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Private Law: Particular Contracts

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prove a debt of the deceased if no suit was brought against him prior to his death "unless suit to enforce the debt or liability" is instituted against the succession within one year of its opening. At the same time the court approved the use of parol to prove the payment of a debt owing to the deceased. The ruling of the court on the first issue is not free of doubt. Legal compensation takes place by operation of law when two debts, equally liquidated and demandable, exist simultaneously. According to the redactors of the Code Napoleon, the effects of compensation derive from two propositions, viz., that compensation is (1) a double payment, and (2) a forced payment.[17] From this point of view, proof that compensation took place is simply proof of payment.[18] It is not at all clear why a person should be permitted to prove by parol that he paid a debt to a decedent and yet not be able to prove in such fashion that compensation had taken place. Furthermore, it appears probable that the purpose of the statutory provision was to prevent proof of a debt or liability of the deceased in order to collect on it. It deals with "a suit to enforce the debt or liability." A claim of compensation offered by way of defense bears no relationship to such a suit. Indeed, a person might not likely contemplate suit to enforce a debt that he considered had been discharged by compensation.

PARTICULAR CONTRACTS

SALE

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The problem of differentiating between what constitutes a breach of contract and a breach of the implied warranty against redhibitory vices or defects has not been adequately resolved by the jurisprudence. It is an important one because the period of prescription for breach of contract is ten years, whereas the redhibitory action is subject to a basic period of one year. Also, damages for a breach of contract are measured by losses sus-

17. 2 HENRI, LÉON AND JEAN MAZEAUD, LEÇONS DE DROIT CIVIL no 1154 (1962); 2 PLANIOL, CIVIL LAW TREATISE (A TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE), no. 588 (1960).

18. See LA. CODE OF CIVIL PROCEDURE art. 1005 (1960), which treats compensation as a method of extinguishment and consequently an affirmative defense.

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tained by the aggrieved party and the profit of which he has been deprived, whereas the rules relating to redhibition provide that damages are recoverable against a seller only if he had knowledge of the defect and failed to disclose it. Otherwise, the buyer is restricted to a return of the purchase price plus expenses of the sale.

Since our Code, contrary to that of the French, subjects declarations of quality to the rules relating to the redhibitory action, damages can be recovered against the seller only if such a declaration is made in bad faith. Common law authorities have suggested in dealing with a similar problem that if the seller delivers the kind of goods called for by the contract he does not commit a breach of contract although the goods are not as warranted. On the other hand, if he delivers something different in kind from that called for by the contract, he does commit a breach of contract.[1] In *Victory Oil Co. v. Perret*,[2] the subject matter was diesel fuel to be used by diesel powered trucks and deliveries were to take place over a period of time. During the course of performance the seller delivered some diesel fuel that damaged defendant's trucks. The court simply took the view that the seller had failed to deliver what he had contracted to deliver and had, therefore, committed a breach of contract. It likened the case to one where a seller bound to deliver kerosene delivers gasoline instead. However, in *George v. Shreveport Cotton Oil Co.*,[3] where the seller who had contracted to deliver prime cotton oil cake delivered cotton oil cake of an inferior quality, the Supreme Court quoted approvingly from the opinion of the court of appeal as follows: "It is too well settled to require any discussion here that the only remedy a purchaser has in the event of the defective quality of the thing delivered, when, as in this case, it has disposed of it, is an action for a diminution of the price, as specially provided in the Civil Code, and he cannot recover damages under the general provision of the law, as if for the inexecution of the contract." The writer is unable to draw any realistic distinction between the *George* case and the instant case. Perhaps the denial in the latter of a writ by the Supreme Court may cast some doubt on the former. If so, this may be all to the good. When declarations of quality are involved, it might be better to restrict the application of the rules

1. See Note, 15 LA. L. REV. 858 (1955).
2. 183 So. 2d 360 (La. App. 4th Cir. 1966).
3. 114 La. 498, 38 So. 432 (1905).

of redhibition to cases where the declaration is made with respect to specific goods identified otherwise than by their quality. This would mean that when the seller contracts to deliver goods of a stated quality, the delivery of goods of a different quality would constitute a breach of contract. This rule would be largely free of doubt, easy to apply, and understandable to the parties. In short, the decision in the instant case is counted as desirable although difficult to square with the case of the cotton oil cake.

In *Williams v. Daste*,[4] the court gave judgment to the seller of a duplex subject to redhibitory vices for the excess of rentals collected by the buyer on the rented portion of the structure over the expenses of the sale and those for the preservation of the thing. Civil Code article 2531 was cited in support. This article recognizes inferentially that the buyer in such a case owes the fruits of the thing to the seller. The buyer's own use of the thing is offset by the seller's use of the price.[5]

Since what purports to be an act of sale may be sustained, if in proper form, as an act of donation,[6] it should follow that the failure of an act of sale to state a price would not prevent it from being translative of the property described in it. This view was taken by the Supreme Court in a well-reasoned opinion in *Bolding v. Eason Oil Co.*[7] The court also held that the validity of the act was not affected by its failure to reflect that the agent who acted for the purchaser had a written power of attorney.

LEASE

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If a landlord secures a judgment for rent to the end of the term of the lease, the right of occupancy under the lease continues in the lessee. It is a valuable right which is subject to seizure by the landlord or by any other judgment creditor and can be sold independently of the lease. In this event the purchaser does not become obligated to pay the rent stipulated in

4. 181 So. 2d 247 (La. App. 4th Cir. 1965).
5. 24 LAURENT, PRINCIPES DE DROIT CIVIL 343 (1877); Farmer v. Fisk, 9 Rob. 351 (La. 1844); Rousseau & Co., Inc. v. Dolese, 8 La. App. 785 (1928).
6. McWilliams v. McWilliams, 39 La. Ann. 924, 3 So. 62 (1887).
7. 248 La. 269, 178 So. 2d 246 (1965).

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