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# Private Law: Obligations

J. Denson Smith

*pany, Incorporated v. Vaughn.*[31] The land under lease was pooled by order of the Commissioner of Conservation during the primary term of the lease and no minerals were produced from the specific land or from any of the lands within the pool during the primary term of the lease in question. The *Crichton v. Lee*[32] case was distinguishable on one fact, that production from the pool ensued during the primary term of the questioned lease, though not from the land covered by the lease. The instrument in litigation here took cognizance of the possibility of state intervention, as it contained a provision to cover such a contingency. Because of this clause and since the situation in principle was the same as that of *Crichton v. Lee,*[33] the court refused to cancel the lease. No delay in beginning and continuing construction of the cycling plant and pressure maintenance system had occurred.

A careful and conscientious survey of evidence occupied the court in *Angelloz v. Southwestern Oil & Refining Company*[34] in attempting to ascertain the intention of the parties to a mineral lease. Admission of extrinsic evidence was approved since the wording of the document was ambiguous.

## OBLIGATIONS

*J. Denson Smith**

The most interesting case under this heading was *Lakeside Dairies v. Gregersen,*[1] where the court affirmed a position it had previously taken that the value of property at the date an option to purchase is exercised rather than at the date it is originally given is controlling for purposes of the action of lesion beyond moiety. The option in question was contained in a lease originally made in 1942 and was exercised in 1945. The court also took the sound view that lesion beyond moiety may be urged as a defense to an action for specific performance brought by the buyer. In addition to the purchase money to be paid by the buyer, the seller was to be granted the so-called privilege of rebuying from the buyer certain of the lots making up the entire property. The court recognized that this was simply a conditional option to be available to the vendor if and when the vendee exercised his option and said that if the vendor should have purchased the lots, the action of lesion would have been

31. 217 La. 459, 46 So. 2d 735 (1950).
32. 209 La. 561, 25 So. 2d 229 (1946).
33. Ibid.
34. 215 La. 1056, 42 So. 2d 753 (1949).
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1. 217 La. 510, 46 So. 2d 752 (1950).

available to the vendee. It appears that in determining the whole price to be paid by the buyer the value of this option should have been included. This is not to say that the value of the lots themselves as compared with the price to be paid for them should have been included, but simply the value of the right granted to the seller to purchase the lots. This value, of course, would be determined as of the time the option was granted and it may be that even if it had been found and added to the price the result would not have been changed. What the court said about lesion being applicable to the purchase of the lots was of course correct.

Justice McCaleb dissented on the ground that the value of the property should have been fixed as of the date the option was originally granted. His position was that the earlier case of *Ronaldson and Puckett v. Bynum*,[2] relied on by the majority, was decided prior to the 1910 amendment to Article 2462, providing for the purchase of options, and that at such time options were not known to our law. He reasoned further that the option constituted an irrevocable contract, the date of which was fixed by the date of the lease in which the option was granted.

The view that prior to the amendment to Article 2462 options were not known in our law, although based on an earlier statement by the supreme court itself,[3] is questionable. On the basis of the resulting legal relations, the promise to sell of the French law, repeated in Article 2462, constitutes what the common law would call an option. The amendment to 2462 may have resulted from a failure to appreciate this fact and from the persistent belief that an offer must be supported by common law consideration to render it irrevocable. A common law option to buy given in a lease is a good example of a promise to sell under French law. From this point of view, instead of the option constituting simply an offer it amounted to a conditional contract to convey, which gives support to the position taken by Justice McCaleb, if not his method of distinguishing the *Ronaldson and Puckett* case. Perhaps it is also true that in many instances options are taken in view of the opportunity afforded to the buyer to acquire the property if within the period allowed its value is enhanced, an aleatory element. Cutting off this possibility at the point where the enhanced value would make the price agreed upon lesionary tends to destroy the value of what the buyer has paid for. It may have been this was the sort of thinking that led to the amendment of Article 2590 of the Civil Code by the 1950

2. 122 La. 687, 48 So. 152 (1908).
3. Moresi v. Burleigh, 170 La. 270, 127 So. 624 (1930).

legislature so as to provide that the immovable must be estimated according to the value which it had "at the time the option was granted if the sale be made pursuant to a valid contract of option."[4] This amendment would also have been in complete accord with the holding that lesion may be urged as a defense to an action for specific performance if the words "or demanded" or their equivalent had been added after the word "made." But this omission can hardly be taken as indicating a legislative intention to upset this part of the majority holding.

*DiCristina v. Weiser*[5] applied again what seems to be the court's position that in contracts for the purchase of realty the time for the passage of the act of sale is of the essence and that if the buyer suffers it to pass he loses his right to demand delivery. In the instant case, while the title was being examined the time for the passage of the act of sale passed without notice by either party. The court dismissed the buyer's action brought thereafter for specific performance, saying that he was in default and that being in default he could not thereafter, by virtue of Article 1913, place the defendant in default and consequently was not entitled to a conveyance. The court also held that the vendor's attorney, not being authorized in writing, could not contract for her for the sale of real estate and that there could be no waiver of the time fixed for the conveyance unless in writing because the contract itself was required to be in writing.

This case, as certain earlier cases, seems not to take into account the authority of the court under the code to grant either party additional time for performance notwithstanding default if on the facts it should see fit to do so. After considerable argument the supreme court decided in *Southport Mill v. Ansley*[6] that in all contracts except completed sales of immovable property, although the party in default is not entitled of right to tender performance, he may be given further delay at the discretion of the judge. If, therefore, in the instant case the plaintiff was in default by virtue of the terms of the contract, the default would not necessarily cut off his right to a conveyance, and in view of the facts surrounding the delay the court might well have granted further time for performance. If it had not seen fit to do so and if its rejection of the demand had been placed on that ground, an approach believed to be more consistent with the code would have been used. Furthermore, there is consid-

4. La. Act 154 of 1950.
5. 215 La. 1115, 42 So. 2d 868 (1949).
6. 160 La. 131, 106 So. 720 (1925).

erable question whether Article 1913 has any proper legal operation other than to require that if one party desires to recover moratory damages, or damages for delay in performance, he must himself offer to perform when undertaking to put the other party in default. Applied to this sort of problem, Article 1913 makes good sense. Its indiscriminate use otherwise can be productive of error. On the record here, if the buyer was in default, the seller must have been also. And if the seller was in default, why was it necessary for the buyer to put her in default? The proper solution would seem to have been, assuming a finding by the court that the buyer should not have been granted further time, a dissolution of the contract including, of course, a return to the buyer of the deposit, if made. The facts are silent about this.

The case of *Red River Cotton Oil Company v. Texas and Pacific Railway*[7] posed a problem of interpretation of a bill of lading. There was ample justification for the view taken by the majority that the carrier was still liable as an insurer rather than as a warehouseman notwithstanding the placing of the cars in question upon a spur track enclosed within plaintiff's yard. The decision was put on the ground that since the free time for unloading had not expired at the time the cars and contents were destroyed by fire, the carrier's liability as an insurer had not ceased. Justice Hamiter dissented, believing that a delivery into the possession of the consignee had been made, thus absolving the carrier of further responsibility as an insurer.

The defendant's attempt to escape responsibility on a contract for the installation of an ice rink on the ground that she signed the contract as an agent and not in her personal capacity properly failed in *Marx v. Spearman*.[8]

The decision of the court in favor of the defendant in a petitory action brought by the plaintiff was based on a counter-letter stating that the property in question claimed by plaintiff by way of inheritance from the record owner belonged to the defendant and had been put in the name of decedent for convenience only. The case was *Young v. Mulroy*.[9] Although the plaintiff attacked the genuineness of the counter-letter, insufficient evidence was presented in support. On the contrary, the evidence presented by the defendant tended to confirm her claim.

The disruption caused by the late World War also gave rise to the case of *Pacific Trading Company, Incorporated v. Louisiana*

7. 216 La. 519, 44 So. 2d 101 (1949).
8. 216 La. 21, 43 So. 2d 146 (1949).
9. 216 La. 961, 45 So. 2d 357 (1950).

*State Rice Milling Company, Incorporated.*[10] Contracts for the sale of rice for delivery to the buyer in this country were involved. When the buyer's license was revoked and its establishment sequestered by the government as the property of an enemy alien at the outbreak of the war with Japan, the Louisiana seller immediately notified the buyer that the contracts were cancelled. This was sustained by the court under the common law doctrine of frustration on the ground that the action would have been taken by a prudent business man in view of all of the information the seller had before it at the time indicating that the business efficacy or value of the contract had been materially impaired. The evidence showed that about twenty-four days later the plaintiff was given a limited license. The seller's action appears to have been somewhat hasty, but perhaps the court was correct in not requiring too nice a degree of deliberation in view of the situation existing on and after December 7, 1941.

## PERSONS

*Robert A. Pascal**

*Parish jurisdiction for divorce or separation.* Section 301 of Title 9 of the Louisiana Revised Statutes, providing for divorce after a two year separation in fact, states that the plaintiff "may sue, in the courts of his or her residence within this state." In *Wreyford v. Wreyford*[1] the plaintiff wife, described as a "resident of Caddo Parish," filed suit in Red River Parish, in which she and her husband had been domiciled while living together and in which the husband was still domiciled at the time of the suit. In the words of the court, quoted because of their extreme importance:

> "The sole question before us is whether a plaintiff, whose cause of action is predicated on the ground established by the aforesaid act of the Legislature, *must* initiate his (her) suit in the court of his (her) residence; or, whether that plaintiff has a *choice* of instituting suit in the court of his (her) residence, with the *alternative choice* of initiating suit in the court of the *defendant's domicile* (which would be the proper forum for a personal action) or in the court of the matrimonial domicile (which would have jurisdiction of the *res*)."

10. 215 La. 1086, 42 So. 2d 855 (1949).

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1. 216 La. 784, 44 So. 2d 867 (1950).