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## Private Law: Sales

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ownership, and the price paid was found to represent the full market value at the time. Although the words of a deed may be superseded by information on a map in accordance with the intent of the parties, the present facts disclosed no such data. Furthermore, there was affixed to the document the United States revenue stamp for a deed of sale whereas no such stamp would have been necessary for a deed conveying only a servitude. The fact that under Section 3369 the police jury would have acquired only a servitude became irrelevant when the proceedings under that statute were dropped by reason of the voluntary conveyance.

### SALES

*J. Denson Smith\**

The court was called upon to consider the effectiveness of an out-of-state conditional sales contract in *Cobb v. Davidson*.<sup>1</sup> The decision of the court of appeal that held the transaction ineffective in Louisiana on the ground that the evidence did not establish lack of knowledge on the part of the vendor and assignee of removal from the State of Texas, where the transaction occurred, was reversed. The supreme court took the view that the burden of proving knowledge of removal was on the defendant as a special affirmative defense. The decisions of the supreme court have heretofore recognized the effectiveness of foreign conditional sales except when to the knowledge of the seller at the time of the transaction the property is being bought for removal to Louisiana. In the instant case the court seems to have accepted the view expressed earlier in lower court opinions that the vendor's protection is destroyed also if he has knowledge of the subsequent removal of the thing sold. Perhaps the present case will not be considered conclusive on the point.

Another conditional sales contract came before the court in *Lee Construction Company v. L. M. Ray Construction Corporation*.<sup>2</sup> The court relied on the *Barber* case<sup>3</sup> to the effect that the distinction between a lease with an option to purchase and a sale is that in the latter the vendee promises to pay a price while in the former he merely has an option to pay. It found a so-called

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1. 219 La. 434, 53 So. 2d 225 (1951).

2. 219 La. 246, 52 So. 2d 841 (1951).

3. *Barber Asphalt & Paving Co. v. St. Louis Cypress Co.*, 121 La. 152, 46 So. 193 (1908).

lease-purchase agreement to constitute an invalid conditional sale and therefore sustained an exception of no cause of action aimed at the plaintiff's attempt to recover rentals plus damages to the machine covered by the agreement.

In *Samuelson v. Bosk*<sup>4</sup> a contract for the purchase and sale of real estate was enforced against the purchaser by forfeiture of the deposit as provided in the contract. The defendant's argument that the agreement had never become binding was rejected and properly so.

The court merely allowed recovery of the value of a building erected by the plaintiff on a lot repossessed by the defendant vendor in *Smith v. Atkins*.<sup>5</sup> It rejected the defendant's claim for the balance due on the purchase price plus interest and taxes, in view of the fact that defendant had exercised a contract option to re-sell the lot and declare forfeited as liquidated damages payments previously made. The question of the reasonableness of the forfeiture was not raised.

The public records doctrine was applied by the court in *Meraux v. R. R. Barrow, Incorporated*,<sup>6</sup> to support the holding that a vendee is not bound by the provisions of a prior unrecorded instrument to which the vendor was a party. The court also found that a family holding corporation could not use the screen of corporate entity to exclude the rights of the estate of a co-grantee.

An attempt of counsel for the defendant to connect a prior writing containing a condition with a subsequent agreement which was unconditional failed in *Quarles v. Lewis*.<sup>7</sup> The court also held that parol evidence was not admissible to establish a condition not made part of the written agreement. A rehearing had apparently been granted but it was dismissed by agreement of counsel.

A problem of interpretation was resolved in *Standard Oil Company of New Jersey v. Evans*.<sup>8</sup> The court's appreciation of the intention of the transferor of a mineral interest was clearly supported by the language employed and the surrounding circumstances. The cases of *White v. Wallace*<sup>9</sup> and *Calumet Refining Company v. Great National Oil Corporation*<sup>10</sup> presented only

4. 219 La. 477, 53 So. 2d 229 (1951).

5. 218 La. 1, 48 So. 2d 101 (1950).

6. 219 La. 309, 52 So. 2d 863 (1951).

7. 219 La. 194, 52 So. 2d 713 (1951).

8. 218 La. 590, 50 So. 2d 203 (1950).

9. 218 La. 931, 51 So. 2d 489 (1951).

10. 218 La. 944, 51 So. 2d 585 (1951).

questions of fact. The court found no reason to disturb the conclusions reached by the trial courts.

### SUCCESSIONS, DONATIONS AND COMMUNITY PROPERTY

*Harriet S. Daggett\**

In the *Succession of Combre*,<sup>1</sup> since decedent and his family had continued in possession after an act of sale reciting a cash consideration, the presumption of simulation placed the burden of proof upon the alleged vendee to show that consideration had been paid. Since this burden was not sustained, the administrator of the succession secured the annulment of the act of sale.

In the *Succession of Montegut*<sup>2</sup> the will of Amelie Montegut contained a clause of doubtful meaning; and after consideration by the supreme court, the case was remanded in order that evidence might be heard bearing upon the intention of the testatrix.<sup>3</sup> It was indicated that a presumption prevails that a testator intends to dispose of all property. When this case again reached the supreme court, the majority took the position that this presumption is not as strong in the jurisprudence as is the preference in case of ambiguity for following as closely as possible the legal order of distribution. Upon rehearing the court adhered to the judgment on first hearing after the remand, particularly since the extrinsic evidence adduced did not convincingly disclose the intention of the testatrix.

In *Gregory v. Hardwick*<sup>4</sup> a testatrix made the following bequest: "I hereby will and bequeath all the rights, title and interest which I may have in any property whatsoever in equal proportions, share and share alike to" four named persons. The court found this provision to be a universal legacy under Article 1606 and *Shane and Withers v. Withers' Legatees*,<sup>5</sup> rather than a legacy under universal title. Thus, seizin was given to these legatees under Articles 1609 and 884, and they had a right of action for an accounting and other relief against decedent's husband. Moreover, the testamentary executrix, one of the legatees,

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1. 217 La. 955, 47 So. 2d 734 (1950).

2. 217 La. 1023, 47 So. 2d 898 (1949) (rehearing 1950).

3. *Succession of Montegut*, 211 La. 112, 29 So. 2d 583 (1947).

4. 218 La. 346, 49 So. 2d 423 (1950).

5. 8 La. 489 (1835).