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Civil Code and Related Subjects: Property

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future, an interesting set of sequels should result. If the rules, on the other hand, are confined to "goose cases," some finely knit logic of distinction will have to be produced.

PROPERTY

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In the case of *Dickson v. Board of Commissioners of Caddo Levee District*,[1] a riparian proprietor claimed damages sustained by his property through erosion. This erosion was the result of an artificial current which had been created in the river and thrown against his plantation at a right angle when defendants made two straight channels, or cut-offs, across two bends of the river above plaintiff's property. The court's opinion, rendered by Justice Fournet, contains a clear and interesting history of the servitude under Article 665 of the Revised Civil Code[2] which is imposed on riparian properties for levee purposes. From the construction of the first levees by the French in 1727, through the Spanish regime, and until 1878, the matter of flood control was an obligation on the riparian proprietors. Accordingly, when flood control became a governmental function, it was a considerable relief of responsibility even though the land remained subject to the use without compensation. The beneficent establishment of compensation—in 1898 for Orleans,[3] and in 1921 for the whole state[4]—did not alter the nature of the servitude; and the levee districts are invested by statute with complete authority for the determination, construction and maintenance of flood control works. In the present case, the actions of the defendant were properly performed for the preservation of existing levees, and the plaintiff's only recourse would be to claim the compensation allowed under the constitution for lands taken, used or destroyed. Since the plaintiff was not making this kind of claim, and his action did not meet the requirement of such a claim, the defendant's exception of no cause of action was maintained and the suit dismissed.

In the case of *Breaux v. Lefort*[5] a group of plaintiffs claimed ownership of a tract of land. Their predecessors had instituted

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1. 210 La. 121, 26 So. (2d) 474 (1946).

2. For texts of corresponding articles in prior civil codes, see Compiled Edition of the Civil Codes of Louisiana, p. 383.

3. La. Const. (1898) Art. 312.

4. La. Const. of 1921, Art. XVI, § 6.

5. 209 La. 506, 24 So. (2d) 879 (1946).

proceedings prior to 1812 to acquire the land and to obtain the United States patent which was issued in due course on June 27, 1934. The defendant shows uninterrupted possession for over thirty years and a chain of title back to a notarial deed in 1840. The question is whether the land, prior to 1934, was public domain and imprescriptible, or whether it was private property and subject to prescription. The latter view had been the basis of decision in the earlier case of *Jopling v. Chachere*[6] and the court here followed the same principle. Accordingly, the patent issued in 1934 established the patentee's title as of an earlier date which would not be later than January 23, 1858, when the official plat was filed and approved. Consequently, the defendant's pleas of acquisitive prescription of ten and thirty years were sustained.

A somewhat similar problem regarding property acquired by state patent was presented in *Douglas v. State*.[7] By special statutory authorization,[8] this suit was filed against the State of Louisiana for money received by the state from a mineral lease on land owned by plaintiff. This mineral lease was awarded on March 8, 1939. Although the plaintiff's patent was not issued until May 28, 1941, it was based upon a warrant issued under the provisions of Act 104 of 1888 and an application dated February 19, 1919 (renewed on February 3, 1939). The plaintiff and her predecessors had done everything that was required to obtain the land which had been bought and paid for, and the court held that a vested right had been acquired since there remained nothing more to be done than the ministerial duty of the register of the land office to issue the necessary formal documents. Accordingly, the plaintiff was granted judgment for the cash bonus which had been received by the state under the mineral lease.

There is one disturbing factor in the reported decision of this case, namely, the use (by the district court judge, quoted with approval by supreme court) of the common law terms "equitable interest" and "equitable title" to describe the plaintiff's rights in the property prior to the issuance of the patent. Justice Fournet does soften the harshness of any possible implications by adding that there is no intent "to create a new system of law with respect to the ownership of real estate in this state," but simply a conclusion that the plaintiff's right be-

6. 107 La. 522, 32 So. 243 (1902); affirmed 192 U. S. 94, 24 S. Ct. 214, 48 L.Ed. 359 (1904).
7. 208 La. 650, 23 So. (2d) 279 (1945).
8. La. Act 52 of 1944.

came complete as a vested right on the basis of the earlier warrant and the applications of 1919 and 1939. Since the application of the common law concept of equitable title was thus disavowed, and indeed would have been improper, it is regrettable that the term was used so frequently and completely by the trial judge and quoted with approval by the supreme court to describe the legal situation involved in the case. This is not to imply that there should have been any different decision, nor that our law is so perfect that it need not make any improvements by borrowing. However, the common law doctrine of equitable title extends to a great many situations within the system of law known as equity; and it is both desirable and necessary to avoid the use of such terms, even where the description is accurate, because there are many other situations which also fit the description without producing the same results in Louisiana law.

An application to homestead certain property in the city of New Orleans under Louisiana Act 235 of 1938 evoked an interpretation of this statute in *State ex rel. City of New Orleans v. Grace.*[9] The property is located in an industrial area of the city and is known as commercial property; it is in use by a sawmill and lumberyard, a junkyard and some tenements. The court enjoined the granting of the homestead application on the ground that the homestead statute did not apply to such land. The statutory language of "actual settlement and cultivation" and "resided upon and cultivated" and "continuous cultivation and improvement for the full period of 5 years" clearly indicates the purpose and scope of the homestead law. A commercial property, such as here involved, is completely outside the statutory contemplation of the establishment of a home and the serious cultivation of the land. Even if the homestead application had been granted, the applicant would not have acquired any vested rights in the property because the title remains in the state until the statutory conditions are all satisfied.[10]

Since the discovery of oil in areas which are, or were, or are alleged to have been at one time, under water, there has been a lot of litigation concerning the ownership of property to which nobody had given much thought for a very long time. The state is a party in many of these actions because of its ownership of the beds of navigable rivers and streams. Accordingly, the issue in such cases is a factual rather than a legal one; and since the

9. 209 La. 669, 25 So. (2d) 301 (1946).
10. Armstrong v. Dantoni, 19 So. (2d) 293, 294 (La. App. 1944).

time as to which such determination has to be made is 135 years ago (1812) the decision must often be based on geological deductions or legal presumptions. Thus, in *Begnaud v. Grubb and Hawkins*,[11] the dispute between the individual and the state depended on whether Bayou Sale had been navigable in 1812 when Louisiana became a state. It is not navigable now, and after consideration of much testimony—scientific, technical and lay—the court concluded that the preponderance of the evidence indicated that the bayou was not navigable in 1812.

In *Transcontinental Petroleum Corporation v. The Texas Company*[12] the plaintiffs claimed mineral rights under a lease from the state in an area which was not under water but which plaintiff alleged had been the bed of a navigable waterway in 1812. The court heard and considered a great amount of scientific and lay evidence, and contradictory but interesting theories and deductions; and concluded that the plaintiff had not discharged the burden of proving navigability in 1812. This must be taken to mean that the party alleging a condition in 1812 different from the present actual condition has the burden of proof with regard to this matter, irrespective of whether he is cast as plaintiff or defendant.

The question of navigability was side-stepped in *O'Brien v. State Mineral Board*[13] because the court decided the case in favor of the plaintiff on the ground that he had a good title derived from the state in a patent covering the area in question, and under Act 62 of 1912, the state had lost any right to attach the patent.

AGENCY

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American Guaranty Company v. Sunset Realty Company[1] was a successful attempt to annul a sale of oil lands on grounds of fraud. Only the agency aspects of the case will be considered here and for this purpose the facts may be stated as follows: One Small learned of activity by the Texas Company ("Texas") on lands in the Paradis oil field adjacent to that apparently owned by Sunset Realty & Planting Company, Incorporated ("Sunset"), a subsidiary of Hibernia Bank & Trust Company, in Liquidation

11. 209 La. 826, 25 So. (2d) 606 (1946).
12. 209 La. 52, 24 So. (2d) 248 (1945).
13. 209 La. 266, 24 So. (2d) 470 (1945).
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1. 208 La. 772, 23 So. (2d) 409 (1944).

("Hibernia"). Small then contracted with Sunset to purchase a fraction of the mineral rights in this land, subject to examination of title. Small discovered outstanding title in American Guaranty Company ("American"). On being notified of this fact, both Sunset and its lessee, Texas, agreed to give Small fractions of their interests if he would obtain a quitclaim from American. Small did so and later transferred to Sunset and Texas. Hibernia had accepted a mortgage on Sunset's land as security for a loan and also joined in the act so as to subordinate Sunset's new record title to the mortgage. The State Bank Commissioner ("Commissioner") joined in the act to approve Hibernia's action. The quitclaim from American to Small was declared null because of fraud on the part of Small. The next questions were the effects of the declaration of nullity as to Sunset, Texas, Hibernia, and the Commissioner.

Sunset and Hibernia claimed they were third parties acquiring from Small as record owner and therefore any annulment of the act between American and Small could not affect their interests. The facts clearly established the agency between Sunset and Texas as principals and Small as agent and the court ignored the mechanics of the acquisition by Sunset and Texas. Certainly Small had acted for Sunset and Texas and, eliminating the fraud issue, they could have been recognized judicially as the actual parties at interest had Small failed to transfer the property to them pursuant to their agreement.

Hibernia and the Commissioner, interested in protecting Hibernia's mortgage, similarly contended they had, by the act of subordination, accepted the mortgage in reliance on the public records showing Small as owner and his transfer to their mortgagor, Sunset. Here the court declared that Hibernia and the Commissioner, even if at the time ignorant of Small's fraud, by entering into the act of subordination had "ratified" Small's act and by such "ratification" had made him their agent! On this basis, the court concluded that the "principals" could not take advantage of the "agent's" acts and could not avail themselves of the transfer from American to Small to give validity to the mortgage.

The result is just, for Sunset was a subsidiary of Hibernia and the Commissioner could not have a greater interest than Hibernia; but it should have been based on other grounds than a finding of a principal-agency relation, for Hibernia as an entity had no dealings with Small. Perhaps the penetration of the cor-

porate fiction would have sufficed, or a handling of the matter on a mortgage basis. With regard to the latter, it is interesting to note that, had the transfers from American to Small to Sunset been valid, Hibernia would have benefited from them without an act of subordination,[2] subject only to rights of third persons acquired on the face of the public records.[3] Hence, Hibernia's purpose in the act of subordination was only to make clear record of a mortgage it already held, not to create a new mortgage, and it could have no greater rights under the subordination than it had under the original mortgage.

Latter & Blum, Incorporated v. Metropolitan Life Insurance Company[4] was a suit by a real estate broker, against both seller and purchaser, for a fee on a building transaction. The suit against the seller was based primarily on an alleged employment and alternatively on quantum meruit; that against the purchaser —itself an alternative to the demand against the seller—on quantum meruit and alternatively on tort.

From the facts, it was clear that the broker, learning of the seller's desire to sell and acting with a view to remuneration, had interested the purchaser in the prospective transaction. The purchaser had authorized the broker to offer as much as $1,200,000 for the building in question. The broker failed to transfer the offer to the proper representative of the seller and had given the purchaser reason to believe the offer had been rejected. Later the purchaser made the offer to the seller through a third party and the seller accepted. The court cound there was no contractual relationship between the plaintiff and either defendant and denied recovery on quantum meruit because the broker's activity was not the "procuring cause" of the sale. It also denied the existence of tort on the basis that the purchaser had just ground to believe the negotiations between him and the plaintiff had terminated before he sought the bargain through a third person.

The decision seems correct. Ordinarily, even the mere fact of creating an interest in a purchaser should warrant remuneration under negotiorum gestio.[5] This should be true even if the broker expects payment for his services.[6] Article 2299 of the Civil

2. Art. 3304, La. Civil Code of 1870.
3. Art. 3342, La. Civil Code of 1870.
4. 208 La. 490, 23 So. (2d) 193 (1945).
5. Arts. 2295-2300, La. Civil Code of 1870.
6. Such, at least, is the result reached in France under articles similar to those of our law. See Picord, La gestion d'affaires dans la jurisprudence

Code, however, allows remuneration if the business "has been well managed." A reading of the opinion leaves one free to conclude that the broker had acted in a manner which appeared to him to be his own best interest, rather than that of the seller or purchaser.

IV. TORTS AND WORKMEN'S COMPENSATION

*Wex S. Malone**

TORTS

A varied assortment of torts and workmen's compensation cases was handed down by the supreme court during the past term. Several of them were restricted to controversies of fact and do not lend themselves readily to treatment.[1] Other decisions are sufficiently significant to merit comment. But it cannot be said that the latest crops of cases has produced anything of startling importance.

Traffic and Transportation

The Louisiana courts have often had occasion to comment on the duty of a motorist who, having the right of way, nevertheless proceeds without regard for the safety of those who have entered or are about to enter the intersection from a less favored thoroughfare.[2] However, until the recent decision in *Kientz v. Charles Dennery, Inc.*,[3] the supreme court had not dealt with the situation presented where traffic lights determine the right of way. The presence of "stop" and "go" signals alters the picture slightly. Anyone who approaches an intersection against the light knows that to proceed further is an arbitrary violation of the law. He cannot discharge his duty simply by "reasonably giving

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contemporaire (1921) 20 Rev. Prim. de droit civil 419, 458-461; and 7 Planiol et Ripert, Traité Pratique de droit civil francais (1931) n. 731.

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1. Burns v. Evans Cooperate Co., Inc., 208 La. 406, 23 So.(2d) 165 (1945) (plaintiff, a motorist, left road and was injured when defendant's car ahead made a sudden turn to the left without signal. Evidence indicated plaintiff was guilty of contributory negligence under the circumstances in attempting to pass.); Hebert v. Meibaum, 209 La. 156, 24 So.(2d) 297 (1945) (pedestrian struck by defendant's car while attempting to cross at street intersection. Evidence showed plaintiff precipitated himself suddenly in path of vehicle, and there was no opportunity for defendant to stop); Pool v. Gaudin, 209 La. 218, 24 So.(2d) 383 (1945) (Defendant charged with defamation in accusing plaintiff of refusing to pay his share of his mother's funeral expenses. The case turned on the property implication to be drawn from the accusing letter).

2. See Comment (1946) 5 LOUISIANA LAW REVIEW 432, 434-438.

3. 209 La. 144, 24 So.(2d) 292 (1945).