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Reviews

MINERAL RIGHTS IN LOUISIANA, by Harriet Spiller Daggett. Louisiana State University Press, University, 1939. Pp. xxxv, 427. \$5.00.

Mineral Rights in Louisiana will be gratefully received by both the legal profession and the oil and gas industry of Louisiana. The task of developing a system of mineral law in Louisiana has fallen almost exclusively upon the courts which have laboriously shaped and woven together the fabric of a new and unique branch of the law without the aid of the Legislature or of the French and Spanish sources to whose authors the problem was unknown. There are little more than half a dozen statutes dealing with the private law relating to mineral rights. Since the first oil well was brought in at the Jennings field in 1901, the Louisiana practitioner has been without an adequate reference book in the field of mineral law. The general reference works on the subject are of little value to him because of their failure to discuss the civilian principles around which the mineral law has developed in Louisiana.

Written by the pioneer in this field of law, *Mineral Rights in Louisiana* is a scholarly and practical discussion of the principles of law applicable to the oil and gas industry. The author not only states the law as announced by the courts, but subjects the courts' decisions to a searching and critical analysis, sometimes disagreeing with the solution reached by the court. She also analyzes many problems of the industry which have not yet been judicially determined and offers her suggestions for their solution from the standpoint of principle.

The book, in the words of the author, "does not purport to be a detailed and complete treatise." It does not cover such topics as conservation, the leasing of public lands, or taxation. But these omissions in no way detract from the usefulness of the book. The law of conservation and the leasing of public lands is almost entirely statutory, the few cases on these topics having added nothing of importance to the provisions of the statutes. Although some problems peculiar to the oil and gas industry occasionally arise in connection with taxation, they are not important enough to command attention in a work of this scope, the purpose of

which "is to discuss in the main the mineral problems peculiar to Louisiana because of the Civil Code."

The 288 pages of text are logically arranged into ten chapters which are divided into sections numbered from 1 to 86 consecutively throughout. There is a complete index, a table of cases, an appendix of forms and an appendix of acts dealing with the private law of minerals.

One of the most interesting and important chapters of the book is Chapter I wherein the author discusses the nature of the right in mineral contracts. She shows how the Louisiana Supreme Court at an early date in the jurisprudence adopted the non-ownership theory of oil and gas and adhered to this view despite apparent inconsistent statements appearing in some of the early cases where the court was in doubt as to whether the mineral contract should be classed as a sale, a lease or a servitude, and how the court finally recognized that this right to explore for minerals might be classed as a servitude or a lease depending on the intention of the parties. It is the author's view that, although the categories of servitude and lease have been established, the right granted in either case is the same, namely, the right to explore, and since Act 205 of 1938 gives the lessee the same remedies as the owner of a servitude in case his right is invaded, "it should not matter a great deal whether these two categories are confined to their labelled compartments or not, except for the matter of term."¹ Dr. Daggett contends that, in cases where there has been no production, the lease should expire at the end of ten years as in the case of the servitude. To support this view she relies on the land policy of the state which prohibits the tying up of property for long terms, the fact that a lease has always been regarded as the granting of a lesser right than that given by sale, and the case of *Arent v. Hunter*,² which held that a lease was a servitude and therefore had lapsed for nonuse of ten years on four of five noncontiguous nonproducing tracts despite the fact that upon the fifth tract a producing well was in existence. Although there is considerable merit to the author's views, nevertheless, as she points out, the case of *Gulf Refining Co. v. Glassell*,³ decided several years after the *Arent* case, again held that the right to explore might be sold or reserved, creating a servitude, or might be leased, and that there were essential

1. P. 15.

2. 171 La. 1059, 133 So. 157 (1931).

3. 186 La. 190, 171 So. 846 (1936).

differences between a mineral servitude and a mineral lease which the court likened unto a farm or predial lease, the term of which may be fixed by the parties. While the view advanced by Dr. Daggett is to be desired it is not likely to obtain as long as the court adheres to the proposition that there is no difference between a farm lease and a mineral lease.

Chapter II deserves special mention because the material it covers is of vital importance to the practitioner as well as the investor. It deals with: the classification of the right of servitude—whether real or personal, divisible or indivisible, heritable or nonheritable; the manner of creating the servitude—whether by title or by prescription; the limited life of the servitude and the possibility of extending it by contract; the loss of the servitude by confusion and by prescription; the possibility of interrupting prescription by acknowledgment, by suit and by user; the suspension of prescription by minority, by interdiction, and by prevention of user by an obstacle. Of particular interest is the section on suspension of prescription by prevention of user wherein the author discusses the interesting problems which arise when mineral rights are sold by owners in indivision. The author's analysis of the decisions on this difficult phase of the law of minerals and her clear and concise statements of their implications indicate a thorough knowledge of the fundamental legal principles involved and their relation to the complex problems facing those who must advise the participants in the development of the oil and gas industry.

It would be going beyond the scope of this review to point out all the interesting questions raised and discussed by Dr. Daggett. The remaining eight chapters discuss the mineral rights of owners in indivision; the rights of their mineral vendees and lessees; the relative rights of the naked owner and the usufructuary; the property classification of the lease; the various concepts of royalty and the rights of owners of royalty; the character of funds derived from the separate mineral interests of husband and wife during the marriage—whether separate or community; the mortgaging and pledging of mineral rights; the liens and privileges on oil and gas wells, their appurtenances and appliances in favor of laborers and furnishers of materials and supplies; and the remedies available to the owners of mineral interests in case of invasions of their interests.

Mineral Rights in Louisiana should meet the long felt need of the Louisiana lawyer in his search for the solution of the many

complex problems which continually present themselves to the oil and gas industry. It is a worthy addition to Dr. Daggett's many valuable contributions to the development of Louisiana law.

J. MORT WALKER, JR.*

THE FORMATIVE ERA OF AMERICAN LAW, by Roscoe Pound. Little, Brown & Co., Boston, 1938. Pp. x, 188. \$2.00.

In October, 1936, Roscoe Pound visited Tulane University at New Orleans to speak about Edward Livingston on the hundredth anniversary of his death. The present writer was there to speak about Roscoe Pound. This volume contains what Pound there said. He said little about Livingston. In that respect the book reminds one of the brochure that Elbert Hubbard once wrote about the late Lydia E. Pinkham for the Lydia E. Pinkham Medicine Company of my native town. He discussed all the famous women of the Victorian period in America, but all he said about Mrs. Pinkham was that among those women was Lydia E. Pinkham.

But Livingston's fame is secure, and he needs no new biographer. The author has given us a book far more valuable than a life of Livingston could have been. The influences that bore upon legislation, upon judicial decision and upon doctrinal writing during the first half of the last century are discussed with learning and acumen. The notes and citations in support of the views expressed are full and convincing.

One finishes the book with a renewed admiration for Marshall, Gibson, Shaw, Ruffin and other great jurists of the early days of the republic. What a libel upon them is the doctrine professed by our so-called "realists" or "economic determinists," that all those great and good men were simply the willing tools of the wealthy, without thought of right or justice or the general welfare! What a strange remedy the "realists" propose for the alleged tyranny of one class,—the substitution for it of the tyranny of another! What a travesty is their attempt to disguise their medieval barbarities as liberal, progressive and forward looking! Happily, perhaps, the recent embrace of the Bolsheviks and Nazis in Europe has removed the last pretence that there

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