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Civil Code and Related Subjects: Particular Contracts

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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).

ticle 2011, as in *Breaux v. Laird*,[2] but was suing for breach of warranty. No legal basis for holding the contractor as a warrantor of plaintiff was found. Presumably, Civil Code Article 2503 would not apply because the contractor was not the vendor's vendor.[3] That is, the contract between the contractor and plaintiff's vendor was a construction contract and not a sale. The result, although supportable on the basis of the case as framed by plaintiff's petition, seems to leave the plaintiff saddled with the loss of his furniture although he was free from fault. As the negligent party, the contractor should have to pay. Perhaps the answer is that plaintiff could have secured judgment against the contractor for the loss of his furniture by basing his claim on the tacit assignment envisioned by Civil Code Article 2011 or, through what would constitute an extension of accepted principles, in tort. At any rate, some clarification of the problem would be helpful.

In *Katz v. Katz Realty Co.*[4] there was presented the novel question of whether the purchaser of a building that encroached on an adjoining lot was entitled to recover from his vendor the cost of purchasing the land encroached upon. The court held that he was but observed that removal and rebuilding would have been more expensive and that plaintiff's written notice of intention to purchase the strip of land had been ignored. It found that Civil Code Article 2514, covering partial eviction, was not applicable to the case. The court also refused to limit plaintiff's relief to rescission, on the authority of earlier cases bearing some analogy to the one before it and in the light of the codal provisions respecting the recovery of damages. Since it appears that plaintiff was entitled to be placed in as good a position as he would have enjoyed if the obligation of the vendor had been fulfilled, the court's disposition of the case seems entirely sound. It well might be, of course, that where this kind of remedy would be considerably more costly than removal and rebuilding, the latter cost should be used as the proper measure. The present decision leaves this possibility open. If, in such an event, the vendee ends up with a smaller structure, this should be taken into account.

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2. 223 La. 446, 65 So.2d 907 (1953).
3. See McEachern v. Plauche Lumber & Construction Co., 220 La. 696, 57 So.2d 405 (1952).
4. 228 La. 1008, 84 So.2d 802 (1955).

In *Chauvin v. LaHitte*[5] rescission of the sale of an automobile was granted because of the seller's fraudulent representations that it was a new car when in fact it had been used. Although the suit was not filed for two and one-half months the court rejected the defendant's contention that it had not been filed timely and that the car could not be returned in substantially the same condition as when sold. There was ample evidence showing a continuing effort on the part of the purchaser to get relief without suit. Plaintiff's claim for attorneys' fees was rejected. Since there was a specific finding of fraud on the part of the defendant, this decision should have the effect of settling the question of whether attorneys' fees may be recovered in a suit for rescission based on fraud. If it is felt to be an undue hardship for a victim of fraud to stand the cost of legal services necessary to a redress of the wrong committed, a legislative remedy would be the proper one. Insurance plaintiffs enjoy this sort of protection.

Another problem of rescission because of a seller's misrepresentations was presented in *W. H. Hodges & Co. v. Aaron.*[6] The case involved the sale of about a hundred head of cattle. The plaintiff's agent had represented that they were young brood cows. Some months later the buyer discovered that the representation was false. There was no finding of fraud. The court treated the case as resting on a failure of consideration rather than the principles of redhibition. Presumably, however, the representation constituted a declaration of quality which, under Civil Code Article 2529, gives rise to redhibition. Fundamentally, the defendant's consent to buy the cattle was founded on a false cause which in turn resulted from the error induced by the agent's false representations. This is the basis of redhibition whether it stems from a vice or defect or a false declaration of quality. The result, therefore, should be the same in either event, pretermitting consideration of prescription. Ordinarily a complaint of the kind made by the defendant must be voiced within a reasonable time after delivery. Although the opinion does not deal explicitly with the fact that several months had passed before the complaint was made, it supports the inference that the seller's conduct may have precluded reliance on the defendant's tardiness. The requirement that a buyer raise his objections within a reasonable time after he has had an opportunity to in-

5. 229 La. 94, 85 So.2d 43 (1956).
6. 230 La. 157, 88 So.2d 10 (1956).

spect what he buys is both sound and fair and a deterrent to fraud. Of course, the instant case will not prejudice its application when properly called for in the future.

In *Associated Discount Corp. v. Bogard*[7] the court rendered judgment in favor of the assignee of a conditional sale entered into in Illinois as against a subsequent purchaser of the automobile in Louisiana from a prior Louisiana dealer-vendee. There was proof that the car was removed to Louisiana without the knowledge or consent of the assignee, in consequence of which it was held that title to the car was never acquired by the Louisiana vendees. In suing, the plaintiff sequestered the car and asked that it be seized and sold and the proceeds applied to the satisfaction of the claim. This resulted in the argument, first presented on appeal, that the plaintiff thereby vested title in the vendee. The court disposed of this contention by reminding that the law of Illinois, claimed to be to such effect, had not been proved at the trial and, therefore, could not be considered. Although there is no uniformity on the point in common law jurisdictions, it is generally held that if the conditional seller reclaims the goods he may not thereafter recover the unpaid purchase price, and, on the other hand, if he causes execution to levy on them he thereby treats the goods as the buyer's and is debarred from reclaiming them. It appears, therefore, that it would be advisable for the seizing conditional vendor here in Louisiana to ask the court to decree that the property seized belongs to him. He would thus avoid any admission that the vendee was the owner.

The effort of a vendor to annul two sales of certain lots to defendant, on the ground of threats and lack of consideration, failed in *Harang v. Smith*.[8] No evidence was found of the alleged threats. The established rule that a recital of consideration in an act of sale cannot be disproved as between the parties was applied to the claim of no consideration.

In *Primm v. Zollinger*[9] the court enforced a provision in a contract to sell certain immovable property which rendered the agreement null in the event the purchaser was unable to borrow a stipulated amount on the property. A return of the buyer's deposit was decreed.

7. 229 La. 389, 86 So.2d 76 (1956).
8. 229 La. 865, 87 So.2d 10 (1956).
9. 229 La. 490, 86 So.2d 113 (1956).

In *Rabb & Rainey Iron Works v. LeBlanc*[10] the plaintiff recovered judgment for an amount advanced to defendant to cover the purchase of a quantity of steel, delivery never having been made.

The case of *Barrett Division of Allied Chemical & Dye Corp. v. Kennedy Saw Mills, Inc.*,[11] involved merely the question of whether plaintiff had sued the right party. The trial court's finding in the negative was affirmed.

The case of *Ducuy v. Falgoust*[12] is examined elsewhere in this *Review*.

LEASE

Only three cases involving ordinary leases were disposed of by the court during the term.

The case of *Huber v. Taussig, Inc.*[1] returned to the court after having been remanded previously for trial on the merits. In the opinion supporting the prior remand the court concluded that an option given to the defendant to cancel an exclusive purchase agreement if the plaintiff did not secure a jobber's contract "with some major oil company satisfactory to" defendant did not give defendant the privilege of acting arbitrarily but required that he act in good faith.[2] In the present opinion the court concluded that there was ample evidence that the defendant's cancellation of the agreement was justified. It therefore found that defendant's action was not a breach of his obligations under an accompanying lease, and reversed the judgment of the trial court that decreed cancellation of the lease.

In *Oster v. Krauss Co.*[3] the court found that the plaintiff had accepted, in full settlement of his claim under a lease, certain payments made to him by the defendant when the lease was terminated.

A lessee of a convalescent home who had made repairs, alterations, and improvements to the premises, in order to comply with

10. 229 La. 625, 86 So.2d 513 (1956).
11. 230 La. 143, 88 So.2d 5 (1956).
12. 228 La. 533, 83 So.2d 118 (1955). See page 253 *supra*.
1. 228 La. 1018, 84 So.2d 806 (1955).
2. Huber v. Taussig, 224 La. 453, 69 So.2d 919 (1953), commented on in 15 LOUISIANA LAW REVIEW 283 (1955).
3. 228 La. 920, 84 So.2d 460 (1955).

regulations by the fire marshal and board of health, recovered judgment for their value in *Walters v. Coen.*[4]

SECURITY DEVICES

*Joseph Dainow**

PRIVILEGES

The Revised Statutes of 1870 contained provisions[1] which created a special privilege in favor of attorneys "on all judgments" obtained by them as a security for the payment of their professional fees. Under this law, it had been held that the privilege did not affect "property" obtained in execution or satisfaction of the judgment.[2] By Act 124 of 1906 this privilege was made operative "on all judgments obtained by them, and on all property recovered thereby."[3] In *State* ex rel. *Maitrejean v. Demarest*[4] the attorney sought the recognition of a privilege under this statute, on property received by the husband in a partition of the community incident to a judgment of separation from bed and board. The court followed the well-established principle of strict construction in the matter of privileges which are in derogation of the general rule of proration among creditors. The privilege was denied because the share of the community property which fell to the husband had belonged to him all along and was not "property recovered" under a judgment, within the meaning of the statute. Of course, the attorney's time and services are the same in one case as in another; and there is no denial of his claim as a creditor. Nevertheless, the rule of *stricti juris* supports the decision in this case.

CROP PLEDGE

The crop pledge has been an important security device in Louisiana agriculture because it enables the farmer to get credit on the strength of his future crop. To preserve the effectiveness of the security in the event of sale of the crop, it has been held

4. 228 La. 931, 84 So.2d 464 (1955).

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1. LA. R.S. 128, 2897 (1870).

2. Luneau v. Edwards, 39 La. Ann. 876, 2 So. 24 (1887); Weill v. Levi, 40 La. Ann. 135, 3 So. 559 (1888).

3. LA. R.S. 9:5001 (1950).

4. 229 La. 300, 85 So.2d 522 (1956).