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Civil Code and Related Subjects: Obligations

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OBLIGATIONS

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There were no cases of any real consequence to this branch of the law decided by the court during the last term.

A rough sort of justice seems to have been worked out of a loose and indefinite agreement in *B. & H. Twin Master Cylinder Co. v. Scott.*[1] Plaintiff was suing for $3,887.17, representing money advanced by it to defendant under an agreement for the manufacture of brake cylinders. It seems that, prior to the formation of the plaintiff corporation, defendant had entered into an oral agreement with the holder of the patent for the perfection and manufacture of the brake cylinders. Defendant was to receive a one-third interest in the patent plus an exclusive right to manufacture the device. For over a year defendant did a considerable amount of work in perfecting the cylinder and, subsequent to the formation of the plaintiff corporation by the patent holder and others, received from plaintiff's president, the patent holder, two checks of the corporation signed by the president and treasurer. The court denied any right in plaintiff to recover the amounts advanced to defendant on the ground that it had no contract with defendant. Yet, although there was no contract, defendant had received the amounts claimed. And, beyond the finding of no contract, the opinion does not explain why the defendant was entitled to keep them. Perhaps it was felt that he received the sums as the money of the patent holder by way of compensation for what he had done. The court stated that defendant had lost his right to the one-third interest in the patent by its transfer to the corporation and it found that he and his employees had labored for over a year on the device. Although the result may be satisfactory, one is left to wonder whether the litigation could not have been framed so as to permit of a more satisfactory exposition of the rights of both plaintiff and defendant.

In *Michel v. Efferson*[2] the court refused to find a waiver of defective construction in the owner's taking possession of the premises after securing an agreement of the contractor to

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1. 223 La. 427, 65 So. 2d 900 (1953).
2. 223 La. 136, 65 So. 2d 115 (1953).

correct certain known defects, and awarded remedial damages. A contract provision guaranteeing all materials and workmanship for a period of one year from the date of acceptance was held not to constitute a conventional period of prescription for the bringing of suit. Justice Moise dissented on both points. The evidence bearing on the first point was conflicting. Resolution of such a disputed issue in favor of the owner seems to be a sound course. Likewise the provision guaranteeing the materials and workmanship could hardly have been intended to establish a period of prescription. A discovery that it had not been satisfied might have been made on the last day of the period. If so, suit might well have been precluded despite the failure to satisfy the guarantee.

A plaintiff claiming recovery from an interstate carrier for water damage to goods received was denied relief inasmuch as he failed to prove the loss of the bill-of-lading, and failed to prove otherwise that it would have shown the receipt of the goods in good condition by the carrier. Plaintiff apparently was relying on a presumption that the goods were received by the carrier in good condition that would have had the effect of shifting the burden of proof to the carrier. This position the court rejected, referring to Louisiana Civil Code Article 2279, requiring proof by the party relying thereon of loss of the instrument which would then open the way for proof of its contents.[3]

In *Childers v. Hudson*[4] the court admitted secondary evidence of a counter letter, the original of which had been destroyed by fire, and decreed reconveyance of a tract of land transferred to defendant by way of security. It was also held, and with good reason, that Louisiana Civil Code Article 2280, requiring advertisement, is inapplicable to a case where the lost instrument is destroyed by fire.

That an assignment of a mineral interest must be in writing was reiterated in *Acadian Production Corp. of La. v. Tennant.*[5] The court found in a corporate resolution sufficient written authority for an agent's assignment of such an interest.

Four cases involved problems of interpretation of no great difficulty. In *Southern Biological Supply Co. v. Morrison*[6] the

3. Yuspeh v. Acme Fast Freight, 222 La. 747, 63 So. 2d 743 (1953).
4. 223 La. 181, 65 So. 2d 131 (1953).
5. 222 La. 653, 63 So. 2d 343 (1953).
6. 221 La. 976, 60 So. 2d 892 (1952).

court found that a written agreement did not constitute a contract to sell, as alleged. It also found no putting in default by the plaintiff. However, the facts seemed to disclose that defendant had in effect disabled itself and that consequently a putting in default would have been a vain and useless thing. A reasonable interpretation was made of an ambiguous drilling provision in a mineral lease in *Godfrey v. Lowery.*[7] Surely if the parties in this case intended to impose a binding obligation on the lessee to drill a well, on pain of responding in damages for its breach, the customary positive language could easily have been employed. In *McLellan v. F. N. Johnston, Inc.*[8] the court's resolution of a problem of interpretation in a carefully reasoned opinion was convincing despite the appealing nature of the opposing position. And in *Pendleton v. McFarlane,*[9] plaintiff's unreasonable delay in asserting his supposed rights assisted the court in determining the understanding of the parties to a written contract.

A dispute between a doctor and his patient concerning the amount owed by the latter for professional services was resolved in favor of the patient in *Katz v. Bernstein.*[10] The evidence was conflicting and the judgment of the court seems to have been just and proper.

Only a factual problem was involved in *Wigginton v. Globe Const. Co.*[11] Finding certain defects of construction in a building erected by defendant for plaintiff, an award was made to cover the necessary repairs.

Recovery of the purchase price of two carloads of syrup was denied in *Quirk v. Raymond Heard, Inc.*[12] The court found that there had been a mutual agreement of cancellation and reserved the right of the plaintiff to seek an accounting.

An overpayment was recovered by a purchaser of air conditioning equipment in *Roberts v. Radalec, Inc.*[13]

7. 223 La. 163, 65 So. 2d 124 (1953).
8. 222 La. 338, 62 So. 2d 504 (1952).
9. 222 La. 569, 63 So. 2d 1 (1953).
10. 223 La. 251, 65 So. 2d 331 (1953).
11. 66 So. 2d 613 (La. 1953).
12. 222 La. 46, 62 So. 2d 96 (1952).
13. 222 La. 831, 64 So. 2d 189 (1953).