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Civil Code and Related Subjects: Security Devices

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curred in having to disinfect upholstered furniture and bedding was rejected in *Villegas v. Latter*.¹⁸

On its third presentation to the court, the litigation of *Cerami v. Haas*,¹⁹ involving a contract to sell real estate, was dismissed as *res adjudicata* under Louisiana Civil Code Article 2286.

SECURITY DEVICES

*Joseph Dainow**

MATERIALMAN'S LIEN (UNDER BUILDING CONTRACT LAW)

In appropriate cases, the statutory delay within which a claim must be filed, in order to establish a laborer's or materialman's lien on the property, is sixty days after the last delivery of all material or the last performance of all labor on the property. This has been interpreted to mean sixty days after the completion of the structure regardless of the last date of services or deliveries by the particular claimant.¹ Since there is no room for ambiguity in the counting of the days, the issue on which disputes center is the starting point for the running of this time. Generally, a building is considered as completed when it is ready for actual occupancy, even though minor repairs and adjustments have to be made at a later date.² In the case of *Trouard v. Calcasieu Building Materials, Inc.*,³ the supplier of materials filed his claim about seven months after the end of construction and actual occupancy of the building. However, he contended that the house was not finished because certain things required for either F.H.A. or V.A. approval had not yet been done. The only issue was whether the claim had been timely filed, and the court held that it had not, stating that the stipulations of a lending agency for requirements which were not part of the building specifications did not constitute any criterion in determining whether or not a building is a completed structure within the meaning of the building contract statute.

18. 66 So. 2d 339 (La. 1953).

19. 222 La. 899, 64 So. 2d 212 (1953).

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1. *National Homestead Ass'n v. Graham*, 176 La. 1062, 147 So. 348 (1933).

2. *Hortman-Salmen Co. v. White*, 168 La. 1067, 123 So. 715 (1929).

3. 222 La. 1, 62 So. 2d 81 (1952).

Under the building contract law, a supplier of materials who duly records his claim is given not only a lien against the property but, as an additional security where there is no recorded written contract, he is also given a personal right of action against the owner.⁴ The same section has a provision requiring reinscription of the claim within one year to preserve the effect of the registry. In the case of *Rathborne Lumber & Supply Co. v. Falgout*,⁵ the owner was trying to defeat the supplier's personal action on the ground that the claimant had not reinscribed his claim within one year. However, the court held that the reinscription requirement was necessary only for the preservation of the lien and privilege against the property, whereas the personal right of action against the owner was a separate and distinct security whose continued effectiveness is not dependent upon reinscription. Of course, the owner can avoid any personal liability for unpaid purchases of his contractor by having a duly recorded written contract with bond.

CHATTEL MORTGAGES

Act 441 of 1952 amended the Chattel Mortgage Law⁶ so as to permit executory process to chattel mortgage creditors whose rights arise from an act under private signature duly acknowledged (in addition to authentic acts under the previous rule). In the case of *General Motors Acceptance Corp. v. Anzelmo*,⁷ the chattel mortgage had been drawn up by private act four months prior to the effective date of the new statute, but the court held it to be a remedial law and retroactive, so that the executory process was properly permitted by the lower court.

While there have been some simplifications and extensions of general principles to make the chattel mortgage a more effective security device, there are still some points at which a line must be drawn. In the case of *Grandeson v. International Harvester Credit Corp.*,⁸ the chattel mortgage holder repossessed the mortgaged property without consent and without any legal process, and it is gratifying to note that the court affirmed a judgment against the impatient creditor in an amount equiva-

4. La. R.S. 1950, 9:4812.

5. 222 La. 345, 62 So. 2d 507 (1952).

6. La. R.S. 1950, 9:5363.

7. 222 La. 1019, 64 So. 2d 417 (1953), noted *infra* p. 289.

8. 66 So. 2d 317 (La. 1953).

lent to the value of the object (a refrigerator) at the time of the wrongful repossession, together with additional damages of approximately the same amount. Now that the chattel mortgage has become such a pervasive and widely used security device, and since so much has been done to protect the interest of the creditor, it is not out of place to protect the rights of the debtor as well.

SUCCESSIONS, DONATIONS AND COMMUNITY PROPERTY

*Harriet S. Daggett**

This resumé of the year's work of the Louisiana Supreme Court in the subjects named in the above title is the sixteenth prepared by the writer. It can scarcely be presumptuous or amiss to observe that no previous year is marked by as many cases of truly new impression, or of as grave importance in the development of the law of the state. Moreover, a clearness of factual statement, a completeness of analysis, an intellectual satisfaction to be derived from the logic of deduction whether in agreement or otherwise, characterizes the work as a whole in a manner not hitherto observed in the humble judgment of this reader. Particularly is this true in mineral rights where almost every case is a tempting invitation for a thesis. It causes the writer keen disappointment and some sense of frustration that the space, nature and purpose of this yearly article necessitate the type of brief treatment given. The civil law lends itself to a moulding by the court for the best interests of the people, as the time, the place and the social and economic conditions dictate, and encourage creative jurisprudence of the highest type. It would appear that the Louisiana Supreme Court has assumed this proper responsibility as a high privilege and a solemn duty of office.

SUCCESSIONS

Regular Heirs

In *Bishop v. Copeland*¹ surviving half-brothers and sisters

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1. 222 La. 284, 62 So. 2d 486 (1952).