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Civil Code and Related Subjects: Particular Contracts

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found that there was a real although inadequate price and refused to set aside, as simulated, certain transfers by plaintiffs' ancestors.

In *Fuss v. Cordeleria de San Juan, S.A.*²⁶ there was a reaffirmation of the rule that a creditor who accepts a payment tendered in full settlement of a disputed claim is estopped to demand any additional amount.

PARTICULAR CONTRACTS

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SALE

The sale is one of the particular contracts given special treatment in the Civil Code. To it are applicable certain particular rules that, as such, are not applicable to contracts generally. Otherwise, the general rules of conventional obligations apply.

A demand for specific performance of a contract to sell real estate was rejected in *Guzzo v. Liggio*.¹ No time for performance was fixed by the agreement, but since three and one-half years had elapsed the court felt that the reasonable time within which performance should have been rendered had expired. There was some evidence of lack of a serious intent to contract for the actual sale of the house but the question of the admissibility of parol to show such intent was not discussed.

In *Wainwright v. Lingle*² the court found that the plaintiff who had paid for fifty shares of stock in a development company was entitled to the stock notwithstanding that two years had elapsed since the contract was formed. The award of specific performance was considered proper on the ground that by paying for the stock the purchaser had acquired rights of ownership.

In *Berniard v. Galiano*³ the plaintiff, after successfully maintaining a suit for specific performance of a contract to convey certain improved real estate, was given judgment for the value of the use and enjoyment of the property dating from the demand for specific performance until the surrender of possession. Inter-

26. 224 La. 338, 69 So.2d 365 (1953).

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1. 224 La. 313, 69 So.2d 357 (1953).

2. 224 La. 702, 70 So.2d 594 (1954).

3. 224 La. 1100, 71 So.2d 857 (1954) and 224 La. 1111, 71 So.2d 861 (1954).

est on the purchase money until its deposit in the registry of the court and certain maintenance expenses were deducted.

The case of *Juneau v. Laborde*⁴ involved the adjustment of the rights of the owner, vendor and purchaser with respect to fractional interests in certain lands. The title question had been found against the purchaser in an earlier opinion.⁵ Here the purchaser got judgment against his vendor for the restitution of the price, costs, and the value of improvements he had placed on the property. Since the plaintiff owners had failed to exercise the election accorded to them by Article 508 of the Civil Code to cause the removal of the improvements, judgment was given against them and in favor of the purchaser's warrantor for their value.

In *Bertucci v. Bertucci*⁶ the court upheld an acquisition of property by a father from his daughter, the plaintiff. It found that the father's assumption of a mortgage on the property plus services rendered by him in caring for and supporting his daughter were ample consideration for the transfer.

A sale of a dump truck was rescinded in *Beyer v. Estopinal*⁷ because of hidden vices and defects and certain innocent misrepresentations. The court properly rejected the claim for damages against the good faith vendor.

A sly professional purchaser of property at tax sales got away with a slick profit at the expense of the owner in *Cortinas v. Murray*.⁸ It was a hard case but the court did not permit it to make bad law.

A complicated title problem was analyzed with care and correctly resolved in *Magnolia Petroleum Co. v. Marks*.⁹ The court applied the settled rule that after the five-year period of constitutional peremption has elapsed a tax sale is immune from attack except by proof of prior payment of the taxes.

LEASE

No additions of any consequence to the jurisprudence covering the subject of leases were made during the last session.

Ownership of a building erected by the plaintiff on leased

4. 224 La. 672, 70 So.2d 451 (1953).

5. *Juneau v. Laborde*, 219 La. 921, 54 So.2d 325 (1951).

6. 224 La. 364, 69 So.2d 502 (1953).

7. 224 La. 516, 70 So.2d 109 (1954).

8. 224 La. 686, 70 So.2d 589 (1954).

9. 74 So.2d 36 (La. 1954).

premises that were sub-let by him to the defendant was the issue in *Masset v. Beckler*.¹⁰ The evidence in support of plaintiff's contention was found to be ample.

The case of *Walters v. Coen*¹¹ involved the application of three established principles. The first was that the right of a lessee under Article 2726 of the Civil Code to remove improvements and additions to the thing let is not forfeited by his breach of the lease resulting from proceedings in bankruptcy. It was further recognized that such a right is subject to valid assignment by the lessee when the trustee in bankruptcy disclaims any interest in the lease. And it was held that if the landlord does not honor the lessee's right of removal he becomes liable for the value of the improvements.

When a lessee under a five-year lease failed to pay the rent due for the fifth month, the lessor, after giving notice to vacate but before instituting ejectment proceedings, leased the premises to a new tenant. Before judgment was rendered in the ejectment proceedings the instant suit was brought by the lessee, who claimed damages in the amount of five thousand dollars on the theory that the lessor in re-letting the premises had broken the contract of lease. The ejectment proceedings were successful. It was held that the lessor's conduct was justified under the circumstances. The case was *Sirianos v. Hill, Harris & Co.*¹²

The rule that a party by continued acquiescence in a course of conduct may estop himself from asserting a legal right was applied in *Whittington Co. v. Louisiana Paper Co.*¹³ A lessor who over a period of four years permitted an agent to collect rental payments was held estopped to claim that the lessee in continuing to pay the agent had violated the terms of the written lease.

COMMUNITY PROPERTY

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The case of *Succession of Woolfolk*¹ is principally concerned with proof of a manual gift from a husband to his wife. The

10. 224 La. 1067, 71 So.2d 570 (1954).

11. 223 La. 912, 67 So.2d 175 (1953).

12. 224 La. 60, 68 So.2d 757 (1953).

13. 224 La. 357, 69 So.2d 372 (1953).

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1. 225 La. 1, 71 So.2d 861 (1954).