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Civil Code and Related Subjects: Conventional Obligations

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ligations of the community were nevertheless partnership obligations, entitled to be paid from the proceeds of the partnership sale before the proceeds were distributed to the co-owners.

During the past term, the court also decided the following cases dealing with successions, donations, and community property. They are *Slater v. Culpepper*,[26] and *Succession of Stansbury*.[27] These cases have been omitted from this discussion since they involved no questions of substantial import. The court also decided the case of *Moore v. Sucher*[28] in which the vendor attacked a notarial act of sale as being a disguised donation. This case is discussed elsewhere in this symposium under the heading *Sale*.

CONVENTIONAL OBLIGATIONS

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There has been some question as to what extent, if any, the doctrine of anticipatory repudiation as a breach of contract obtains in Louisiana. This question was answered in *Marek v. McHardy*,[1] wherein the court said that an anticipatory breach of contract is actionable in this state. Actually plaintiff did not institute his suit in advance of the time performance of the repudiated obligation was due and the only question the court had to decide was whether, in acting on the defendant's repudiation, he had destroyed his right to the promised performance. In the meantime there had been no retraction.[2] The court might have decided, therefore, that the anticipatory repudiation dispensed with the necessity of plaintiff's continuing his own performance without expressing an opinion as to whether he would have been able to maintain suit for breach of contract, on the strength of the repudiation, prior to the time performance of the repudiated obligation was due. That is, it might have restricted its inquiry to the question of whether plaintiff, without completing his own performance, had a right to damages for the defendant's breach. In view of the reciprocal nature of a commutative contract it

26. 233 La. 1071, 99 So.2d 348 (1957).
27. 234 La. 924, 102 So.2d 218 (1958).
28. 234 La. 1068, 102 So.2d 459 (1958).

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1. 234 La. 841, 101 So.2d 689 (1958).
2. It is questionable whether under the circumstances the repudiator should have had a power of retraction. See 4 CORBIN, CONTRACTS 932, § 980 (1951).

seems clear that a party thereto should not be required to continue his own performance when faced with a repudiation by the other.[3] Indeed, in an appropriate case he might well be required to take no further action if his own damages would be minimized thereby. The pronouncement of the court in the instant case may lead to the acceptance in Louisiana of the body of principles developed by the common law in cases of anticipatory repudiation. If so this should occasion no alarm. When the plaintiff would be entitled on the facts to a decree of specific enforcement the repudiation should not deprive him of his right.[4]

The case of *Spearman v. Willson*[5] arose out of an attempt by the plaintiff to put her property beyond the reach of a creditor who had secured a judgment against her with respect to which a devolutive appeal had been taken. Pending the hearing on the appeal she gave to the defendant over $10,000 in cash. However, after the judgment was affirmed she sought recovery of the money in order to pay it. She was only partly successful and finally brought suit for the remainder. The action was dismissed by the trial judge on the ground that the transaction was fraudulent and *contra bonos mores* with the result that the plaintiff was in no position to seek the aid of the court. This holding was reversed on the basis of the showing that the plaintiff had endeavored to recover the money to pay the judgment and had actually borrowed enough and paid it. The fraudulent purpose had thus not been consummated. Presumably the plaintiff had had a change of heart. If so, she was entitled to endeavor to undo the wrong she had planned and was entitled to the support of the law in the effort. Having paid the judgment, she was not in *pari delicto* with the transferee who was, in turn, in no position to say that the bargain was illegal.[6]

An attempt by a debtor to shield his property from the pursuit of his creditors through the device of a fraudulent mortgage was found ineffective in *Baton Rouge Production Credit Association v. A. G. Alford.*[7] The evidence of the fraudulent nature of the transaction was clear. The court also held that the holder of the mortgage to whom it had been sent after the institution of the instant suit to have it cancelled was not an indispensable

3. See LaRose v. Dufresne, 234 La. 42, 99 So.2d 16 (1958).
4. See 4 CORBIN, CONTRACTS § 976 (1951).
5. 234 La. 82, 99 So.2d 31 (1958).
6. See 6 CORBIN, CONTRACTS § 1465 (1950).
7. 235 La. 117, 102 So.2d 866 (1958).

party. Reliance was on a rule, adopted in certain common law jurisdictions, that litigants are exempted from taking any notice of a title acquired during the pendency of a suit. Although it may be proper to say that the transferee was not an indispensable party to the instant litigation, there yet appears some question as to whether the judgment rendered would be effective as to him in the light of our statute providing for the filing of a notice of *lis pendens*.[8] Was not the mortgage a real right constituting immovable property within the statutory provision?

The parol evidence rule was involved in *Tessier v. LaNasa*.[9] The defendant, a prospective purchaser, sued by a real estate broker for a commission, defended on the ground that he signed the written offer to buy the property on the oral condition and assurance that the agent would obtain a $100,000 loan for him, and that he had not done so. The majority opinion found the evidence admissible on the theory that it was offered not to contradict the writing but to show that it did not manifest the intention and meaning of the parties. Justice McCaleb, in a concurring opinion, justified the consideration of the evidence on the ground that the suit was not on the written contract for the purchase and sale of the property but on the oral agency agreement which was not expressed in the writing. The owner of the property had never sought to enforce the offer to buy, although he had accepted it soon after it was submitted. There is considerable jurisprudential authority for the view that the evidence in question would serve simply to show that the proposal was not to be effective unless the agent succeeded in making arrangements for the loan, *i.e.*, that it was delivered conditionally only.[10] On the other hand, the admissibility of such evidence has been supported on the theory that the writing is not a complete integration of the agreement and proof of the condition serves merely to establish the entire agreement between the parties.[11] Under either theory the evidence would have been admissible at common law and it is at least doubtful that Article 2276 would require a different result with us despite its unduly broad lan-

8. LA. R.S. 13:3541 (1950). "The pendency of an action in any court, state or federal, in the state affecting the title, or asserting a mortgage or lien upon immovable property, shall not be considered or construed as notice to third persons not parties to such suit, unless a notice of pendency of such action shall have been made, filed or registered, in compliance with R.S. 13:3541 through 13:3543."

9. 234 La. 127, 99 So.2d 56 (1958).

10. See Mire v. Haas, 174 So. 374 (La. App. 1937), and authorities there cited.

11. See 3 CORBIN, CONTRACTS 323, § 589 (1950).

guage.[12] The condition was not in contradiction of the writing.[13]

Although there is considerable doubt concerning the scope of the application of Article 1900 of the Civil Code,[14] it seems to have been correctly applied in *Stephens v. Anderson-Dunham, Inc.*[15] The defendant was allowed to prove that whereas the cause recited in support of a promise to pay a royalty was services to be rendered, which were admittedly not rendered, there was another true and sufficient cause. The plaintiff was not undertaking to contradict a recital of the cause for the purpose of invalidating the contract but was undertaking to show the true cause in order to sustain it, which seems to be exactly what the article permits.

The issue before the court in *Knox v. W. E. Parks Lumber Co.*[16] was whether the purchaser of standing timber was entitled to extend the period for its removal by paying an agreed amount. Plaintiff claimed that defendant was to have the right to do so only if the removal *could not* be completed within the primary term, *i.e.*, only if it was impossible for him to remove it. The court rejected this interpretation. Its view was that the defendant was entitled to the extended term if *for any reason* he did not cut and remove the timber within the primary term. It also found that plaintiff's action in retaining for some three months defendant's check sent to support the election to extend the term operated to extend it. Although the language of the court seemed to apply only to the one-year extension in question, it affirmed the judgment of the district court which maintained the agreement for any future extension as well. It well might be, however, that this could not be permitted to continue indefinitely although the contract imposed no time limit for the extensions from year to year. The court might have to find eventually that only a reasonable period of time was intended.

In *Sonnier Electric Co. v. J. M. Brown Construction Co.*[17] the plaintiff, a sub-contractor under a government contract, was held

12. See Salley v. Louviere, 183 La. 92, 162 So. 811 (1935).
13. See 3 CORBIN, CONTRACTS 322, § 589 (1950).
14. "If the cause expressed in the consideration (*contract*) should be one that does not exist, yet the contract cannot be invalidated if the party can show the existence of a true and sufficient consideration (*another true and sufficient cause*)." The italicized words give the correct translation from the French. This article is considered at length in Comment, 3 LOUISIANA LAW REVIEW 427 (1941).
15. 234 La. 237, 99 So.2d 95 (1958).
16. 234 La. 964, 102 So.2d 232 (1958).
17. 234 La. 540, 100 So.2d 499 (1958).

on the basis of the sub-contract entitled to the benefits provided by the prime contract as well as bound by its provisions otherwise. The court's disposition of the case accorded with the agreement between the parties and also satisfied the ends of justice. Both plaintiff and defendant seem to have profited by the generosity of the Corps of Engineers in making an adjustment because of a called work suspension.

In *Pechon v. National Corporation Service, Inc.*,[18] an employment contract was found to be for an indefinite time and therefore terminable at will.

PARTICULAR CONTRACTS

SALE

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The case of *Wells v. Joseph*[1] raises a serious question affecting the public records doctrine. The decision held that an unrecorded tax redemption was effective against a purchaser from the heirs of the tax adjudicatee in his suit to quiet title. Although the redemption had not been recorded, there were of record a judgment sending the heir of the tax debtor into possession of the property and other subsequently recorded instruments. From this the court reasoned that having been put on inquiry as to the title since the public records revealed that there were other claimants to the property, and that a lawsuit to establish ownership would be necessary, the purchaser must be considered as having bought at his peril and risk. In view of the fact that the case is being noted elsewhere in this issue, no extensive comment will be here made. Granting that the instruments of record may have put the plaintiff on inquiry, an investigation of the title could have led at most to the discovery of the unrecorded redemption. But this leaves unanswered the question of whether the unrecorded redemption could be held effective against the plaintiff without doing violence to established principles of registry. The public records doctrine holds that all unrecorded sales, contracts, and judgments affecting immovable property are utterly null and void as to third parties even when they know of their ex-

18. 234 La. 397, 100 So.2d 213 (1958).

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1. 234 La. 780, 101 So.2d 667 (1958).