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Substantive Law - Private Law: Security Devices

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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 cases²¹ 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

*Joseph Dainow**

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.

situations where privileges came into competition among themselves, the order of their ranking was again determined on the basis of the nature of the debt to which the privilege was attached.² The statutes which subsequently added new privileges contained a ranking provision which usually followed the same principle of establishing priorities according to the nature of the basic claims. The one notable departure from this system of ranking is in the Chattel Mortgage Law which—through all the changes and developments—contains a ranking provision which introduced a chronological basis for deciding priorities³ where a chattel mortgage is involved.

Since the Civil Code privileges compete among themselves without reference to the date of their creation, there was no need for the code to specify the exact time at which each came into existence. When a code privilege competes with a chattel mortgage, however, it is necessary to place a date tag on the former in order to get it into a chronological frame of reference with the recordation date of the latter. In several instances the court has already dealt with this problem, and a more complete discussion of this subject will be covered in a later article. During the past term, one new item was added by the court to the chronological reference points for Civil Code privileges.

In the case of *Union Credit Company v. Croswell Company, Incorporated*,⁴ the Civil Code privilege of a secretary⁵ was in competition with a chattel mortgage. The chattel mortgage was duly recorded subsequent to the beginning of the employment but prior to a salary reduction and the eventual failure to pay the salary altogether. The court of appeal gave preference to the chattel mortgage on the theory that the secretary's privilege attached only when the debt became due. This was reversed by the Supreme Court, which recognized the secretary's privilege as existing from the original date of employment which "could not be considered anything other than a continuous contract." The creation and existence of the privilege are not conditioned upon any outstanding indebtedness but are intended to secure the payment of wages in preference to other claims.

2. Arts. 3186-3187, 3254-3270, La. Civil Code of 1870. See Dainow, Article 3267 and the Ranking of Privileges, 9 LOUISIANA LAW REVIEW 370, 371-374 (1949).

3. La. R.S. 1950, 9:5354: "Every such mortgage shall be . . . superior in rank to any privilege or preference arising subsequently thereto." (Italics supplied.)

4. 219 La. 993, 54 So. 2d 425 (1951).

5. Arts. 3191, 3214, La. Civil Code of 1870.

The establishment of each privilege, both in the code and in the statutes, is based upon certain policy considerations, sufficient in every instance to outweigh the general policy of proration among creditors. The decision in the present case is likewise one of policy and of effectuating the legislative intent underlying the original establishment of the secretary's privilege. The contention that the change in salary constituted a new contract with a new privilege was not considered as pertinent in view of the custom and practice in such employment relationships, as distinguished from changes in rent or other adjustments which may occur between landlord and tenant.

BUILDING CONSTRUCTION PRIVILEGES

Under the building contract law⁶ the materialman's privilege does not prime a mortgage if the mortgage exists and is duly recorded "before any material is furnished." On a single building construction project the matter is a simple one of comparing dates, but in the cases of *Jones & Sons v. Meyer* and *Security National Bank v. Meyer*,⁷ the construction involved an extensive housing development in which twenty-two units were planned. The owner proceeded in groups of four, and it was with the third and fourth groups that he got into financial difficulties. The mortgage given on these latter properties was recorded before any materials were furnished for them, but the materialman claimed priority on the ground that the entire project was one and that the mortgage had been recorded subsequent to the furnishing of supplies for the first and second groups of houses. The issue thus became one of fact—to determine whether the whole plan for the twenty-two houses was one construction project, and on the evidence the court found it was not a single continuous or blanket development project. The trial court's judgment sustaining the priority of the mortgage was affirmed. Large scale housing developments involve many incidental security problems; a clarification of the important facts in the construction plan consistently with statements in the mortgage and supply contracts can provide a basis for reliable advice and the avoidance of disputes.

PRIVILEGE ON OIL AND GAS WELLS

Every privilege, with its priority, is in the nature of an exception to the general rule of equality and proration among creditors.⁸

6. La. Act 323 of 1938; La. R.S. 1950, 9:4812.

7. 200 La. 153, 55 So. 2d 898 (1951).

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

Accordingly, no privilege can exist without code or statutory text, and in matters of privileges the rule of strict interpretation is necessarily followed. In each case the requirements for the existence of the privilege must be complied with completely; however, on the other hand, a privilege cannot be made dependent upon conditions not specified under that particular statute. Thus, the owner of property cannot assert a lessor's lien against the effects of the occupant where there is no contract of lease between the parties;⁹ conversely, the automobile mechanic has a lien on the car he has repaired even though the work was not ordered by the owner.¹⁰

In the case of *Oil Well Supply Company v. Independent Oil Company*¹¹ the defendant resisted an asserted privilege on oil and gas wells on the ground that there had been no contractual relationship between the plaintiff supplier and either the owner or operator of the wells. There was no denial of the delivery of the supplies directly on the property, nor was there any other basis of defense under the statute.¹² At the same time, however, neither was there any requirement under the statute that the privilege be limited to supplies furnished under contract with the owner or operator. Accordingly, the court sustained the privilege and affirmed the lower court's judgment maintaining a writ of provisional seizure.

CHATTEL MORTGAGES

The chattel mortgage law may be considered as consisting of two principal parts: one which authorizes the chattel mortgage and sets out the requirements for its creation and the scope of its effectiveness,¹³ and the other which is meant to deter fraud or abuse in connection with mortgaged property.¹⁴ Among the latter provisions is one which imposes personal liability for the principal debt upon the purchaser of chattel mortgaged property who fails to procure an affidavit of non-encumbrance from an out-of-parish vendor.¹⁵ The full impact of the operation of this provision was felt in the case of *Harris Finance Company v. Fridge*.¹⁶ The his-

9. Arts. 2705, 3218, La. Civil Code of 1870; *Fisk v. Moores*, 11 Rob. 279 (La. 1845).

10. La. R.S. 1950, 9:4501.

11. 219 La. 936, 54 So. 2d 330 (1951).

12. La. Act 68 of 1942; La. R.S. 1950, 9:4861 et seq.

13. La. R.S. 1950, 9:5351-5358, 5363-5365.

14. La. R.S. 1950, 9:5359-5362.

15. La. R.S. 1950, 9:5362; La. Act 172 of 1944, § 8.

16. 219 La. 1106, 55 So. 2d 707 (1951).

tory of this section and a full analysis of its possibilities have been set out in an earlier issue of this REVIEW.¹⁷ In the present case, the defendant purchaser was held personally liable for the principal debt because he had not obtained the appropriate affidavit, despite the fact that the plaintiff mortgagee had not recorded the chattel mortgage, and regardless of a possible disparity between the amount of the principal debt and the current value of the automobile involved.

The result of this statute goes far beyond that contemplated by the system of mortgage. While agreeing with the purpose of protecting the chattel mortgagee and deterring fraud or abuse by third persons, one might well consider it pertinent for the Legislature to re-examine this statutory provision with a view to giving the warranted protection to one interest without unduly harming the other.

SUCCESSIONS, DONATIONS AND COMMUNITY PROPERTY

*Harriet S. Daggett**

In the *Succession of Gumbel*¹ Mr. Gumbel had made Touro Infirmary his residuary legatee. Later, at a time when he was too ill to prepare another codicil, he wrote the President of Touro Infirmary asking that certain changes be made in connection with the devolution of his property after his death. The president acceded to this request and the Board of Directors of Touro Infirmary by resolution passed after Mr. Gumbel's death confirmed the president's action. Later, the executor petitioned the court for an order to carry out all wishes of the deceased, including those mentioned in his letter to the President of Touro. All legatees joined in the petition except Touro Infirmary, which had previously passed the resolution. The court granted the order and then one of the legatees who had signed the petition attacked the order, stating that previously she had been unaware of her rights and had been mistaken in the belief that her legacy would be unaffected by the agreement with Touro Infirmary. Although the executor showed that sufficient funds had been retained to protect her legacy, she entered opposition to the executor's provisional account. Obviously the agreement was neither a will nor

17. Note, 12 LOUISIANA LAW REVIEW 516 (1952).

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1. 220 La. 266, 56 So. 2d 418 (1951).