Civil Code and Related Subjects: Lease

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Duties of the Lessee

The plaintiff in Rials v. Davis\(^1\) leased his cleaning business, known as the Barrel Dry Cleaners, to defendant for fifty-two weeks at $100.00 a week. Defendant also owned a competitive cleaning business, known as Milady Cleaners. After a few weeks, the cleaning work brought in to Barrel Dry Cleaners was transferred by defendant to Milady Cleaners. The personnel of Barrel Dry Cleaners was reduced until only one woman was left on duty at the premises to receive clothing from customers and, after they had been cleaned at the other establishment, to deliver them. Gross receipts at the Barrel Shop decreased from an average of $195.00 a week to about $40.00 a week. Plaintiff sued for damages occasioned by the failure of the lessee to maintain the business as a prudent administrator. Defendant denied any obligation on his part to continue the leased premises as a going business.

The court correctly rejected common law authorities on the point and considered the basic nature of the contract of lease at civil law. Citing several of the French commentators in an analysis of the problem, the court concluded that "The thing leased was the business and the equipment necessary for its operation. There is no question that the parties contemplated the continuation of the business as a going concern during the term of lease. A mere reading of the lease itself and the provisions above referred to discloses this fact."\(^2\)

Therefore, the lessee violated his obligations by diverting clientele of the business to another business owned by him. Acceptance of the weekly rent thereafter did not estop the lessor, and an award of $3,000.00 damages by the district court was affirmed.

Rank of Lessor's Privilege

A problem of ranking several lessor's privileges in relation to a chattel mortgage was raised in Easterling v. Brooks.\(^3\) Brooks, the lessee, executed a lease of a farm, and, at the time when he

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1. 212 La. 161, 31 So. (2d) 726 (1947).
2. 212 La. 161, 170, 31 So. (2d) 726, 729.
3. 213 La. 519, 35 So. (2d) 132 (1948).
was not in arrears on his rent, moved a truck onto the leased premises. Thereafter the lessee executed a chattel mortgage of the truck to Walling, the intervenor. At a later date, Brooks, as lessee, executed a second lease to the same lessor for a dwelling on the farm property. Thereafter the first lease expired, Brooks being in arrears on his rental on both leases. A third lease was executed, this time on the farm covered by Lease Number 1.

The lessor provisionally seized the truck, along with other property. Walling intervened, praying separate appraisal and sale of the truck, and claiming to prime the lessor's lien. The court of appeal affirmed the lower court in holding that all of the lessor's claim primed the intervenor's "since Mrs. Easterling [the lessor] acquired a fixed and vested right against the truck when it became subject to and affected by her lessor's lien and privilege under the first lease 'to secure payment ... of all of the indebtedness due her' she not being required, under the law, 'to impute payment in such a way ... as to impair her rights. ...'"

The supreme court held that this was incorrect insofar as it permitted the lessor's privilege arising from the second and third leases to prime the chattel mortgage. The privilege arising from the first lease primed the chattel mortgage even though no rent was actually due when the chattel mortgage was executed; but the chattel mortgage primed all claims under leases arising subsequent to it.

This result was reached in reliance on "the duty of the creditor to impute the proceeds derived from the sale of the movables to the debt that was secured, but if of equal rank and dignity, then to the one longest due." The same result could, of course, be reached in reliance on the express provisions of the chattel mortgage act. On either basis, the ranking made by the supreme court appears entirely consonant with the theory of the chattel mortgage act in its relation to lessor's privileges.

**Eviction**

In *Lama v. Manale*, the court held that to enable a lessor to obtain possession of leased premises on termination of a writ-
ten lease, only five days' notice to vacate is necessary, in order to maintain summary ejectment proceedings. The court applied the first paragraph of Revised Statutes Section 2155 as amended and said that the ten and thirty day notice provisions of the second paragraph of that section are inapplicable.

The comments on this statute had generally taken a contrary view, but there was no judicial authority on the subject. Lower courts and practicing attorneys should welcome the definitive ruling on this problem.

IV. TORTS AND WORKMEN'S COMPENSATION

Wex S. Malone*

TORTS

Tort Liability of the State

The state's immunity from tort liability is limited only by the requirement of our constitution that "private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid." Somewhat similar provisions appear in most of the state constitutions. However, the prohibition is generally directed only at the taking of property and is limited to appropriational harms.

The provision in the Louisiana constitution that compensation must likewise be paid for damage to private property opens the way for an expansion of state liability which may result in trimming down the traditional immunity of the sovereign. A substantial body of law had been developed in Louisiana which perhaps pointed in this direction. Damages for injury inadvertently inflicted during the course of public improvement work had been recovered in several decisions. In all these cases, however, the injury followed from affirmative conduct of the state's agents in making public improvements on land, and usually the damage merely represented extended compensation for an in-

11. Compare Comment (1940) 2 LOUISIANA LAW REVIEW 161, and Comment (1946) 21 Tulane L. Rev. 256.

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