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Oil and Gas - Conveyance of Fractional Mineral Interests by Quitclaim Deed in Mississippi - Rosenbaum v. McCaskey

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OIL AND GAS—CONVEYANCE OF FRACTIONAL MINERAL INTERESTS BY QUITCLAIM DEED IN MISSISSIPPI—*Rosenbaum v. McCaskey*, 386 So. 2d 387 (Miss. 1980).

On March 19, 1947, I. A. Rosenbaum, Sr., conveyed 1,700 acres of land to T. S. McCaskey by quitclaim deed. One forty-acre portion of this conveyance subsequently became the subject of controversy. At the time of the conveyance, the grantor owned an undivided one-half mineral interest in the forty acre tract as well as the entire surface interest. Mr. Rosenbaum had previously conveyed an undivided one-half interest in the minerals. The quitclaim deed to McCaskey contained the following recital: "It is understood and agreed that the grantor herein is to retain one-half (½) of all oil, gas and mineral rights in the above described lands, together with one-half (½) of all minerals and royalties."[1]

Thereafter, on May 27, 1947, T. S. McCaskey conveyed the property by quitclaim deed to T. B. McCaskey. The following recital was at the end of the land description: "It is further understood and agreed that this instrument conveys all oil, gas and minerals except that one-half interest owned by I. A. Rosenbaum."[2]

Upon his death, Rosenbaum devised his estate to his children, who brought suit to remove clouds and to confirm title in an undivided one-fourth interest in the oil, gas and minerals in the forty acre tract in controversy. The bill of complaint was dismissed and the Rosenbaums appealed.

On appeal, the Mississippi Supreme Court reversed the dismissal, stating that the quitclaim deed was sufficient to retain in the grantor an undivided *one-half* mineral interest in the forty-acre tract. The court held, however, since the appellants sought only to confirm title to an undivided *one-fourth* mineral interest, the quitclaim deed transferred from Rosenbaum to McCaskey an undivided one-fourth mineral interest in the forty-acre tract.[3]

THE SALMEN RULE

The Problem

Mississippi, as a number of other states, subscribes to the concept of real property ownership which allows the concurrent but separate existence of estates in surface interests and mineral interests below the

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[1]Record at 63, Brief for Appellant at 2, Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

[2]Record at 101.

[3]Rosenbaum v. McCaskey, 386 So. 2d 387, 390 (Miss. 1980).

surface.[4] Basic tenets of real property law generally apply to these severable estates, including the concepts and rules pertaining to conveyances. However, it is obvious that the separate ownership of oil, gas and mineral estates creates unique problems which require equally unique solutions. A number of problems peculiar to oil, gas and mineral estates may not be directly addressed by the general rules for the conveyance of land.

One such problem pertinent to this discussion was addressed by the Texas court in *Klein v. Humble Oil & Refining Company*.[5] In the *Klein* case, property was conveyed by general warranty deed from Robert Stein to F. F. Klein, reserving one-eighth of all mineral rights to the grantor. Klein subsequently conveyed the identical property by a general warranty deed which contained an exception of one-eighth of all mineral rights. The question presented for the determination of the Texas court was whether Klein conveyed six-eighths or seven-eighths of the mineral estate. The court determined that Klein's exception was not a further severance of the mineral estate, but effectively passed title to seven-eighths of the mineral estate.[6] In reaching this decision, the court construed the exception in Klein's deed as protecting the grantor's warranty of title in the previous reservation.[7]

The Judicial Solution

The *Klein* decision provided the foundation for the subsequent decision reached by the Texas Supreme Court in *Duhig v. Peavy-Moore Lumber Company*.[8] The fact situation in *Duhig* was reminiscent of the *Klein* case. Duhig acquired property by general warranty deed in which the grantor retained an undivided one-half mineral interest. Duhig subsequently conveyed the property by a general warranty deed which stated: "But it is expressly agreed and stipulated that the grantor herein retains an undivided one-half interest in and to all min-

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[4]*See, e.g.*, Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), *suggestion of error overruled*, 200 Miss. 27, 27 So. 2d 402 (1946); Whelan v. Johnston, 192 Miss. 673, 6 So. 2d 300 (1942); Stern v. Great S. Land Co., 148 Miss. 649, 114 So. 739 (1927); Moss v. Jourdan, 129 Miss. 598, 92 So. 689 (1922); Fox v. Pearl River Lumber Co., 80 Miss. 1, 31 So. 583 (1902).

[5]67 S.W.2d 911 (Tex. Civ. App. Eastland-1934), *aff'd*, 126 Tex. 450, 86 S.W.2d 1077 (1935).

[6]*Id.* at 914.

[7]*Id.* The court also relied heavily upon the distinguishing characteristics of reservations and exceptions, a reservation creating a new right out of the subject of the grant and an exception excluding some part of the thing conveyed. *See, e.g.*, Oldham v. Fortner, 221 Miss. 732, 74 So. 2d 824 (1954); Cook v. Farley, 195 Miss. 638, 15 So. 2d 352 (1943); Federal Land Bank v. Cooper, 190 Miss. 490, 200 So. 729 (1941); Moore v. Lord, 50 Miss. 229 (1874); Ewing, *Reservation and Exception of Minerals in Mississippi Conveyancing*, 39 MISS. L.J. 39 (1967).

[8]135 Tex. 503, 144 S.W.2d 878 (1940).

eral rights of minerals of whatever description in the land."[9] The Court of Civil Appeals of Texas construed that on its face the deed purported to convey the entire surface estate and one-half of the minerals.[10] In addition they stated that the intent of the parties as manifested in the deed should be perpetuated.[11] Therefore, any ambiguity found in the deed was to be construed in the grantee's favor.[12] On appeal from this judgment, the Texas Supreme Court held that if a grantor who owns the surface and an undivided one-half mineral estate attempts to convey property by general warranty deed, while retaining the same fractional mineral estate, he conveys the property subject only to the reservation in the conveying deed.[13] This concept as solidified into a concise rule of law has become known as the *Duhig* rule. The *Duhig* rule was adopted in Mississippi in 1951 in the case of *Salmen Brick & Lumber Co. v. Williams*[14] and is commonly referred to as the *Salmen* rule in Mississippi.

Two rationales were advanced for the decision in *Duhig*. The author of the opinion subscribed to the idea that the rule should be one of construction, that is, when basic rules of construction are applied to the deed, the wording of the deed itself makes it obvious that the grantee should receive the surface and a one-half mineral interest.[15] The remainder of the court espoused a second rationale which relied on the principle of estoppel.[16] In the granting deed, Duhig "retained" a one-half interest in the minerals. If the deed was interpreted to mean that Duhig kept an entire one-half interest, then the warranty in the deed would have been breached at the time of the conveyance. Since the deed appeared to convey a one-half mineral interest, Duhig could not both retain and convey the entire one-half interest to which he had title. To protect the warranty in the deed, the one-half mineral interest passed to the grantee. The court held that the covenant in the deed, "operates as an estoppel denying to the grantor and those claiming under him the right to set up such title against the grantee and those who claim under it."[17]

In succeeding years, the rule has not consistently met with approbation. The Texas Supreme Court has declined to extend *Duhig* to alter

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[9]*Id.* at 506, 144 S.W.2d at 879.

[10]Peavy-Moore Lumber Co. v. Duhig, 119 S.W.2d 688 (Tex. Civ. App. Beaumont-1938), *aff'd*, 135 Tex. 503, 144 S.W.2d 878 (1940).

[11]119 S.W.2d at 690 (1938).

[12]119 S.W.2d at 689 (1938).

[13]135 Tex. 503, 144 S.W.2d 878 (1940).

[14]210 Miss. 560, 50 S. 2d 130 (1951).

[15]135 Tex. at 506-07, 144 S.W.2d at 879-80.

[16]135 Tex. at 507, 144 S.W.2d at 880.

[17]135 Tex. at 508, 144 S.W.2d at 881. *See also* 1 WILLIAMS AND MEYERS, OIL AND GAS LAW (Matthew Bender) § 311.

an express agreement in an unambiguous deed regarding bonuses, rentals, and royalties.[18] In cases in which the intent of the parties was clear from the present deed[19] or from the present deed when construed with a prior deed,[20] it has been held that *Duhig* does not apply.

The Mississippi Supreme Court was confronted with problems concerning the conveyance of fractional mineral interests on several occasions prior to its eventual adoption of the *Salmen* rule.[21] Nonetheless, in these instances the court reached decisions in line with the rule. In one case, the grantor and his business partner had been the recipient of a conveyance consisting of one-half of the existing surface rights and one-fourth the mineral rights. Later the grantor alone conveyed his interest in the property excepting one-half the mineral rights. When faced with construing the deed the Mississippi court held that the exception of one-half the mineral rights in the later deed merely described the grantor's interest (one-half of one-fourth). Instead of reserving a one-eighth mineral interest to the grantor, the entire mineral estate possessed by the grantor passed to the grantee.[22] In *Richardson v. Moore*,[23] a deed attempted to reserve mineral rights, "in accordance with deed . . . conveying to us the said land."[24] The court held that all the mineral interests passed to the grantee, leaving the grantor with nothing,[25] since the grantor was employing the language to protect his warranty, not to retain mineral rights.[26]

As previously noted, the *Duhig* rule was expressly adopted by the Mississippi Supreme Court in *Salmen Brick & Lumber Co. v. Williams*[27] in which the factual background of the case was similar to *Duhig*. In 1922, land was conveyed to the Salmen Brick and Lumber Company by quitclaim deed with an express reservation of one-half the minerals. When the Company conveyed the land by general warranty deed in 1926, using the same reservation language found in the prior deed, it was held to have conveyed its entire one-half mineral interest.[28] The court stated that:

> The 1926 deed considered alone unambiguously conveyed the surface and one-half of the minerals to the grantee . . . [i]t conveyed by

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[18]Benge v. Scharbauer, 152 Tex. 447, 259 S.W.2d 166 (1953).

[19]Hester v. Weaver, 252 S.W.2d 214 (Tex. Civ. App. Eastland-1952).

[20]Pich v. Lankford, 295 S.W.2d 749 (Tex. Civ. App. Amarillo-1956), *rev'd on other grounds*, 157 Tex. 335, 302 S.W.2d 645 (1957).

[21]Fatherree v. McCormick, 199 Miss. 248, 24 So. 2d 724 (1946); Richardson v. Moore, 198 Miss. 741, 22 So. 2d 494 (1945).

[22]Fatherree v. McCormick, 199 Miss. 248, 252-53, 24 So. 2d 724 (1946).

[23]198 Miss. 741, 22 So. 2d 494 (1945).

[24]*Id.* at 741, 22 So. 2d at 495.

[25]*Id.* at 741, 22 So. 2d at 495.

[26]*Id.* at 751, 22 So. 2d at 496.

[27]210 Miss. 560, 50 So. 2d 130 (1951).

[28]*Id.* at 566, 50 So. 2d at 132.

> general warranty the 'fee simple' title, reserving one-half of the minerals, . . . [y]et appellants say that the grantor therein failed to convey what it warranted it was conveying, because under the precedent exception . . . the grantor, Salmen Company, had only one-half of the minerals when the deed was executed. But there is no ambiguity on the face of the 1926 deed; it conveyed to the Williams Company one-half of the minerals.[29]

In embracing the rule, Mississippi has utilized both rationales advanced in the *Duhig* case. The court applied the rule of construction rationale in *Garraway v. Bryant*,[30] a case bearing similarity to both *Salmen* and *Duhig*. In another case, the breach of warranty rationale was followed.[31]

There are at least two confusing areas inherent in dealing with fractional mineral interest conveyances.[32] The first occurs when the language used in the deed is not clear as to which interest is reserved and which is conveyed, causing uncertainty of the operation of the deed.[33] Mississippi, as evidenced in *Salmen*, employs the *Duhig* rule to solve this conflict.[34] The second problem arises when the interest owned by the grantor is simply not enough to fulfill both the interest conveyed and the interest retained.[35] In this situation, the court in Mississippi has also applied the *Salmen* or *Duhig* rule. For example, in one instance when a grantor owned a one-half mineral interest and his subsequent conveyance attempted to retain a one-fourth mineral interest, he was found to be in breach of warranty. By operation of his warranty deed retaining a one-fourth interest, he had warranted a three-fourths mineral interest to his grantee; thus expressly violating his warranty.[36] The court stated that a grantor "cannot convey and warrant and reserve and retain the same thing at the same time."[37] The court also held that the warranty obligation would take precedence over the grantor's reservation rights.[38]

The Special Warranty Deed

Mississippi has also countenanced the application of the rule in a situation in which the conveyance was by special warranty deed.[39] This

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[29] *Id.*

[30] 224 Miss. 459, 80 So. 2d 59 (1955).

[31] Lucas v. Thompson, 240 Miss. 767, 128 So. 2d 874 (1961).

[32] *See* Barber, ***Duhig to Date: Problems in the Conveyancing of Fractional Mineral Interests***, 13 SW. L.J. 320 (1959).

[33] *Id.*

[34] *See* 23 MISS. L.J. 64 (1951).

[35] Barber, *supra* note 30, at 320.

[36] Brannon v. Varnado, 234 Miss. 466, 106 So. 2d 386 (1958).

[37] *Id.* at 469, 106 So. 2d at 387 (citing Salmen Brick & Lumber Co. v. Williams, 210 Miss. 560, 50 So. 2d 130 (1951).

[38] *Id. at* 466, 106 So. 2d at 386.

[39] Merchants & Mfrs. Bank v. Dennis, 229 Miss. 447, 91 So. 2d 254 (1956).

situation appeared in *Merchants & Manufacturers Bank v. Dennis*[40] where the facts were essentially the same as in *Salmen*. The distinguishing factor was that the second conveyance was by special warranty deed instead of by general warranty deed. Notwithstanding this fact the court followed the *Salmen* rule without dissent and held that the grantor's entire mineral interest was conveyed to the grantee.[41] In dicta in *Merchants & Manufacturers Bank*, the court implied that the *Salmen* rule would be applied to a quitclaim deed, stating, "... it makes no difference that the conveyance was by special warranty. Our conclusion would be the same even if it were only a quitclaim deed."[42]

Salmen Under Attack

The acceptance of the application of the *Salmen* rule in Mississippi has not been without comment. In a vehement dissent to the majority in *Salmen*, Justice Alexander said that a reservation to the grantor should mean exactly what it says.[43] He interpreted the court's ruling as saying, "we think it best to take your reserved half mineral interest and give it to [grantee] because it is better for you to surrender this interest than that you be exposed to embarrassment or litigation."[44] The dissent also pointed out that the circumstances used by the court to reach its decision would better be relied upon in a suit to reform a deed.[45] The rule was also criticized prior to its express adoption. In the dissent of *Fatherree v. McCormick*[46] the court pointed out that, "[w]hat has been done here by the majority is simply to strike out of the deed the clause 'less and except one-half of all mineral rights' ... [s]trike out the clause and it produces the same result precisely

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[40]*Id.*

[41]*Id.* at 453, 91 So. 2d at 256. *Accord* American Republics Corp. v. Houston Oil Co. of Texas, 173 F.2d 728 (5th Cir. 1949), *cert. denied*, 338 U.S. 858 (1949).

[42]Merchants & Mfrs. Bank v. Dennis, 229 Miss. 447, 454, 91 So. 2d 254, 256 (1956). For a further discussion see, Ewing, *Reservation and Exception of Minerals in Mississippi Conveyancing*, 39 MISS. L.J. 39, 65 (1967).

[43]Salmen Brick & Lumber Co. v. Williams, 210 Miss. 560, 577, 50 So. 2d 130, 137 (1951) (Alexander, J., dissenting). The court should not create ambiguity to make available rules of construction. *Id.* at 574, 50 So. 2d at 136 (citing Gaston v. Mitchell, 192 Miss. 452, 4 So. 2d 892 (1941)).

[44]210 Miss. at 577, 50 So. 2d at 137. (Alexander, J., dissenting).

[45]*Id.* at 577, 50 So. 2d at 137 (Alexander, J., dissenting). In a suit which was brought for reformation of a deed, the court followed the principles and considered such circumstances. The deed was thereafter successfully reformed. Florida Gas Exploration Co. v. Searcy, 385 So. 2d 1293 (Miss. 1980). Also, where grantor owned a one-half interest and conveyed reserving a one-fourth interest, reformation of the deed was allowed when mutual mistake was shown. Smalley v. Rogers, 232 Miss. 705, 100 So. 2d 118 (1958). The practical result of the decision in Rosenbaum v. McCaskey was the reformation of the deed.

[46]199 Miss. 248, 24 So. 2d 724 (1946) (Griffith, J., dissenting).

which the majority reaches."[47] Despite such instances of disapproval, the rule has been consistently applied in Mississippi.

QUITCLAIM AND RELATED PRINCIPLES

The deed in question in *Rosenbaum* was a quitclaim deed. The statute concerning quitclaim deeds in Mississippi states "[a] conveyance without any warranty shall operate to transfer the title and possession of the grantor as a quitclaim and release" as set forth in the statute.[48] An aspect of a quitclaim deed which is important in relation to the subject of discussion is the application of the concept of estoppel by deed of an after-acquired title.[49] The general rule, with respect to this doctrine, is that if a deed purports to convey no more than the grantor's interest the grantor may later assert an after-acquired title or interest.[50] In 1848, the Mississippi legislature passed a statute which has been continued to the current code. The statute reads, "A conveyance of quitclaim and release shall be sufficient to pass all the estate or interest the grantor has in the land conveyed, and shall estop the grantor and his heirs from asserting a subsequently acquired adverse title to the lands conveyed."[51] With the enactment of this statute, Mississippi adopted a minority stance in regard to the effect of a quitclaim deed.

The then newly enacted statute was followed in *Chapman v. Sims*,[52] in which the court stated "[a] quitclaim deed is as effectual to convey title as one with general warranty. Under our statute [§ 2300, Code of 1857] it has the same effect. . . [and] . . . a doctrine. . .that a quitclaim conveyance in the chain of title affects the party who claims under it with notice of infirmities in the title, would be as impolitic as it is unsupported by reason. . .."[53] Subsequent decisions limit the statute to the estate, right or interest which the particular conveyance in question passed;[54] however, the fact that a deed is a quitclaim should not cause any less credence to be given to the deed itself since a quitclaim

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[47]*Id.* at 254, 24 So. 2d at 726 (Griffith, J., dissenting).

[48]MISS. CODE ANN. § 89-1-37 (1972).

[49]Record at 140-41, Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

[50]*See, e.g.*, Mitchell v. Woodson, 37 Miss. 567 (1859); Nixon v. Carco, 28 Miss. 414 (1854); 23 AM. JUR. 2d *Deeds* § 298 (1965); 31 C.J.S. *Estoppel* § 22 (1964); 144 A.L.R. 561 (1943); 58 A.L.R. 360 (1929).

[51]MISS. CODE ANN. § 89-1-39 (1972).

[52]53 Miss. 154 (1876). *See also* Carter v. Bustamente, 59 Miss. 559 (1882).

[53]53 Miss. at 169. *See also* Owen v. Potts, 149 Miss. 205, 115 So. 336 (1928).

[54]Bramlett v. Roberts, 68 Miss. 325, 10 So. 56 (1890); McInnis v. Pickett, 65 Miss. 354, 3 So. 660 (1888). A quitclaim deed conveys all the interest of the grantor, of whatever type, at the time of the conveyance.

deed has the same power to convey title as a warranty deed.[55] In *Meyers v. American Oil Co.*,[56] which dealt with a deed of trust given on property in which the grantor had no interest at the time of the conveyance, the court stated:

> Nothing is better settled in this state than the rule that the grantor and all persons in privity with him shall be estopped from ever afterwards denying that, at the time his deed of conveyance was executed, he was seized of the property which his deed purported to convey. . .[b]y statute . . . the rule is extended even to quitclaim deeds . . . the estoppel runs with the land.[57]

Some cases such as *McLaurin v. Royalties, Inc.*,[58] have criticized and attempted to limit this holding. However, the *McLaurin* case merely limited the rule with respect to subsequently re-acquired title, and its impact has thus been effectively lessened.[59] *Meyers* is still the controlling law. Its holding was reaffirmed and followed as recently as 1973[60] and is a statement of the law in Mississippi with respect to quitclaim deeds and the estate they have the capacity to convey.

ANALYSIS BY THE COURT

The court perceived the issue in *Rosenbaum* to be whether the grantor Rosenbaum reserved any mineral interest in the property conveyed by quitclaim deed to the grantee McCaskey. In arriving at the conclusion that Rosenbaum did, in fact, successfully retain a one-half mineral interest in the land conveyed, the court first distinguished the *Salmen* rule, making clear that if this situation had involved a *warranty deed*, the rule would have applied and the grantor's one-half mineral interest to the grantee would have been conveyed. However, because the deed was a *quitclaim deed*, a different approach was necessary.

The court found that the grantee in a quitclaim deed must look to the chain of title to determine the extent of the interest conveyed. The grantor in such a deed has no obligation to protect the conveyance

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[55]Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629 (1948); Allen v. Leflore County, 80 Miss. 298, 31 So. 815 (1902). For additional discussion see Ethridge, *The After-Acquired Property Doctrine and its Application in Mississippi*, 17 Miss. L.J. 153 (1945).

[56]192 Miss. 180, 5 So. 2d 218 (1941).

[57]*Id.* at 186-87, 5 So. 2d at 220.

[58]231 Miss. 240, 95 So. 2d 105 (1957). *See also* Crooker v. Hollingsworth, 210 Miss. 636, 46 So. 2d 541 (1950), *suggestion of error overruled*, 210 Miss. 644, 50 So. 2d 355 (1951).

[59]Turner v. Miller, 276 So. 2d 690 at 694 (Miss. 1973), in which the court stated that the *McLaurin* case is outside the general holdings of the Mississippi court and has been generally criticized. *See also* 29 MISS. L.J. 353 (1958).

[60]276 So. 2d 690, 693-94 (Miss. 1973).

from any adverse claims. Nevertheless, the grantee may claim all the grantor's interest at the time of the conveyance or any interest subsequently acquired by him.[61]

The court found that the deed in the *Rosenbaum* case was unambiguous in its reservation of a one-half mineral interest to the grantor. When this deed was construed with the prior conveyance of a one-half mineral interest by the grantor, the grantee could expect to receive only the remaining interest, which was the surface rights.

An analogy to the doctrine of estoppel to assert after-acquired title was not applicable to the grantor's one-half mineral interest, since the grantor neither conveyed it nor acquired it subsequent to the conveyance.[62] The court held that the mineral interest at issue had never left the grantor's possession; therefore, the estoppel would not operate as it had in *McLaurin v. Royalties, Inc.*[63] with respect to the interest of the grantor at the time of the deed.

The court determined that both the grantor and the grantee owned a one-fourth mineral interest in the land. The court arrived at this conclusion by considering the fact that, "the Rosenbaums have always recognized that the McCaskeys owned at least an equal interest with them in the minerals,"[64] thus allowing the alleged intention of the parties to alter the deed which had been held to be unambiguous by the court. The effect of the decision was essentially that of a deed reformation.

CONCLUSION

As previously noted, by statute in Mississippi[65] a quitclaim deed is effective to convey all of the interest of the grantor at the time of the conveyance. In addition, any subsequently acquired interest of the grantor inures to the benefit of the grantee.[66] In *Rosenbaum*, the mineral interest of the grantor in its entirety consisted of an undivided one-half interest. The quitclaim deed should have operated to convey the surface and the minerals, less the reservation in the deed,[67] that is,

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[61]MISS. CODE ANN. § 89-1-39 (1972).

[62]The chancellor held that the quitclaim deed conveyed the interest. Record at 140-41, Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

[63]231 Miss. 240, 95 So. 2d 105 (1957). In that case, the court attempted to limit the operation of estoppel with respect to subsequently acquired interest; however, it allowed the precept to stand which estops the grantor from claiming interests of which he was possessed at the time of the conveyance. *Id.*

[64]386 So. 2d at 390.

[65]MISS. CODE ANN. § 89-1-39 (1972).

[66]*Id.*; *Contra* McLaurin v. Royalties, Inc., 231 Miss. 240, 95 So. 2d 105 (1957).

[67]In the *Salmen* case, the deed through which the grantor gained title was a quitclaim deed with a reservation which operated to leave title to an undivided one-half interest in the deeds grantor and convey to the *Salmen* grantor the surface and a one-half mineral interest. Salmen Brick & Lumber Co. v. Williams, 210 Miss. 560, 564, 50 So. 2d 130, 131 (1951).

the grantee should have received the surface and an undivided one-half mineral interest. The Mississippi Supreme Court has held that a quitclaim deed is as effective to convey title as a warranty deed.[68] In *Chapman v. Sims*,[69] the court stated that the grantee of a quitclaim deed has no more duty to investigate the chain of title than does the grantee of a warranty deed.[70] The grantee in this case had no more duty to investigate the chain of title than the grantee in, for example, *Salmen*. The quitclaim deed conveyed all the interest of the grantor at the time of the conveyance,[71] which in *Rosenbaum*, consisted of the surface and a one-half mineral interest.

Considering the state of the law in Mississippi, there was little basis for the assumption that the unambiguous deed failed to convey the one-half mineral interest in *Rosenbaum*. Courts have often found similar deeds to be unambiguous,[72] including at least one in which the wording of the reservation was exactly the same as that used in *Rosenbaum*.[73] However, in these cases, it was found that the reservation involved was effective to convey the interest of the grantor. There is no reason an equally unambiguous quitclaim deed should not have been as effective to convey the grantor's interest in *Rosenbaum*.

The result reached in the *Rosenbaum* case would perhaps have been proper if the litigation had involved a suit to reform a deed.[74] However, *Rosenbaum* was not a suit to reform a deed[75] but a suit to effectuate a deed.

The *Salmen* rule relies heavily on a breach of warranty theory but it is also a rule of construction. In that interpretation the operation of the rule relates by analogy to a doctrine of estoppel by deed of after-acquired title. By statute in Mississippi,[76] this doctrine has been extended to quitclaim deeds. Since the *Salmen* rule's operation depends on this doctrine by analogy, it is important to the rule's operation in Mississippi that the doctrine itself has been extended to quitclaim

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[68]*See, e.g.*, Owen v. Potts, 149 Miss. 205, 115 So. 336 (1928); Chapman v. Sims, 53 Miss. 154 (1876).

[69]53 Miss. 154 (1876).

[70]*Id.* at 169.

[71] *Accord* Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629 (1948).

[72]Garraway v. Bryant, 224 Miss. 459, 463-64, 80 So. 2d 59, 60 (1955); Salmen Brick & Lumber Co. v. Williams, 210 Miss. 560, 572-73, 50 So. 2d 130, 135 (1951); Peavy-Moore Lumber Co. v. Duhig, 119 S.W.2d 688, 690 (Tex. Civ. App. Beaumont-1938), *aff'd*, 135 Tex. 503, 144 S.W.2d 878 (1940).

[73]*Compare Rosenbaum with Duhig*. Both the *Rosenbaum* and *Duhig* grantors used the word "retain."

[74]Florida Gas Exploration Co. v. Searcy, 385 So. 2d 1293 (Miss. 1980); Smalley v. Rogers, 232 Miss. 705, 100 So. 2d 118 (1958).

[75]Record at 146.

[76]MISS. CODE ANN. § 89-1-39 (1972).

deeds. There would therefore be both credibility and logic in an extension of the operation of the *Salmen* rule to a quitclaim deed. In *Rosenbaum*, since all the interest of the grantor had been effectively conveyed to the grantee, the grantor should have been completely estopped in his attempt to reclaim his title. The rule with respect to the actual interest conveyed was not questioned, only the rule regarding subsequently acquired title.[77] Therefore, *McLaurin* should have had no application since it attempted to limit only the latter.

The court acted with restraint in its refusal to extend the application of the *Salmen* rule to quitclaim deeds. However, the resulting inconsistency with respect to quitclaim deeds should be a consideration in future conveyancing.

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[77]231 Miss. at 248, 95 So. 2d at 108-09.