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Civil Code and Related Subjects: Security Devices

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regulations by the fire marshal and board of health, recovered judgment for their value in *Walters v. Coen.*[4]

SECURITY DEVICES

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PRIVILEGES

The Revised Statutes of 1870 contained provisions[1] which created a special privilege in favor of attorneys "on all judgments" obtained by them as a security for the payment of their professional fees. Under this law, it had been held that the privilege did not affect "property" obtained in execution or satisfaction of the judgment.[2] By Act 124 of 1906 this privilege was made operative "on all judgments obtained by them, and on all property recovered thereby."[3] In *State* ex rel. *Maitrejean v. Demarest*[4] the attorney sought the recognition of a privilege under this statute, on property received by the husband in a partition of the community incident to a judgment of separation from bed and board. The court followed the well-established principle of strict construction in the matter of privileges which are in derogation of the general rule of proration among creditors. The privilege was denied because the share of the community property which fell to the husband had belonged to him all along and was not "property recovered" under a judgment, within the meaning of the statute. Of course, the attorney's time and services are the same in one case as in another; and there is no denial of his claim as a creditor. Nevertheless, the rule of *stricti juris* supports the decision in this case.

CROP PLEDGE

The crop pledge has been an important security device in Louisiana agriculture because it enables the farmer to get credit on the strength of his future crop. To preserve the effectiveness of the security in the event of sale of the crop, it has been held

4. 228 La. 931, 84 So.2d 464 (1955).

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1. LA. R.S. 128, 2897 (1870).

2. Luneau v. Edwards, 39 La. Ann. 876, 2 So. 24 (1887); Weill v. Levi, 40 La. Ann. 135, 3 So. 559 (1888).

3. LA. R.S. 9:5001 (1950).

4. 229 La. 300, 85 So.2d 522 (1956).

that the purchaser may be held liable for loss to the creditor on the theory that he became a joint tortfeaser with the pledgor who wrongfully made the sale.[5] Since the crop pledge must be duly recorded, the first purchaser might have been held liable on the ground of constructive notice of the public records, instead of performing the legal gymnastic of bending to the form of a tort and a joint tortfeasor. Be that as it may, subsequent purchasers were not held liable because beyond the first purchaser the property is no longer "crop" but "an article of commerce."[6]

In *Soileau v. Gibbs*[7] the promissory note secured by a duly recorded crop pledge was acquired by the plaintiff, and the trial court held the purchasers liable on the tort theory of *Alexandria Production Credit Association v. Horn.*[8] However, this was reversed by the Supreme Court and an exception of no right of action was sustained on the ground that the plaintiff was not the original pledgee and there was no legal or express conventional subrogation in his favor. On the basis of the tort and joint tortfeasor theory, there might not need to be such privity of contract to sustain liability. Accordingly, the Supreme Court's reversal is significant not only for its holding but also because it might be indicative of the court's pulling back a little from that tort and joint tortfeasor theory for sustaining liability of third persons in crop pledge cases.

BUILDING CONSTRUCTION PRIVILEGES

The provisions of the Building Contract Law[9] contemplate three different fact situations: (1) where written contract and proper bond are duly executed and recorded, (2) where the contract has been recorded but there is something defective as to the bond (no bond, insufficient bond, improper surety, bond not furnished or recorded within proper time), and (3) where there is no written contract or where the contract is not recorded.

The first situation is the most regular and most protected for all parties concerned, and the principal statutory provisions for this situation are in Sections R.S. 9:4801-4805. The particulari-

5. Alexandria Production Credit Association v. Horn, 199 So. 430 (La. App. 1941).
6. Loeb v. Collier, 131 La. 377, 59 So. 816 (1912).
7. 229 La. 976, 87 So.2d 312 (1956).
8. 199 So. 430 (La. App. 1941).
9. LA. R.S. 9:4801-4807 (1950).

ties of the second situation are covered in Section 4806, and for the third situation the special provisions are in Section 4812.

On some matters, the statute has one rule for all three situations; on several points there are separate and different rules which are applicable wherever so provided. One of these points of difference is the time within which claims must be filed in order to constitute valid privileges against the property. For the first kind of situation (proper contract and bond, duly recorded), the pertinent statutory provision in Section 4802 fixes the delay at 30 days after notice of acceptance or default. For the second situation (recorded contract but defect as to bond), the statutory time for filing claims is fixed at the same delay of 30 days by Section 4806, which incorporates by cross-reference the rules of Sections 4802 and 4803. For the third situation (no written or recorded contract), Section 4812 of the statute provides that claims must be filed within 60 days after last delivery of material or last performance of service in order to constitute a privilege against the property.

In *Schwartz Supply Co. v. Zimmerman*[10] there was a recorded contract but the contractor gave no surety bond. In due course the building was completed and a notice of acceptance was duly recorded in the proper mortgage office. When certain unpaid materialmen filed their claims, more than 30 days had elapsed but less than 60. They claimed the benefit of Section 4812 allowing 60 days, but the court applied the 30 day term of Sections 4806 and 4802, which was the proper rule for this example of the second type of fact situation, where there was a recorded contract but no bond.

In reaching its decision in this case, the court seemed to rely in some measure on the rule of interpretation that laws *in pari materia* must be construed with reference to each other. However, since Section 4806 incorporated by express cross-reference this rule of Section 4802, there is direct and express statutory coverage of the problem involved. In any event, it is clear that Section 4812 was properly held inapplicable.

VEHICLE CERTIFICATE OF TITLE ACT

In *Commercial Securities Co. v. Hugh Roberson Motors, Inc.*,[11] an automobile dealer executed a floor plan mortgage in the

10. 228 La. 861, 84 So.2d 438 (1955).
11. 229 La. 959, 87 So.2d 306 (1956).

morning and sold the car in question to another dealer later the same day. The chattel mortgage was received and filed in the proper office on the following day. The trial court held that a purchaser without knowledge or notice and before the recordation of a chattel mortgage obtained perfect title free and clear of the mortgage. A subsequent purchaser likewise acquired perfect title from his author. The court of appeal reversed[12] on the ground that the act provided a series of requirements culminating in the issuance of an official title certificate, and in the present case the chattel mortgage had been duly received and filed prior to the application by the ultimate purchaser (third opponent) for an official title certificate which then showed the encumbrance.

The Supreme Court reversed again and reinstated the judgment of the trial court, citing its own decision in *Hindelang v. Collard Motors, Inc.*[13] Since this earlier case was decided in 1942 and before the first adoption of the Vehicle Certificate of Title Act in 1950, the decision in the present case does not directly answer the issues raised by the court of appeal concerning the point of time at which a purchaser now acquires perfect title to an automobile. Inferentially, it asserts the unchanged applicability of the general rules of the Civil Code on sales[14] that title passes when the contract is completed (and this is absolutely beyond question after delivery and payment). Further, the present decision must be considered as classifying an automobile purchaser as a "third person" within the meaning of the chattel mortgage ranking provision of the Vehicle Certificate of Title Act,[15] although he has not yet complied with other provisions of the same statute concerning the procurement of an official title certificate. The present decision may create some doubts about the basic policy objectives of the Vehicle Certificate of Title Act, and clarification would be in order at the first opportunity.

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12. 77 So.2d 591 (La. App. 1955).
13. 200 La. 569, 8 So.2d 600 (1942).
14. LA. CIVIL CODE arts. 1922, 1923, 2441, 2446 (1870).
15. LA. R.S. 32:710 (1950), the pertinent part of which provides that the chattel mortgage is effective against "third persons" only from the time of proper inscription in the office of the commissioner.