

CIVIL LAW PROPERTY COURSEBOOK

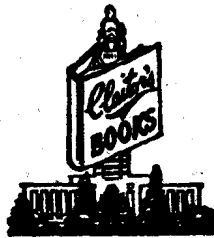
**Louisiana Legislation, Jurisprudence
and Doctrine**

FOURTH EDITION

By

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LAW BOOKS

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This fourth edition of the Civil Law Property Coursebook ought to be known as the Melvin J. Dugas edition. The author is grateful to his research assistant for 1985-87 who prepared the final manuscript and proof-read the galleys. Responsibility for any substantive mistake is the author's alone.

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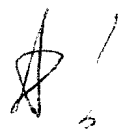


INTRODUCTION: THE DOMAIN OF CIVIL LAW PROPERTY

A.N. Yiannopoulos, *Civil Law Property* §§1-6 (2d ed. 1980):
(footnotes omitted)

§1. Property

Property is a word with high emotional overtones and so many meanings that it has defied attempts at accurate all-inclusive definition. The English word property derives from the Latin *proprietas*, a noun form of *proprius*, which means one's own. In the United States, the word property is frequently used to denote indiscriminately either the *objects* of rights that have a pecuniary content or the *rights* that persons have with respect to things. Thus, lands, automobiles, and jewels are said to be property; and rights, such as ownership, servitudes, and leases, are likewise said to be property. This latent confusion between rights and their objects has its roots in texts of Roman law and is also encountered in other legal systems of the western world. Accurate analysis should reserve the use of the word property for the designation of rights that persons have with respect to things.

Property may be defined as an exclusive right to control an economic good, corporeal or incorporeal; it is the name of a concept that refers to the rights and obligations, privileges and restrictions that govern the relations of man with respect to things of value. People everywhere and at all times desire the possession of things that are necessary for survival or valuable by cultural definition and which, as a result of the demand placed upon them, become scarce. Laws enforced by organized society control the competition for, and guarantee the enjoyment of, these desired things. What is guaranteed to be one's own is property. 

Neither all things are objects of property rights, nor all rights that persons have with respect to things are governed by the law of property. Legislation, doctrine, or jurisprudence in various legal systems define the things that may become objects of property rights. In most legal systems, including common law jurisdictions, Louisiana, and legal systems of the French family, the word things applies to both physical objects and incorporeals. In legal systems following the model of the German Civil Code, however, the word things applies only to corporeal objects that are susceptible of appropriation. In these systems, incorporeals, as rights and obligations, are not things nor technically objects of property rights. Accurate definition of the word things is indispensable

in view of the fact that only things in the legal sense may be objects of property rights. Entities that are not things in the legal sense may, however, be objects of a variety of other rights. For example, according to modern conceptions, living human bodies and members or parts thereof are not things; they are objects of a comprehensive right of personality. Nevertheless, blood plasma, hair, and organs separated from a human body are things and objects of property rights. Dead bodies, though ordinarily destined to be disposed of by burial or cremation, are likewise regarded as things.

Persons may have with respect to things a variety of rights, some of which confer a direct and immediate authority while others confer the possibility of enjoyment through the intervention of another person. For example, according to appearances, a lessee and an owner have the use and enjoyment of a house in much the same way. The owner, however, has a direct and immediate authority over the house; the lessee has a right against the lessor to let him enjoy the house. All rights that are susceptible of pecuniary evaluation are property in the sense that they are guaranteed by the legal order and form part of a person's patrimony. But only rights that confer a direct and immediate authority over a thing, that is, real rights, are governed by the civil law of property.

In the Louisiana Civil Code of 1870, the word property is at times a translation of the French *propriété* and at times a translation of *biens*. In context, it may mean things, ownership, or patrimony. In the new legislation, the word property is used consistently to mean things. In Louisiana jurisprudence, the word property is used broadly to denote rights forming part of a person's patrimony and narrowly rights conferring on a person a direct and immediate authority for the use and enjoyment of a thing that is susceptible of appropriation. Thus, leases, contractual or delictual causes of action, interests in pension plans, the rights to pursue employment and to conduct a business, and uncopyrighted designs are property in the broad sense. Property in the narrow sense refers exclusively to real rights. All real rights, such as ownership, personal servitudes, predial servitudes, and mineral servitudes, are property in the narrow sense. Since according to accurate civilian usage objects of ownership and of other real rights may only be corporeal things that are susceptible of appropriation, the word property in the narrow sense does not apply to personal rights which, though having a value and forming part of a person's patrimony, bear on an incorporeal, such as a credit or an obligation.

§2. Civil Law Property

According to civilian classification, the law of property is a branch of private law, and particularly of the civil law.

In civil law jurisdictions, the law of property deals with the principal real rights that a person may have in things. This definition of the domain of property law distinguishes it from the other main branches of the civil law, namely, the law of persons, the law of obligations, the law of family, and the law

of successions. The law of persons deals with the incidents of natural and juridical personality; the law of obligations is preoccupied with relations whereby a person called creditor is entitled to demand from another person called debtor a performance; the law of family regulates legal relations arising out of blood relationship or marriage; and the law of successions deals with the devolution of property upon death. These branches deal with relations that may, and frequently do, give rise to property rights. Due to their origin and purpose, however, these property rights are often subject to special rules rather than the general law of property which may apply to them only subsidiarily and in the absence of specific regulation. These classifications are not rigorously logical abstractions but merely working generalizations devised for the purpose of convenience of understanding and regulation.

§4. Louisiana Property Law

Book II of the Louisiana Civil Code, titled "Things, and the Different Modifications of Ownership," includes the fundamental precepts of the Louisiana property law and regulates selectively a number of institutions.

This Book deals with the law of things, ownership, usufruct, habitation, rights of use and predial servitudes. Possession, which according to modern conceptions is a *sui generis* patrimonial right, has been relegated to Title XXIII of Book III along with acquisitive prescription and prescription of nonuse which are, respectively, methods of acquisition and loss of real rights.

§6. Revision of the Louisiana Civil Code: the New Law of Property

The need for revision of the Louisiana Civil Code of 1870 has been felt since the turn of the century.

The Louisiana legislature, sensitive to the need for change, passed in 1948 Act 335 by which the Louisiana State Law Institute was specifically directed to prepare a *projet* for the revision of the Louisiana Civil Code. The legislative mandate was implemented by the Institute in 1961 with the organization of a Civil Law Section consisting of sixty persons elected for a period of over three years. They are Louisiana lawyers, judges, and faculty members who are particularly learned in the civil law and who desire to engage actively in the work of the Civil Law Section. The objectives that this section aspires to fulfill may be summarized in two propositions: the development of civil law studies in Louisiana and the accomplishment of a revision of the Civil Code.

The work of revision began with Book II of the Louisiana Civil Code and this project was completed in 1979. The new law of property, adopted title by title, reflects the work of a committee of experts over more than ten years. It conforms with the Louisiana civilian tradition in substance and form and with solutions suggested by doctrine, jurisprudence, and legislation in developed civil law countries, such as France, Germany, and Greece. It also

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CHAPTER V: OWNERSHIP; GENERAL PRINCIPLES

Civil Code arts. 477-532

1. CONTENT OF OWNERSHIP: Civil Code arts. 477-482

2 Aubry et Rau, *Droit civil francais 169-179* (an English translation by the Louisiana State Law Institute 1966) (footnotes omitted):

Concept Of Ownership

139. Ownership of Corporeal Things.

In the proper sense, the term ownership (*droit de propriété*) expresses the idea of a complete legal power of a person over a thing. It can be defined as a right by virtue of which the thing is absolutely and exclusively subject to the volition and the actions of a person.

The powers inherent in a full ownership right can not be taxatively enumerated. They can be summarized as follows: The owner can at will use or enjoy his property, dispose of it physically, perform all the legal transactions of which it is susceptible, and exclude all third parties from any participation in the exercise of his various powers over the property.

Although the ownership right is by its nature absolute, its exercise is subject to various restrictions imposed in public interest.

Secondly, the powers inherent in an ownership right must not be exercised so as to interfere with the property interests of others. This imposes certain limits which the property owners must not exceed in their mutual interest.

Finally, ownership may be modified by statutory or contractual servitudes. But because it is by its nature absolute and exclusive, it is presumed to be free of any servitude. It follows that one who claims a servitude on the land of another, has the burden of proving it, although he might in fact be in possession of this servitude.

In general the benefits of ownership are the same whether it bears on immovable or on movable property. However, law insured better the conservation of immovables than of movables. The owner of a movable can not recover it from a third party purchaser in good faith unless he was dispossessed by loss or theft. Also, the law has been less exacting with respect to alienation of movables than of immovables.

140. Extension of the Term Ownership to Incorporeals.

In its original meaning, ownership referred only to corporeals. But the term has been broadened to include the exclusive right to use and dispose of incorporeals.

* * *

141. Use, Transformation and Destruction of the Thing.

The owner has the power to subject the thing belonging to him to any use compatible with its nature.

He is also authorized to receive all the profits, income or other benefits which the thing can produce or procure. This aspect of ownership is the basis for the right to fish or hunt on the owned land. By virtue of the same attribute, the owner may exploit a quarry, surface or subterranean mine on his land, and to search out for the purpose of exploitation sources of water, ordinary or mineral (Art. 552,3).

Finally, the owner is free to change the nature of the thing, lessen its value or destroy it. He can change the mode of land cultivation, turn arable land into pasture or vineyard, or vice versa, cultivate forest land, and erect any structure above or below surface, all the way to the limits of his land. (Art. 552,3). He can build a pond on it, using water sources originating on his land, rain water, or water flowing in from a higher land or a public road.

Although the exercise of these various rights of ownership is subject to the condition that it must not interfere with the ownership of another and, if the property involved has been classified as historical monument, that it will not be violated (Laws of 30 March 1887 and 31 December 1913), the mere fact that the exercise deprives a third person of some advantage or benefit does not give a cause of action for damages.

142. Acts of Administration and of Disposal.

Ownership includes the power to undertake any legal transactions of which the thing is susceptible. He can lease it, alienate it gratuitously or for consideration, and if the thing is an immovable, burden it with servitudes or mortgages. He can even give up his ownership by simply abandoning the property, without transfer to another person.

The power to alienate is of public order; the owner can not, in principle, renounce it by contract; a prohibition to alienate imposed by the donor on the donee, or by a testator on a legatee, has only limited effect.

143. Exclusive Character of Ownership. The Right to Enclose one's Land. Common Pastures.

The owner has the power to exclude all third persons from any use, enjoyment or disposal of his property and to take all convenient measures. He can,

especially, surround his estate by walls, ditches or other enclosures, provided he respects the servitudes with which it is burdened (Art. 647).

* * *

144. The Perpetual Character of Ownership.

The Court of Cassation has held that the ownership of an immovable is not lost because the owner has abstained for thirty years from any acts of enjoyment. It can be lost as a result of non-use only if another person becomes the owner through acquisitive prescription.

* * *

2. PATRIMONY: Civil Code arts. 3182, 3183, 3556(28)

A.N. Yiannopoulos, *Civil Law Property* §§122-128 (2d ed. 1980)
(footnotes omitted):

§122. The Classical Theory: Aubry and Rau

The civilian notion of patrimony (*patrimonium*) has its origin in Roman law. A general theory of patrimony, however, was first developed last century by Aubry and Rau. According to this theory that remains classical, the cohesion of the various values composing a person's patrimony and the resulting universality of rights and obligations is explained as an attribute of personality. In the words of Aubry and Rau, "the idea of patrimony is deduced logically from the idea of personality . . . The patrimony is the projection of personality and the expression of the juridical capacity with which a person is invested."

From this precept, the authors derived a series of propositions: 1. *Only* natural and juridical persons may have a patrimony. The existence of a distinct patrimony is frequently the essential element and the justification of juridical personality. 2. *Every* person has a patrimony, even if it contains liabilities only. Exceptionally, however, a person may be deprived of his patrimony by a general confiscation as a penalty imposed by the state. 3. Every person has only *one* patrimony that is *inseparable and indivisible*. A living person, therefore, may not by inter vivos act transfer his patrimony to another person because this would annihilate the personality of the transferor. By way of exception, however, an ascendant may partition his property among his descendants and transfer to them all the individual elements of his patrimony.

§123. Objective Theory

The rigorously logical theoretic construct of Aubry and Rau has been subjected to severe criticism in France as being "fictitious, abstract, and abusively logical." Critics have pointed out that the bond between personality and patrimony has been exaggerated to the point of confusion of the two ideas

CHAPTER X: REAL ACTIONS

1. PETITORY ACTION

Civil Code arts. 526-529

Louisiana Code of Civil Procedure Art. 3651-3652

Art. 3651. Petitory action

The petitory action is one brought by a person who claims the ownership, but who is not in possession, of immovable property or of a real right therein, against another who is in possession or who claims the ownership thereof adversely, to obtain judgment recognizing the plaintiff's ownership.

Art. 3652. Same; parties; venue

A petitory action may be brought by a person who claims the ownership of only an undivided interest in the immovable property or real right therein, or whose asserted ownership is limited to a certain period which has not yet expired, or which may be terminated by an event which has not yet occurred.

A lessee or other person who occupies the immovable property or enjoys the real right therein under an agreement with the person who claims the ownership thereof adversely to the plaintiff may be joined in the action as a defendant.

A petitory action shall be brought in the venue provided by Article 80(1), even when the plaintiff prays for judgment for the fruits and revenues of the property, or for damages.

Art. 3652.³ Same; Proof of title; immovable

To obtain a judgment recognizing his ownership of immovable property or real right therein, the plaintiff in a petitory action shall:

(1) Prove that he has acquired ownership from a previous owner or by acquisitive prescription, if the court finds that the defendant is in possession thereof; or

(2) Prove a better title thereto than the defendant, if the court finds that the latter is not in possession thereof.

When the titles of the parties are traced to a common author, he is presumed to be the previous owner.

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Art. 3654. Proof of title in action for declaratory judgment, concursus, expropriation, or similar proceeding.

When the issue of ownership of immovable property or of a real right therein is presented in an action for a declaratory judgment, or in a concursus, expropriation, or similar proceeding, or the issue of the ownership of funds deposited in the registry of the court and which belong to owner of the immovable property or of the real right therein is so presented, the court shall render judgment in favor of the party:

- (1) Who would be entitled to the possession of the immovable property or real right therein in a possessory action, unless the adverse party proves that he has acquired ownership from a previous owner or by acquisitive prescription; or
- (2) Who proves better title to the immovable property or real right therein, when neither party would be entitled to the possession of the immovable property or real right therein in a possessory action.

a. Proof of Ownership: Civil Code arts. 530-532

See A.N. Yiannopoulos, *Civil Law Property* §192 (2d ed. 1980)

DESELLE v. BONNETTE

251 So. 2d 68 (La. App. 3d Cir. 1971)

CULPEPPER, J.

This is a petitory action. From an adverse judgment, defendant appealed.

Plaintiff alleges in his petition, and defendant admits, that defendant is in possession of the disputed property. The issue is whether plaintiff has sustained his burden under LSA-C.C.P. Article 3653(1) to "make out his title" against a defendant in possession.

In dispute is plaintiff's title to a narrow strip of land, approximately 65 feet in width and 600 feet in length. This strip is located between the old and the new routes of the highway which runs generally north and south from Marksville to Hessmer and thence on to Bunkie. The new highway is west of and approximately parallel to the route of the old one.

The plaintiff, James J. Deselle, is the owner of a 12-acre tract of land which fronted on the east side of the old highway, which was abandoned in about 1920. The strip in dispute lies between plaintiff's land and the new highway.

The defendant, Paul D. Bonnette, is the owner of the property on the west side of the new highway, across from the strip in dispute. Defendant contends the strip is included in his title and that he and his ancestors in title have been in possession for many years.

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REAL ACTIONS

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Previous to 1911, the property of plaintiff, the property of defendant and the strip in dispute were part of a 48-arpent tract owned by Alcide A. Chatelain on both sides of the old highway. In 1911, Chatelain sold the 12 acres lying east of the old highway to Marius Deselle, plaintiff's ancestor in title. In 1916, Chatelain sold the 36 acres lying west of the old Marksville-Hessmer highway to Isaac Gauthier, defendant's ancestor in title. When the old highway was abandoned in about 1920, the new highway was located approximately 65 feet west of the previous route. The strip of land between the old and new highways is that which is in dispute.

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Plaintiff's chain of title from the common author is as follows:

(1) Sale from Alcide A. Chatelain to Marius Deselles on September 30, 1911 conveying "about 12 arpents, more or less; and being all the lands belonging to vendor on the east side of the public road leading from Marksville to Bunkie."

Highway moved

(2) Act of exchange on September 27, 1926 from Marius Deselles to Wade Deselles conveying "12 arpents and being all the land belonging to the vendor on the east side of the public road leading from Marksville to Bunkie * * * being the same acquired by the vendor herein from Alcide A. Chatelain * * *" (No mention is made of the fact that the highway location was changed in 1920.)

(3) Sale on February 1, 1945, from Wade J. Deselles to James Deselles conveying an undivided one-half interest in "12 acres, more or less, bounded * * * and west by public road, said property having been acquired by vendor during the existence of the community of acquets and gains between him and Lonie McCoy, now deceased, and the other undivided half interest presently belonging to purchaser herein, he having inherited same from the estate of his deceased mother, the said Lonie McCoy."

As shown by plaintiff's above delineated chain of title, Marius Deselle acquired in 1911 only 12 arpents lying east of the old Marksville-Bunkie road, which was abandoned in about 1920. Hence, in the exchange in 1926, Marius Deselle conveyed to Wade Deselle valid title to only the 12 acres lying east of the old abandoned highway and did not convey valid title to any portion of the strip in dispute which lies west of the old abandoned highway.

Since Wade Deselle did not acquire valid title to any portion of the strip in dispute, he could not convey valid title to an undivided one-half interest in the strip to the plaintiff, James Deselle, in the 1945 sale.

As to the undivided one-half interest which plaintiff contends he inherited from his mother, Mrs. Lonie McCoy Deselle, there is no other proof in the record of the title to this interest except the statement in the 1945 deed from Wade Deselle to James Deselle. Under this statement, plaintiff's mother's title was no more extensive than that of his father and did not include the strip in dispute. Hence, there is not sufficient proof that plaintiff has valid title

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to an undivided one-half interest in the strip through inheritance from his mother.

LSA-C.C.P. Article 3653 provides:

“To obtain a judgment recognizing his ownership of the immovable property or real right, the plaintiff in a petitory action shall:

“(1) Make out his title thereto, if the court finds that the defendant is in possession thereof; or

“(2) Prove a better title thereto than the defendant, if the court finds that the latter is not in possession thereof.”

Comment (a) under Article 3653 states that the words “make out his title” are taken from Article 44 of the Code of Practice, and are intended to have the same meaning as given to them under the jurisprudence interpreting the source provision. Jurisprudence under Code of Practice Articles 43 and 44 establishes the rule that in a petitory action against a defendant in possession the plaintiff must make out his title to the property claimed and must recover upon the strength of his own title and not upon the weakness of the defendant possessor’s, *Blevins v. Manufacturer’s Record Publishing Co.*, 235 La. 708, 105 So. 2d 392 (1957) and the cases cited therein. Furthermore, in such an action defendant’s title is not at issue until plaintiff has proved an apparent valid title in himself, *Albritton v. Childers*, 225 La. 900, 74 So. 2d 156; *Cook v. Martin*, 188 La. 1063, 178 So. 881. Where both plaintiff and defendant trace their titles to a common author, plaintiff is not required to prove his title beyond the common author, *Gaylord Container Corp. v. Stillely*, 79 So. 2d 109 (La. App., 1st Cir. 1955) and the cases cited therein.

Applying LSA-C.C.P. Article 3653 and the cited jurisprudence to the present case, it is obvious that plaintiff has not proved a valid title under the chain of conveyances delineated above. Furthermore, plaintiff does not seek to establish ownership by acquisitive prescription. Hence, it is clear that plaintiff has not proved a valid title as against the defendant who is in possession.

The district judge recognized that plaintiff did not prove a valid title back to the common author. However, he held that under the facts of the present case the plaintiff need only establish a better title than the defendant. In so holding, the court relied on cases decided before the adoption of the new Code of Civil Procedure in 1960, which held that if the defendant in a petitory action has possession without a title translative of ownership, the plaintiff need only establish a better title than defendant, *Kernan v. Baham*, 45 La. Ann. 799, 13 So. 155 (1893); *In re St. Vincent de Paul Benevolent Association of New Orleans*, 175 So. 140 (Orl.App. 1937) [additional citations omitted].

Applying this jurisprudence to the present case, the district court held that the defendant, Paul Bonnette, had no title translative of ownership since his 1943 deed of acquisition from J. Ledoux Bonnette described the property as “located on the Marksville-Hessmer blacktopped highway, and containing

36 acres, more or less, and described as being bounded * * * east by said highway leading from Marksville to Hessmer * * *

The district court reasoned that since the old highway, abandoned in 1920, was never blacktopped, the highway referred to is necessarily the new highway which is blacktopped, and therefore defendant's title does not cover any portion of the strip in dispute located east of the new highway route. The district judge then went on to hold that since plaintiff's deed of acquisition from Wade Deselle in 1945 did cover the strip in question and defendant's 1943 deed of acquisition did not, plaintiff had a better title than defendant.

Although the district judge's position is respectable, it is our view that the jurisprudence on which he relies has been legislatively overruled by the new Code of Civil Procedure, LSA-C.C.P. Articles 3651-3653 are new and make important procedural changes in the real actions which existed under the prior Code of Practice and the jurisprudence. See Yiannopoulos, La. Civil Law of Property, See. 137; McMahon, Changes Made by the New Code of Civil Procedure Relating to the Real Actions, 21 La. Law Review 1, 46; Johnson, Procedural Changes Made by the New Code of Civil Procedure, 35 Tul. Law Review 541.

Under Article 43 of the Code of Practice, it was required that the petitory action be brought "against the person who is in the actual possession of the immovable." Jurisprudence developed the "action to establish title" where neither plaintiff nor defendant were in possession, and there was a conflict in the cases as to whether plaintiff's burden in such an action was to prove a valid title or simply to prove a better title than defendant. See LSA-C.C.P. Article 3653, Official Revision Comment (b). The Code of Civil Procedure broadens the petitory action to include both the prior petitory action and the action to establish title. Under Article 3651 the petitory action is brought "by a person who claims the ownership, but who is not in possession, of immovable property or of a real right, against another who is in possession or who claims the ownership thereof adversely."

Under the Code of Civil Procedure, defendant's possession, or lack of it, determines the burden of proof imposed on the plaintiff in a petitory action. Article 3653 provides that if the defendant is in possession plaintiff must "make out his title," but if the defendant is not in possession the plaintiff need prove only a better title than the defendant. The relevant possession is defined in Article 3660 as "corporeal possession * * * or civil possession * * * preceded by corporeal possession." No distinction is made between the situation where defendant possesses without a title translatable of ownership and the situation where the defendant possesses with such a title. Hence, it is our view that the prior jurisprudence making this distinction, and on which the trial judge relied, is no longer a part of our law.

Of course, comment (a) under Article 3653 indicates that the words "make out his title" are intended to have the same meaning as given to them under the jurisprudence interpreting the source provision. But, apparently, the redactors were thinking of the mainstream of jurisprudence rather than of technical

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exceptions. Be that as it may, the comment is not a part of the text and cannot be taken to establish exceptions when the text establishes none. From the viewpoint of policy considerations, there might be some merit to the idea that a person with a defective title ought to prevail over a possessor who has no title at all. But if such an exception were allowed to prevail in the light of the text of Article 3653(1), which is clear and unambiguous, a chaotic situation would arise. The burden of proof would no longer be allocated in the light of the defendant's possession as Article 3653(1) and (2) requires.

Having concluded that plaintiff's petitory action must be dismissed, we do not reach the question of defendant's title. Our jurisprudence is established that in a petitory action against a defendant in possession the title of the defendant is not at issue until plaintiff has proved a valid title in himself, *Dupuy v. Shannon*, 136 So. 2d 111 (3rd Cir. 1961) and the authorities cited therein.

For the reasons assigned, the judgment appealed is reversed and set aside. . . .

PURE OIL COMPANY v. SKINNER

294 So. 2d 797 (La. 1974)

BARHAM, J.

We granted writs (285 So. 2d 541 (La. 1973)) to review the decision of the Court of Appeal on the issue of a plaintiff's burden of proof in a real action when defendant is the possessor of the property in controversy. Defendants, the relators in these cases, contended in their writ applications that the decisions of the Court of Appeal (284 So. 2d 608, 284 So. 2d 614 (La. App. 2d Cir. 1973)) conflict with that of the Third Circuit in *Deselle v. Bonnette*, 251 So. 2d 68 (La. App. 3d Cir. 1971), wherein it was held that in a petitory action against a defendant in possession, a plaintiff must make out his title to the property in dispute without regard to the title of the party in possession.

The Court of Appeal in the instant cases held that respondents, the parties claiming title or ownership of the disputed land against adverse claimants in possession without a deed translative of title, did not have to prove a title good against the world but only had to prove better title than relators.

The issues in the instant cases were first presented for consideration in 1961 when The Pure Oil Company, which had oil, gas and mineral leases covering the disputed property from both claimants, instituted a concursus proceeding by depositing royalties attributable to the property in controversy in the registry of the court and citing both relators and respondents to assert their respective interests. Subsequent to the institution of the concursus proceedings, respondents instituted a boundary action against the relators and, by stipulation, the parties agreed that judgment rendered in the concursus proceedings would be determinative of the issues in the boundary action.