

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: Lease

Joseph Dainow

Repository Citation

Joseph Dainow, *Civil Code and Related Subjects: Lease*, 10 La. L. Rev. (1950)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol10/iss2/15>

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.

The majority opinion does not disclose any extent to which it may have been influenced by the fact that the husband acquired the property seventeen years after the separation, or by what looked like the prefabricated litigation of the alert plaintiff. On the other hand it would hardly seem desirable to let a person derive a benefit from his own failure (or deliberate omission) to record his divorce judgment. However, the principle of public recordation does reflect one of the strongest policies in Louisiana law, and it should require a very clever and deliberate superior expression to avoid or supersede it.¹⁹

LEASE

*Joseph Dainow**

In the case of *Lingle v. Wainright*,¹ the lease contract contained one provision (printed) requiring written notice of renewal to lessor prior to a certain date, and also another provision (typewritten) giving lessee the option of renewal for a four-year period at a stipulated increased rental. The lessee gave written notice of renewal for the four year period at the higher rental, but sent it *later* than the date in the first provision; and the lessor accepted the new rent payments for nearly a year after the original lease expired. When the lessor sold the property, the new owner brought this suit to evict the lessee, and the dispute centered on the question of renewal. By reading both renewal provisions together and interpreting the contract as a whole, the court found that the lessor had waived his right to insist on written notice prior to the designated date, and that there had been a good renewal for the four-year period.

Another question of waiver was presented in the case of *Redon v. Armstrong*.² The lessor sued for cancellation of the lease on the ground of the lessee's failure to make prompt payment of a certain monthly rent note. The lessee pleaded that there had been a waiver of the contract promptness by the lessor's acceptance of several payments a few days late. However, the court

19. Cf. the protection of third person's recorded purchase in conflict with succession policies in *Chachere v. Superior Oil Co.*, 192 La. 193, 187 So. 321 (1939), noted in (1940) 2 LOUISIANA LAW REVIEW 387. However, the forced heirs were given the protection where the third person had only a recorded option to purchase (as distinguished from a record title) in *Thompson v. Thompson*. 211 La. 468, 30 So. (2d) 321 (1947), noted in (1948) 8 LOUISIANA LAW REVIEW 429.

* Professor of Law, Louisiana State University.

1. 215 La. 117, 39 So. (2d) 843 (1949).

2. 215 La. 307, 40 So. (2d) 474 (1949).

found that on each of these occasions, the lessor had remonstrated and warned about the lateness and further specified that their acceptance was not to be considered as a waiver. The lower court's judgment for the plaintiff was affirmed.

SECURITY DEVICES

*Joseph Dainow**

Liens and Privileges

The Louisiana Constitution requires that privileges and mortgages on immovable property (with certain exceptions) must be recorded in order to affect third persons, and it also provides that "privileges on movable property shall exist without registration of same, except in such cases as may be prescribed by law."¹ While the last part of this provision authorizes the legislature to require recordation for any specific privilege on movables, it is clearly by way of exception and must therefore be interpreted strictly rather than liberally.

In the series of statutes (1934, 1940, 1942)² which established the liens and privileges on oil wells, property and equipment, a priority over the statutory liens for work and supplies was given to a vendor's lien if it existed and was recorded before the beginning of the work or the furnishing of supplies. This provoked the question of whether these statutes created an exception (as permitted in the constitution) by requiring the recordation of a vendor's lien on *movable* property in order to enjoy the priority over the statutory liens, and for the 1934 statute it was

* Professor of Law, Louisiana State University.

1. La. Const. of 1921, Art. XIX, § 19.

2. La. Act 145 of 1934, § 2: "... such lien and privilege [for services or supplies] shall be superior to all other liens and privileges or mortgages against said property, except taxes or a bona fide vendor's lien and privilege, provided such vendor's lien and privilege exists and is recorded before the work . . . or the furnishing of . . . supplies is begun."

La. Act 100 of 1940, § 2-B: "That as to movable property said vendor's lien and privilege must exist and be filed for record within seven days after said property, subject to the vendor's lien and privilege, is delivered to the well or wells. Said vendor's lien and privilege shall be evidenced by a written instrument signed by the purchaser and when authentic in form or duly acknowledged, shall be filed for record in the records of the parish where the well or wells is located. The effect of said filing shall prevent said movables from becoming immovable by nature or destination. The property shall be described in such a manner as to be reasonably subject to identification and either the premises on which the property is located or is to be located, shall be stated. Filing, recordation and preservation shall be in the same manner and form and in the same book as now provided for the recordation of chattel mortgages, but the recorder shall enter under the heading 'Remarks' the words, 'Vendor's Lien.'"

La. Act 68 of 1942, § 2-B, is the same as La. Act 100 of 1940, § 2-B.