

Louisiana Law Review

Volume 5 | Number 1
December 1942

Reversionary Interests in Minerals

R. O. Rush

Repository Citation

R. O. Rush, *Reversionary Interests in Minerals*, 5 La. L. Rev. (1942)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol5/iss1/21>

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

provided for. Hence, where property is kept in the Orleans Sheriff's custody and a keeper or guardian is required, \$3.00 per diem is allowable, with provision for more keepers according to the nature of the property.¹²¹

Closing Remarks

The writ of sequestration has existed in Louisiana in substantially its present form since the Code of Practice of 1825.¹²² The later amendatory statutes have been purposed to broaden the scope of the remedy rather than to alter or eliminate portions of the articles themselves. The "jurisprudence" of the court interpreting these articles has been notably "constant." These circumstances would indicate general approval of the sequestration laws by the bench, bar, and legislature.

A question which has probably occurred to many a Louisiana lawyer is why we need three separate and distinct remedies such as sequestration, attachment, and provisional seizure, with three totally different sets of detailed rules. It is not difficult to conceive of one remedy covering all three types of cases, with only such variations in the rules as the type of case may require. Thus, while no suggestion of change is made as to the sequestration laws themselves, a definite improvement could be made by devising one set of rules to cover attachment, provisional seizure, and sequestration.

HENRY A. MENTZ, JR.

REVERSIONARY INTERESTS IN MINERALS

The Louisiana Supreme Court recently decided two cases,¹ *Hodges v. Norton* and *White v. Hodges*. These decisions may have far reaching effects upon the law of oil and gas in Louisiana. It is to a discussion of these cases and the *reversionary interest*² involved that this paper is dedicated.

121. La. Act 136 of 1880, § 23; La. Act 69 of 1922; La. Act 398 of 1938, § 1 [Dart's Stats. (1939) § 1378]. In regard to parishes outside Orleans, La. Act 167 of 1928, § 1 [Dart's Stats. (1939) § 1338] govern, but do not seem to change the general rule for charges for keeping and administering the property set out in Article 283.

122. See 2 Louisiana Legal Archives, *Projet of the Code of Practice of 1825* (1937).

1. *Hodges v. Norton*, 200 La. 614, 8 So. (2d) 618 (1942); *White v. Hodges*, 9 So. (2d) 433 (La. 1942).

2. A reversion has been defined as "the residue of an estate left in the grantor to commence in possession after the determination of some particular estate granted out by him." 1 Simes, *Law of Future Interests* (1936) 59, § 42.

Stated hypothetically, the facts in the case of *Hodges v. Norton* are as follows: November 6, 1915, A sold four hundred and forty acres of land to H and reserved one-half interest in the minerals for fifteen years. October 29, 1923, S purchased a one-fourth interest in the reserved minerals. October 31, 1923, N purchased from S a one-fourth interest in the minerals reserved on the two hundred and twenty acres. November 21, 1923, H, the landowner, executed a release of his "reversionary interests" to N with respect to the one-fourth mineral interest on the two hundred and twenty acres sold to S. The defendants acquired title from N to one-fourth the mineral interest in the two hundred twenty acres. Prescription was interrupted in 1924 by several oil wells drilled on the original four hundred forty acres that produced until 1931. The plaintiff, H, sues to cancel the defendants' servitude contending that it expired in 1930 by the expiration of the fifteen year term stipulated in the original reservation. *Held*, when H, the landowner, conveyed his reversionary interest to S, he merely *deleted* from the original contract the fifteen year limitation thereby making the prescription provided by law applicable to the servitude, and this had not yet accrued.

This case presents a different type of reversionary interest from that referred to in any previous cases. The only prior case³ that has discussed reversionary mineral interests contemplated a situation where the landowner had sold a mineral servitude and then sold his reversionary interest which was to take effect when the previously sold servitude expired and reverted to the landowner. This case, *Hodges v. Norton*, however, contemplates a situation where the servitude would expire because of a delimitation of a term even though there was an interruption or suspension, thereby causing it to revert to the landowner. By selling the reversionary interest in such a situation, the landowner was held to have removed the delimitation of the specified term, thereby subjecting the servitude to the prescription provided by the law in reference to all servitudes.

States that adhere to the common law rules of property, whether they follow the ownership or non-ownership theory⁴ of mineral interest, recognize that the owner of land has three distinguishable legal interests in the land and minerals after he has

3. *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940).

4. The non-ownership doctrine is followed "with more or less judicial refinement, in the states of Indiana, New York, Louisiana and Oklahoma, besides controlling the early decisions in Illinois." *Glassmire, Law of Oil and Gas Leases and Royalties* (2 ed. 1938) 124, § 36.

leased the land for oil development.⁵ These interests include (1) the ownership of the land subject to the lease, (2) the right to receive the rents and royalties under the lease, and (3) the reversionary fee interest in the minerals. Unless they are expressly reserved, they pass with a conveyance of the land to the grantee without being expressly mentioned.⁶ They may, however, be separately conveyed apart from the ownership of the land and from each other.⁷ The reversionary interest in oil and gas may be sold or reserved separately from the soil, rents, or royalties the lessor is entitled to under the lease.⁸ There is some conflict in these states, however, as to whether a conveyance by a lessor of the oil and gas in the land is limited to a transfer of his reversionary mineral interests under future leases, or also conveys the rents and royalties under the existing lease.⁹ Although not definitely settled, it has been held that a conveyance of all the rents and royalties accruing under future as well as existing leases does not violate the rule against perpetuities.¹⁰

Since Louisiana has adopted the non-ownership theory of mineral interests and her courts have held in numerous cases that the sale of an interest in minerals conveys only a servitude or a right to search,¹¹ it is elementary that at the time the vendor disposes of an interest in his minerals he still retains in his possession a "certain object"¹² that must revert to him at some future date, although the exact date of its return is conditional and dependent upon the possibility of various interruptions¹³ and suspensions,¹⁴ as well as upon the "use" made of the servitude. Al-

5. 3 Sumners, *The Law of Oil and Gas* (Perm. ed. 1938) 486, § 601.

6. *Ibid.*

7. *Ibid.*

8. *Rowland v. Griffin*, 179 Ark. 421, 16 S.W. (2d) 457 (1929); *Eason v. Rosamond*, 173 Okla. 10, 46 P. (2d) 471 (1935); *Lemar v. Garner*, 121 Tex. 502, 50 S.W. (2d) 769 (1932).

9. *Wright v. Carter Oil Co.*, 97 Okla. 46, 223 Pac. 835 (1923) held that the reversionary as well as the royalties under the existing lease were conveyed. *Carruthers v. Leonard*, 254 S.W. 779 (Tex. Com. App. 1923) held that only the reversionary mineral interest passed, but no interest in the rents and royalties under the existing lease passed to the buyer.

10. *Miller v. Sooy*, 120 Kan. 81, 242 Pac. 140 (1926).

11. *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 91 So. 207 (1922); *Wemple v. Nabors Oil & Gas Co.*, 154 La. 483, 97 So. 666 (1923).

12. *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940) (definition given the reversionary mineral interest).

13. Art. 3520, La. Civil Code of 1870: "Prescription ceases likewise to run whenever the debtor, or possessor, makes acknowledgement of the right of the person whose title they prescribed."

Art. 790, La. Civil Code of 1870: "The time of prescription for nonusage begins for discontinuous servitudes from the day they cease to be. . . ."

14. Art. 792, La. Civil Code of 1870: "If the owner of the estate to whom the servitude is due, is prevented from using it by any obstacle which he

though the Louisiana Civil Code provides for the sale of interests that will materialize in the future¹⁵ and the Louisiana court has intimated that there was such a thing as a reversionary interest¹⁶ it was not until 1940¹⁷ that the court expressly recognized that the reversionary interest was a "certain object" that could be sold before the original servitude prescribed and reverted to the original owner.

According to the Louisiana cases that have discussed the problem of "reversionary interest"¹⁸ there are apparently two methods by which a vendee may become the owner of the reversionary interest of the owner of the land. One method is by expressly purchasing the "certain object" referred to in the *Gailey v. McFarlain*¹⁹ case, while the other method is by the doctrine of accretion.²⁰ It is immaterial how he acquires it or by what name it is called, for in the final analysis the effect is the same, because all that he acquires is a servitude or right to search²¹ that will expire in ten years if it is not interrupted or suspended. The important and essential question yet unanswered definitively in our jurisprudence is: When does the prescription begin to run against the right to exercise the servitude? If it begins to run from the moment it is purchased, the vendee may never have an opportunity to "use" it because the original servitude may be inter-

can neither prevent nor remove, the prescription of nonusage does not run against him as long as this obstacle remains."

Art. 3554, La. Civil Code of 1870: "Prescription does not run against minors and persons under interdiction, except in the cases specified by law."

15. Art. 747, La. Civil Code of 1870: "A servitude may be established or acquired in favor of an estate which does not exist, or of which one is not yet the owner; but if the hope of becoming the owner be not realized, the servitude falls. It may also be stipulated that an edifice not yet built shall support a servitude; or, shall have the benefit of one when it is built."

Art. 2450, La. Civil Code of 1870: "A sale is sometimes made of a thing to come: as of what shall accrue from an estate, of animals yet unborn, or such like other things, although not yet existing."

Art. 2451, La. Civil Code of 1870: "It also happens sometimes that an uncertain hope is sold; as a fisher sells a haul of his net before he throws it; and, although he should catch nothing, the sale still exists, because it was the hope that was sold, together with the right to have what might be caught."

Daggett, *Mineral Rights in Louisiana* (1939) 42, 43, § 14; Note (1940) 2 *LOUISIANA LAW REVIEW* 752.

16. *Standard Oil Co. of Louisiana v. Webb*, 149 La. 245, 88 So. 808 (1921); *Bodcaw Lumber Co. v. Clifton Heirs*, 169 La. 759, 126 So. 52 (1930); *Gayoso Oil Co. v. Arkansas Natural Gas Corp.*, 176 La. 333, 145 So. 677 (1933).

17. *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940).

18. *Ibid.*; *Hodges v. Norton*, 200 La. 614, 8 So. (2d) 618 (1940); *White v. Hodges*, 9 So. (2d) 433 (La. 1942).

19. 194 La. 150, 162, 193 So. 570, 575 (1940).

20. *White v. Hodges*, 9 So. (2d) 433 (La. 1942).

21. *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 91 So. 207 (1922); *Wemple v. Nabors Oil & Gas Co.*, 154 La. 483, 97 So. 666 (1923).

rupted or suspended, causing it to extend for a great many more years than ten. If it begins to run from the day that the original servitude reverts to the landowner, a policy of land tenure will come into existence that is contrary in spirit to the established rule of jurisprudence declared in *Frost Johnson Lumber Company v. Sallings*²² as well as the rule forbidding perpetuities.²³

The Chief Justice of the Louisiana Supreme Court has expressed an opinion opposed to any land tenure policy that would dismember the ownership of the land and minerals permanently or indefinitely,²⁴ and as a necessary corollary to this position, has indicated that prescription should begin to run against the right to exercise the servitude created by the purchase of the reversionary interest from the moment it is conveyed,²⁵ even though the owner has no right to exercise it until the servitude on the land at the time of the purchase of the reversionary interest has reverted in the landowner. This viewpoint can be substantiated by the application of the principles of suspensive conditional obligations as applied to the purchaser of "royalty" in the case of *Vincent v. Bullock*.²⁶ The purchaser of the reversionary interests obtains a mineral servitude upon the lapse of the existing servitude. Since its existence is dependent upon the happening of a future and uncertain event, the principles of suspensive conditional obligations are applicable.²⁷ If it is conceded that the purchaser of the reversionary interest acquires a contractual right subject to a suspensive condition, then it must also be conceded that he acquires a "right"²⁸ which entitles him to a servitude if and when the previously sold servitude reverts to the landowner, from the moment the contract for the sale of the reversionary interest is completed.²⁹ This "right," however, is suspended by

22. *Ibid.*

23. *Female Orphans Society v. Young Men's Christian Association*, 119 La. 278, 44 So. 15 (1907).

24. *Frost-Johnson Lumber Co. v. Sallings's Heirs*, 150 La. 756, 91 So. 207 (1922).

25. *Gailey v. McFarlain*, 194 La. 150, 193 So. 570 (1940); *Hodges v. Norton*, 200 La. 614, 8 So. (2d) 618 (1942).

26. 192 La. 1, 187 So. 35 (1939).

27. Art. 2043, La. Civil Code of 1870: "The obligation contracted on a suspensive condition, is that which depends, either on a future or uncertain event, or on an event which has actually taken place, without its being yet known to the parties."

28. Art. 2028, La. Civil Code of 1870: "The contract of which the condition forms a part is, like all others, complete by the assent of the parties; the obligee has a *right* of which the obligor cannot deprive him; its exercise is only suspended, or may be defeated, according to the nature of the condition." (Italics supplied.)

29. *Ibid.*

the terms of Article 2028 until the happening of the condition. In *Vincent v. Bullock*³⁰ the court determined that the royalty buyer did not acquire an interest in the oil or gas, but only acquired a "right" to share in the oil and gas "if and when" it was produced; that this right was subject to the happening of a suspensive condition, or future event, namely, the production of oil; and if this future event did not occur within the term specified, or within the ten year term established by law, this real right acquired by the vendee expired by the terms of Article 3529.³¹ This same principle could be applied to the purchase of the reversionary interest by stating that the vendee acquires the "right" to a servitude. This "right" is suspended until the happening of a future event, namely, the reversion of the previously sold servitude in the landowner (vendor). If this event does not take place within the term specified or within the term established by operation of law (ten years), the right to the servitude will expire, for the ten year term begins to run from the date of the sale.

The opposing position, that prescription does not begin to run against the right to exercise the reversionary interest until it has reverted in the landowner, may be substantiated by the "obstacle" theory of servitudes.³² If the sale of the reversionary interest conveys a servitude which cannot be exercised until the previously sold servitude reverts in the landowner, the purchaser of the reversionary interest is prevented from using the servitude by an "obstacle" which he can neither prevent nor remove. Such a situation is therefore within the express terms of Article 792³³ which suspends the running of prescription against the right to use the servitude until the obstacle is removed. In the recent case of *White v. Hodges*,³⁴ the court decided that when the owner of the land sells an interest in the minerals after having *previously* sold *all* of his mineral interest in that land, an obstacle was created that suspended the running of prescription against the grantee until the expiration of the previously sold servitudes. Al-

30. 192 La. 1, 187 So. 35 (1939).

31. La. Civil Code of 1870: "This presumption has also the effect of releasing the owner of an estate from every species of real rights, to which the property may have been subject, if the person in possession of the right has not exercised it during the time required by law."

32. Art. 792, La. Civil Code of 1870: "If the owner of the estate to whom the servitude is due, is prevented from using it by any obstacle which he can neither prevent nor remove, the prescription of nonusage does not run against him as long as this obstacle remains." Note (1940) 2 LOUISIANA LAW REVIEW 755.

33. Art. 792, La. Civil Code of 1870.

34. *Ibid.*

though neither the court nor the parties specified the mineral interest sold as a "reversionary" interest, when the case is analyzed it is observed that the court interpreted the conveyance as being a sale of an interest in the minerals, after the previously sold mineral interest had reverted in the landowner. It may also indicate a tendency on the part of the court to take a position that prescription against the reversionary interest does not begin to run until the previously sold servitudes revert. The court stressed the fact that at the time of the purchase the vendee did not know that all the mineral interests in that land had been sold; therefore, he did not consent to the "obstacle";³⁵ that he was not a co-owner of the mineral servitude; consequently, he could not demand a partition;³⁶ therefore, there was nothing he could do to prevent or remove the obstacle. It is submitted, however, that even if the vendee knows of an existing mineral servitude on the land or is himself a co-owner of the existing servitude, there is still an obstacle preventing him from using the servitude, which he cannot prevent or remove. Therefore prescription should be suspended until his right to search comes into existence.

Another theory that may be advocated to substantiate this position is that there is a distinction between the right to *use* a servitude and a right to a servitude. By this is meant that at the moment of the sale of the reversionary interest a right to a servitude is created; but the right to *use* the servitude does not come into existence until the previously sold servitudes revert in the landowner. It is the opinion of the writer that the prescription of Article 789³⁷ against "the right of servitude" refers to the *right to use* the servitude; and since only the right to a servitude is created on the date of the sale of the reversionary interest, the ten year prescription against nonuser should not begin to run until the right to *use* the servitude is present.

Another theory that may be advanced in support of this position is the rule that prescription does not begin to run against a

35. *Clark v. Tensas Delta Land Co.*, 172 La. 913, 136 So. 1 (1931); *Superior Oil Producing Co. v. Leckelt*, 189 La. 972, 181 So. 462 (1938).

36. Art. 740, La. Civil Code of 1870: "If the coproprietor has established the servitude for his part of the estate only, the consent of the other owners is not necessary, but the exercise of the servitude must be suspended, until his part be ascertained by partition. In this case, he to whom the servitude has been granted, may compel the coproprietor from whom he received it, to sue for a partition, or may sue for it himself." *State ex rel. Bush v. United Gas Public Service Co.*, 185 La. 496, 169 So. 523 (1936).

37. La. Civil Code of 1870: "A right to servitude is extinguished by the nonusage of the same during ten years."

right of action until that right of action accrues,³⁸ and it has been held that such a right does not accrue until a party is entitled to sue to enforce this right.³⁹ This rule has never been applied to a right to exercise a mineral servitude; however the similarity is pointed out for the purposes of analogy. Since the holder of the reversionary interest cannot sue to enforce his "right to search" until the revestment of the previously sold servitudes, prescription should not begin to run until that time.

The second method that has been used as a means of acquiring a reversionary interest is the doctrine of "accretion." In the case of *White v. Hodges*⁴⁰ the landowner sold an interest in minerals to the plaintiff *after* he had previously sold *all* of his mineral interests. The court stated the doctrine of accretion, but seems to have applied the obstacle theory of suspension of servitudes in determining the case. In such a situation the doctrine of accretion is clearly applicable;⁴¹ but when it is applied the rules of the suspension of servitudes would seem to be superfluous if not actually erroneous as the two doctrines appear to indicate different theories. The doctrine of suspension implies that there is a *servitude* in existence at the time with the right to use it suspended. The doctrine of accretion implies that there is nothing in existence at the time, unless it be the right to claim the thing if the vendor later acquires title, because the vendor has sold something that he does not own. It is submitted that the case should have been decided by the application of the doctrine of accretion alone for the reason that when the landowner sold the servitude, which he did not own, he did not convey a servitude, but only the right to *claim* a servitude if he later acquired it; but, when the previously sold servitudes prescribed and revested in him, he then acquired a servitude and by the doctrine of accretion this servitude accrued to the vendee. There was no place for an application of the doctrine of "obstacle" because there was no servitude in existence until after the previously sold mineral servitudes revested in the landowner. It seems that a more consistent line of jurisprudence would be established on this subject if

38. *South Arkansas Lumber Co. v. Tremont Lumber Co.*, 146 La. 61, 83 So. 378 (1919); *Wall v. Heslin*, 2 Orl. App. 112 (La. App. 1905).

39. *Liles v. Barnhart*, 152 La. 419, 93 So. 490 (1922).

40. *Ibid.*

41. The vendor sold something he did not own at the time he sold it, but later acquired it, therefore when he acquired it, the doctrine of accretion caused it to accrue to the vendee. *Wolf v. Carter*, 131 La. 667, 60 So. 52 (1912); *Brewer v. New Orleans Land Co.*, 154 La. 446, 97 So. 605 (1923); *St. Landry Oil & Gas Co., Inc. v. Neal*, 166 La. 799, 118 So. 24 (1928).

the court would apply but one of these conflicting doctrines to a litigated case.

The application of the doctrine of accretion to reversionary interest is very limited, because it is applicable only when the landowner sells an interest in minerals after he has previously sold *all* the mineral interest he owns. When the servitude previously sold prescribes and reverts in the landowner, the revested mineral interest accrues to the vendee who purchased *but* obtained nothing at the time of the sale except a right to claim a servitude in the future. In such a case the prescription of ten years nonuser should not begin to run until the servitude has revested in the landowner and accrued to the vendee; for until that time he has no servitude nor the right to exercise or use the servitude.

The next problem of discussion taken from the case of *Hodges v. Norton*⁴² was not directly concerned with reversionary interest; however it is important enough to mention, because, by implication, it firmly establishes a principle of oil and gas law in Louisiana which was enunciated by the court in many prior cases although it was never made an issue. It has frequently been held that the stipulation of a term of more than ten years in a conveyance or reservation of a mineral interest did not extend the life of the servitude without user beyond the ten year period, but such a stipulated term was to be interpreted only as a delimitation of the length of the servitude in case there was an interruption or suspension.⁴³ It was not positively stated in this case, but as a necessary consequence the court upheld the validity and binding effect of such a delimitation by stating that if the landowner had not sold the reversionary interest the mineral interest originally reserved would have reverted to him at the expiration of the fifteen year term, even though prescription was interrupted by the several wells drilled upon the tract of land.⁴⁴

The decisions mentioned will undoubtedly encourage the holders of reversionary interests in their belief that prescription against their servitudes does not begin to run until the servitude

42. *Ibid.*

43. The parties to a sale or reservation of mineral interests in which there was stipulated a term of more than ten years have always attempted to use the stipulated term to extend the life of the servitude without user. *Bodcaw Lumber Co. v. Magnolia Petroleum Co.*, 167 La. 847, 120 So. 389 (1929); *Lewis v. Bodcaw Lumber Co.*, 167 La. 1067, 120 So. 859 (1929). In the instant case the term was used to shorten the life of the servitude although there had been user.

44. *Hodges v. Norton*, 200 La. 614, 8 So. (2d) 618 (1942).

previously sold has reverted to the landowners. These decisions may encourage numerous landowners who plan to sell their land to reserve the *reversionary* interests as well as the mineral interests, as a part of the consideration and price of the sale in an effort to extend the life of a servitude beyond the ten year period without user. They may also encourage the owners of land who are about to sell mineral interests to delimit the term of the servitude so as to prevent the life of the servitude sold from extending until the oil sand is drained, if there is production within the life of the servitude. The implications of the decisions are many. If they are permitted to develop without restriction to extremes, the ownership of mineral interests in Louisiana may develop into as complicated a system of land tenure as has developed in the common law states where vested and contingent remainders, fee tail and possibility of reverter interests create complications in the ownership of land and minerals. The Louisiana court has avoided such entanglements in the past and will no doubt avoid them in the future.

R. O. RUSH

STERILIZATION OF HABITUAL CRIMINALS

Human sterilization for social good has been one of the most controversial problems of recent decades.¹ Legislation involving the sterilization of human beings² was first attempted in the United States in the form of a measure introduced in 1897 in the Michigan legislature.³ The first asexualization bill to run successfully the gamut of legislative approval was enacted by the Pennsylvania legislature in March 1905, but it was vetoed by the governor. The first such statute to receive both legislative and

1. See Comments (1933) 8 Notre Dame Lawyer 327; (1936) 24 Ky. L.J. 220; (1937) 17 B.U.L. Rev. 246. See also cases cited and annotations (1926) 40 A.L.R. 535; (1927) 51 A.L.R. 862; (1933) 87 A.L.R. 242.

2. Sterilization is usually accomplished by vasectomy in the male and salpingectomy in the female—surgical operation the purpose of which is to cut and seal the tubes through which the reproductive cells must pass. Often in the case of the male the operation is conducted under a local anesthetic and requires about fifteen minutes. The patient need not be confined to bed. In the female, sterilization demands an operation of more complexity: the abdomen is opened and the patient must remain in bed for at least one week. It must be emphasized that such operations do not in any degree unsex the patient, but he is irreparably precluded from producing offspring. For a detailed discussion, see Landman, Human Sterilization (1932) cxi, xii.

3. This bill was defeated by only a few votes.