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The Work of the Louisiana Supreme Court for the 1951-1952 Term
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Substantive Law - Private Law: Sales

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SALES

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That the jurisdictional limits of the Supreme Court might be reconsidered with profit is suggested by the number of cases presented to it involving claims of redhibition, rescission, and reduction in purchase price. Six of this kind came up during the last term. The court affirmed a judgment rejecting a demand for the purchase price of a stamping machine because of plaintiff's failure to furnish certain type, which destroyed the usefulness of the machine for the purchaser.[1] It exercised the authority granted by the code[2] to allow a reduction in the purchase price of a yacht in lieu of redhibition, because the buyer had made extensive repairs and could not, therefore, return the yacht in substantially its condition at the time of the sale.[3] It concluded that the buyer's use of an automobile for two months during which it had been driven over 11,000 miles precluded his claim for rescission or reduction in price.[4] It decided that, in consequence of the seller's knowledge of the defects in a building, the prescriptive period of one year for bringing the action *quanti minoris* should date from their discovery.[5] It held that the builder of a house was chargeable with knowledge of its defective condition.[6] And, in a similar case it agreed with the trial court that a vendee of a house was legally subrogated to his vendor's action in warranty against the latter's vendor, but that the liability was not solidary.[7]

In its opinion in *Tuminello v. Mawby*[8] the court questioned the *Kodel* case,[9] in which the court had refused to impute to a manufacturer knowledge that the cabinets of the radios he sold would not hold up in this climate. Although what the court said in the *Tuminello* case will be helpful, one can wish it had been more specific concerning the present status of the *Kodel* case. With reference to the holding in *McEachern v. Plauche Lumber*

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1. Wilson Gold Stamping Machine Co. v. Webb Hardware & Furniture Co., 220 La. 282, 56 So. 2d 423 (1952).

2. Art. 2543, La. Civil Code of 1870.

3. Poor v. Hemenway, 60 So. 2d 310 (La. 1952).

4. Tucker v. Central Motors, Inc., 220 La. 510, 57 So. 2d 40 (1952).

5. Wilfamco, Inc. v. Interstate Electric Co., 221 La. 142, 58 So. 2d 833 (1952).

6. Tuminello v. Mawby, 220 La. 733, 57 So. 2d 666 (1952).

7. McEachern v. Plauche Lumber & Construction Co., Inc., 220 La. 696, 57 So. 2d 405 (1952).

8. 220 La. 733, 57 So. 2d 666 (1952).

9. Kodel Radio Corp. v. Shuler, 171 La. 469, 131 So. 462 (1930).

& Construction Company[10] the basic article of the code giving the purchaser the benefit of his vendor's right of warranty[11] is in a section dealing with warranty against eviction, not vices and defects, and certain questions arise that likely will be productive of further litigation. One may wonder, for example, whether the case recognizes that by subrogation a consumer has a cause of action in warranty against the manufacturer-vendor of the retailer from whom the consumer buys. And if the retailer's action in warranty against a manufacturer is supported by imputed knowledge, whether the consumer will have the benefit thereof with respect to the damage he sustains.[12]

Two cases requiring consideration of the legal effects of attempted conditional sales reached the court. The *Barber* case[13] was relied on to support the holding that an agreement to sell a tractor and certain other property accompanied by a delivery to the purchaser resulted in a completed sale.[14] The plaintiff's argument that the contract was nothing more than a logging arrangement under which the buyer was not obligated to pay a price was rejected. The case involved an attempt by the plaintiff, as owner, to sequester the property in the hands of the lessee-vendee. In a similar case and on the same authority the court held that an agreement in the form of a lease-purchase contract constituted a completed sale.[15] Despite the *Barber* case and the frequent reaffirmation of its disapproval of conditional sales arrangements, it is not too clear that there is logical justification for depriving the parties inter se of the power to enter into the kind of contract before the court. However, the rule denying effect to such arrangements does disclose a double-barreled public policy against (1) the imposition of unreasonable forfeitures on unsuspecting purchasers and (2) the deception of third parties by novel arrangements designed to postpone transfer of title notwithstanding delivery of possession.

The court's long history favoring security of acquisition based on the public records was reaffirmed in *Quatre Parish Company*

10. 220 La. 696, 57 So. 2d 405 (1952).
11. Art. 2503, La. Civil Code of 1870.
12. See Civ. Cass., D.85.1.357 (1884); Bordeaux, D.89.2.11 (1888).
13. Barber Asphalt Paving Co. v. St. Louis Cypress Co., 121 La. 152, 46 So. 193 (1908).
14. Roy O. Martin Lumber Co., Inc. v. Sinclair, 220 La. 226, 56 So. 2d 240 (1951).
15. Lee Const. Co. v. L. M. Ray Const. Corp., 219 La. 246, 52 So. 2d 841 (1951).

v. Beauregard Parish School Board.[16] It was found that certain third parties were not bound by an erroneous description in a tax title involving a typographical error in the range number. Justices Hawthorne and Moise dissented, feeling that the public records themselves were sufficient to put the third parties on notice. The former also believed that the constitutional period of peremption of tax titles protected the title of the purchaser.

Several cases dealt with miscellaneous problems of no great consequence. A difficult problem of interpretation was examined with care and resolved in favor of the defendant.[17] A stipulation of no warranty, not even for a return of the purchase price, was enforced as written.[18] The court decided that the transaction amounted to the sale of a chance or hope. Although it was stated that Article 2503 was controlling, it appears that Article 2505 might have been relied upon as more direct authority. Against the dissent of the Chief Justice, registered in an opinion in which the facts were painstakingly analyzed,[19] recovery was allowed of funds found to have been advanced for the purchase price of real estate. The second highest bidder at a partition sale was found to have had no standing to claim the property when the first bidder failed to comply.[20] And in two cases[21] the court applied the settled rule that where a timber vendee has exercised the right to cut and remove all of the merchantable timber, the contract for the sale thereof is terminated, even in the absence of a specified removal period.

SECURITY DEVICES

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RANKING OF PRIVILEGES

In establishing privileges as exemptions from the general rule of proration among creditors,[1] the Civil Code granted such a preference to certain debts by reason of their nature, and in

16. 220 La. 592, 57 So. 2d 197 (1952).

17. Interstate Natural Gas Co., Inc. v. Mississippi River Fuel Corp., 220 La. 43, 55 So. 2d 775 (1951).

18. In re Canal Bank & Trust Co., 221 La. 184, 59 So. 2d 115 (1952).

19. Devron v. Goesling, 221 La. 53, 58 So. 2d 709 (1952).

20. Brewer v. Cowan, 220 La. 189, 56 So. 2d 149 (1951).

21. Blanchard v. Norman-Breaux Lumber Co., Inc., 220 La. 633, 57 So. 2d 211 (1952); Dalton v. Norman-Breaux Lumber Co., Inc., 220 La. 647, 57 So. 2d 216 (1952).

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1. Arts. 3182-3183, La. Civil Code of 1870.