

SUPREME COURT OF LOUISIANA

No. 96-C-0732

HELENA BABIN KENNEDY

Versus

JAMES KENNEDY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF CLAIBORNE, STATE OF LOUISIANA

JOHNSON, Justice Dissenting

I respectfully dissent.

La. C. C. Art. 560 provides: *The usufructuary may cut trees growing on the land of which he has the usufruct and take stones, sand and other materials from it, but only for his use or for the improvement or cultivation of the land.*

This case presents an area of land that has not been improved or cultivated in many years. As a result, many of the trees have reached their prime and others are near maturity. It is evident that some type of maintenance is needed to preserve this land for both the naked owner and the usufructuary. When the parties cannot agree as to the management plan, the courts must approve a plan. In this case, the majority approved a clear cut plan.

The experts have testified that selective cutting of the timberlands is far more prudent. This land is capable of producing commercial timber if properly maintained. The ecological aspects warrant a selective cutting and not a clear cut of the land. To follow the majority's plan would mean that the fruits of the land are being dissipated. **La. C. C. Art. 562** provides: **When the usufruct includes timberlands, the usufructuary is bound to manage them as a prudent administrator. The proceeds of timber operations that are derived from proper management of timberlands belong to the usufructuary.** The statute is clear that "timber operations should not deplete the substance of the land. The interests of the naked owner are protected by the prohibition of waste and by the obligations of the usufructuary to act as a prudent administrator and to preserve the substance

of the property subject to the usufruct". See comments **La. C. C. P. Art. 562.**

A clear cut of the land will affect the substance of the property and therefore, deny the naked owner the protection that the statutes in this regard afford him. Clearly, prudent management of the land requires that it be selectively cut in order to preserve the substance of the land.