil, gas or other minerals were or were not removed. And, as defendants properly observed, nowhere is it alleged that defendants are in possession by the use of the word 'possession.' This makes it difficult to construe the petition to mean plaintiffs intended to allege that defendants were in possession within the contemplation of Article 3651 of the Code of Civil Procedure."

46. See *The Work of the Louisiana Appellate Courts for the 1962-1963 Term —Mineral Rights*, 24 LA. L. REV. 215, 229 (1964); Note, 38 TUL. L. REV. 190 (1963).

the real actions of the Code of Civil Procedure is governed by the petitory action.[47] While *Walmsley* apparently provides additional recourse to plaintiffs in similar situations, the decision may be easily avoided in subsequent cases if a defendant simply *alleges* his possession instead of *claiming* it. If defendant *alleges* and proves possession, the action to remove a cloud will apparently not be available, and when the state claims ownership adversely, he will be in the hopeless situation of being unable to bring any action — petitory, possessory, or one to remove cloud from title. While the result is an obvious effort to give the plaintiff a right he justly deserves, unfortunately under Louisiana law such a right does not exist when the state or its agent, the Mineral Board, proves its possession, raising the presumption of ownership,[48] and the state refuses consent to suit. The cliché hard facts make bad law is applicable to *Walmsley*,[49] and it has been suggested that the decision probably would not be reached again except on the identical and peculiarly harsh facts of that case.[50] Again, unfortunately, this has not been so.

In *Stevens v. Humble Oil & Refining Co.*,[51] a recent case from the Fifth Circuit Court of Appeals, substantial royalties in escrow were at stake, and could be disbursed only upon determination of ownership of certain land. Plaintiff, confronted by defendants holding mineral leases from the Mineral Board as agent for the state, properly pointed out that under Louisiana law adjudication of ownership could be had only if the state were a party to a petitory action.[52] Defendants were lessees of the Mineral Board, and the state was protected by sovereign immunity. The court reasoned that the petitory action was not the only action available and that plaintiff should file a supplemental petition to quiet or to remove a cloud from title and join the Mineral Board. The court stated that plaintiff could get a *declaration* of ownership only by bringing a petitory action and that the state would be an indispensable party.[53] But

47. See note 46 *supra*.
48. See LA. CIVIL CODE arts. 3498, 3437 (1870).
49. *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Mineral Rights*, 24 LA. L. REV. 215, 231 (1964).
50. *The Work of the Louisiana Appellate Courts for the 1965-1966 Term — Civil Procedure*, 26 LA. L. REV. 581, 598 (1966).
51. 346 F.2d 43 (5th Cir. 1965).
52. *Id.* at 46. Plaintiff contended he was denied prompt adjudication of the title question because the state and its lessees conspired to keep the question of ownership from being decided by the state urging sovereign immunity and the lessees refusing to call the state in warranty.
53. 346 F.2d 43, 47 (5th Cir. 1965).

the court reasoned that the decree of the district court did not require a *declaration* of plaintiff's ownership as condition precedent to distribution of the escrow fund, but only an *adjudicaiton* of ownership. Interpreting what it found to be the Louisiana law concerning the action to quiet or remove a cloud from title, the court said:

> "In *Walmsley* and *Daigle* the Louisiana Supreme Court has made it clear that there can be an *adjudication of title* incidental to cancellation of a state mineral lease, whether or not the state is joined." (Emphasis added.)[54]

Thus this decision holds that the real party in interest, the state, was not necessary where the issue of ownership was being *adjudicated* adversely to it in an action to remove cloud from title, a clear violation of the procedural system of this state.[55] This decision is not supported by the holding of the *Daigle* case which must be limited to the facts there presented.[56] It is questionable whether the distinction drawn between *adjudication* and *declaration* of ownership exists.[57] As in *Walmsley*, the presumption of ownership given to a possessor was apparently overlooked.[58] The law was further confused by the implication in *Daigle* that ownership is not an issue[59] in a suit to compel the Mineral Board to cancel leases even though ownership may be determined incidentally to the cancellation.[60] To the contrary, the very nature of the action to quiet title is protection of ownership. Therefore a case cannot be decided without adjudication of plaintiff's claim of ownership.[61]

Summary and Conclusion. Under present law, a private landowner may be without relief in title controversies with the state.

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54. *Ibid.*

55. Actions involving determination of ownership to land are clearly governed by the petitory action.

56. Daigle v. Pan American Prod. Co., 236 La. 578, 587-88, 108 So. 2d 516, 519 (1958). This case holds that an action against the State Mineral Board seeking determination of title is impossible without consent of the state to suit.

57. No explanation for this distinction is found in the decision. It is apparently similar to the construction given to the defendant's pleadings in the *Walmsley* case, where the court held that defendant had *claimed* possession instead of *alleging* possession. For analysis of this construction see *The Work of the Louisiana Appellate Courts for the 1962-1963 Term —Mineral Rights*, 24 LA. L. REV. 215, 232 (1964).

58. See LA. CIVIL CODE arts. 3498, 3437 (1870).

59. Daigle v. Pan American Prod. Co., 236 La. 578, 588, 108 So. 2d 516, 519 (1958).

60. *Ibid.*

61. *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Mineral Rights*, 24 LA. L. REV. 215, 235 (1964).

The petitory action, adjudicating ownership, is not available unless legislative consent is procured. The possessory action affords some relief if brought against the Mineral Board as agent for the state. However, the plaintiff must satisfy the necessary legal requirements prior to institution of this action,[62] and even if this is done, the *St. Mary's* case vividly illustrates the limitations of the relief afforded.[63] While the action to remove cloud from title has been resorted to with success by private landowners, its application has been extended beyond intended bounds in the *Walmsley* and *Stevens* decisions. This extension has led to unwarranted encroachment on Louisiana's real actions, but it reflects concern by the judiciary over inadequacy of remedies in this area.

To clear up some of the confusion, the following suggestions are submitted. The action to remove cloud from title should be abolished by legislation. This was suggested both prior to the Code of Civil Procedure[64] and since its adoption in the wake of the *Walmsley* decision.[65] Legislation should be enacted to give a plaintiff the right to have his controversy with the state adjudicated by the real actions. This, of course, calls for either partial or total abrogation of state immunity. Opponents of such abrogation contend that the state would be subjected to a flood of litigation and undue expense. Originally, governmental immunity was based on the theory that governmental functions were for *public* benefit and taxes raised should not be used to defend and pay damage claims when the government was not acting in a private capacity.[66] In prior Louisiana decisions, leasing of mineral lands by the state or the Mineral Board has been characterized as proprietary or quasi-private activity rather than a governmental function,[67] which negates the argument that

62. See LA. CODE OF CIVIL PROCEDURE art. 3658 (1960).

63. See St. Mary Parish Land Co. v. State Mineral Board, 246 La. 908, 168 So.2d 821 (1964).

64. See Zengel, *The Real Actions--A Study in Code Revision*, 29 TUL. L. REV. 617, 634 n.59 (1955).

65. See *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Mineral Rights*, 24 LA. L. REV. 215, 235 (1964).

66. Hamill, *The Changing Concept of Sovereign Immunity*, 13 DEFENSE L.J. 653 (1964).

67. Begnaud v. Grubb & Hawkins, 209 La. 826, 833, 25 So.2d 606, 608 (1946): "The argument that because ordinarily the State as a sovereignty can not be sued in its courts except with its consent is untenable. It overlooks the fact that while the State possesses legislative, public and governmental power in the exercise of which it is a sovereignty and governs its people, it also possesses proprietary and quasi private power conferred upon it not for the purpose

a governmental body should not have to stand trial when exercising public functions. Moreover, under such legislation as the Federal Tort Claims Act,[68] immunity is waived, and other studies indicate, in the field of torts at least, that there is a trend away from sovereign immunity. As one writer says:

> "To the objection that abrogation of it [sovereign immunity] would bankrupt many public bodies, the answer is insurance. To the objection that it is more equitable to make the wronged party bear his own loss than to have the community through its taxpayers bear it, the answer is in modern society the individual loss is often collectively borne."[69]

A very limited measure of relief is afforded by the Title Controversy Committee of the Mineral Board. However, this body has no authority to settle the ownership of lands. Solutions emanating from the committee take the form of unitization agreements in which the parties agree to royalty sharing, temporarily solving the important problem of revenue distribution. But these agreements are terminable at the will of either party, at which time judicial action may be instituted. If an amicable settlement is reached, some measure of relief is afforded, but negotiations with the committee may prove unsuccessful, and for the private landowner claiming ownership adversely to the state the problem of securing authorization to sue the sovereign may be insurmountable.

It is suggested that state immunity from suit in the area of title controversies be abrogated. Denying record titleholders their day in court when they have a meritorious claim is reprehensible and foreign to our ideas. Abolition of the action to remove cloud and abrogation of sovereign immunity would also bring harmony to the real actions which at present are confused to say the least.

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of governing its people but for the private advantage of the inhabitants of the State itself as a legal personality. . . . [Prior cases] held that when the State executed a mineral lease it was acting in its proprietary or quasi private capacity."

68. 28 U.S.C. § 2674 (1964).

69. Comment, *Sovereign Immunity in Colorado, and the Feasibility of Judicial Abrogation*, 35 COLO. L. REV. 529, 555 (1963).