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Civil Code and Related Subjects: Sale

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Liberandi causa

In the absence of questions regarding interruption or suspension, the application of the rules of liberative prescription may sometimes be relatively as simple as the calendar computation of the required lapse of time. Even so, there are nevertheless questions on which a major dispute can arise. One of these is the determination of the starting point for the computation, as illustrated in the case of *Lake Front Land Company v. Department of Highways*.³ In 1926 the plaintiff expected to derive certain benefits to its land from the construction of a proposed highway, and deposited in escrow \$50,000 to pay for the construction of a muck canal and embankment. The highway was never built and when the plaintiff sued in 1945 to recover its money, the defendant pleaded the liberative prescription of ten years against personal actions.⁴ The fundamental theory of this prescription is the loss of a right by reason of failure to use it during a period when it could have been exercised. Thus, liberative prescription could not have commenced to run from the time when the money was put up in 1926 because there was no right then to demand its return. It was not until a formal report in 1938 that the highway project was abandoned, and it was not until 1943 that the plaintiff was informed of this action. Since both of these dates were well within the ten years prior to suit, the court dismissed the prescription plea. In the light of basic principles, it might be stated more specifically that it was not until 1943 that there was any delinquency in the exercise of an existing right.

SALE

*Alvin B. Rubin***Nature of the Contract*

The Civil Code defines the contract of sale as "an agreement by which one gives a thing for a price in current money."¹ The "contract of rent of lands" (*rente foncière*), on the other hand "is a contract by which one of the parties conveys . . . to the other a tract of land . . . and stipulates that the latter shall hold it as owner, but reserving to the former an annual rent of a certain sum of money, or of a certain quantity of fruits, which the other party binds himself to pay him."²

3. 81 So. (2d) 280 (La. 1947).

4. Art. 8544, La. Civil Code of 1870.

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1. Art. 2439, La. Civil Code of 1870.

2. Art. 2779, La. Civil Code of 1870.

In *Vincent v. Bullock*,³ the supreme court interpreted the clause "a certain quantity of fruit," with emphasis on the word "certain," to mean a contract stipulating a fixed amount of the fruits, not a percentage of them. This interpretation was followed in *Everett v. Clayton*,⁴ which presented the problem of the nature of a contract whereby a plantation was "sold" for \$10,000, together with one-half of the "net revenue of the property, eighty per cent of all monies derived from the sale of the timber thereon," and the assumption of a mortgage thought to affect on the property. The court held that such a conveyance was a sufficient basis to start the ten year prescriptive period *acquiriti causa*. Although the contract was not defined categorically as a sale, the court said that "there has been considerable argument advanced as to whether or not the deed . . . was a sale or a rente foncière . . . (I)t is apparent that the deed is not a rente foncière . . ."⁵

If this means that the contract was therefore a sale, some light is cast on the problem of whether or not a *fixed sum of money* is necessary to constitute a sale, or whether a sale, strictly speaking, may exist although the "price" depends upon future income from the property.⁶

Formalities

In *Davidson v. Midstates Oil Corporation*,⁷ the plaintiff alleged that he had a written contract with defendant whereby plaintiff was to sell and defendant was to buy oil leases on three tracts of land. The plaintiff also alleged that there was a later oral agreement to purchase the leases on only two of the tracts, for a different price, and on altered conditions. The court found that, although the plaintiff alleged that he was proceeding under the written contract, the only basis of his suit was the later oral agreement. Therefore, an exception of no cause of action was sustained, since "a contract to transfer immovable property must be in writing"⁸ and "oil . . . and other mineral leases and contracts applying to or affecting such

3. 192 La. 1, 187 So. 35 (1939), commented upon in (1940) 1 LOUISIANA LAW REVIEW 416.

4. 211 La. 211, 29 So. (2d) 769 (1947).

5. 211 La. 211, 29 So. (2d) 769, 772.

6. See a discussion of this problem in Hebert and Lazarus, *Some Problems Regarding Price in the Louisiana Law of Sales* (1942) 4 LOUISIANA LAW REVIEW 378, particularly at 402 et seq.

7. 31 So. (2d) 7 (La. 1947).

8. Art. 2275, La. Civil Code of 1870.

leases . . . are incorporeal immovable property.”⁹ The court did not consider the question of whether a written contract relating to the transfer of immovable property can be either set aside or altered by a later oral contract.

Homestead Association Transactions

In *Capillon v. Chambliss*,¹⁰ the court again considered the question of whether or not a sale to and resale from a building and loan or homestead association affects the status of the property conveyed as community or separate property. The plaintiff's wife had sold certain real estate to her daughter, plaintiff's step-daughter, as of course, she had the right to do if the real estate was her separate property, but as she had no right whatsoever to do if the house and lot were community property. Plaintiff's wife had acquired the property by an act of sale reciting that it was her separate property, and had later entered into the usual sale and resale transaction with a homestead association, again making the proper recitations as to “separateness” of the property. In the latter transaction, her husband had joined. Still later, however, the wife had made another sale and resale, without her husband joining. Plaintiff contended that from this transaction there arose a presumption that the real estate was community property.¹¹

The court followed *Succession of Farley*¹² in holding that such a sale and resale is merely a pignorative contract and does not affect the status of the property conveyed, even though it may be “in truth a sale and resale” insofar as it involves the validity of the vendor's lien thereby created.¹³ The issue had been discussed and decided by the supreme court even prior to the *Farley* case, as the court noted.¹⁴

Warranty

In *T. A. Du Bell v. Union Central Life Insurance Company*,¹⁵ a vendee of a tract of land sued his vendor for the value of the tract,

9. La. Act 205 of 1938 [Dart's Stats. (1939) §§ 4735.4-4735.5].

10. 211 La. 1, 29 So. (2d) 171 (1946), also discussed herein at page 209.

11. See Art. 2402, La. Civil Code of 1870.

12. 205 La. 972, 18 So. (2d) 586 (1944); commented upon in the Symposium, *The Work of the Louisiana Supreme Court for the 1943-1944 Term* (1945) 6 LOUISIANA LAW REVIEW 237.

13. See *Holloman v. Alexandria and Pineville Building & Loan Ass'n*, 137 La. 970, 69 So. 764 (1915).

14. *Mayre v. Pierson*, 171 La. 1077, 133 So. 163 (1931), cited at 211 La. 1, 29 So. (2d) 176 (1946).

15. 211 La. 167, 29 So. (2d) 709 (1947), commented upon also herein at p. 261.

alleging a breach of warranty. The plaintiff had purchased a tract, discovered he did not have possession of 12.4 acres of the tract, brought a petitory action against the occupants, and lost. The court held that a suit for breach of warranty is a suit for damages, within the meaning of Code of Practice Article 165(9), and therefore might be brought in the parish where the land was located.¹⁶

Public Records

*Thompson v. Thompson*¹⁷ is commented upon in a case note in this issue. The court there held that an apparently valid cash sale, duly recorded, from a vendor to a person who was in fact his son could be attacked by forced heirs of the father as a donation in disguise, as against the holder of a recorded lease with option to purchase. The court noted, however, that, if the option holder "had actually acquired title . . . he, as a purchaser for valuable consideration on the faith of the public records, could defeat the rights of these claimants."¹⁸ However, the surviving widow in community of the vendor had rights subordinate even to the option holder, under the line of jurisprudence following *McDuffie v. Walker*.¹⁹ Justice Hamiter dissented, observing that "The distinction sought to be made in the majority opinion between a recorded option and a recorded deed (as they relate to forced heirs) very likely will be productive of anomalous situations."²⁰

A footnote to the case is of particular interest in connection with title examinations. Justice McCaleb's opinion states that, if there had been a *sale* to the option holder, he would have defeated the rights of the claimants: ". . . this would be true in this case *only* because the deed . . . does not show *on its face* that it is a conveyance by a father to his son. If it did, it would place third persons on notice that the deed was subject to attack by forced heirs and hence a third purchaser would take title subject to the rights of forced heirs."²¹ (Italics supplied).

Of course an ostensible sale which showed on its face that it was a conveyance from father to son would be a rare document. Similarity of names apparently is not sufficient to place a purchaser on notice. But what if there are other documents of record which

16. The court relied upon Art. 2486, La. Civil Code of 1870.

17. 211 La. 468, 30 So. (2d) 321 (1947).

18. 211 La. 468, 30 So. (2d) 321, 330 (1947).

19. 125 La. 152, 51 So. 100 (1909).

20. 211 La. 468, 30 So. (2d) 321, 335 (1947).

21. 211 La. 468, 30 So. (2d) 321, 330.

show the kinship and which are found in the chain of title—for example, succession proceedings? Such situations are apt to be more frequent. The footnote partially quoted may raise some conjecture as to whether or not such record entries place third parties on notice of the potential claims of heirs.

LEASE

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Lessor's Privilege and Right of Pledge

In the case of *Burgin v. Jumonville Pipe & Machinery Company, Incorporated*,¹ the plaintiff was a sublessor of a tract to the defendant. The oral lease under which plaintiff held had expired on December 30, 1944, but he had remained in possession under assurances that his lease would be renewed. The lease was in fact renewed in writing for the calendar year 1945, on March 23, 1945. Meanwhile defendant had been informed that his sublease would terminate at the end of 1945, but defendant also remained in possession. On March 27, 1945, plaintiff seized the defendant's effects on the land in question asserting a lessor's privilege and right of pledge.

The defendant contended that the plaintiff had no privilege because the property in question was not "leased" by the plaintiff from plaintiff's lessor, nor, in turn, by the plaintiff to defendant at any time after January 1, 1945, and the fifteen day period prescribed for exercise of the lessor's privilege after the property is removed from the leased premises had elapsed.²

The court mentioned Civil Code Article 2688 dealing with tacit reconduction of a lease. But "regardless of whether plaintiff's lease was reconducted, . . . a written lease was executed by the landowner in favor of Burgin [the plaintiff] for the calendar year 1945, and therefore, . . . Burgin had the full right to possession of the premises . . . for the entire year 1945, including the months of January, February, and March, and defendant, insofar as the year 1945 is concerned, is without any right whatsoever to contest the occupancy or possession of the premises by Burgin, this being a matter solely and entirely between the landowner . . . and Burgin."³

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1. 211 La. 148, 29 So. (2d) 595 (1947).

2. Art. 2709, La. Civil Code of 1870.

3. 211 La. 148, 157, 29 So. (2d) 595, 598.