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Private Law: Lease

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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 translatif 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

*J. Denson Smith**

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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the lease; he becomes the owner of the right of occupancy in return for the amount of his bid. Extinction of the right of occupancy by confusion results when the landlord acquires the right of occupancy but not so when the right of occupancy is bought by another. In *Hollier v. Boustany*,¹ after the landlord had secured a judgment for rent to the end of the term, a judgment creditor of the lessee seized the latter's right of occupancy and became the purchaser at its sale. It was held, however, that he took nothing by his purchase inasmuch as two days before he secured judgment against the lessee, the latter and the landlord had entered into an agreement that operated as a surrender of the right of occupancy in satisfaction of the landlord's judgment. It was said that the discharge of the tenant's obligation to pay rent constituted a voluntary remission by the landlord supported by Civil Code article 2199. Since a voluntary remission is gratuitous the view expressed might be taken as indicating that the tenant's release of the right of occupancy was also gratuitous. This was the position taken by the purchaser who was relying on Civil Code articles 1970 and 1984.² Nevertheless, the opinion makes it clear that the landlord's right to enforce the judgment was discharged in consequence of the lessee's surrender of the right of occupancy with the result that the surrender was onerous, not gratuitous.

By statute, an assumption of responsibility by a lessee for the condition of the leased premises is effective to relieve the owner of responsibility to third persons on the premises subject to certain qualifications. It has been held with good reason that the assumption is effective only with respect to those parts of the leased premises that are subject to control by the lessee rather than the lessor. In *Gebbia v. City of New Orleans*,³ the court held against the owner-lessor, the City of New Orleans, in view of the fact that the city had retained control over a ladies rest room in the Municipal Auditorium, where the injury occurred.

1. 180 So.2d 591 (La. App. 3d Cir. 1965). Writ refused.

2. See also LA. CIVIL CODE art. 1980 (1870).

3. 181 So.2d 292 (La. App. 4th Cir. 1965), reversed on question of wife's capacity to sue on behalf of community in 249 La. 409, 187 So.2d 423 (1966).