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Civil Code and Related Subjects: Security Devices

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and defects so radical as to justify condemnation. The holding seems clearly sound. The defects in question existed at the time the lease was entered into and there is no correspondence between such a situation and one where during the course of the lease repairs become necessary and cannot be postponed. It is the latter situation that is dealt with in Civil Code Article 2700. Surely when the lessor delivers to the lessee premises subject to defects that prevent their use the lessee should be entitled to cancellation on the authority of Article 2695 unless he has contractually assumed the risk.

SECURITY DEVICES

*Joseph Dainow**

Suretyship

The Louisiana Motor Vehicle Safety Responsibility Act¹ provides that a person who has had an automobile accident not covered by insurance will have his licenses and registration certificates suspended unless he puts up "security." The case of *State v. Ray*² held that the Commissioner may accept a surety bond signed by private individuals. This interpretation of the statute is sustained by the court on the basis of an analysis of several of its provisions, and in this particular case it resulted in obtaining some recovery for the widow and children of the man who had been killed by the uninsured driver. If the legislature feels that private sureties are sufficient protection in such situations, nothing further need be done; however, if there is any question about this, the statutory provisions should be restudied and amended.

This case also held that individual sureties are liable in accordance with the responsibility specified in the bond despite their assertion that (and even if in fact) they had not read the first page of the document when they appended their signatures on the second page. In the light of the exceedingly generous attitude of the law towards the gratuitous private surety, this may seem a little rough on sureties who may have been misled by the representations of the debtor-driver for whom they were going

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1. LA. R.S. 32:851 (Supp. 1952).

2. 237 La. 599, 111 So.2d 786 (1959).

surety, but there can be no alternative for holding persons responsible for the clearly stated undertakings in the document which they signed voluntarily.

Building Contracts

In *Hero & Co. v. Farnsworth & Chambers Co.*³ the materialman who furnished supplies to a subcontractor made a written accepted agreement with the prime contractor whereby in consideration of the contractor's making checks and payments jointly payable to subcontractor and supplier, the latter waived its "material lien privilege." Notwithstanding this agreement, the supplier recorded its affidavits for unpaid materials and brought suit for recognition of its lien. The court held the supplier to its waiver agreement and denied the lien, thereby indicating that the law which provides the lien is not a rule of public order and can be waived by proper agreement. The partial dissent raises what appears to be a serious point that since the prime contractor had withheld the last payment due to the subcontractor there had never been any payment for a part of the supplies furnished; accordingly, for these supplies the consideration of jointly payable checks had not been performed and to that extent the waiver should not apply. This point seems to have some validity but it is not clear from the evidence of complicated transactions and imputations of partial payments (as between subcontractor and supplier) that the supplier had not received enough money to pay for all the materials furnished and that there was the necessary identification of certain unpaid supplies with the final payment which had been withheld.

PRESCRIPTION

*Joseph Dainow**

Liberative Prescription

One of the principal problem areas in the subject of liberative prescription is the classification of the cause of action, on account of the differences in the length of time necessary in the respective cases. Among the specific problems, a troublesome

3. 236 La. 306, 107 So.2d 650 (1958).

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