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Carl F. Walker

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and purpose of each statute. But if there is a direct conflict between two acts which are to take effect simultaneously, then it would seem that the court should declare both acts inoperative and void, unless some reason may be found to show that the Legislature intended one to prevail over the other.

Helen Marie Wimmer

MINERAL RIGHTS—AFTER-ACQUIRED TITLE DOCTRINE—REVERSIONARY INTEREST

In *Long-Bell Lumber Company v. Granger*, 63 So. 2d 420 (La. 1953), the Louisiana Supreme Court, speaking through Justice Hamiter, held that the sale of a second mineral servitude to the owner of an existing mineral servitude on the same tract of land was void since one may not validly purchase that which he already owns.

This case involves a very complicated factual situation relating to a number of conveyances among various entities of the Long-Bell interests, "the good faith separate existence of which [was] . . . not challenged by the defendants."[1] A brief statement of the material facts are as follows:

> In 1931 the Long-Bell Lumber Sales Corporation conveyed to the Long-Bell Minerals Corporation a mineral servitude on the lands in dispute. In 1936 the Long-Bell Farm Land Corporation, a sub-vendee of the Long-Bell Lumber Sales Corporation, purported to convey a mineral servitude on the same tract of land to the Long-Bell Petroleum Company, which had previously merged with the Long-Bell Minerals Corporation. In 1943 Long-Bell Farm Land Corporation sold the land to the defendants' authors in title and reserved the mineral rights to the Long-Bell Petroleum Corporation. The defendants, Miller and Granger, acquired the lands by separate transactions in 1944 and 1946.
>
> The plaintiffs brought these consolidated petitory actions against the defendants after receiving adverse decisions in previous jactitation suits.

The defendants' claim to the mineral interests in question depended upon the effect of the 1936 deed. They contended that

1. Long-Bell Lumber Co. v. Granger, 63 So. 2d 420 (La. 1953).

since the Long-Bell Lumber Company retained the land until the original servitude prescribed in 1941, the 1936 sale was effective under the *doctrine of after-acquired title*,[2] and that prescription began to run from the date of the sale. It was also contended, particularly on application for rehearing, that the 1936 conveyance transferred the "reversionary interest"[3] of the landowner, and that title to this interest vested in Long-Bell Petroleum Corporation when the original servitude prescribed. This casenote will discuss each of these problems.

If the doctrine of after-acquired title had been held applicable to the 1936 conveyance, and prescription held to have begun from the date of the sale, the "second servitude" would have prescribed in 1946, vesting ownership of the mineral interests in the defendants. Previous cases lend some support to this position. In *White v. Hodges*[4] a landowner attempted to sell a mineral interest to a third person while all the mineral rights were outstanding. The court found that the landowner had sold something which belonged to another, but held that the purchaser acquired the interest by the doctrine of after-acquired title. That is, upon extinguishment of the previously existing servitudes by prescription, the mineral rights reverted to their former owner and hence inured to the benefit of the purchaser. The date when prescription began to run against the interest acquired by the purchaser was also at issue. After finding that the purchaser did not have actual knowledge of the existing servitude, it was held that prescription began to run on the date the outstanding servitude prescribed.

The case of *McDonald v. Richard*[5] presented a situation in which the landowner purported to convey certain mineral interests to the plaintiff at a time when the entire mineral interests were vested in a third party. Pursuant to the authority of Article 2452, Louisiana Civil Code of 1870, the sale was declared null. All of the mineral interests were outstanding. The court stated, however, that if the vendor had retained the land, the

2. St. Landry Oil & Gas Co., Inc. v. Neal, 166 La. 799, 802, 118 So. 24, 25 (1928): "Ordinarily, where one sells the property of another—and the rule is equally applicable to the granting or sale of mineral leases—and later acquires title to the property sold by him, the title vests immediately in his vendee."

3. "Reversionary interest" is a common law term. The term as used here denotes the expectancy of the landowner to become owner at a future date of an outstanding mineral servitude by prescription.

4. 201 La. 1, 9 So. 2d 433 (1942).

5. 203 La. 155, 13 So. 2d 712 (1943).

purchaser would have acquired the mineral interest by the doctrine of after-acquired title the day the outstanding servitude prescribed.

In *Bates v. Monzingo*,[6] a later case, a landowner was said to have "oversold"[7] the mineral interests to his land. The oldest outstanding mineral interest was that portion which had been reserved by the landowner's vendor. It was not proved that any of the outstanding interest at the time of the "oversale" had prescribed, but the court said: "However, he [Monzingo] remained the owner of the land until 1942, and therefore, if his own vendor's one-half interest prescribed in 1937 [as contended], that interest inured to Monzingo's benefit and also to the benefit of any vendee of an interest theretofore 'oversold'." The rationale by which the prescribed mineral interest would have inured to the purchaser was not expressly stated by the court, but cases discussing the applicability of the doctrine of after-acquired title to mineral interests were cited as authorities.

The "reversionary interest" of the landowner in the outstanding mineral interests to his land was first discussed in *Gailey v. McFarlain*.[8] There the court stated that it was an object of value which could legally be sold, but found that the parties had not intended its transfer. In *Gulf Refining Company v. Orr*[9] the court lent support to the possible validity of such a sale, but emphasized that "reversionary interest" as the object of a sale would not be implied from a deed.

In both *McDonald v. Richard*[10] and *Long-Bell Lumber Company v. Tritico*,[11] purported conveyances of mineral interests had been made when all the mineral interests were already outstanding. The deeds did not expressly indicate that a "reversionary interest" had been conveyed. It was held that the conveyances were null, as the vendors had attempted to convey that which they did not own. The doctrine of after-acquired title was not applicable because the vendors sold the land prior to prescription of the outstanding mineral interests.

The recognition, with qualifications, of the "reversionary

6. 221 La. 479, 59 So. 2d 693 (1952).
7. Technically, the word "oversold" seems to have been inappropriately used, as there was no valid sale of any part of the thing sold.
8. 194 La. 150, 193 So. 570 (1940).
9. 207 La. 915, 22 So. 2d 269 (1945).
10. 221 La. 479, 59 So. 2d 693 (1952).
11. 216 La. 426, 43 So. 2d 782 (1949).

interest" theory, as stated in the dicta of the above cases, seems to have been denounced by the dicta in *Liberty Farms, Inc. v. Miller*.[12] There the court said: "One may not reserve reversionary rights to minerals when he is not the owner of the minerals at the time the reservation is made. It is settled that, in such instances, the reservation is ineffective and the outstanding mineral interests revert to the person owning the land at the time of prescription."[13]

The court's reluctance to uphold the sale of a reversionary right appears to be based upon a strict adherence to the spirit of the prescription laws. In *McDonald v. Richard*[14] the court quoted from the language in *Martel v. A. Veeder Company*[15] as follows: "The fundamental rule of public policy that a debtor, or an obligor in the case of a servitude or real right, cannot renounce in advance the benefit of prescription which may release him or his land from the obligation." Perhaps, too, the court does not wish to introduce another complicated rule of property.

If the court had recognized the 1936 deed in the instant case as the sale of a "reversionary interest," it is possible that prescription would have been held to run from the date of the sale. This was discussed in dicta in *McDonald v. Richard*,[16] where the court stated that the outstanding servitude at the time of the sale would not be an obstacle which would prevent the running of prescription, because it would have been consented to by the purchaser.

The court in the instant case said: "Clearly the doctrine of after acquired title cannot be applied to the 1936 mineral deed, even assuming that it is applicable to mineral sales in some instances."[17] The inapplicability of the doctrine of after-acquired title, in the light of Article 2443 of the Civil Code,[18] could hardly be questioned, inasmuch as the interest purportedly purchased was held to have been the same as that already owned by the purchaser. The statement by the court seems to imply that the doctrine of after-acquired title may be subject to different rules

12. 216 La. 1023, 45 So. 2d 610 (1950).
13. 216 La. 1023, 1033, 45 So. 2d 610, 614 (1950).
14. 221 La. 479, 59 So. 2d 693 (1952).
15. 199 La. 423, 439, 6 So. 2d 335, 340 (1942).
16. 221 La. 479, 59 So. 2d 693 (1952).
17. 203 La. 155, 166, 13 So. 2d 712, 716 (1943).
18. Art. 2443, La. Civil Code of 1870: "He who is already the owner of a thing, cannot validly purchase it. If he buys it through error, thinking it the property of another, the act is null, and the price must be restored to him."

of application when mineral interests are involved. The previous cases, however, have indicated that the doctrine of after-acquired title is "equally"[19] applicable to the sale of mineral interests.

Carl F. Walker

MINERAL RIGHTS—SERVITUDES—PRESCRIPTION—PUBLIC RECORDS DOCTRINE

Watkins, defendant, sold land to Wise, plaintiff, on July 13, 1929, reserving to himself a mineral servitude. W. T. Gleason sold other land to R. R. Gleason, another defendant, on December 31, 1932, reserving a mineral servitude. On April 6, 1934, R. R. Gleason sold this land to Wise, reserving to himself the minerals previously reserved by W. T. Gleason. On April 30, 1936, Wise and Watkins, and Wise and W. T. Gleason executed mineral leases on both tracts of land. On October 21, 1940, these leases were extended to April 30, 1943. On July 6, 1943, Wise, Watkins, and W. T. Gleason executed another lease in which Wise stated that it was his intention "to admit ownership" of the minerals in W. T. Gleason and Watkins, "and extend the duration thereof." This lease was notarized and recorded. W. T. Gleason sold his mineral interest to R. R. Gleason. Thereafter other defendants purchased portions of R. R. Gleason's mineral interest, relying on the joint lease. Wise brought suits against Watkins, Gleason, and Gleason's vendees alleging slander of title. *Held*, (1) In a sale of land, attempted withholding of mineral rights not then belonging to the vendor is not sufficient acknowledgment to interrupt prescription. (2) A servitude prescribed for ten years non-user is a dead thing, and cannot be revived by the renunciation of prescription. (3) Vendees of mineral rights cannot rely on one instrument of the public records and disregard others showing the lapse of more than ten years since the creation of the servitude. *Wise v. Watkins, Wise & Gleason*, 62 So. 2d 653 (La. 1952).

In *Frost-Johnson Lumber Co. v. Nabors Oil and Gas Co.*,[1] the court held that the expression, "all mineral rights are expressly reserved, having heretofore been sold by the present vendor . . ."[2] was sufficient acknowledgment to interrupt the

19. See note 2 supra.
1. 149 La. 100, 88 So. 723 (1921).
2. 149 La. 100, 105, 88 So. 723, 724.