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Civil Code and Related Subjects: Security Devices

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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. 9:2771¹⁴ 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 mortgages³ 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

14. La. Acts 1958, No. 183.

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).

excess of the \$4,000, so that two lower ranking encumbrances were paid out of the \$4,000 because they were not subject to the homestead exemption. One was a federal income tax lien which is unaffected by state laws,⁴ and the other was for building materials (used to repair and improve the homestead) within the constitutional exception from homestead exemption.⁵ The poor debtor was left with only \$768.04 out of the \$18,000 foreclosure sale price, but "he has no cause for complaint."⁶

PRESCRIPTION

*Joseph Dainow**

Liberative Prescription

In *Succession of Picard*,¹ plaintiff sought to recover the amount of certain promissory notes executed by the decedent, and the plea of prescription was overcome by proof of a pledge which had been given to secure the indebtedness and which served as a continuing acknowledgment constantly interrupting the running of time.² A point of particular interest was the defendant's contention that the things pledged (other notes and shares of stock) had no value, some of them having been of no value even at the time they were pledged. Based upon the conclusion that there was a valid pledge, written on the back of the notes representing the principal indebtedness, the court made the point that the value or lack of value of the thing pledged is irrelevant, because it is the pledgee's detention of the thing which serves as the continuing acknowledgment and because the pledgee is also under an obligation to return the pledged things (upon payment of the debt) regardless of their value.

In *Martin v. Mud Supply Co.*,³ the plaintiff brought suit in tort against the owner of an automobile for damage (wrongful death) caused by an employee who was using the car with permission but not in the scope of his employment. However, the owner's insurer was not joined in the suit until long after the

4. 239 La. 510, 518, 119 So.2d 446, 449 (1960), and authorities cited.

5. LA. CONST. art. XI, § 1, par. 2.

6. 239 La. 510, 520, 119 So.2d 446, 449 (1960).

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1. 238 La. 455, 115 So.2d 817 (1959).

2. LA. CIVIL CODE art. 3520 (1870).

3. 239 La. 616, 119 So.2d 484 (1960).