Louisiana Law Review

Volume 7 | Number 3
March 1947

Privileges on Oil, Gas, and Water Wells - Act 232 of 1916 - Act 68 of 1942

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supported by a natural obligation would be gratuitous. The result of the adoption of a restrictive view of the theory of natural obligations is therefore to bring within the category of donations those contracts which rest upon an obligation not classifiable as a natural obligation as enumerated in Article 1758.[25] The use of the authentic act would be essential to the validity of such contracts.[26]

Granting that it was competent for the court to find that a natural obligation did not survive the original dation en paiement, the subsequent acknowledgment of indebtedness would constitute a gratuitous contract. This is but another way of saying that it was intended as a disguised donation. The inquiry would then follow whether it could be upheld as a donation. From the record it appears that the second agreement, referred to by the court as an "executed instrument" was in fact a contract under private signature. Notwithstanding, therefore, that the court did not seem to recognize the possibility of sustaining the promise on the suggested basis, such an inquiry would have led to the same result as that reached by the court. In short, the decision is considered to be correct although the supporting reasons were not definitive.

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PRIVILEGES ON OIL, GAS, AND WATER WELLS—ACT 232 OF 1916—ACT 68 OF 1942—Plaintiffs furnished materials used in the drilling of two oil wells for the defendants. Upon failure of the contractor to pay for the materials, the plaintiff sought to attach defendants' producing well, asserting a privilege under Act 232 of 1916.[1] The defendants had not recorded the bond required by the act, and the plaintiff contended that the failure to file the bond rendered the defendants liable for the value of the supplies

25. The Civil Code, of course, recognizes certain kinds of gratuitous contracts that are not treated as donations. The French call such contracts *contrats désinetrésses*. See Note 22, supra, for illustrations of this type of gratuitous contract. For discussion, see 2 Colin et Capitant, Droit Civil Francais (ed. 1935) 13, § 12.

26. This theory accounts for the number of decisions sustaining simulated acts of sale as donations where the transfer was in the form of an authentic act: Holmes v. Patterson, 5 Mart. (O.S.) 693 (1818); Rhodes v. Rhodes, 10 La. 85 (1836); D'Orgency v. Droz, 13 La. 382 (1839); Sémère v. Sémère, 12 La. Ann. 681 (1856); Wolf v. Wolf, 12 La. Ann. 529 (1857); Harper v. Pierce, 15 La. Ann. 666 (1860); McWilliams v. McWilliams, 39 La. Ann. 924, 3 So. 62 (1887); Reinerth v. Rhody, 52 La. Ann. 2029, 28 So. 277 (1900); Nofsinger v. Hinchee, 199 So. 597 (La. App., 1941). Semble Haggerty v. Corri, 5 La. Ann. 433 (1850).

1. Dart's Stats. (1939) §§ 5091-5097.

furnished. Defendants moved to dissolve the attachment on the ground that Act 100 of 1940[2] superseded Act 232 of 1916, and argued that the plaintiff's lien was not timely filed under the provisions of Act 100 of 1940. *Held,* Act 232 of 1916 has never been repealed, and plaintiff's lien was timely filed under that act. *Standard Supply and Hardware Company v. Humphrey Brothers,* 26 So. (2d) 8 (La. 1946).

One of the purposes of Act 232 of 1916 is to protect the laborers and furnishers of materials for drilling contracts by requiring the owner to secure bond from the contractor. The surety on this bond stands in the place of the defaulting contractor.[3] When the owner fails to exact the bond he is deemed to be in default and liable to the same extent as the surety would have been. Additional protection is afforded the laborers and furnishers of material in the form of a lien which attaches to the well.[4] In order to invoke the provisions of this statute, however, a sworn statement of the claim or privilege must be recorded within thirty days after the registry of notice by the owner of his acceptance of the work. Such claim must also be filed with the owner after the completion of the work or default of the contractor.[5]

Later acts[6] appeared to restate the entire law on the subject, enlarging the group entitled to the privilege and increasing their protection. A lien was made effective on the well and equipment simply by virtue of recordation and independent of any failure by the owner to exact bond. Procedural as well as substantive provisions were improved. Act 100 of 1940 required that the claim for labor or materials furnished to be filed within ninety days after the last date of delivery of supplies or last work done.[7] However, these later acts do not provide for personal liability of the owner.

Prior to the instant case, some authorities believed that the

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2. Repealed by La. Act 68 of 1942, § 6 [Dart's Stats. (Supp. 1946) §§ 5101.6-5101.12].

3. La. Act 232 of 1916, § 6 [Dart's Stats. (1939) §5096].

4. Id. at § 5 [Dart's Stats. (1939) § 5095].

5. Id. at § 4 [Dart's Stats. (1939) § 5094].

6. La. Acts 161 of 1932, 145 of 1934, and 100 of 1940. For a complete discussion of these acts, see Daggett, Louisiana Privileges and Chattel Mortgage (1942) 486-513, §§ 126-131.

7. La. Act 100 of 1940, § 2, repealed by Act 68 of 1942 [Dart's Stats. (Supp. 1946) §§ 5101.6-5101.12].

1916 act had been impliedly repealed by the later acts.[8] Since the more extensive coverage in the later acts had impelled their use this issue had never been presented. The attachment in the present case, however, was based upon the peculiar difference between the provisions for asserting the claims in the two acts. Under the 1940 act the delay for filing the claim had expired ninety days after the completion of the work,[9] while under the 1916 act the delay had not commenced to run by reason of the owner's failure to accept the work.[10] This presents a situation where, although the more complete protection extended by the 1940 act could not be employed, the limited privilege allowed by the 1916 act could be enforced. It is conceivable under the decision of the instant case that a claimant could, at the same time, avail himself of the remedies afforded by both statutes, that is, the more comprehensive lien afforded by the 1940 act and the personal liability under the 1916 act. It is therefore incumbent upon the owner to furnish bond in order to relieve himself of the additional liability imposed by the 1916 statute.

The finding that the 1916 act has not been repealed was based on rules of statutory interpretation. The court adhered to the principle that the later act repeals the former only insofar as its provisions are wholly inconsistent and repugnant.[11] The two remedies are distinguishable on the ground that one provides a privilege simply by virtue of recordation, while the other provides the additional security of bond or personal liability in lieu thereof. In deciding that the provisions of the 1916 act do not conflict with the provisions of the subsequent acts, the court

8. Daggett, op. cit. supra note 2, at 489, § 126. The same is manifest when one compares the complete absence of litigation under the 1916 act with the great number of cases cited under the later acts in Shepard's Louisiana Citations.

9. See note 7, supra.

10. See note 5, supra.

11. Bank of Lecompte v. Lecompte Cotton Oil Co., 125 La. 844, 51 So. 1010 (1910); City of New Orleans v. New Orleans Jockey Club, 129 La. 64, 55 So. 711 (1911); State v. McKinney, 171 La. 549, 131 So. 667 (1930); State v. Board of Commissioners of Caddo Levee Dist., 188 La. 1, 175 So. 678 (1937); Mouledoux v. Maestri, 197 La. 525, 2 So. (2d) 11 (1941). Repeals by implication are not favored and where possible courts will reconcile statutes by any fair and reasonable construction. Bennett-Brewer Hardware Co. v. Wakeman, 160 La. 407, 107 So. 286 (1926); State v. Standard Oil Co. of La., 188 La. 978, 178 So. 601 (1937); State ex rel. Hodge v. Grace, 191 La. 15, 184 So. 527 (1938); State v. Theard, 203 La. 1026, 14 So. (2d) 824 (1943); W. T. Rawleigh Co. v. Hammons, 24 So. (2d) 406 (La. App. 1946). Cf. State v. McKinney, 171 La. 549, 131 So. 667 (1930); State v. Tate, 185 La. 1006, 171 So. 108 (1936). There the court said that where the obvious purpose of the law is to cover the whole subject matter therein dealt with, it supersedes all prior pertinent legislation.

drew an interesting analogy to the Building Liens Act of 1916:[12] "We see no valid reason why the statutes dealing with drilling contracts should be so construed as to deny the furnisher of materials the protection afforded the furnisher of materials under building contracts."[13]

Subsequent to the institution of proceedings in the instant case the legislature adopted a new statute[14] on the subject, specifically repealing Act 100 of 1940. Act 68 of 1942 is an attempt to improve upon the earlier statute, but, like the 1940 act, it includes no provisions as to bond. Hence, the 1916 act provides an alternative still available to creditors of a drilling contractor.

JACK J. COUSIN

12. La. Act 262 of 1916, as amended and re-enacted by La. Act 298 of 1926 [Dart's Stats. (1939) §§ 5106-5122]. As was pointed out in the decision, Act 232 of 1916 and Act 262 of 1916 were companion statutes, one applying to building contracts and the other to drilling contracts, both being designed to protect the furnisher of materials, etc. Although the evolution of the Building Liens Act parallels that of the act granting a privilege on oil wells and equipment, the former in its amended form carries with it the provision requiring the furnishing of bond similar to that required in Act 232 of 1916. Cf. La. 298 of 1926, § 2 [Dart's Stats. (1939) § 5107]; La. Act 232 of 1916, § 3 [Dart's Stats. (1939) § 5093]. For a complete discussion on the history and application of Act 262 of 1916, see Daggett, op. cit. supra note 2, at 216-332, §§ 62-73.

13. Standard Supply and Hardware Co. v. Humphrey Bros., 26 So.(2d) 8, 11 (La. 1946).

14. La. Act 68 of 1942 [Dart's Stats. (Supp. 1946) §§5101.6-5101.12].