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Measures of Damages - Vendor's Breach of Bond for Deed - Fruits and Revenue of the Land

S. W. J.

party, would be liable for the medical expenses incurred by his wife.[30] Is this a loss to the lessee as contemplated by Article 2695, for which the lessor must indemnify the lessee? If the lessor must reimburse the lessee for medical expenses incurred by members of his family, it follows that the lessee would have to bring suit in his own name.[31] However, if the jurisprudence is interpreted as meaning that any third person is given a right to recover against the lessor under the provisions of Article 2695, then whether the injured person was a member of the lessee's family would make no difference.[32]

Although a hardship may be inflicted by the doctrine of the present cases, the interpretation of Article 2695 as giving rise only to an ex contractu obligation between lessor and lessee appears warranted by the language of the Code. Under Article 2322, it is clear that the injured party has recourse against the owner for injuries received by reason of the defective premises. Therefore the doctrine of the principal cases should be limited to their particular facts, i.e., where the lessor is not the owner of the defective building.

J. G. C.

MEASURES OF DAMAGES—VENDOR'S BREACH OF BOND FOR DEED —FRUITS AND REVENUE OF THE LAND—Defendant refused to execute an act of sale as provided by a bond for deed contract, notwithstanding full performance by the purchaser who then sued for specific performance and damages. *Held,* that the plaintiff was entitled to specific performance and damages caused by defendant's granting a mineral lease subsequent to the time the purchaser became entitled to a conveyance under the bond for deed,

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The court did not discuss either Duplain v. Wiltz, 190 So. 60 (La. App. 1940) or *Graff v. Marmelzadt.* The decision rather went off on the grounds of sufficiency of evidence to permit the plaintiff to recover damages.

30. Overton v. Nordyke, 10 La. App. 317, 120 So. 544 (1929).

31. LaGroue v. New Orleans, 114 La. 253, 38 So. 160 (1905); Shield v. F. Johnson & Son Co., 132 La. 773, 61 So. 787, 47 L.R.A. (N.S.) 1080 (1913); Labat v. Gaerthner Realty Co., 146 So. 69 (La. App. 1933).

However, damages resulting to the wife are her separate property, recoverable by herself alone. Cartwright v. Pivesigur, 125 La. 700, 51 So. 692 (1910); Stevens v. Illinois Central R. Co., 6 La. App. 165 (1927).

32. There was dictum in *Brodtman v. Finnerty* assimilating the wife of the lessee to her husband, but this was overruled in *Ciaccio v. Carbajal.* In Brennan v. Iskevitch, 148 La. 973, 88 So. 237 (1921), the court said: "We are not informed why plaintiff should be supposed to be a lessee jointly with her husband simply because she acted as his agent in negotiating the lease and do not know of any reason why she should be so considered."

the measure of which was the consideration paid for the lease. *Bandel v. Sabine Lumber Co.*, 193 So. 359 (La. 1939).

Articles 1926[1] and 1930[2] of the Louisiana Civil Code of 1870 provide that the party who violates a contract is liable for the damages which the other party sustained thereby. Generally, the measure of damages for the inexecution of a contract is the loss suffered or the profit of which the obligee has been deprived.[3] Article 1934 further provides that if the person breaking a contract has been guilty of no fraud or bad faith, he is liable only for such damages as were contemplated or may reasonably be supposed to have entered into the contemplation of the parties at the time of the contract.[4] There can be no question that under the circumstances of the present case the purchaser in the bond for deed contract should be entitled to recover the damages caused by the vendor's leasing the premises to another.[5] The only problem presented concerns the propriety of the measure of recovery.[6] The language used by the court suggests that it was granting the purchaser the amount of the lease as the "fruits and revenues" of which he had been deprived.[7]

Ordinarily, fruits and revenues, as such, belong to the owner of property.[8] But until an act of sale is passed, the purchaser is

1. Art. 1926, La. Civil Code of 1870: "On the breach of any obligation to do or not to do, the obligee is entitled either to damages, or in cases which permit it, to a specific performance of the contract . . . ."

2. Art. 1930, La. Civil Code of 1870: "The obligation of contract extending to whatsoever is incident to such contracts, the party who violates them, is liable, as one of the incidents of his obligation, to the payment of the damages which the other party has sustained by his default."

3. Gauthier v. Green, 14 La. Ann. 788 (1859). Art. 1934, La. Civil Code of 1870: "Where the object of the contract is anything but the payment of money, the damages due to the creditor for its breach are the amount of the loss he has sustained and the profit of which he has been deprived. . . ."

4. Goodloe & Co. v. Rodgers, 10 La. Ann. 631 (1855). Art. 1934, § 1, La. Civil Code of 1870: "When the debtor has been guilty of no fraud or bad faith he is liable only for such damages as were contemplated or may reasonably be supposed to have entered into the contemplation of the parties at the time of the contract." II Greenleaf, Evidence (1899) 210: "The damages to be recovered must always be the natural and proximate consequence of the act complained of."

5. Bodillo v. Tio, 7 La. Ann. 487 (1852).

6. See note 5, supra.

7. ". . . the judge of the lower court erred in not granting . . . judgment . . . for the fruits and revenues derived by the defendant from the property . . . ." Bandell v. Sabine Lumber Co., 193 So. 359, 361 (La. 1939).

8. Art. 499, La. Civil Code of 1870: "Fruits of the earth, whether spontaneous or cultivated; civil fruits, that is the revenues yielded by the property from the operation of the law or by agreement . . . belong to the owner by right of accession."

Art. 501, La. Civil Code of 1870: "The fruits produced by the thing belong

not the "owner" of the property, although by equity he may be entitled to a conveyance.[9] Even granting that he might be treated as owner, it is at least questionable whether the initial *payment* for an oil and gas lease can be considered as falling properly within the category of "fruits and revenues."[10]

Instead of treating the value of the lease as the fruits and revenues to which the purchaser is entitled, it would be more accurate to consider the value of the lease as a measure of the loss sustained by the purchaser in getting property which is encumbered. The loss to him would be the difference between what he bargained for and what he actually received.[11] Doubtless, in the principal case a fair measure of this loss would be the amount paid for the lease.[12] But, would the same measure be proper if the lease had been granted for an inadequate consideration?[13] Under such circumstances, the price received would not reflect the true loss to the purchaser. The loss would be the actual value of the interest conveyed, or the value of the complete estate less the value remaining after the granting of the lease. On the other hand, if the vendor's act be considered as depriving the purchaser of a *profit* to which he was entitled, an actual value of less than the consideration paid would not constitute an objection to granting the purchaser the full consideration, since it should be presumed on such a showing that the purchaser could have obtained the same price as the vendor.

Notwithstanding the questionable language in the opinion, the court's adoption of the consideration paid for the lease as the measure of the damage sustained by the purchaser affords a rule which is easy to apply in determining damages in such cases, and which generally would produce an equitable result. In some cases, however, the real value of the conveyance might have to be more accurately ascertained. The decision also accords with the

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to its owner, although they may have been produced by the work and labor of a third person. . . ."

Art. 502, La. Civil Code of 1870: "The products of the thing do not belong to the single possessor, and must be returned with the thing to the owner who claims the same, unless the possessor held it bona fide."

9. Art. 2462, La. Civil Code of 1870: "A promise to sell, when there exists a reciprocal consent of both parties as to the thing, the price and terms, and which if it relates to immovables, is in writing, so far amounts to a sale, as to give either party the right to enforce specific performance of same."

10. Art. 502, La. Civil Code of 1870. Elder v. Ellerbe, 135 La. 990, 66 So. 337 (1914).

11. Art. 2015, La. Civil Code of 1870.

12. Bodillo v. Tio, 7 La. Ann. 487 (1852).

13. Ibid. In the principal case, the adequacy or fairness of the consideration received for the lease was not even discussed.

general jurisprudence of Louisiana on the subject,[14] although the accuracy of the suggestion that the purchaser is being allowed "fruits and revenues" from the property is open to question.[15]

S. W. J.

MINES AND MINERALS—REVERSIONARY INTEREST—PRESCRIPTION—The defendant landowner after selling one-half the mineral rights upon his land and leasing the other half, granted a mineral deed to plaintiff. By this deed there was sold to plaintiff "all interest and ownership of the vendor . . . in and to all mineral rights" and the right of ingress and egress to and from the land. More than ten years after any of these grants, defendant entered into another lease and production was secured. The plaintiffs, contending there had been a sale of the "reversionary interest," claimed ownership of the minerals. *Held,* that there had not been a sale of this interest although "It is clear that the reversionary mineral interest of the owner of the fee simple title is a 'certain object' which can be legally sold." *Gailey v. McFarlain,* 193 So. 570 (La. 1940).

The present case confirms intimations in previous opinions[1] that the owner, after *selling* the mineral rights on his land, has an interest with which he may deal. That he may sell mineral rights subject to an existing *lease* is more definitely settled.[2]

Two approaches to the reversionary interest have been suggested:[3] (1) Under the articles treating of the sale of a hope or things not *in esse*[4] and (2) under the article stating that a ser-

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14. Gauthier v. Greene, 14 La. Ann. 788 (1859). Arts. 1930, 1934, La. Civil Code of 1870. Art. 1930: "The obligations of contract, extending to whatsoever is evident to such contracts, the party who violates them, is liable, as one of the incidents of his obligation, to the payment of the damages, which the other party has sustained by his default." Elder v. Ellerbe, 135 La. 990, 66 So. 337 (1914).

15. Art. 499, La. Civil Code of 1870. See Elder v. Ellerbe, 135 La. 990, 66 So. 337 (1914); Lesseigne v. Cedar Grove Realty Co., 150 La. 641, 91 So. 136 (1922) (*rent notes* properly called *fruits* and *revenues* of the land).

1. Standard Oil Co. of Louisiana v. Webb, 149 La. 245, 253, 88 So. 808, 811 (1921); Gayoso Co. v. Arkansas Natural Gas Corp., 176 La. 333, 340, 145 So. 677, 679 (1933).

2. In Coyle v. North Central Texas Oil Co., 187 La. 238, 174 So. 274 (1937), the mineral rights were bought subject to an existing mineral lease. In the present case *(Gailey v. McFarlain)* the purchasers were held to have knowledge of leases recorded prior to the sale. Is the distinction between the "sale" and "lease" of minerals sufficient to make any difference in the time that prescription would begin?

3. Daggett, Mineral Rights in Louisiana (1939) 42-43.

4. Arts. 2450, 2451, La. Civil Code of 1870.