Private Law: Sale

J. Denson Smith

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varying results. In the case of City of New Orleans v. Noto\(^{10}\) the defendant claimed a "fair valuation," citing a very recent "succession appraisal" of the same property and contending for inclusion of the "replacement cost of the buildings." The court sustained the city's offer of the "market value" of the lots and improvements, defining market value as "a price which would be agreed upon at a voluntary sale between a willing seller and purchaser." In the present case, the determination of the market value was based on actual sales of similar property in the immediate vicinity. In the absence of such similar sales, other circumstances and factors would have to be considered. In any event, the court reasserted its statement in an earlier case that replacement cost is not a fair method of calculating the value of improved property.

**SALE**

*J. Denson Smith*

The principle that a purchaser may not be compelled to accept a title suggestive of litigation was applied in two cases during the 1949-1950 term. In *Trasher v. Flintkote Company*\(^1\) the court refused to order a buyer specifically to perform a contract with the plaintiff, it appearing that a prior suit by plaintiff to quiet title brought under the supposed authority of Act 106 of 1934\(^2\) was defective. This, the court found, resulted from the fact that the mentioned act applies only to cases where the property in question is adjudicated to an individual and not to the state, or as held in the instant case, to a municipality. Plaintiff had acquired title from the City of New Orleans, to which the property had been adjudicated at a tax sale for want of bidders. In *City of New Orleans v. Ricca*\(^3\) the court refused to order a defendant to purchase property from the city as the adjudicatee in an auction sale for want of any record of ownership by an individual. The court pointed out that such a title is suggestive of litigation in that prescription does not run against the state or the United States nor against minors or interdicts nor against parties holding under any other chain of title who are not parties to the suit.

A reduction in the price of a potato dehydrator was allowed

\(^{10}\) 47 So. 2d 36 (La. 1950).
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1. 216 La. 73, 43 So. 2d 222 (1949).
3. 217 La. 413, 46 So. 2d 505 (1950).
the purchaser in *J. B. Beaird Company, Incorporated v. Burris Brothers, Limited*, in an action by the seller for the purchase price on the strength of a finding that the machine was not suitable for the intended purpose in that it did not have the capacity supposed by the buyer. The buyer's alternative claim for rescission was held to have passed out of the case as a consequence of the fact that he had sold the dehydrator. The court did not find a guarantee by the seller that the machine had the capacity in question, but did find that the seller knew what capacity the buyer had in mind and also knew that he would not have bought the machine if he had known it would not measure up to his expectations. The seller's plea of one year prescription was rejected inasmuch as the claim for a reduction was being used by way of defense. A dissenting opinion by Justice Hamiter was based on the belief that the trial court's finding of lack of sufficient evidence that the machine would not do what it was supposed to do was supported by the record.

A seller's suit for the price of certain lumber delivered to the defendant was rejected and the defendant's counterclaim for damages flowing from the seller's failure to deliver lumber of the grade specified was allowed in *Mabry v. Midland Lumber Company*. The court did not advert to the principles of redhibition including the measure of damages applicable in such actions, but seemed to treat the seller's action in delivering lumber that was green and wet, contrary to the specifications of the contract, as simply a breach for which the buyer was entitled to damages. The opinion did not contain an itemization of the damages, but presumably they went beyond recovery of the expenses of the sale or those incurred in preservation of the thing sold, the measure applicable to cases of redhibition. The jurisprudence is not too clear on whether under circumstances such as those in the instant case the buyer's remedy is to be found in the articles dealing with redhibition or whether those articles may be disregarded and the case be treated as involving simply a breach of contract. The instant case adds some weight to a few earlier cases that were handled in like fashion.6

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4. 216 La. 655, 44 So. 2d 693 (1949).
5. 47 So. 2d 673 (La. 1950).