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## Sales - Lesion Beyond Moiety - Immovables and Movables Mixed

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enactment of legislation establishing a legal presumption that a bottle of "soda pop" had *not* been adulterated by an officious meddler between the time it left the plant of the producer and the ultimate purchase by the consumer.<sup>36</sup>

Louisiana will probably continue to follow the trend evidenced by the *LeBlanc* case and common law jurisdictions.<sup>37</sup> Future adjudication will most likely be characterized by increased liability of manufacturers; the ultimate result could well be strict liability.

William D. Brown, III

SALES—LESION BEYOND MOIETY—IMMOVABLES  
AND MOVABLES MIXED

The plaintiff and the defendants were co-owners of a poultry business. In 1948 the plaintiff sold his interest to the defendants by two<sup>1</sup> notarial acts executed simultaneously. One act transferred plaintiff's interest in the realty, the other his interest in the movables. The plaintiff sought to rescind the sale of the immovables on the ground of lesion beyond moiety. Parol evidence was admitted, over the objection of the plaintiff, to support the defendants' contention that the separation into two acts was done for convenience and that the parties intended the two acts to constitute a single transaction conveying both the realty and the business for a lump price. The court held that the action of lesion beyond moiety did not lie. "Rescission of sales for lesion beyond moiety is not granted in sales *involving* movables."<sup>2</sup> (*Italics supplied.*) *Corona v. Corona*, 221 La. 576, 59 So. 2d 889 (1952).

The purpose of this note is to consider the validity of this case insofar as it holds that the action of lesion beyond moiety does not lie in a mixed sale of movables and immovables.

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36. Of course, the defendant should have the right to destroy such a presumption by producing positive evidence of interference.

37. Prosser, *Handbook of the Law of Torts* 690 (1941); Vold, *Sales* 464 (1931) and cases cited therein at note 75; 1 Williston, *Sales* §§ 244, 244a (2 ed. 1924) and cases cited therein.

Many manufacturers seem to have abandoned all notions of escape from charges of redhibitory defects. Bogert & Fink, *Business Practice Regarding Warranties in the Sale of Goods*, 25 Ill. L. Rev. 400, 416 (1930).

1. A third act granted a mortgage in favor of plaintiff as security for the unpaid portion of the purchase price.

2. *Corona v. Corona*, 221 La. 576, 584, 59 So. 2d 889, 892 (1952).

Lesion beyond moiety is the remedy granted to a vendor of immovables who has received less than one-half the value of the thing sold.<sup>3</sup> The court in the *Corona* case decided that this doctrine applies only to a case in which immovables alone are sold, basing this holding on an interpretation of Civil Code Article 2594, which reads: "Rescission for lesion beyond moiety is not granted against sales of movables. . . ." (Italics supplied.)<sup>4</sup> In effect the court gave Article 2594 precedence over the general rule of Article 1861, which provides that ". . . 2. In sales of immovable property, the vendor may be relieved, if the price given is less than one-half of the value of the thing sold. . . ." Although it is true that if considered alone Article 2594 will bear the interpretation given to it by the court, it is submitted that when read together with other articles on lesion, an entirely different meaning will become apparent.

Since the remedy for lesion is founded upon an implied error or imposition,<sup>5</sup> it is difficult to understand how the selling of a movable in the same transaction with an immovable can destroy the implied error or imposition.<sup>6</sup> The selling of a movable with an immovable does not seem to offer to the vendor of the immovable the protection which it was intended for the vendor to have in such cases. Moreover, the code, in Article 2666 under the title "Of Exchange," expressly recognizes the applicability of lesion beyond moiety where a movable and an immovable are *exchanged* for an immovable.<sup>7</sup> It would seem then, by analogy, that lesion beyond moiety would also be applicable to a mixed *sale*. That money instead of an immovable is given for the movable and immovable should make no difference. At face value it would seem the *Corona* case has overruled the earlier case of *Hustmyre v. Waters*.<sup>8</sup> In that case action was brought to

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3. Art. 2589, La. Civil Code of 1870. See also Art. 1861, La. Civil Code of 1870, a general article on lesion which was cited by the court.

4. The court in the *Corona* case stated that Article 2594 in their opinion meant "Rescission for lesion beyond moiety is not granted in sales involving movables." *Corona v. Corona*, 221 La. 576, 584, 59 So. 2d 889, 892 (1952).

5. Art. 1860, La. Civil Code of 1870.

6. Art. 2589, La. Civil Code of 1870, speaks of the impossibility of waiving the right to the action of lesion beyond moiety even by express statements in the contract to that effect. This is an indication of the difficulty of destroying the implied error or imposition upon which the action is based.

7. Art. 2666, La. Civil Code of 1870. If *A* gives a \$100 immovable and a \$1,501 movable in exchange for a \$1,000 immovable by *B*, then *A* can avail himself of lesion beyond moiety because the movable given exceeds by more than one-half, the value of the immovable given by *B*.

8. *Hustmyre v. Waters*, 186 La. 218, 171 So. 855 (1937). There was no mention of this decision in the *Corona* case or in the briefs of counsel.

set aside a sale for lesion beyond moiety. Plaintiff alleged that she had sold immovables worth \$25,000 for \$7,500. She further alleged that the sale included movable property transferred in the same act. The defendants filed an exception of no cause of action levelled at the proposition that an action does not lie to set aside a sale of movable property for lesion beyond moiety. The court held that the exception of no cause of action had been properly overruled, since the plaintiff had specifically alleged that the realty sold had a value in excess of \$20,000, and had thereby segregated the immovable from the movable property. It is to be noted that in the *Hustmyre* case the plaintiff alleged that the price paid for both the movable and realty was less than half the value of the realty alone, thus making lesion obvious.

Where movables and immovables are transferred together in a sale, obvious problems may arise. In many situations, it would be impossible to prove what part of the price was paid for the immovables. The court would undoubtedly be justified in refusing to allow rescission for lesion beyond moiety in such cases. This factor would necessarily limit the availability of the action to mixed sales; but a matter of proof and not a legal principle would be controlling.

In the *Hustmyre* case the market value of the realty<sup>9</sup> was more than double the entire price of the sale. It is easy then, in such a case, to see that lesion has occurred. It is submitted that the holding of the *Corona* case will prevent the use of lesion beyond moiety in an instance such as this, even as it will when the price paid for the immovable and the price paid for the movables is separately stipulated in the act of sale.

The court reasoned that since the action does not apply to movables it cannot apply to a sale of movables and immovables combined. It is submitted that it could have concluded, with just as much logic, that since the action applies to immovables, the fact that a sale of immovables also includes movables does not destroy its application to such a sale.<sup>10</sup>

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9. The existence of lesion must be determined by the value of the property at the time of the sale. Art. 2590, La. Civil Code of 1870. The court has consistently held that it should be determined upon the market value of the property. Comment, 24 *Tulane L. Rev.* 145 (1949).

10. The conclusion offered by the writer would not result in undue hardship to the vendee. If the action of lesion beyond moiety is allowed, the vendee has the choice of either rescinding the sale or of paying the full market value of the immovable. Art. 2591, La. Civil Code of 1870.