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Private Law: Convetional Obligations

J. Denson Smith

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This symposium, presented for the fourteenth time in the LOUISIANA LAW REVIEW, examines the main work of the Supreme Court of Louisiana during the judicial term from October 1950 to September 1951.

I. Private Law

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

A novel problem involving natural obligations was presented to the court in *Breaux v. Breaux*.[1] Here a legatee transferred to her son property acquired under the will of her aunt pursuant to an understanding that the property would go to the son when he attained his majority. Subsequently the legatee filed suit against her son to set aside and annul the authentic act by which she purported to convey the property to him for a price paid in cash. The defendant admitted that no price was paid but relied on the claim that the conveyance was supported by a natural obligation of his mother to carry out the wishes of the testatrix. In its original opinion the court held that the defense was unavailing because the desire of the testatrix was not defective for want of form only as provided in Article 1758 but was void in substance as a prohibited fidei commissum or a substitution. On rehearing, it seemed to conclude that the "understanding" plaintiff had with the testatrix that the property "would go" to the defendant when he attained his majority imposed, by virtue of Article 1758(1), a natural obligation on plaintiff that was neither immoral nor unjust and was therefore valid cause for the transfer.

Article 1758(4) imposes a natural obligation on a party who takes by way of inheritance to execute *the dispositions made by the ancestor* that are null for want of form alone. On the other hand, Paragraph 1 imposes a natural obligation on a promisor to fulfill *an obligation assumed by himself* that is null either for

* Professor of Law, Louisiana State University.

1. 218 La. 795, 51 So. 2d 73 (1950) (rehearing 1951).

want of form or for some reason of general policy but is not in itself immoral or unjust. An application of these provisions to the instant case would indicate that if the obligation resting on the plaintiff *arose solely from the act of the testatrix* in attempting a disposition that was invalid not only because lacking in the required form but also because such a disposition was also prohibited, it could not be characterized as a natural obligation in view of 1758(4). On the other hand, if the plaintiff's obligation *stemmed from a promise made by the plaintiff* to the testatrix, then it would appear to fall within the scope of 1758(1). This involves the justifiable assumption that the promise would not be enforceable as a civil obligation because it would amount indirectly to the accomplishment of a prohibited fidei commissum. The question would then remain whether the nullity of the promise would result because fidei commissa are contrary to general policy or because they are also immoral or unjust. An answer that they are merely contrary to general policy—and this was given by the court—would result in sustaining the transfer. This disposition nevertheless leaves the disturbing thought that a transfer of the kind here made, if based solely on the wishes of the testatrix, would be rendered invalid by Paragraph 4, while the same transfer, based on a promise made to the testatrix to carry out her invalid wishes, would be validated by Paragraph 1. Yet, if the policy of the law, as expressed in 1758(4) is against validity, why should this policy be changed merely because a promise is made to carry out the invalid disposition? This leads one to believe that the lawmakers did not intend by 1758(1) to give validity to a transaction that, without a promise to carry it through, would be invalid under 1758(4). The conclusion seems then to follow that when, because of its illicit character, an intended disposition would not create a natural obligation by its own force under 1758(4), it cannot be raised to the status of a natural obligation by the making of a promise in furtherance thereof. And this would be in keeping with the principle that natural obligations result from rules imposed primarily in the interest of the individual as opposed to the public generally.[2]

In *Succession of Aurianne*[3] the decedent directed her executors to pay the balance remaining due on the principal of a $15,000.00 long prescribed promissory note after recognizing in

2. See Comment, 12 LOUISIANA LAW REVIEW 79 (1951).
3. 219 La. 701, 53 So. 2d 901 (1951).

the will an indebtedness to such extent. The opinion concerns a claim to the unpaid interest on the note. In rejecting the creditor's opposition the court held that the mere acknowledgment of the debt did not operate as a renunciation of the acquired prescription so as to revive the entire indebtedness, including interest, that there was no new promise to pay the debt which would have such effect, but that the direction to pay the unpaid principal should be given effect as an expression of an intention to discharge the natural obligation. The court's position seemed to be that it was merely supporting the executor's duty to see the testament faithfully executed. In a separate concurring opinion the chief justice agreed that the testatrix did not intend to renounce the prescription nor to acknowledge the indebtedness but took the view that her act was a recognition of a natural obligation to pay the stated amount and a "giving" in compliance with Article 1759(1). The court undoubtedly gave effect to the intention of the testatrix but it may be wondered just how much the theory of natural obligations actually figured in the case.

The case of *Lama v. Manale*,[4] having previously been remanded, returned to the court for solution of the question of whether a lessor should recover a stipulated penalty of $5.00 per day for 543 days as a consequence of the tenant's failure to surrender the leased premises. The supreme court, reversing the lower court, enforced the contract as written, saying that the provisions of the lease contract were clear and were binding on the defendant. There was a dissent from Justice Hamiter, who seemed to rely chiefly on the idea that such a provision should not be enforced against a lessee who acts in good faith on the advice of competent counsel.

The case is consistent with the long-established policy toward the protection of landlords and is in recognition of the principle that a contract is the law between the parties. The moral is that lessees should be more careful in confecting their agreements.

When a series of pyramided real estate transactions collapsed on the withdrawal of the defendant, the real estate agent brought suit to recover a claimed commission and, as assignee, damages for the defendant's refusal to consummate his agreement to buy certain property. The court found that the withdrawal was in order and dismissed the plaintiff's suit.[5] In view of the fact that

4. 218 La. 511, 50 So. 2d 15 (1950).
5. Munson v. Larguier, 218 La. 693, 50 So. 2d 808 (1951).

the action of the agent resulted in a profit to the defendant of $250.00 which the vendee of defendant's home paid for his release, the position of Justice McCaleb, in dissenting, that the agent was entitled to his commission on this transaction because it had been enforced, in effect, by the vendor, is appealing. Yet it is difficult to see in defendant's willingness to accept a windfall from his vendee, any basis for denying him the right to rely on non-completion of the basic transaction, as far as plaintiff was concerned.

Nothing novel was presented by the court in *Guidry and Swayne v. Miller*.[6] The suit was by a contractor for damages including lost profits on a building contract and was remanded to permit the contractor to introduce further proof to show how much he would have spent in completing the contract if he had not been dismissed by the owner. A similar case was *Gowan v. Stone and Webster Engineering Corporation*[7] where the court, enforcing the rule that Article 2765 authorizes recovery of lost profits, found in favor of the contractor's contention.

The case of *Pennington v. Drews*[8] seems to have been finally disposed of on its third trip to the court. The court rejected the plaintiff's claim for penalties of $25.00 per day amounting to $34,475.00, concluding that the stipulated penalty was recoverable under the contract only if the defendant refused to render services involving the use of his oil exploration device while specific work was in progress. It found that no specific work was in progress when the refusal to work occurred. There was a dissenting opinion by Justice Moise.

There was a failure to satisy the burden of proof required by Article 2277 in *Fleury v. Ramos*.[9] The court applied the rule that the findings of the trial judge on questions of fact are entitled to great weight.

A contract for the removal of a gas line was found voidable because of misrepresentation and error in *Sylvester v. The Town of Ville Platte*[10] and the court remanded the case so that there could be a determination of how much the plaintiff was entitled to on a quantum merit.

6. 217 La. 935, 47 So. 2d 721 (1950).
7. 217 La. 935, 47 So. 2d 721 (1950).
8. 218 La. 258, 49 So. 2d 5 (1949) (on rehearing 1950).
9. 218 La. 293, 49 So. 2d 17 (1950).
10. 218 La. 419, 49 So. 2d 746 (1950).