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*The Work of the Louisiana Supreme Court for the
1949-1950 Term*

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Private Law: Lease

J. Denson Smith

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and has existed continuously for not less than three months." Even though the insured might later recover from his disability, the presumption stated in the policy would be deemed conclusive. The court pointed out that in its opinion there is authority supporting this view and likewise authority to the contrary in other states.

LEASE

*J. Denson Smith**

The cases under this heading decided during the 1949-1950 term were not of any significance jurisprudentially. In *Anglin v. Nasif*¹ the court rejected an attempt by three plaintiffs, lessees, to recover amounts claimed to have been paid by them in excess of allowable rentals under applicable OPA regulations. Defendant had converted an apartment renting at \$45 per month into two bedrooms, which he rented at \$30 per month each plus \$5 from each of the plaintiffs for kitchen privileges. This was done with the authority of the Shreveport Rent Director, and the conclusion of the court was that defendant's action was not an illegal evasion of the regulations, but a lawful avoidance.

Eviction proceedings brought in *Canal Realty and Improvement Company, Incorporated v. Paillet*² were dismissed as premature. After having accepted rent for the month of June, plaintiff instituted the eviction suit on June 27 without giving the tenant ten days' notice that the contract was terminated because of violations of its provisions. A notice to vacate previously given was waived by the later acceptance of additional rent.

In the case of *Salter v. Zoder*³ the court, on certiorari, annulled judgments of the district court and the court of appeal, and found in favor of the plaintiff, who was suing for damages resulting from injuries to his minor daughter. The daughter was injured when she fell against a sheet of galvanized iron being used to cover a stack of lumber placed in a driveway by the defendant lessor. Plaintiff was a sub-lessee. The court found the defendant negligent in obstructing the driveway in violation of the rights of plaintiff and his family and in creating a condition highly dangerous to children, knowing that the child in question and others were accustomed to play in the driveway. The decision rested on Articles 2315 and 2316 of the Louisiana Civil Code.

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1. 217 La. 392, 46 So. 2d 309 (1950).

2. 217 La. 376, 46 So. 2d 303 (1950).

3. 216 La. 769, 44 So. 2d 862 (1950).

Justice Hamiter dissented on the ground that the proximate cause of the accident and injury was not the stack of lumber with its galvanized iron covering but the fact that the child tripped during play on some other and disconnected object. He felt that if an iron chair had been at the same place the injury could have happened just as easily.

MINERAL RIGHTS

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REVERSIONS—SERVITUDE AND LEASE

One of the interesting developments in the jurisprudence since the last resumé involves what the court in *Gailey v. McFarlain*¹ termed a "reversionary interest." In that case the court expressed the opinion that such an interest could be dealt with, but under the test of intention had not been dealt with in the contract under consideration.

In later cases, apparently because of obvious difficulties of application of prescription and possible dangers to settled principles of public policy, the court strengthened resistance to the concept by deciding that a vendor dealing with the possibility of reversion was simply selling something that he did not own. During the past year, in at least three important decisions, the court has adhered to the non-recognition policy. *Long-Bell Petroleum Company v. Tritico*² may be said to stand for a denial under the theory of the sale of a thing not owned; it was cited by the court for this principle in *McMurrey v. Gray*.³ The latter case is emphatic on the point and grounds strongly on the public policy argument advanced by Chief Justice O'Niell in *McDonald v. Richard*,⁴ wherein, incidentally, the idea was further blighted by the word "so-called" consistently prefixing the phrase "reversionary interest" used by the court in *Gailey v. McFarlain*.⁵

In *Liberty Farms v. Miller*,⁶ the court again in no uncertain terms negates the reservation, termed a reversionary "right" in this case, grounding in part on the theory of sale of property not

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1. 194 La. 150, 193 So. 570 (1940).

2. 216 La. 426, 43 So. 2d 782 (1949).

3. 216 La. 904, 45 So. 2d 73 (1949).

4. 203 La. 155, 13 So. 2d 712 (1943).

5. 194 La. 150, 193 So. 570 (1940).

6. 216 La. 1023, 45 So. 2d 610 (1950).