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Civil Code and Related Subjects: Security Devices

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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

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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

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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.

answered in the negative by the 1940 federal court case of *In re Lent.*[3]

The 1940 statute evidently set out to correct this situation and revised both the title and the text of the 1934 act so as to set out more specifically the requirement and the manner of recordation as one of the necessary conditions for the priority granted to a vendor's lien over the statutory liens in favor of laborers and materialmen. The legislative intent in this regard is clear, and although there may conceivably be objection as to the method of this legislative expression for a matter so narrowly hemmed in by the Constitution, this issue has not received serious attention by the court.

In the 1949 case of *H. H. Transportation Company v. Owens*[4] all members of the court apparently accepted the statute as providing adequately both the requirement and the manner of recordation for a vendor's lien on movables as a condition for its ranking priority. Under these circumstances it is somewhat surprising that the majority of the supreme court—concurring in the opinion of the district judge—picked on some of the collateral language of the statute "property . . . delivered to the well or wells" as a means of cutting away its application where delivery was not *to a well* but merely to the site before the commencement of operations. Thus the vendor's lien on an entire drilling rig was given the priority, on the ground that the statute did not require its recordation. The concurring opinion of Justice McCaleb[5] refused to follow this distinction but accepted what had actually been done as compliance with the statutory requirement of recordation.

To sustain the priority of the vendor's lien on movable property, there might have been raised the question as to the constitutionality of the recordation requirement which is an original and independent provision in a statute otherwise devoted to the creation and ranking of laborers' and materialmen's liens on oil wells and equipment. There is no other text of law which provides for the recordation of a vendor's lien on movable property, and in order to establish this requirement the legislative expression would have to meet the strict interpretation of the exception permitted in the Constitution, Article XIX, Section 19.

3. 34 F. Supp. 700 (D.C. La. 1940). Judge Porterie considered the language in the 1934 act which referred to recordation of vendor's lien on movables as "surplusage, meaningless and ineffectual."

4. 214 La. 985, 39 So.(2d) 441 (1949).

5. 214 La. 985, 996, 39 So.(2d) 441, 445.

This possibility was not considered by the court since it gave judgment in favor of the vendor in this case on another ground.

IV. TORTS AND WORKMEN'S COMPENSATION

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TORTS

Landowner's Liability to Trespassing Children

The extent of a landowner's duty to protect trespassing children from the danger of drowning in a pond or other body of water maintained on his premises cannot be easily defined. It is admittedly difficult to devise adequate protective measures against such risk without frequently imposing heavy financial burdens on the proprietor or seriously interfering with his effective use of his own property. This is particularly true in Louisiana where the topography of the countryside makes the use of canals and other drainage facilities a necessity. Furthermore, in this state there is an obvious overspreading risk of unavoidable drowning in the many natural bodies of water such as bayous, swamps, and rivers which characterize our terrain. For this reason, the peril of drowning is one to which the child populace of this state would continue to be exposed even if all man-made bodies of water were adequately safeguarded.

The difficulty of working out a compromise formula which would operate fairly for both landowner and trespassing children has induced many courts to close the door to recovery by announcing that the "attractive nuisance" doctrine (which would be the springboard for recovery in such situations) does not apply to ponds and other bodies of water.[1] In the past the Louisiana courts have consistently given judgment for the defendant in cases of this type.[2] Recently, however, in the case, *Saxton v. Plum Orchards, Incorporated*,[3] the supreme court was faced with a tragic occurrence which convinced it that simple rule-of-thumb action denying recovery is too harsh in the drowning cases. The facts of the *Plum Orchards* case indicate that in 1942 defendant had developed several acres of property in New Orleans as a sub-

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1. See cases collected (1925) 36 A.L.R. 224; (1926) 45 A.L.R. 992; (1928) 53 A.L.R. 1354; (1929) 60 A.L.R. 1453.

2. McKenna v. City of Shreveport, 133 So. 524 (La. App. 2d cir. 1931); Peters v. Town of Ruston, 167 So. 491 (La. App. 2d cir. 1936); Fincher v. Chicago, R.I. & P. Ry., 143 La. 164, 78 So. 433 (1918).

3. 215 La. 378, 40 So.(2d) 791 (1949).