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Parol Evidence Used to Show Lack of Authenticity Necessary to Justify Executory Process

John C. Anderson

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petitioner's injuries.⁵⁷ This seems to indicate, then, that if a crewman negligently injured a longshoreman instantaneously even *without bringing into play an antecedent condition*, unseaworthiness would still be found, the *condition* being the negligent seaman himself. The logical question then becomes why is a longshoreman not a "seaman" at all times and for all purposes. Surely if a longshoreman performs the duties traditionally performed by seamen, the situation in *Usner* could be regarded as one negligent "seaman"—*an unseaworthy condition in himself*—causing injury to another "seaman," and the shipowner would be held liable under unseaworthiness. Such circuitous logic is illustrative of the heretofore unrestrained reaches of the unseaworthiness doctrine. It is submitted that the Court in *Usner* was moved more by considerations of equitable treatment for the shipowner who has no control over the competence of stevedores⁵⁸ rather than by the technical requirements of its frequently unwieldy doctrine of unseaworthiness.⁵⁹ However limited its application might be, it is hoped that the decision in *Usner* reflects a tendency toward a more practical approach to the problem of unseaworthiness when longshoremen are involved.

James Louis Williams, IV

PAROL EVIDENCE USED TO SHOW LACK OF AUTHENTICITY
NECESSARY TO JUSTIFY EXECUTORY PROCESS

Plaintiff petitioned for seizure of immovable property owned by defendant to foreclose, via executory process, on a conventional mortgage evidenced by notarial act in authentic form. Defendant sought to enjoin the executory proceeding for insuffi-

57. See note 45 *supra* and accompanying text.

58. See note 14 *supra* and accompanying text. However, to base a decision merely on the fact that a shipowner has no control over stevedores furnished to load and unload his cargo would have meant the overruling of the Court's prior cases holding such lack of control not to be a defense at the shipowner's disposal in attempting to disprove unseaworthiness. In such instances the shipowner does have an opportunity to obtain indemnification from the stevedoring contractor.

59. Perhaps the Court looked further than the immediate liability of the shipowner. Had Luckenbach Overseas Corp. been held liable in this case, it could have sued *Usner's* employer for indemnity for its failure to perform in a "workmanlike manner." *Ryan Stevedoring Co. v. Pan-Atlantic Corp.*, 350 U.S. 124 (1956). Thus, this decision may reflect a tendency to give limited recognition to the heretofore circumvented protection given stevedoring companies by the Longshoremen's and Harbor Workers' Act.

ciency of authentic evidence.¹ The trial court, on the basis of the parol evidence rule,² refused to allow defendant to introduce testimony that two witnesses were not present at the execution of the mortgage.³ On first hearing, the court of appeal affirmed the trial court, but reversed on rehearing and *held*, parol evidence was admissible to prove that the two witnesses were not present at the execution of the authentic act. *Union Savings & Loan Ass'n v. The Grand Co.*, 239 So.2d 395 (La. App. 4th Cir. 1970), *cert. denied*, 256 La. 916, 240 So.2d 375 (1970).

The issues raised by the instant case involve the methods of attacking the authentic act, the evidentiary rules pertaining to it, and the nature of the act itself.⁴ The pith of Louisiana's legislation concerning authentic acts is contained in Louisiana Civil Code articles 2234 through 2239.⁵ The original legislative source of all but one of these articles is the Code Napoleon of France.⁶ Historically, the emphasis on documentary evidence was initiated in France during the sixteenth century.⁷ However, as early as the middle ages, the inconvenience of oral proof and

1. LA. CODE CIV. P. art. 2573: "The original debtor, his surviving spouse in community, heirs, legatees, and legal representative are not required to furnish security for the issuance of a temporary restraining order or preliminary injunction to arrest a seizure and sale, when the injunctive relief is applied for solely on one or more of the following grounds: . . .

"(5) The order directing the issuance of the writ of seizure and sale was rendered without sufficient authentic evidence having been submitted to the court, or the evidence submitted was not actually authentic."

2. "An authentic act is full proof of the agreement contained in it . . . and parol evidence cannot be admitted against or beyond what it contained therein nor on what may have been said before or at the time of making it or since . . . in the absence of a specific averment of error, fraud, or ambiguity . . ." *Weysham v. Aiavolasiti*, 227 So.2d 798, 800 (La. App. 4th Cir. 1969). *See also* *Smith v. Bell*, 224 La. 1, 68 So.2d 737 (1953); *Vial v. Moll*, 37 La. Ann. 203 (1885); *Colsson v. Consolidated Ass'n Bank*, 12 La. 105 (1838).

3. The presence of two witnesses is required by LA. CIV. CODE art. 2234: "The authentic act, as relates to contracts, is that which has been executed before a notary public . . . in the presence of two witnesses."

If an act is executed without the presence of two witnesses, the act is not authentic. *Pain v. Plicque & LeBeau*, 10 La. 304 (1836); *Ford Motor Credit Co. v. Williams*, 225 So.2d 717 (La. App. 1st Cir. 1969). *See also* *Cotton v. Washburn*, 228 La. 832, 84 So.2d 208 (1955); *Jackson v. Spearman*, 188 La. 535, 177 So. 659 (1937); *cf. Finance Sec. Co. v. Williams*, 42 So.2d 902 (La. App. 1st Cir. 1949).

4. The instant case raises indirect questions relating to requisites for authenticity and estoppel. These collateral issues will be discussed in footnotes at the conclusion of this Note.

5. These articles are found in the chapter of the Civil Code dealing with proof of obligations and they fall under the section of this chapter which pertains to literal proof. LA. CIV. CODE arts. 2234-39.

6. Only LA. CIV. CODE art. 2237 has no corresponding article in the Code Napoleon. *See* 3 LOUISIANA LEGAL ARCHIVES 1220-24 (1942).

7. 2 PLANIOL, CIVIL LAW TREATISE no. 1105 (La. St. L. Inst. transl. 1959).

the danger of false testimony were recognized.⁸ The invention of the printing press and the spread of the knowledge of reading and writing helped remedy these problems of inconvenience and subornation, and consequently, in 1566 the Ordinance of Moulin was enacted in France requiring that all acts, where the value of the property exceeded a certain amount, be executed before a notary or under private signature.⁹ The framers of the French Civil Code expected documentary evidence to be the most important means of proof, and, hence, they regulated the various means of documentary proof, hoping to encourage the preparation of contemporaneously constituted written proof (*preuve constituée*) of as many transactions as possible.¹⁰ The framers especially encouraged the use of the authentic act by making it public in nature¹¹ and by giving public acts advantages over private acts.¹² Furthermore, the veracity of public officers in the execution of public acts was of such great public interest that special procedures¹³ were enacted for proving forgeries.¹⁴

A comparison of the authentic act of Louisiana to that of

8. *Id.*

9. *Id.*

10. P. HERZOG, CIVIL PROCEDURE IN FRANCE § 7.24 (1967).

11. In France authentic acts always have been of a public nature because they have been drawn up by public officers who have the power to execute public acts. The public officer's sincerity is insured by his training and qualifications, plus the terrible consequences in case of forgery on his part. 6 BEUDANT, COURS DE DROIT CIVIL FRANÇAIS no. 975 (1906); 2 PLANIOL, CIVIL LAW TREATISE nos. 80-81, 89 (La. St. L. Inst. transl. 1959); 4 TOULLIER, DROIT CIVIL FRANÇAIS nos. 44-45, 56-58 (6th ed. 1848). Historically, conviction of a public officer for a forgery entailed loss of his position and function, plus "conviction to hard labor for life." 2 PLANIOL, CIVIL LAW TREATISE no. 90, at 57 (La. St. L. Inst. transl. 1959).

12. The principal advantage of the public act was its conclusive probative effect in evidence as to all contained within the act, until it was proved a forgery through the "inscription de faux." 6 BEUDANT, COURS DE DROIT CIVIL FRANÇAIS no. 997 (1906); 4 TOULLIER, DROIT CIVIL FRANÇAIS no. 66 (6th ed. 1848); 2 PLANIOL, CIVIL LAW TREATISE nos. 87-88, 90 (La. St. L. Inst. transl. 1959).

13. There are two procedures for proving forgeries, *inscription de faux* and *faux incidental civil*. The *inscription de faux* is a criminal proceeding in which the state is the prosecutor. When the criminal suit is instituted, any civil suit concerning the act in question is suspended until a finding in the criminal suit. A finding of forgery in the criminal suit is conclusive evidence in the civil suit. The *faux incidental civil* is a civil proceeding which arises where the procedure of inscription is recorded as an incident to an action already commenced. P. HERZOG, CIVIL PROCEDURE IN FRANCE § 7.44 (1967); 2 PLANIOL, CIVIL LAW TREATISE nos. 83-85 (La. St. L. Inst. transl. 1959).

14. The word "forgery" can mean either that the instrument has been altered in its execution or that the draftsman made a false statement. P. HERZOG, CIVIL PROCEDURE IN FRANCE § 7.44 (1967); 2 PLANIOL, CIVIL LAW TREATISE no. 86 (La. St. L. Inst. transl. 1959). For authority that the word "forgery" has the same meaning in Louisiana in regard to authentic acts, see *SucceSSION of Tete*, 7 La. Ann. 95 (1852).

France reveals an absence of Louisiana legislation specifying the procedure by which one may assail the authentic act.¹⁵ Despite some early confusion, the Louisiana decisions recognize that by alleging forgery one may directly attack an authentic act.¹⁶ In so attacking the act one may use parol evidence to prove the act a forgery.¹⁷

15. *W. Cox & Co. v. King's Estate*, 20 La. Ann. 209 (1868); *Succession of Tete*, 7 La. Ann. 95 (1852); *Lewis' Heirs v. His Executor*, 5 La. 387 (1833); see also *Succession of Block*, 131 La. 101, 59 So. 29 (1912).

16. In 1833, the Supreme Court of Louisiana, in *Lewis' Heirs v. His Executor*, 5 La. 387 (1833), noted the absence of positive legislation providing for prosecutions of forgery. The court said that this implied that no special procedures were intended to be used in Louisiana for assailing authentic acts. The court commented that by making proper allegations, a party could introduce parol evidence and directly show that the act was invalid. In that case the plaintiffs alleged that an authentic act was null because of the lack of requisite legal formalities during the execution of the act. The court found that this allegation authorized the plaintiff to introduce parol proof of the informality. Three years later, in *Pain v. Plicque & LeBeau*, 10 La. 304 (1836), the supreme court allowed a notary and the two witnesses to an authentic act to testify and prove by parol that the witnesses were not actually present at the execution of the act. Notwithstanding these decisions, the supreme court decided in *Succession of Tete*, 7 La. Ann. 95 (1852), that parol evidence could not be admitted to contradict a notary's recitals in an authentic act and prove them false, when there was an objection to the admission of the parol evidence. *Succession of Tete* has never been considered authoritative, however, because for unspecified reasons the court set aside its opinion on rehearing. See *Succession of Block*, 131 La. 101, 59 So. 29 (1912); *W. Cox & Co. v. King's Estate*, 20 La. Ann. 209 (1868). Subsequently, in *Succession of Theriot*, 114 La. 611, 38 So. 471 (1905), the Supreme Court of Louisiana held that parol evidence could be admitted to contradict a notary's recitals in an authentic act and prove them false.

The procedure for attacking an authentic act is provided by LA. CIV. CODE art. 2236, which declares: "The authentic act is full proof of the agreement contained in it . . . unless it be declared and proved a forgery." See *Succession of Block*, 131 La. 101, 59 So. 29 (1912). Thus, it has been held that when one assails the authentic act, he sues directly against the instrument to have it annulled. *Succession of Theriot*, 114 La. 611, 38 So. 471 (1905); *W. Cox & Co. v. King's Estate*, 20 La. Ann. 209 (1868); *Lewis' Heirs v. His Executors*, 5 La. 387 (1833); see also *Succession of Block*, 131 La. 101, 59 So. 29 (1912).

17. In assailing the act, one must distinguish the evidentiary rules applicable when one attacks the form of the act—e.g., *Succession of Tete*, 7 La. Ann. 95 (1852)—from those applicable when one attacks the agreement contained in the act—e.g., *W. Cox & Co. v. King's Estate*, 20 La. Ann. 209 (1868). When one attacks the form of the act, the parol evidence rule is not applicable because the parol evidence rule is intended to bar parties from disputing their own declarations, not the notary's. *Succession of Theriot*, 114 La. 611, 38 So. 471 (1905). See also *W. Cox & Co. v. King's Estate*, 20 La. Ann. 209 (1868).

However, when one attacks the agreement contained in the authentic act, he may be barred from contradicting or varying the recitals of the parties to the act. *Templet v. Babbit*, 198 La. 810, 5 So.2d 13 (1941); see also note 2 *supra*.

To reconcile the different grounds and evidentiary rules for attacking the authentic act, the Supreme Court of Louisiana has construed the word "forgery," as provided in LA. CIV. CODE art. 2236, to include the nuances of "false," *Succession of Tete*, 7 La. Ann. 95 (1852), and "fraud, error or force" within its meaning, *Templet v. Babbit*, 198 La. 810, 5 So.2d 13 (1941). *The Work of the*

In *Union Savings & Loan Ass'n v. The Grand Co.*,¹⁸ the court faced the problem of whether the parol evidence rule, or any other evidentiary rule, was applicable to bar oral testimony impeaching the notary's declarations contained in the authentic act. Ordinarily, the parol evidence rule protects the sanctity of the declarations of the parties, but here the defendant attacked the form of the act, rather than the agreement contained therein.¹⁹

On first hearing, the court decided that article 2238²⁰ controlled the dispute.²¹ The court concluded that the declarations

Louisiana Appellate Courts for the 1966-1967 Term—The Parol Evidence Rule, 5 LA. L. REV. 269 (1943). Hence, one may attack an authentic act, if he alleges it to be a "forgery," and one may use parol evidence to prove it a "forgery." See *Ford Motor Credit Co. v. Williams*, 225 So.2d 717 (La. App. 1st Cir. 1969).

18. 239 So.2d 395 (La. App. 4th Cir. 1970).

19. For a discussion of the evidentiary differences between attacking the form and attacking the disposition of an act, see note 17 *supra*. The importance of attacking the form of the authentic act is that, in an executory proceeding, the plaintiff must prove his right to use the executory process by authentic evidence, LA. CODE CIV. P. art. 2635, and by attacking the form of the act, the defendant may be able to show a lack of the authentic evidence necessary to justify the plaintiff's use of the executory process. *Myrtle Grove Packing Co. v. Mones*, 226 La. 287, 76 So.2d 305 (1954); *Raalte v. The Congregation of the Mission*, 39 La. Ann. 617, 2 So. 190 (1887); *Miller, Lyon & Co. v. Copell*, 36 La. Ann. 264 (1884); *American Budget Plan, Inc. v. Small*, 229 So.2d 190 (La. App. 4th Cir. 1969); see also *General Motors Acceptance Corp. v. Anzelmo*, 222 La. 1019, 64 So.2d 417 (1953).

If defendant can show that any link of evidence is not in authentic form, he may enjoin the seizure and sale of his property. LA. CODE CIV. P. arts. 2751, 2753(5); *General Motors Acceptance Corp. v. Anzelmo*, 222 La. 1019, 64 So.2d 417 (1953); *American Budget Plan, Inc. v. Small*, 229 So.2d 190 (La. App. 4th Cir. 1969); *Ford Motor Credit Co. v. Williams*, 225 So.2d 717 (La. App. 1st Cir. 1969).

20. LA. CIV. CODE art. 2238 provides: "An act, whether authentic or under private signature, is proof between the parties, even of what is there expressed only in enunciative terms, provided the enunciations have a direct reference to the disposition.

"Enunciations foreign to the disposition, can serve only as a commencement of proof."

21. In deciding that Civil Code article 2238 controlled the dispute, the court rejected arguments by the defendant that LA. CODE CIV. P. art. 2753(5) made parol evidence admissible. The court held that Code of Civil Procedure article 2753 did "not purport to establish the nature, sufficiency, or admissibility of evidence establishing the alleged fact that the order of seizure and sale was rendered on evidence not actually authentic. It merely [provided] . . . that [one] . . . may obtain the temporary restraining order or preliminary injunction on one or more of the listed grounds without furnishing security for the issuance thereof." *Union Sav. & Loan Ass'n v. The Grand Co.*, 239 So.2d 395, 398 (La. App. 4th Cir. 1970). This reasoning is substantiated by comment (b) to LA. CODE CIV. P. art. 2753, which says: "(b) This article merely regroups and broadens the grounds for the issuance of an injunction to arrest the seizure and sale provided in Art. 739 of the 1870 Code"; and by comment (c) to the same article which says: "(c) . . . in 1953 the supreme court again considered the question, and held that lack of authentic evidence could be raised either under an application for injunc-

of the notary had a "direct reference to the disposition" of the act, and therefore, they could not serve as a "commencement of proof" under article 2238.²² The court's interpretation of article 2238 was ingenious but opposite its traditional meaning. The notary's declarations have never been considered as "enunciations" within the meaning of article 2238, because the "enunciations" provided for have always referred to the declarations of the parties.²³ Consequently, a "commencement of proof" could be initiated only when the "enunciations" emanated from the person against whom the action is brought.²⁴

On rehearing the court reversed its original holding because of a re-examination of Code of Civil Procedure article 2753, and the court said that not only did its reconsideration of article 2753 compel a reversal of its holding, but it also caused a different interpretation of Civil Code article 2238.²⁵

The writer suggests that the court's decision on rehearing is erroneously based upon Code of Civil Procedure article 2753. An examination of the purposes and history behind article 2753 indicates that the article was never intended to liberalize rules pertaining to the nature, sufficiency, or admissibility of evi-

tive relief to arrest the seizure and sale, or under an appeal from the order therefor. All cases to the contrary were again expressly overruled. *General Motors Acceptance Corp. v. Anzelmo*, 222 La. 1019, 64 So.2d 417 (1953), noted, 14 La. L. Rev. 289 (1953).

"The position taken by the Supreme Court in the *Anzelmo* case is codified in this article."

In addition, LA. CODE CIV. P. art. 2751 provides for injunctive relief when "the procedure required by law for an executory proceeding has not been followed." Comment (d) to article 2751 provides: "(d) The provisions in the above article permitting injunctive relief to arrest the seizure and sale of the property in an executory proceeding when 'the procedure required by law for an executory proceeding has not been followed' was inserted primarily to make injunctive relief available to the defendant when the order of seizure and sale was issued without sufficient authentic evidence. No change in the law is made in this respect. See comment (b) under art. 2753 *infra*." The writer submits that the court's original holding that LA. CODE CIV. P. art. 2753 did not establish evidentiary rules was correct.

22. LA. CIV. CODE art. 2238. The "disposition" of the act has historically referred to and meant the agreement contained within the act. See 2 PLANIOL, CIVIL LAW TREATISE no. 94 (La. St. L. Inst. transl. 1959).

23. See P. HERZOG, CIVIL PROCEDURE IN FRANCE § 7.28(a) (1967); 2 PLANIOL, CIVIL LAW TREATISE nos. 94-95 (La. St. L. Inst. transl. 1959).

24. See note 23 *supra*; Comment, 3 LA. L. REV. 427 (1941).

25. The court said: "We granted this rehearing primarily because we wanted to reconsider the effect of L.S.A.—C.C.P. Art. 2753(5) in light of subsection (3) of that article." 239 So.2d 395, 398 (La. App. 4th Cir. 1970). After reconsideration of this article, the court changed its position regarding LA. CODE CIV. P. art. 2753. The court said that this change caused it to reverse its interpretation of LA. CIV. CODE art. 2238: "As a result of these considerations we also have changed our conclusion regarding the effect of Civil Code Article 2238." 239 So.2d 395, 399 (La. App. 4th Cir. 1970).

dence, but rather that it was intended merely to enlarge the substantive grounds upon which an executory proceeding could be enjoined.²⁶ Moreover, the court's reliance on article 2753 was unnecessary, because Louisiana courts consistently have allowed parties to introduce parol evidence proving allegations that an authentic act was not executed in compliance with Civil Code article 2234.²⁷ As is fraud,²⁸ the false declarations of the notary are included within the meaning of "forgery," as provided by Civil Code article 2236,²⁹ and allegations of false declarations by a notary should entitle parties to introduce parol evidence, just as do allegations of fraud.³⁰

Because the authentic act of Louisiana can be attacked directly and by use of parol evidence, one may question the nature of Louisiana's authentic act. It is obviously not of such a public and sacramental nature as the authentic act of France.³¹ However, it is a public act executed by a public officer,³² and, since the notary is under a duty³³ to execute the act veraciously, the act is self-proving until proven a forgery.³⁴ This quasi-sacramental nature of the authentic act of Louisiana has the dual advantage of bringing stability to titles and agreements,³⁵ while not giving undue probative force to written acts.³⁶

26. See note 21 *supra*.

27. LA. CIV. CODE art. 2234; Succession of Theriot, 114 La. 611, 38 So. 471 (1905); Ford Motor Credit Co. v. Williams, 225 So.2d 717 (La. App. 1st Cir. 1969); see also Succession of Cauvien, 46 La. Ann. 1412, 16 So. 309 (1894); Pain v. Plicque & LeBeau, 10 La. 304 (1836); Finance Sec. Co. v. Williams, 42 So.2d 902 (La. App. 1st Cir. 1949); Dainello v. McCoy, 131 So. 608 (La. App. Or. Cir. 1930).

28. See note 17 *supra*.

29. LA. CIV. CODE art. 2236.

30. *Id.*

31. For a discussion of the public nature of France's authentic act, see notes 11-13 *supra*.

32. LA. R.S. 35:2 (1950) provides that all acts executed by notaries public, in conformity with the provisions of LA. CIV. CODE art. 2234 shall be authentic acts. See LA. R.S. 35:7-35:8 (1950) which provide that all acts executed before a commissioned officer of the United States shall have the force and effect of an authentic act. See also LA. R.S. 35:9 (1950) which provides that acts executed in a foreign country before ambassadors and consular officials shall have the force and effect of an authentic act and sections 452-453 of the same title which provide that acts executed by any commissioner for the State of Louisiana shall have the same force and effect of a notarial act.

33. *Id.* 35:198 provides that a notary shall be liable when he fails or neglects to perform his duties.

34. Succession of Block, 131 La. 101, 59 So. 29 (1912).

35. Even though one may attack an authentic act and use parol evidence by alleging the act is a forgery, his allegations will only be found true if his evidence is "clear, cogent, and conclusive." See W. Cox & Co. v. King's Estate, 20 La. Ann. 209, 212 (1868). This evidentiary burden aids in maintaining the probative force of authentic acts, notwithstanding attacks by use of parol evidence.

36. For authority that the notary's declarations should not have undue

In conclusion, the result reached by the court in the instant case is correct, but the court's reasoning should have been grounded in Civil Code article 2236.³⁷ The decision of the court is especially desirable because it forces parties deriving advantages from an authentic act either to comply fully with the formalities required by law or to face the possibility of losing these advantages. In the near future Louisiana appellate courts may have an opportunity to clarify other problems relating to attacks on authentic acts, such as what fulfills the requirements of authenticity³⁸ and when should parties to an act be estopped from disputing a notary's declarations.³⁹

John C. Anderson

CORPS OF ENGINEERS—NEW GUARDIANS OF ECOLOGY

Plaintiffs, riparian landowners, desired to fill a portion of adjacent submerged lands owned by them in order to create an island to be connected to the mainland by a bridge. The landowners applied to the United States Army Corps of Engineers (hereinafter referred to as Corps) for a permit to dredge and fill the affected navigable waters. Although the proposed project was found to involve no adverse effects on navigation, the Secretary of the Army (hereinafter referred to as Secretary) denied the application on grounds of potential damage to fish

probative force, *see* Succession of Therlot, 114 La. 611, 38 So. 471 (1905); *W. Cox & Co. v. King's Estate*, 20 La. Ann. 209 (1868); *Lewis' Heirs v. His Executors*, 5 La. 387 (1833). For an argument that the agreement contained in the authentic act should not have undue probative force, *see* Comment, 3 LA. L. REV. 427 (1941).

37. LA. CIV. CODE art. 2236; *see also* note 17 *supra*.

38. The instant case was remanded to the district court. Once the defendant introduces parol evidence to substantiate his allegations that the two witnesses were not present at the execution of the act, the district court will have to decide whether there was substantial compliance with LA. CIV. CODE art. 2234 in regard to what constitutes execution "in the presence of two witnesses." *See, e.g., Finance Sec. Co. v. Williams*, 42 So.2d 902 (La. App. 1st Cir. 1949); *cf. Abshire v. Comeaux*, 159 La. 1087, 106 So. 574 (1925); *General Fin. v. Warner*, 169 So. 112 (La. App. 1st Cir. 1936); *Wessell v. Kite*, 142 So. 363 (La. App. 2d Cir. 1932); *Dainello v. McCoy*, 131 So. 608 (La. App. Ori. Cir. 1930).

39. The district court, on remand, will also have to consider whether the defendant should be estopped from contesting the validity of the authentic act of mortgage because he later "cured" any defects of formality by his action subsequent to the act's execution. *Childs v. Pruitt*, 196 La. 866, 875, 200 So. 282, 285 (1941); *Reliance Homestead Ass'n v. Brink*, 173 La. 331, 137 So. 52 (1931); *cf. Monk v. Monk*, 243 La. 429, 144 So.2d 384 (1962); *Hodges v. Long-Bell Petroleum*, 240 La. 198, 121 So.2d 831 (1959); *Snell v. Union Sawmill Co.*, 159 La. 604, 105 So. 728 (1925); *Blanchard v. Allain*, 5 La. Ann. 367 (1850).