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# Insurance - Insurable Interests

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widely accepted method of justifying such refusal, *viz.*, discretionary refusal to grant relief under the Federal Declaratory Judgments Act<sup>39</sup> where such relief would be improper or against public policy,<sup>40</sup> was suggested by the dissent and went unanswered by the Court. Since the Court clearly considered the plaintiff's action as declaratory in nature, and since the Court did recognize that the Senate Report was concerned with the hardship placed on a workman by a trial in federal court, the dissent's suggestion was at least germane. As a result of the Court's apparently unqualified exercise of jurisdiction in this case, it would seem to be of no importance whether a similar state court action brought by the workman was in existence either before or after the bringing of the federal court action by the insurer. Therefore, the insurer is put to little disadvantage, if any, by the removal prohibition. In cases in which he might once have sought removal he may now simply bring a concurrent federal action and begin a race to judgment.<sup>41</sup> The workman is accordingly under an even greater procedural disadvantage than he would have been subjected to by mere removal, for he may now be forced to participate in two separate suits conceivably carried on in widely separated locales. It is not difficult to visualize the shrinkage in settlement value of the claim of a workman faced with such an alternative. In this regard the decision in the instant case appears to have left serious problems unanswered, with the result that a major policy behind the 1958 removal amendment has been effectively emasculated.

*James R. Craig*

#### INSURANCE — INSURABLE INTERESTS

Plaintiff, a finance company employee, allegedly made an oral promise to her employer in order to induce him to loan her brother money with which to purchase an automobile. The promise was to the effect that she would repay the loan if her brother defaulted. The finance company made the loan, plaintiff's brother purchased an automobile, and subsequently the automobile was destroyed in an accident. Plaintiff brought the instant action on a policy of collision insurance which named

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39. 28 U.S.C. §§ 2201, 2202 (1958).

40. BORCHARD, DECLARATORY JUDGMENTS 312 (2d ed. 1941).

41. Since both actions would be in personam they would be able to proceed concurrently under the rule of *Kline v. Burke Const. Co.*, 260 U.S. 226 (1922).

the plaintiff as insured and as owner of the automobile in question. Defendant denied liability on the ground that plaintiff's verbal promise to pay her brother's debt did not give rise to an insurable interest in the brother's vehicle.<sup>1</sup> The trial court held for the plaintiff, concluding that even if her oral promise to pay her brother's debt was not enough to make her legally liable giving rise to an insurable interest in the automobile, her subsequent judicial admission of liability rendered the original promise enforceable. On appeal to the First Circuit Court of Appeal, *held*, reversed. An oral promise to pay the debt of another is unenforceable and creates no obligation whatsoever. Therefore, it cannot be the basis for an insurable interest. Even if the subsequent judicial admission made the promise enforceable it came too late to avail the plaintiff, since an insurable interest must exist not only at the time of loss but also at the time the policy is written. *Rube v. Pacific Insurance Co.*, 131 So.2d 240 (La. App. 1st. Cir. 1961).

An insurable interest in the insured property is required as a matter of public policy in order to prevent wagering contracts, intentional destruction of property, and other evils which might result if one were allowed to recover more than indemnification for loss.<sup>2</sup> Louisiana R.S. 22:614 defines an insurable interest in property as "any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage."<sup>3</sup> Even though a party has no proprietary interest in the thing insured, he may have an insurable interest in the property if he may profit by its continued existence or lose by its destruction.<sup>4</sup> For example,

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1. Defendant also pleaded an alternative defense of fraud and deceit in the procurement of the policy. Since the court decided in favor of the defendant on the original defense, the alternative defense was not considered. *Rube v. Pacific Insurance Co.*, 131 So.2d 240 (La. App. 1st Cir. 1961).

2. "The legal requirement that the insured have an insurable interest has been devised with three objects in view: (1) measurement of the insured's loss; (2) prevention of wagering; (3) guarding against the moral hazard." PATTERSON, *INSURANCE* 109 (2d ed. 1957).

3. Although many states have left the task of defining insurable interest to the courts, eighteen have adopted the general statutes defining insurable interest. They are: ARIZ. REV. STAT. 20-1105 (1956); ARK. STAT. 66-3205 (Supp. 1959); CAL. INS. CODE § 281 (1935); COLO. REV. STAT. 72-1-2(5) (1953); FLA. REV. INS. CODE § 454 (1959); GA. CODE 56-2405 (Supp. 1960); HAWAII REV. LAWS 181-414 (1955); IDAHO INS. CODE 41-1806 (1961); LA. R.S. 22:614 (1950); MONT. REV. CODE 40-3705 (Supp. 1959); NEB. REV. STAT. 44-374 (1943); N.Y. INS. LAW § 148 (1949); N.D. CENT. CODE 26-02-04 (1960); OKLA. STAT. 36-3605 (Supp. 1957); UTAH CODE ANN. 31-19-4 (1953); VA. CODE 38.1-331 (Supp. 1952); WASH. REV. CODE 48.18.040 (1950); W. VA. CODE ANN. 3373 (1961).

4. *Osborne v. Security Ins. Co.*, 155 Cal. App. 2d 201, 318 P.2d 94 (1957)

a mortgagee has an insurable interest in the property which stands as security for the mortgagor's obligation.<sup>5</sup>

The question arises whether a promise to pay another's debt in the event the debt is not paid gives rise to an insurable interest in the debtor's property mortgaged as security for the debt. This question is of consequence only if the creditor has a valid lien or privilege on the property and the promisor would be subrogated to the privileged creditor's rights or in some other manner acquire an interest in the property by the payment of the debt. Otherwise, the interest of the promisor is that of a general creditor and, as such, he has no insurable interest in the debtor's property.<sup>6</sup>

In the instant case plaintiff argued that Article 2278 of the

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(a mother had an insurable interest in the automobile that she gave to her minor son where she was obligated to pay the balance of the purchase price and was liable for damages for injuries resulting from her son's negligent use of the vehicle); *Feinman v. Consolidated Mut. Ins. Co.*, 155 N.Y.S.2d 326, 331 (1956) ("a party, even though he has no property interest in the thing insured, may yet have an insurable interest in such property where he will profit by or gain some advantage by its continued existence, and may suffer some loss or disadvantage by its destruction . . . or injury by the happening of the event insured against"); *Hecker v. Commercial State Bank*, 35 N.D. 12, 159 N.W. 97 (1916) (a creditor who loans money to a business concern and takes as collateral therefor a pledge of a fire insurance policy on goods used in the business has an insurable interest in the goods); *Annot.*, 45 A.L.R. 863 (1926) (a landlord has an insurable interest in fixtures or chattels placed on premises by his lessee).

5. *Bell v. Western Marine & Fire Ins. Co.*, 5 Rob. 423, 444 (La. 1843) ("That a mortgagee has an insurable interest is, in our opinion, unquestionable, and is supported by the best authorities. . . . So has any creditor having a lien on the property . . . and it makes no difference, if there be a superior lien in favor of another, if something remains for the assured"); *Alexander v. Security-First Nat. Bank*, 7 Cal.2d 718, 62 P.2d 735 (1936) (different persons may have separate insurable interests in the same property, as, for example, mortgagor and mortgagee); *National Reserve Ins. Co. v. McCrory*, 160 S.W.2d 972 (Tex. Civ. App. 1942) (a mortgagor has an insurable interest to the extent of his debt); *Hassett v. Pennsylvania Fire Ins. Co.*, 150 Wash. 502, 273 Pac. 745 (1929) (a conditional sales vendor of an automobile who sold his contract, with guarantee of payments, has been held to have retained an insurable interest).

6. 4 APPLEMAN, *INSURANCE* § 2138 (1941). *Monroe Building & Loan Ass'n v. Liverpool & L. & G. Ins. Co.*, 50 La. Ann. 1243, 24 So. 238 (1898) cited *Roos & Co. v. Merchants' Mutual Ins. Co.*, 27 La. Ann. 409 (1875) for the proposition that a general creditor has no insurable interest in the property of his debtor. However, an examination of the *Roos* case raises doubt as to whether it is support for the statement. The creditor in that case was held to have an insurable interest in the subject property, but it is not clear from the statement of facts whether the creditor was a general creditor or had a privilege on the goods in question. LA. CIVIL CODE art. 3183 (1870) provides: "The property of the debtor is the common pledge of his creditors, and the proceeds of its sale must be distributed among them ratably, unless there exist among the creditors some lawful causes of preference." It might be argued that this article would place a general creditor in the position of a pledgee and, as such, would support an insurable interest in the property of his debtor. It is likely, however, that Louisiana courts will accept the majority rule in common law jurisdictions to the effect that a general creditor has no insurable interest in the debtor's property.

Civil Code does not provide that an oral promise to pay the debt of a third person is void and unenforceable, but only prohibits the use of parol evidence to prove such a promise. This, it was argued, would be a defense good only between the parties to the oral contract. Defendant contended that the promise was defective in form and, therefore, gave rise to no legal obligation. The court decided this issue in favor of the plaintiff.<sup>7</sup> If Article 2278(3) is applicable, it should make little difference whether the promise was void or merely could not be proved by parol evidence. Had the plaintiff been allowed to recover from the insured, she could then plead Article 2278(3) in defense of any action by the finance company to enforce the promise.<sup>8</sup> If the promise were not enforceable, then plaintiff suffered no loss by the destruction of the automobile. If she suffered no loss, there is no reason why the insurer should be required to indemnify her for the destruction of the automobile.

Whether Article 2278(3) renders an oral promise to pay the debt of another void or merely renders it unenforceable, it is subject to question whether this article was intended to apply to a promise made to induce the promisee to extend credit to another. It is conceded that the jurisprudence supports the holding of the instant case that it is so applicable.<sup>9</sup> However, a dis-

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7. The court announced: "The whole tenor of the jurisprudence on the subject indicates that such promises are unenforceable and create no obligation whatsoever on the part of the promisor." *Rube v. Pacific Ins. Co.*, 131 So.2d 240, 246 (La. App. 1st Cir. 1961). However, the court further stated: "Such an oral promise, therefore, standing alone is utterly unenforceable *until proven by competent evidence.*" (Emphasis added.) *Id.* at 246. This latter statement tends to support the plaintiff's proposition that the obligation is enforceable but with certain restrictions on the manner of proof. The common law statute of frauds serves a purpose similar to that of Article 2278(3) of the Louisiana Civil Code. *Wallenburg v. Kerry*, 16 La. App. 221, 133 So. 823 (La. App. 2d Cir. 1931). Typical common law statutes of frauds provide that a contract subject to the statute is invalid or void. OKLA. STAT. 15:136 (1936); N.Y. PERSONAL PROPERTY LAW § 31 (Supp. 1949). However, the Kentucky statute provides that no action shall be brought to charge a person upon a promise to pay the debt of another unless the promise is in writing. KY. REV. STAT. 371.01 (1953). The Kentucky Supreme Court has held that this statute does not render such promises or agreements void, for this would be going beyond the wording and the spirit of the statute. *Montague v. Garnett*, 3 Bush 297 (Ky. 1867); *Roberts v. Tennell*, 3 Monroe 247 (Ky. 1826). Similarly, Article 2278(3) does not provide that a promise to pay the debt of another is void, but merely prohibits proof by parol evidence.

8. LA. CIVIL CODE art. 2278(3) (1870): "Parol evidence shall not be received: . . . (3) To prove any promise to pay the debt of a third person. But in all cases mentioned in this article, the acknowledgment or promise to pay shall be proved by written evidence signed by the party who is alleged to have made the acknowledgment or promise or by his agent or attorney in fact, specially authorized in writing so to do."

9. The promise made to induce the promisee to loan money or extend credit to another in common law jurisdictions has generally been held subject to the statute of frauds; that is, it cannot be proved by parol evidence. One argument

inction exists between a simple promise to pay the existing debt of another and a promise made to induce the promisee to extend credit to another. The former promise is very similar to a gift, or donation *inter vivos*. Since there is neither direct benefit to the promisor nor action required on the part of the promisee, it is fitting that the law should require exacting evidence in order to prove such obligations. To prove the donation *inter vivos* an authentic act is required;<sup>10</sup> but to prove the promise to pay the existing debt of another, only written evidence is required despite the fact that the making of the payment might well constitute a gift to the debtor.<sup>11</sup> A similar distinction in the requirement of proof should be made between the above promise and a promise made to induce the promisee to extend credit to another. The courts have recognized that Article 2278(3) is not applicable to a promise to pay the debt of another when the promise is not made primarily to answer for another's debt but is impelled from pecuniary or business motives for the benefit of the promisor.<sup>12</sup> A promise to pay the

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favoring a like interpretation for Article 2278(3) is that it was not until 1858 that Louisiana adopted legislation prohibiting the use of parol evidence in proving the promise to pay the debt of another. La. Acts 1858, No. 208, § 3. There was no similar provision in the French Civil Code nor in *Las Siete Partidas*. Consequently, it may be that the legislation was adopted from the statute of frauds existing in common law states. If this be so, it is arguable that the Louisiana provision should apply as it does in common law jurisdictions. On the other hand, the Louisiana legislation may have been prompted by the statute of frauds but adopted only for the purpose of preventing proof by parol of the simple promise to pay the existing debt of another, a problem not existing in the common law states. This problem did not exist at common law because the simple promise to pay the existing debt of another was already unenforceable for lack of consideration (2 CORBIN, CONTRACTS § 372 (1950)), whereas in Louisiana the promise would have been enforceable prior to the 1858 act. *New Orleans Gas Light and Banking Co. v. Paulding*, 12 Rob. 378 (La. 1845); *Flood v. Thomas*, 5 Mart. (N.S.) 560 (La. 1820).

Of the cases relied upon by the instant case, two specifically support the holding that a promise made to induce the promisee to extend credit to another cannot be proved by parol evidence, *viz.*, *Levy & Dieter v. Dubois, Lowe & Foley*, 24 La. Ann. 398 (1872); *Graves v. Scott & Baer*, 23 La. Ann. 690 (1871). Two of the other cases involved a simple promise to pay the existing debt of another: *Litton v. Parker*, 106 So.2d 776 (La. App. 2d Cir. 1958); *Schneider v. Ruf*, 176 So. 402 (La. App. Or. Cir. 1937). The following cited cases discuss circumstances where the rule of Article 2278(3) is inapplicable: *Magge v. Crowe*, 111 So.2d 552 (La. App. 1st Cir. 1959); *Fuselier v. Hudson*, 93 So.2d 266 (La. App. 1st Cir. 1957); *B. & B. System v. Everett*, 34 So.2d 521 (La. App. 2d Cir. 1948); *Wallenburg v. Kerry*, 16 La. App. 221, 133 So. 823 (2d Cir. 1931). In *National Materials Co. v. Guest*, 147 So. 771 (La. App. Or. Cir. 1933), evidence was admitted in an attempt to prove that the debt was that of the promisor, rather than that of a third person. *Watson Brothers v. Jones*, 125 La. 249, 51 So. 187 (1910); *Hornsby v. Rives*, 2 So.2d 532 (La. App. 2d Cir. 1941) (evidence admitted to prove that promisor was primarily liable with the debtor, not merely serving as a guarantor).

10. LA. CIVIL CODE art. 1538 (1870).

11. *Id.* art. 2278.

12. *Fuselier v. Hudson*, 93 So.2d 266 (La. App. 1st Cir. 1957); *B. & B.*

existing debt of another does not, on its face, suggest that it is made to subserve some purpose of the promisor, whereas the promise made to induce the extension of credit is more likely to suggest that the promisor is advancing some interest of his own. Furthermore, a promise to pay the existing debt of another invites no action in reliance on the promise, whereas a promise made to induce the extending of credit does invite action. Under strict civilian theory, all promises are enforceable which are intended to have legal effect,<sup>13</sup> including the promise to pay the existing debt of another.<sup>14</sup> Assuming no error, violence, threat, or fraud, a promise made to induce the promisee to loan money or extend credit to another is enforceable in the absence of positive provision to the contrary.<sup>15</sup> Where one makes a promise intending to be bound legally and another relies upon the promise, it should be enforceable. There is nothing unique in the requirement that a trier of fact weigh conflicting parol evidence. Prior to the legislation prohibiting the use of parol evidence to prove an oral promise to pay the debt of a third person, a Louisiana court considered such a case and decided it without any apparent difficulty.<sup>16</sup> Consequently, it does not seem that written evidence is necessary in order to secure justice. It is suggested that the wording of Article 2278(3) does not require that it be applied to the promise made to induce the

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System v. Everett, 34 So.2d 521 (La. App. 2d Cir. 1948); Wallenburg v. Kerry, 16 La. App. 221, 133 So. 823 (La. App. 2d Cir. 1931).

13. Smith, *A Refresher Course in Cause*, 12 LOUISIANA LAW REVIEW 2 (1951). The author points out that "In the civil law, agreement *without more* equals contract, as long as the agreement is a lawful one." *Id.* at 4. In referring to French civil law he indicates that "A promise was enforceable because it was a manifestation of the promisor's will to be bound, and no further reason was required." *Ibid.* LA. CIVIL CODE art. 1764 (1870): "All things that are not forbidden by law, may legally become the subject of, or the motive for contracts. . . ." *Id.* art. 1901: "Agreements legally entered into have the effect of laws on those who have formed them."

14. Flood v. Thomas, 5 Mart.(N.S.) 560, 562 (La. 1827): "The debt of another is a sufficient consideration to support a contract of surety, or a promise to pay it." New Orleans Gas Light and Banking Co. v. Paulding, 12 Rob. 378, 380 (La. 1845): "[A] debt due by another is a sufficient consideration upon which to base a promise to pay."

15. LA. CIVIL CODE art. 1819 (1870). Also necessary to the enforceability of the promise are the following: (1) parties legally capable of contracting; (2) their consent legally given; (3) a certain object, which forms the matter of agreement; (4) a lawful purpose. *Id.* art. 1779.

16. New Orleans Gas Light and Banking Co. v. Paulding, 12 Rob. 378, 380 (La. 1845), decided prior to the statute prohibiting the use of parol evidence in proving a promise to pay the debt of another, set out the following standards for testing such a promise: "[A] debt due by another is a sufficient consideration upon which to base a promise to pay; but such promise, in order to be binding, must be positive and freely made. The intention of becoming surety for the debtor must be unequivocally expressed, and the contract must be made with the creditor."

promisee to extend credit or loan money to another and that in most cases a more equitable result would be reached if the article were not so applied.<sup>17</sup>

In the instant case the court also reviewed the jurisprudence and the justification for requiring an insurable interest in property. It noted the public policy against wagering agreements and generally distinguished such contracts from indemnity insurance contracts. After indicating that the insured had no insurable interest at the time of loss and therefore no loss entitling her to indemnity, it stated the rule that, to be insurable, an interest must exist not only at the time the policy is written but also at the time the loss occurs.<sup>18</sup> In so doing it relied upon an earlier Louisiana case, the relevant portions of which seem to be dicta and not in keeping with present-day commercial practices nor justifiable when recovery is limited to indemnification for loss sustained by the insured.<sup>19</sup> Louisiana has no statute specifying when the insurable interest must exist. However, leading authorities on insurance indicate that an insurable interest in property need exist only at the time of loss and point out that many cases cited to the contrary contain only dicta on the subject.<sup>20</sup> It seems that the Louisiana cases in point are

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17. In the instant case a question of fact existed as to whether the promise was made with the intent of creating a legal obligation. Since the court reached its decision on other grounds, not much consideration was given to this point. It is, therefore, possible that even if Article 2273(3) were not applied to the promise made to induce the promisee to loan money to another that in this particular case the promise would have still been unenforceable because it was not made with the requisite intent.

18. *Rube v. Pacific Ins. Co.*, 131 So.2d 240, 246 (La. App. 1st Cir. 1961).

19. In *Davis-Wood Lumber Co. v. Insurance Co. of North America*, 154 So. 760 (La. App. 1st Cir. 1934), the court found that the insured had no interest at the time of issuance of the policy and no interest at the time of loss by fire. The *Davis-Wood* case relied on *Marcuse v. Upton*, 9 La. App. 28, 118 So. 790 (La. App. Or. Cir. 1928), in which the party sold the property prior to the loss and therefore could not recover. The *Marcuse* case relied on *Bell v. Western Marine & Fire Ins. Co.*, 5 Rob. 423, 443 (La. 1843), which indicated that "the interest of the assured must be subsisting at the time of the loss, in order to give a claim for indemnity." In this case the owner insured it and later sold it but retained a mortgagee's and vendor's privilege on the property. Thus he had a different insurable interest at the time of loss, but nevertheless he was allowed to recover on the original policy. In *State v. Williams*, 46 La. Ann. 922, 15 So. 290 (1894), the court recognized the validity of an open policy of insurance with respect to future shipments of cotton. However, it pointed out that in effect for each shipment a new subsidiary contract was entered into which was subject to the terms of the original open policy.

20. PATTERSON, *INSURANCE* 130 (2d ed. 1957): "Since insurance of a property interest is a contract to pay loss or damage sustained by the insured, it would seem to be sufficient for the insured to prove that he had an insurable interest at the time when the event insured against occurred." VANCE, *INSURANCE* 173 (3d ed. 1951): "In order that insurance on property shall be valid, an interest must exist in the insured at the time of the loss. It is not necessary that an



subject to this criticism. If the insurable interest were required at the time of issuance of the policy then insurance on open stocks of merchandise would be unenforceable as to goods not in stock when the policy was written. The same would be true for the policies on buildings under construction and in policies covering household goods and personal effects. The very nature of property insurance providing indemnity for loss supports the reasoning that an insurable interest need exist only at the time of loss. There is no wager against which the public must be protected if the most a party can collect is indemnity for his actual loss. If he has no interest when the policy is issued and he acquires none prior to the loss, he has suffered no loss and is not entitled to indemnity. On the contrary, if he has no interest at the time the policy is written, but acquires one prior to the loss he should be allowed to recover to the extent of his loss. By simply enforcing the agreement between the parties to an insurance policy providing only for indemnity, no wagering is involved, because the most the insured can recover is the amount of his loss.

Of the several states which have passed statutes on the subject there are four which require the insurable interest to exist at the time the insurance takes effect and four which do not.<sup>21</sup> Although all eight of these states require an insurable interest at the time of loss, at least six do not require that the insurable interest be maintained for the entire time between issuance of the policy and occurrence of the loss. The more recent statutes favor the requirement of insurable interest only at the time of the loss.

The foregoing considerations prompt the suggestion that the better rule as to when an insurable interest must exist is contrary to the one announced in the instant case. If property insurance is limited to indemnification of the insured's loss, then an

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interest shall exist at the time of the issue of the policy, provided the parties intend that the risk shall attach only when an interest accrues to the insured; nor, in the absence of an express provision to that effect, does the suspension of the insured's interest during the currency of the policy defeat a recovery if an interest has been reacquired before the loss occurs. But there is much dicta to the effect that the insured must possess an insurable interest at the time the insurance is issued as well as at the time of loss."

21. Insurable interest required when policy issued: ARK. STAT. 66-3205 (Supp. 1959); CALIF. INS. CODE § 286 (1935); NEB. REV. STAT. 44:374 (1943); N.D. CENT. CODE 26-02-05 (1960). Insurable interest not required at time policy issued: FLA. REV. INS. CODE § 454 (1959); GA. CODE 56-2405 (Supp. 1960); IDAHO INS. CODE 41-1806 (Supp. 1961); MONT. REV. CODE 40-3705 (Supp. 1959).

insurable interest in the subject property should be required only at the time of loss. It is further suggested that whether Article 2278(3) of the Civil Code merely limits the method of proving a promise to pay the debt of another or renders the promise void, it should not be applied to the promise made to induce the promisee to extend credit to another, Louisiana jurisprudence to the contrary notwithstanding.

*Sydney B. Nelson*

MINERAL LEASES — EXECUTION BY LANDOWNER WHO IS  
ALSO AGENT FOR SERVITUDE OWNER

Plaintiff conveyed title to 160 acres of land by act of partition to his brother, the defendant,<sup>1</sup> reserving one-half the minerals. The act contained an agreement whereby defendant was granted full power of attorney to make and execute oil and gas leases affecting all of the mineral interest in the land. It was provided that any bonus, rental money, and future royalties would be equally divided between the brothers. Eight months before accrual of liberative prescription against plaintiff's mineral servitude, defendant executed a mineral lease with a primary term of five years, to commence four days after prescription would have accrued on the plaintiff's servitude. Contemporaneously with the execution of the lease, defendant and his lessee agreed that the bonus would be put in escrow pending title examination.<sup>2</sup> One month before expiration of the prescriptive period, plaintiff made written demand on the defendant, the lessee, and the escrow agent, for payment of one-half the bonus, and one-half of all future rentals and royalties which might become due. Upon being refused, the plaintiff instituted an action for a declaratory judgment recognizing his rights. The trial court rendered judgment in his favor. On appeal, the court of appeal *held*, affirmed. The lease of the entire mineral interest was valid and binding as of its date of signing by defendant and lessee. To effectuate the leasing of the entire mineral interest, the defendant necessarily signed as agent of plaintiff as well as

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1. The lessee and the escrow agent were also defendants in the district court, but did not join the landowner on appeal.

2. The agreement provided that the bonus of \$4,000 and the title to the leased property would be placed in escrow and the lessee might, within one month before the beginning of the primary term, examine title and allow the defendant landowner thirty days in which to meet any requirements of title which the lessee's attorneys might make.