Louisiana Law Review

Volume 17 | Number 2
The Work of the Louisiana Supreme Court for the 1955-1956 Term
February 1957

Civil Code and Related Subjects: Conventional Obligations

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the court found the certificate to be a thing of value even if deferred in realization, acquired during the marriage and hence community property.

The community is dissolved as of the date of judgment for separation — not of the filing of the suit. Thus, the husband owes the community all cash dividends received by him until the date of judgment. Alimony pendente lite is grounded on the husband's legal duty to support his wife, regardless of fault on her part and is payable out of community funds. After dissolution of the community, the husband does not owe his wife alimony unless the court awards it, which was not the case here. Thus, alimony paid after judgment by the husband must be charged against the wife's share in the community. The commingling rule was applied against the husband's demands for credit to his separate estate. The law allows the wife an injunction to protect her share of community and she may not be penalized for using it. Interest was allowed on the debt to the wife without need to amend pleadings.

CONVENTIONAL OBLIGATIONS

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A contention that Civil Code Article 167 is out of harmony with modern conditions and should be held repealed by implication was rejected in *Lowther v. Fireside Mutual Life Insurance Co.*[1] The court concluded, contrary to the contention of plaintiff, that the prohibition against a major's binding himself for a longer term than five years is still in full force and effect. It therefore affirmed the dismissal of plaintiff's suit to recover on an employment contract beyond the allowable period.

A contract between the Louisiana Department of Highways and a road contractor was held to contain a stipulation pour autrui in favor of an abutting landowner in *Ortego v. Caldwell.*[2] In consequence, the landowner, whose levees were to be rebuilt to his satisfaction, was given judgment against the contractor for damages resulting from the contractor's failure properly to fulfill his obligation. That the stipulation for the rebuilding of

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1. 228 La. 946, 84 So.2d 596 (1955).
2. 229 La. 907, 87 So.2d 124 (1956).

the levees was for the benefit of the adjoining landowners seems entirely clear on the basis of the wording of the contract and the circumstances of the case.

Another problem of contract interpretation was involved in *Guerriero v. Davidson.*[3] The plaintiff attorney's contention that a yearly retainer fee agreement with defendant used-car dealer did not cover legal services of a personal nature was sustained. The lower court's award was reduced on the proper ground that the plaintiff was precluded from recovering more than the amount of the bill he had presented to the defendant for the services rendered.

In *Zenith Construction Co. v. Southern Construction Corporation*[4] an assignee who had assumed responsibility for completing a sewer contract was endeavoring to recover from the assignor the cost of making certain repairs allegedly necessitated by the negligence of the assignor. The court found it unnecessary to pass on the question of whether the assignor was responsible for the making of the repairs inasmuch as the assignee had failed to prove the alleged negligence.

That the cost of making necessary repairs plus other losses resulting directly from defects of construction is the proper measure of recovery, whether the contract is a construction contract or the sale of a completed house, may be inferred from *Chatelaine v. Globe Construction Co.*[5] The opinion indicates that the court considered it unnecessary to determine expressly whether plaintiff's action was an action *quanti minoris* or one for breach of a construction contract, although there is language supporting the latter view. If plaintiff's action had been treated as the former, the fact that the defendant was the manufacturer would have permitted recovery beyond the mere cost of repairs inasmuch as knowledge of the defects would have been presumed.

In *Cardos v. Cristadoro and Radio Specialty Corporation*[6] the court approved the specific enforcement of a contract obligating the defendant to purchase at book value the stock of a fellow deceased incorporator.

Lack of evidence to support the claims made resulted in the

3. 229 La. 664, 86 So.2d 526 (1956).
4. 229 La. 901, 87 So.2d 122 (1956).
5. 229 La. 280, 85 So.2d 515 (1956).
6. 228 La. 975, 84 So.2d 606 (1955).

court's affirming judgments dismissing the suits in *Sanders v. Walther*,[7] *Allison v. Pick*,[8] and *Kalshoven v. Loyola University*.[9]

PARTICULAR CONTRACTS

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SALE

It is well settled that the purchaser of a defective building is entitled to recover from his vendor by way of the action *quanti minoris* what it will cost to remedy the defects. This principle was applied in *Cipriano v. Superior Realty & Construction Corporation*.[1] However, the defect was in a wall heater and the award included not only what it would have cost to replace the heater but also the cost of repairing the damage resulting from a fire caused by the defect. At the same time the court refused to permit recovery of damages for the loss of furniture damaged by the fire. This was based on a lack of proof of knowledge of the defect by the vendor, who was not the builder, and the absence of facts to support a finding of presumptive knowledge. The holding draws a distinction between damage to the thing sold resulting from an inherent defect and damage to the vendee's other property. Such a distinction is proper in view of the fact that the relief granted in an action *quanti minoris* is founded on the theory of error as to the cause or determining motive. The allowance of a reduction in price instead of redhibition rests on the supposition that the purchaser would have bought the thing despite the defect although he would not have paid as much as he did for it. Because of this basic theory, it is clear that the action *quanti minoris* can afford no relief for the destruction of furniture placed in the house by the vendee. It might apply, presumably, so as to cover the replacement of furniture in the case of a sale covering a house and furniture. But this goes beyond the instant case. Plaintiff's claim against the contractor who built the house was dismissed. The court pointed out that the plaintiff was not attempting to avail himself of any right his vendor may have had against the contractor under Ar-

7. 228 La. 1109, 85 So.2d 8 (1956).
8. 229 La. 524, 86 So.2d 179 (1956).
9. 229 La. 69, 85 So.2d 34 (1956).
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1. 228 La. 1065, 84 So.2d 822 (1955).