

Louisiana Law Review

Volume 8 | Number 3
March 1948

Sales - Recordation - Specific Performance

William M. Meyers

Repository Citation

William M. Meyers, *Sales - Recordation - Specific Performance*, 8 La. L. Rev. (1948)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol8/iss3/13>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

of sale to be a complete integration of their entire agreement.¹² In the instant case, the very fact that the stipulation for the third party was not included in the formal act of sale suggests that the parties did not intend the act of sale to be a complete integration. Any evidence bearing on this point, including the preliminary contract itself, should be admissible.

Assuming, however, that the parties intended to supersede completely the prior contract, did they have the power to do so to the prejudice of a third party beneficiary who had consented to avail herself of the advantage provided in her favor? It is submitted that the court was correct in holding that the stipulation could not be thus revoked. The facts as a whole lend themselves to the conclusion¹³ that a stipulation pour autri was intended as the court found. After the assent of the beneficiary, revocation was not possible without her consent.¹⁴ Hence, the decision of the court to remand the case in order to determine the parties' intentions, though couched in misleading language, seems correct.¹⁵

ROBERT E. LEAKE, JR.

SALES—RECORDATION—SPECIFIC PERFORMANCE—Bartley Thompson sold land by authentic act to his son, Jesse, for a recited cash consideration. The act was a donation in disguise, but was duly recorded as a sale. It did not reveal the father and son relationship. After Bartley's death Jesse leased the land to plaintiff, giving the lessee an option to purchase. The option was recorded. Plaintiff complied with its terms and made tender to Jesse, who refused to convey title. The widow and other children of Bartley Thompson sued to have the deed from father to son declared null and the option cancelled. Plaintiff sued for specific performance. *Held*, that since the sale from father to son was a donation in disguise, title never vested in Jesse and upon the death of the father the land returned fictitiously to the succession by virtue of Article 1505.¹ The forced heirs then became owners of the portion neces-

12. There is strong common law authority to the effect that ordinarily a formal document such as a deed would not be so employed. "The purpose of a deed of conveyance is to 'convey' not to operate as a full memorial of the terms of the agreement." Corbin, *supra* note 5, at 638.

13. Or at least to the establishment of a probability sufficiently strong so as to justify the overruling of the exception of no cause of action.

14. Art. 1902, La. Civil Code of 1870, quoted *supra* note 9.

15. The writer expresses no other opinion on any other points which were raised in the case.

1. La. Civil Code of 1870, which provides: "To determine the reduction to which donations, either inter vivos or mortis causa are liable, an aggregate is

sary to fill their legitime. The court stated that the right to specific performance is not absolute and since the rights of others have intervened, Jesse cannot deliver a clear title, hence the remedy of plaintiff is in damages. Since Jesse is not required to perform the contract, his mother is entitled to have the gratuitous donation to him annulled under Article 2404.² *Thompson v. Thompson*, 211 La. 468, 30 So.(2d) 321 (1947), Justice Hamiter dissenting.

The case of *Chachere v. Superior Oil Company*³ involved a similar contest between a good faith purchaser and forced heirs. However, in that case, the purchaser, relying on the records, had actually acquired legal title. It was decided that the forced heirs could not maintain their action against the purchaser. Affirming the *Chachere* case by name the court in the instant case said, "... considerations of public policy respecting a stability of titles make it necessary that innocent parties prevail over the forced heirs even though it results in the denial of the heir's rights which our law has so carefully guarded."⁴ So the present decision is limited to a situation where the third party has not acquired title, but is merely a promisee to sell or the holder of an option. It is interesting to note that while Chief Justice O'Niell in a concurring opinion in the *Chachere* case said that he did not feel certain that the rule of *McDuffy v. Walker*⁵ applied unqualifiedly to a case where a forced heir is suing to annul a simulated sale made by his ancestor from whom he inherits,⁶ he did not object to the dicta in the case under consideration approving *Chachere v. Superior Oil Company*.

It was stated in the opinion that the court was confronted with a clash of rights between the right of revendication⁷ on the part of the heirs and the right of specific performance⁸ on the part of the

formed of all the property belonging to the donor or testator at the time of his decease; to that is fictitiously added the property disposed of by donations inter vivos according to its value at the time of the donor's decease, in the state in which it was at the period of the donation. . . ."

2. La. Civil Code of 1870.

3. 192 La. 193, 187 So. 321 (1939), noted in (1940) 2 LOUISIANA LAW REVIEW 387.

4. 211 La. 468, 493, 30 So. (2d) 321, 329 (1947).

5. 125 La. 152, 51 So. 100 (1910).

6. 192 La. 196, 199, 187 So. 321, 322, 323 (1939).

7. The right of revendication is granted by Art. 1517, La. Civil Code of 1870, which provides, "The action of reduction or revendication may be brought by the heirs against third persons holding the immovable property, which has been alienated by the donee, in the same manner and order that it may be brought against the donee himself, but after discussion of the property of the donee.

8. The right of specific performance is granted by Art. 2462, La. Civil Code of 1870: "... One may purchase the right or option to reject, within a stipulated time, an offer or promise to sell, after the purchase of such option, for any

plaintiff.⁹ But is not the real clash between the doctrine of forced heirship and that of reliance on the faith of the public records? The need for stability of titles was in conflict with the principles of forced heirship in the *Chachere* case, and the former was declared paramount. Here the rule that the right of specific performance is not absolute was utilized to limit the doctrine of recordation, and the result was that forced heirs were protected against the rules of registry.

Many cases have expounded the rule that all a prospective purchaser of land need look to is the public records; for there can be no other actual owner, so far as third parties are concerned, than the owner of record.¹⁰ Even if the buyer knows the actual owner, he may, in the absence of fraud, rely on the public records, since he is not bound by any knowledge not of record.¹¹ A number of cases, both state and federal, have declared that the above principles applied with equal force in favor of a promisee in an executory contract of sale.¹² The simple record title system of Louisiana has been developed by the jurisprudence into a method of protection against unrecorded and secret equities.¹³ No exceptions to the above rules have heretofore been admitted in favor of forced heirs.¹⁴

consideration therein stipulated, such offer, or promise can not be withdrawn before the time agreed upon; and should it be accepted within the time stipulated, the contract or agreement to sell, evidenced by such promise or acceptance, may be specifically enforced by either party."

9. 211 La. 468, 498, 30 So. (2d) 321, 331.

10. *Duson v. Roos*, 123 La. 835, 49 So. 590 (1909); *McDuffy v. Walker*, 125 La. 152, 51 So. 100 (1909); *Schniedau v. New Orleans Land Co.*, 132 La. 264, 61 So. 225 (1913); *Cole v. Richmond*, 156 La. 262, 100 So. 419 (1924); *Howard v. Coyle*, 163 La. 257, 111 So. 697 (1927); *Hughes v. Morrissey*, 169 La. 176, 124 So. 772 (1929); *Southern Casualty Co. v. Ross*, 179 La. 145, 153 So. 673 (1934); *Chachere v. Superior Oil Co.*, 192 La. 193, 187 So. 321 (1939).

11. *George v. Manhattan Land & Fruit Co.*, 51 F. (2d) 28 (C. C. A. 5th, 1931); *Porter v. Cooke*, 127 F. (2d) 853 (C. C. A. 5th, 1942); *McDuffy v. Walker*, 125 La. 152, 51 So. 100 (1909); *Soniat v. Whitmer*, 141 La. 235, 74 So. 916 (1917); *Dalby v. Continental Supply Co.*, 165 La. 636, 115 So. 807 (1928); *Westwego Canal & Terminal Co., Inc. v. Pizanie*, 174 La. 1068, 142 So. 691 (1932).

12. *Lehman v. Rice*, 118 La. 975, 43 So. 639 (1907); *Kinberber v. Drouet*, 149 La. 986, 90 So. 367 (1922); *Whited & Wheless v. Calhoun*, 122 La. 100, 47 So. 415 (1908).

13. *Blevins v. Sun Oil Co.*, 110 F. (2d) 566 (C. C. A. 5th, 1940).

14. It might be argued that the case of *Long v. Chailon*, 187 La. 507, 175 So. 42 (1937), represents a departure from the *McDuffy v. Walker* rule in favor of forced heirs. There land belonging to the community was recorded in the name of the father. After the mother's death, the land was seized and sold in payment of a debt of the father, but the forced heirs were allowed to recover the land itself. But was the record title good here? There was no indication on the records that the marital status of the father at the time of the seizure was the same as at the time of his purchase.

The courts of Louisiana have affirmed the so-called doctrine of *McDuffy v. Walker* in very strong and sweeping language.¹⁵ In *State ex rel. Recorder of Mortgages v. Hebert*,¹⁶ the supreme court stated,

“ . . . These cases show that in this state registry is not a mere matter of notice alone, but a matter of public policy upon a most ‘important property right’; and that considerations of equity cannot prevail against it. ‘ . . . the want of registry cannot be supplied.’ ”

In effect, the dicta of the court in the instant case indicates that the doctrine of reliance on public records is superior to the rights of forced heirs where the purchaser has acquired title; but where the third party's rights are those of a promisee in an executory contract of sale, or the holder of an option, the claims of forced heirs will be sustained on the theory that granting specific performance of a contract is a matter of judicial grace. If the public policy involved in the former case necessitates a system of registry upon which the public can rely, the same considerations should compel the reaching of a similar conclusion in the latter situation.

Would the court have granted a rescission of the sale if Jesse had actually delivered title to the plaintiff after the forced heirs had filed suit and recorded a notice of *lis pendens*?

Justice Hamiter, dissenting, called attention to an anomalous situation which could develop under the present holding.¹⁷ What would be the result of Jesse had sold the property outright to John Doe after the option to plaintiff was recorded and John Doe had recorded his deed. The court's dicta and reasoning indicate that plaintiff's rights would prevail over John Doe's, the claim of the forced heirs would prime those of plaintiff and Doe would have rights superior to those of the forced heirs. Such a situation might indeed result in confusion.

WILLIAM M. MEYERS

15. *Southern Casualty Co. v. Ross*, 179 La. 145, 150, 153 So. 673, 674 (1934), where the court said, “if we had the proper parties before us and if restoration of the ‘status quo’ was possible, we could not even then take an equitable view of the case, without sweeping away our long-established and time-honored registry system, which has been founded upon the highest considerations of public policy.”

In *Bell v. Canal Bank & Trust Co.*, 187 So. 295, 297 (La. App. 1939), the court said: “. . . the defendant is entitled to the benefit of that rule of law which has become almost consecrated in our jurisprudence to the effect that one who acquires property dealing on the faith of the public records will not be affected by any knowledge acquired outside of those records.”

16. 175 La. 94, 100, 143 So. 15, 17 (1932).

17. 211 La. 468, 512, 30 So. (2d) 321, 335, 336 (1947).