Civil Code and Related Subjects: Obligations

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Judicial recognition of the principle that an offeror has the legal power to render his offer irrevocable for a period of time simply by an expression of will to that effect has been unclear. However, in the recent case of Housing Authority of the Town of Lake Arthur v. T. Miller & Sons, an attempt by a bidder to revoke his bid without allowing to the housing authority thirty days from the opening of bids for its acceptance, as provided in the bid, was held ineffective. The court did not consider Article 1809 of the Code and it is not clear just why the proposal was counted as irrevocable by the bidder while the offeree remained legally free to accept or reject. Of course, the irrevocability of the offer would appear to be fully supported by that article. Indeed, there is common law authority for a like result in the making of contracts for public works, notwithstanding the general rule that an offer unsupported by consideration is revocable.

The thirty-day period was held to begin on the day next after the opening of the bids.

The court dealt with four problems concerning the admissibility of parol evidence that warrant noting. The rules are clear enough but their application is troublesome. Where an attack is made on a contract on the basis of the cause expressed therein, Article 1900 of the Civil Code provides that the contract cannot be invalidated if the party can show the existence of another true and sufficient cause. The decision of the court in Love v. Dedon sustains this principle in effect by finding that the introduction of parol evidence in such a case is not disallowed by Article 2276. In consequence, the wife's attack on simultaneous transfers between herself and her husband based on the ground that they constituted sales between a husband and wife failed, since the evidence established that the transfers were actually made by the parties, who were judicially separated from each other, in settlement of their rights in the property. As indicated by the court, the parol evidence, rather than de-
stroying the effectiveness of the acts, had the effect of sustaining them. This seems to be in full accord with the principle stated in Article 1900. A similar holding, recognizing the admissibility of parol evidence to establish motive or intent, was made in Collins v. Brunet,4 and the plaintiffs were held entitled to a reconveyance of certain property they had previously transferred to the defendant. The use of parol evidence to show that an assignment of a mineral lease was held in escrow pending an investigation of the title of the lessors and was not delivered nor was the price paid until the title had been approved was sustained in Wampler v. Wampler.5 In keeping with this disposition of the case, it is generally held that parol evidence is admissible to show that delivery of an instrument was withheld pending the occurrence of a condition to its effectiveness.6

A more complicated and interesting problem of parol evidence was before the court in Smith v. Smith.7 Notwithstanding the well-established rule which permits proof of a simulated transfer by a party thereto only by means of a counter letter or interrogatories, parol evidence was admitted on behalf of a former husband to show that a transfer to his wife in the form of a dation en paiement was not supported by any existing indebtedness on his part. The theory of the court seemed to be that, this being the case, the transfer between husband and wife was not a permissible contract within the provisions of Articles 1790 and 2446 of the Civil Code and, therefore, was in fraud of the law. However, the husband is permitted to make a donation of the community immovables to his wife subject to the rights of forced heirs, or to his own right to attack the transfer as a donation omnium bonorum. Where a transfer is made without any price—even in the form of an existing indebtedness—it may stand as a donation provided that it is in the required form and a donation between the parties is not forbidden. Consequently, the present transfer might have been valid as a donation, as far as the husband was concerned, provided it left him with enough for his subsistence and support. By showing merely that there was no existing debt to support the transfer as a dation en paiement the possibility of a valid donation would not be negatived. In short, treated simply as a donation to the wife, it would be in

4. 239 La. 402, 118 So.2d 454 (1960).
5. 239 La. 315, 118 So.2d 423 (1960).
6. 3 CORBIN ON CONTRACTS § 589 (1950); RESTATEMENT OF CONTRACTS § 241, and see Corbin's comment thereon in Note 72 to § 589.
7. 239 La. 688, 119 So.2d 827 (1960).
fraud of the law only if it was a donation *omnium bonorum*. Consequently the court might conceivably have taken the position that parol evidence was not admissible to show that the transaction was a simulated transfer but that it was admissible to show that the transfer was a prohibited donation *omnium bonorum*. This contention seems to have been made by the defendant but the court refused to so limit the evidence. The result of excluding proof by parol that the transfer was a pure simulation would have been that the husband would have had to prove that the transfer was either a donation *omnium bonorum*, or if he could have done so, was a prohibited sale for a price in current money. The problem is explored more fully elsewhere in this Review.

On the basis of the facts before it in *Hughes v. Breazeale*, the court held that the defendants had assumed the risk that the municipal authorities might not approve a plan for offsite improvements in connection with the development of a subdivision. In consequence they were held liable on a note they had given by way of a penalty conditioned on their failure to construct the improvements, notwithstanding that they could not secure the necessary authorization.

Article 1939 of the Civil Code permits the recovery of interest on interest provided that the amount of interest due on an obligation is added to the principal and made part of a new contract. In *Mayfield v. Nunn* a creditor holding an overdue note took a new note which included the amount due and $5,166.30 in addition as a bonus. The new note stipulated interest at the rate of eight per centum from date. It was held that the stipulation for interest from date was not permitted under Article 1939 insasmuch as the bonus constituted discount or interest, and the allowance of interest thereon would constitute the payment of interest upon interest. Of course, if the bonus had constituted interest already due on the original obligation which had been added to the principal when the new note was given, the exception of the article would have been applicable.

In *W. R. Aldrich & Co. v. Gravity Drainage District No. 1 of Rapides Parish*, the court refused to construe R.S. 38:2211 dealing with the letting of public contracts so as to justify the

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8. 240 La. 126, 121 So.2d 510 (1960).
9. 239 La. 1021, 121 So.2d 65 (1960).
10. See footnote 6, by the court, id. at 1021, 121 So. at 70.
award of a storm drainage contract to the second lowest bidder on the whole project. The award was made after two items had been deleted because of insufficient funds with the result that the second lowest bidder was then the lowest bidder. The action of the defendant seemed to have been taken in complete good faith but the court felt that to approve it would be to sanction a practice which would permit the manipulation of items within a contract proposal so as to defeat the purpose of the statutory provision. Justice McCaleb dissented on the basis of the language of the proposal signed by all of the bidders which, in his opinion, reserved to the defendant the right to remove any section, part, or segment of work from the contract, and on a Pennsylvania case12 which followed the view that where the proposal notifies the bidders in advance that all bids or parts of bids may be rejected, the standard of competition is the same for all persons desiring to compete for the work. He felt that to deprive the public authority of such a privilege, and compel it to re-advertise, would be contrary to the public interest. The majority opinion declined to find the cited case sufficiently persuasive to override its view concerning the meaning of the statute. Since the statute provides that the contract shall be let to the lowest responsible bidder, it does appear that the view taken by the Pennsylvania case would not preclude manipulation to the advantage of one bidder over another and that alternative bids can be sought where there is doubt that the available funds will be sufficient to cover all of the desired work.

A sewer sub-contractor was found not responsible for breakage in the sewer line he installed since the evidence disclosed that the material furnished by him and the workmanship were in keeping with his contract obligations and that the difficulty stemmed from the insufficiency of the plans he was compelled to follow.13 He was given judgment against the principal contractor and the latter was in turn given judgment against the developer for whom the work was being done. The question of whether the developer was entitled to reimbursement from the Sewerage and Water Board, which furnished the plans and inspected the actual work, was not passed upon. The court's opinion contains a painstaking examination of the evidence adduced at the trial and its basic holding was placed on the ground that

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the contractor had warranted the sufficiency of the plans to the sub-contractor. The developer was held likewise to have warranted the plans to the contractor. The court pointed out that R.S. 9:2771\(^{14}\) was not in effect at the time the contract was formed.

On the basis of the facts before it in *Southern Scrap Material Co. v. Commercial Scrap Materials Corp.*,\(^{15}\) the court properly found that damages sustained by a buyer for breach of a contract to deliver steel should be determined as of the time delivery was due under a final extension agreement. This is but an application of the rule that damages in such a case should be measured as of the time performance is due. Here the original time for performance was extended by mutual agreement.

In *B. F. Edington Drilling Co. v. Yearwood*,\(^{16}\) the court denied recovery of the contract price for a well-drilling contract on finding that the plaintiff had committed a substantial breach of the contract. It refused to pass on the claim made in the brief on appeal by which plaintiff sought recovery in *quantum meruit* for the value of the services rendered on the ground that such recovery had not been claimed in the alternative.

**SECURITY DEVICES**

*Joseph Dainow*

In *Harvey v. Thomas*,\(^{1}\) the property sold at foreclosure sale was subject to a variety of mortgages and other encumbrances, and the debtor tried to salvage the $4,000 homestead exemption.\(^{2}\) For some of the claims there was a homestead waiver, and if these would be paid first, some of the others would be cut out, and the debtor would get the $4,000 homestead exemption. However, to do this would disregard the basic rule of ranking among mortgages\(^{3}\) and the court properly insisted upon their payment in the order of their priority. Accordingly, some mortgages without waiver of homestead were paid out of the funds in

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15. 239 La. 958, 120 So.2d 491 (1960).
16. 239 La. 303, 118 So.2d 419 (1960).
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1. 239 La. 510, 119 So.2d 446 (1960).
2. LA. CONST. art. XI, § 1.
3. LA. CIVIL CODE art. 3329 (1870).