Louisiana Law Review

Volume 10 | Number 2
The Work of the Louisiana Supreme Court for the 1948-1949 Term
January 1950

Civil Code and Related Subjects: Conventional Obligations

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decision, the president and general manager of an ice manufacturing corporation, authorized to contract for the sale of its product, may bind the corporation by a stipulation for liquidated damages in the event of the corporation's non-performance of its obligations under the contract. Third persons are entitled to rely on a corporation's general officer having authority to enter into contracts in the usual course of business and certainly stipulations for liquidated damages must be frequent in contracts for the delivery of ice. The same result would follow under ordinary agency law, Article 3000 of the Civil Code providing that the authority of agents may be inferred from their functions or the ordinary course of the business to which they are devoted.

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

Despite the criticism that has been levelled at the doctrine of lesion beyond moiety the court demonstrated in *Jones v. First National Bank, Ruston,*[1] that the opportunity it affords for protecting a vendor of real property who transfers his title thereto for less than one-half its actual value is not to be lightly surrendered. The case did not involve an ordinary sale of the property but a dation en paiement in satisfaction of a judgment. The position of the transferee was that, under the provisions of Louisiana Civil Code Articles 1861 and 1863, a dation en paiement of immovable property is not subject to the doctrine of lesion beyond moiety, and that in any event the value of the land for oil, gas and mineral purposes cannot be considered in arriving at the true value of the property. In rejecting the latter contention the court was able to clear up certain misconceptions stemming from the case of *Wilkins v. Nelson*[2] and resulting in a holding by the Second Circuit Court of Appeal in *Silbernagel v. Harrell*[3] that the court declared unsound. The opinion pointed out the obvious difference between the sale of a mineral right, a contract speculative by its very nature and covering an immovable by disposition of law to which the code does not extend the protection of the action of lesion, and the sale of property the value of which is enhanced by the possibility of profitable mineral development.

In finding a transfer of real property in the form of a dation en paiement to be subject to the action, the court merely pointed

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1. 41 So.(2d) 811 (La. 1949).
2. 155 La. 807, 99 So. 607 (1924).
3. 18 La. App. 536, 138 So. 713 (1932).

to Civil Code Article 2659 which provides that the giving in payment is subject to all of the rules governing ordinary contracts of sale.

Justice Hawthorne wrote a lengthy dissenting opinion, taking the position that Articles 1861 and 1863 make it clear that the action of lesion does not apply to a giving in payment. This question, as to which differing opinions have been expressed, will be considered in detail in a later issue of this review. In passing, it is of interest to notice that Title VII, Of Sale, is made up of thirteen chapters, and that Chapter 13 is headed "Of the Giving in Payment," thus treating the giving in payment as a particular kind of sale. If lesion beyond moiety is founded on the idea of implied error or imposition, the possibility thereof might indeed be graver where a debtor is transferring his property as a means of satisfying his debts than where an owner of property is making an ordinary sale. The suggestion that, in the former case, all the debtor has to do to protect himself is to refrain from making the dation and let his property be seized is not convincing. For that matter all the vendor has to do is not make an ordinary sale, but offer at auction.

In *Brasher v. City of Alexandria*,[4] the court, on rehearing, reversed itself and held a sewer contractor obligated to furnish concrete cradles necessary to stabilize certain portions of the line as a consequence of a soft subsoil, the existence of which was unforeseen. The case reduces itself to the proposition that a contract capable of performance must be performed notwithstanding that the cost may be greater than anticipated, unless the additional cost is occasioned by the insufficiency of plans and specifications furnished by the other party and warranted to be sufficient.

Failure of a condition on which the transfer was made was given as the court's primary reason for annulling a deed conveying a mineral interest to the defendant attorney as a contingent fee for securing cancellation of a mineral lease for non-payment of delay rentals. It appeared that a suit to cancel the lease was filed but was abandoned upon the discovery that the rentals, contrary to the belief of the mineral lessor, had been paid.[5] The court also said that there was error as to the principal cause which nullified the contract. Three of the justices concurred in the decree. Justice McCaleb filed a concurring opinion disagreeing with the finding of error and preferring to rest the decision

4. 41 So.(2d) 819 (La. 1949).
5. Cheramie v. Stiles, 41 So.(2d) 502 (La. 1949).

on the ground that the attorney was not entitled to the interest conveyed because the conveyance was contingent upon his securing a cancellation of the lease.

In *Tennant v. Russell*,[6] the court dismissed a suit wherein the plaintiff was seeking to set aside a partition between husband and wife on the theory that he had a vested interest in the property as a consequence of an agreement with the wife on a contingent fee basis for the annulment of a notarial partition. The court pointed out that the contract for the bringing of the annulment action did not give the attorney a vested interest in the subject matter of the suit, and that since the client had terminated the action against her husband, as she was legally privileged to do, the attorney's only recourse was through recovery on the basis of quantum meruit.

After finding in *Sugar Field Oil Company v. Carter*[7] that there was insufficient evidence to establish an agreement to pay a broker's commission, the court permitted the broker to recover on a quantum meruit for services rendered in bringing a prospective purchaser of certain property and the defendant together, the latter having profited to the extent of $75,000.00 paid for an unexercised option to purchase the property.

The court also held that, since the claim in a suit on quantum meruit becomes liquidated only with the rendition of judgment, interest could be allowed only from such date.

The only issue presented in *Hinterlang v. Usner*[8] was whether the defendants had been induced by fraud to purchase a certain business from the plaintiff. The court did not believe that the defense had been established, a view amply supported by the record.

Tarver v. Allaun[9] involved the question of whether the plaintiff vendor was entitled to $500.00 that had been placed in escrow by defendant vendee, as option money for the purchase by defendant of certain mineral leases on the condition that if he elected to purchase the money was to be returned. The evidence being that the defendant had not elected to purchase the property, the court properly gave judgment for the plaintiff in accordance with the contract.

Only a question of fact was presented to the court in *Brezner*

6. 214 La. 1046, 39 So.(2d) 726 (1949).
7. 214 La. 586, 38 So.(2d) 249 (1949).
8. 41 So.(2d) 455 (La. 1949).
9. 41 So.(2d) 71 (La. 1949).

v. B. & T. Lumber Company,[10] and this was resolved against the plaintiff who was seeking to recover an amount allegedly loaned to defendant, it appearing that the plaintiff had merely made payments to defendant on a contract to purchase lumber.

PROPERTY

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Construction on River Bank

Article 455 of the Civil Code provides that the use of the banks of navigable rivers is public, and the courts have enjoined owners from putting up constructions on such property.[1] At the same time, the codifiers recognized the probability of structures actually being placed on the river bank because they included two articles for the purpose of dealing with these situations. Article 861[2] provides for the removal of the construction if it "obstructs or embarrasses" the use of the river bank; Article 862[3] permits the construction to remain if it "merely encroach upon the public way" and if its removal would cause signal damage to the owner. The choice between the prohibitive and the permissive rules is frequently and necessarily left to the court. In the case of *Town of Madisonville v. Dendinger*[4] the court applied the permissive rule of Article 862 so as to leave a private warehouse which was located on the riparian property and extended across the river bank. In the present state of the jurisprudence, it is

10. 214 La. 1016, 39 So.(2d) 598 (1949).

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1. Town of Napoleonville v. Boudreaux, 142 So. 874 (La. App. 1932). For fuller discussion, see Note (1949) 9 LOUISIANA LAW REVIEW 542. Cf. Pizanie v. Gauthreaux, 173 La. 737, 138 So. 650 (1931).

2. Art. 861, La. Civil Code of 1870: "Works which have been formerly built on public places, or in the beds of rivers or navigable streams, or on their banks, and which obstruct or embarrass the use of these places, rivers, streams, or their banks, may be destroyed at the expense of those who claim them, at the instance of the corporation of the place, or of any individual of full age residing in the place where they are situated.

"And the owner of these works can not prevent their being destroyed under pretext of any prescription or possession, even immemorial, which he may have had of it, if it be proved that at the time these works were constructed, the soil on which they are built was public, and has not ceased to be so since."

3. Art. 862, La. Civil Code of 1870: "If the works, formerly constructed on the public soil, consist of houses or other buildings, which can not be destroyed, without causing signal damage to the owner of them, and if these houses or other buildings merely encroach upon the public way, without preventing its use, they shall be permitted to remain, but the owner shall be bound, when he rebuilds them, to relinquish that part of the soil or of the public way, upon which they formerly stood."

4. 214 La. 593, 38 So.(2d) 252 (1948). See fuller discussion in Note (1949) 9 LOUISIANA LAW REVIEW 542.