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Real Property -- Implied Warranty: Seller of Land Limited by Restrictive Covenants Implicitly Warrants That the Land Was Usable for the Restricted Purpose

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takes the life of the insured. Unfortunately, the benefits gained through such guidance are more than offset by the unjust manner in which the court reached its final result. Besides the unfairness on the peculiar facts of this case, the abandonment of the heretofore universally recognized common-law test of intent to kill has the potential for producing results that most courts and commentators would find inequitable.⁶⁹ For example, under the rule laid down by the court in *Quick*, a son whose reckless driving caused the death of his father would not be allowed to recover any insurance proceeds accruing as a result of his father's death.

It is submitted that the court should have remanded the case for a hearing to determine whether Jill Quick intentionally killed the insured. In disposing of the case in this manner, the court could have avoided setting an unwarranted and inequitable precedent in North Carolina.

JOHN MULL GARDNER

Real Property—Implied Warranty: Seller of Land Limited by Restrictive Covenants Implicitly Warrants That the Land Was Usable for the Restricted Purpose

In a case of first impression and without appellate court precedent in any other jurisdiction,¹ the North Carolina Supreme Court rejected the venerable maxim that in a sale of land by deed there are no implied warranties.² By extending the implied warranty concept developed for new home sales,³ the court created a new substantive right based on

69. *E.g.*, *Hatcher v. Aetna Life Ins. Co.*, 105 F. Supp. 808, 810-11 (D. Ore. 1952).

1. Brief for Plaintiff at 13, *Hinson v. Jefferson*, 287 N.C. 422, 215 S.E.2d 102 (1975). *But cf.* *Hyland v. Parkside Inv. Co.*, 10 N.J. Misc. 1148, 162 A. 521 (S. Ct. 1932) where it was held a landlord who specifically restricts the use of a leased premise for one purpose guarantees the fitness of the premise for that particular purpose.

2. *Huntley v. Waddell*, 34 N.C. 33 (1851). In some states the prohibition against implied warranties for real property is statutorily sanctioned. *See, e.g.*, ORE. REV. STAT. § 93.140 (1973). In these states it is unlikely that the decision of *Hinson v. Jefferson*, 287 N.C. 422, 215 S.E.2d 102 (1975) can be followed without statutory changes, implied warranty cases for new homes notwithstanding. *Yepsen v. Burgess*, 525 P.2d 1019 (1974) (en banc). For unlike the implied warranty in new home cases in which the courts attempt to avoid merger and preserve the contractual obligations, the implied warranty in *Hinson* is derived from the deed itself. 287 N.C. at 435, 215 S.E.2d at 111.

3. *Hartley v. Ballou*, 286 N.C. 51, 209 S.E.2d 776 (1974). The case is analyzed in Note, *Real Property—Implied Warranty of Workmanlike Quality in New Housing Sales: New Protection for the North Carolina Homebuyer*, 53 N.C.L. REV. 1090 (1975)

implied warranty for lands covered by restrictive covenants. As formulated in *Hinson v. Jefferson*,⁴ whenever a deed contains a restrictive covenant that limits the use of conveyed property to one specific use, the grantor implicitly warrants that the land conveyed was at the time of the conveyance usable for the purpose to which it was specifically limited.

The decision is significant because it carves out a limited exception to the doctrine of *caveat emptor* and thus provides greater protection for the purchaser. The basis for the *Hinson* decision was not consumer protection, however. The state supreme court was dissatisfied with the vagaries of alternative restitutionary theories, such as mistake, particularly in the light of the countervailing policy in favor of stability in executed land sales. The *Hinson* warranty was thus created to ensure greater certainty.⁵ An examination of the opinion reveals, however, that failure by the court to discuss the substantive issues that inhere in warranty actions could undermine its efforts.⁶

In 1971, defendants sold a small parcel of land in rural Pitt County to plaintiff, Mrs. Hinson, for \$3,500.⁷ Contained within the deed that conveyed the parcel were restrictive covenants that greatly limited the use of the land. Foremost among these restrictions was the requirement that the land be used exclusively for residential purposes.⁸ Because the lot was not serviced by a municipal sewage system, Mrs. Hinson applied to the Pitt County Health Department for the required permit for the installation of a septic tank or an on-site sewage disposal system.⁹ Subsequent inspections by the Health Department and the United States Department of Agriculture Soil Conservation Service disclosed that the lot purchased by Mrs. Hinson was only 2.6 feet above the water level of the Black Swamp. Consequently, unless several hundred thousand dollars were expended for channel improvements the lot could

and Note, *Real Property—Implied Warranty of Habitability in North Carolina*, 11 WAKE FOREST L. REV. 155 (1975).

4. 287 N.C. at 435, 215 S.E.2d at 111.

5. See text accompanying note 18 *infra*.

6. See text accompanying notes 30-49 *infra*.

7. 287 N.C. at 424, 427, 215 S.E.2d at 104, 105.

8. *Id.* at 424-25, 215 S.E.2d at 104. In addition to restricting the parcel to exclusively residential uses, according to the covenants no residence at all was permitted on the parcel unless its construction cost exceeded \$25,000. *Id.* at 424, 215 S.E.2d at 104. The deed prohibited the placing of trailers and mobile homes on the parcel. *Id.* Similarly, subdividing the lot into smaller lots was also prohibited. *Id.* at 425, 215 S.E.2d at 104. Finally, prior to any construction the buyer was required to submit the building plans and specifications to the defendants for their written approval. *Id.* at 424, 215 S.E.2d at 104.

9. *Id.* at 425-26, 215 S.E.2d at 105.

not comply with septic tank or on-site sewage disposal regulations.¹⁰ Neither the buyer nor the seller knew of the subterranean hydrologic conditions of the lot.¹¹ Unable to build because of these conditions, Mrs. Hinson attempted to rescind the deed. The trial court held for defendants.¹²

The court of appeals refused to adopt plaintiff's implied warranty theory¹³ but accepted the mutual mistake contention and reversed the trial court.¹⁴ The court relied extensively on *MacKay v. McIntosh*,¹⁵ an earlier North Carolina case in which a Florida realty company attempted to specifically enforce an executory land contract made by its agent and the buyer. The facts revealed, however, that prior to signing the contract of sale the buyer advised the seller's agent that her sole purpose for acquiring the property was to build a retail store. The agent assured her that the property was zoned for business purposes when in fact the local zoning ordinances prohibited business uses. The North Carolina Supreme Court therefore accepted defendant's contention that both parties acted on an honest mistake and rescinded the contract.¹⁶ The *MacKay* decision recognized, however, that generally a contract is binding and only when a mistake was of a material fact which formed the basis of a contract could a contract be voided on the grounds of mutual mistake.¹⁷

10. *Id.* at 426, 215 S.E.2d at 105.

11. *Id.* at 427, 215 S.E.2d at 105-06.

12. *Id.* at 427-28, 215 S.E.2d at 106.

13. *Id.* at 429, 215 S.E.2d at 107. At the appeals court it was contended that the deed should be rescinded for either of two reasons. First, the terms and conditions of the covenants restricting the use of the conveyed property to a single use gave rise to a mutually dependent warranty on behalf of the grantor that the land was in fact usable for its restricted purpose. Second, since neither party knew about the high watertable at the time of the conveyance, a mutual mistake concerning the utility of the parcel had occurred. Two other contentions, although not made, appear relevant. First plaintiff could have argued that an existing impossibility at the outset of the transaction invalidated the deed. See D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES 965-66 (1973). The impossibility theory, however, is subject to the same basic uncertainties as the mistake cases, *id.* at 965, and would probably have been rejected by the supreme court. Second, it could be argued that since it was impossible to comply with the restrictive covenant and build the contemplated single family house, the restrictions should be removed to permit development of the land for some other purpose. See, e.g., *Abate v. Hebert*, 100 So. 2d 273 (La. App. 1st Cir. 1958). However, under this approach purchasers can receive a windfall since presumably their purchase price reflected the restricted use of the property. Thus the effect of this type of decision is to give the buyer an unrestricted fee at restricted prices. Furthermore, if the property was within a subdivision, removal of the covenant may adversely affect the interests and expectations of neighboring property owners.

14. *Hinson v. Jefferson*, 24 N.C. App. 231, 238-39, 210 S.E.2d 498, 502-03 (1974).

15. 270 N.C. 69, 153 S.E.2d 800 (1967).

16. *Id.* at 73, 153 S.E.2d at 804.

17. *Id.*

The state supreme court in *Hinson* replaced the mistake rationale of the court of appeals with a warranty theory. The court feared that the mistake doctrine was too uncertain a standard to rescind a completed land transaction.¹⁸ Recent writings and cases lend support to this fear. One commentator has observed that in any mistake case the several factors¹⁹ used by the courts may point toward different results, and one factor although important in one case may be ignored in another. Consequently neither lawyer nor judge can be assured what factors will be decisive in a particular case.²⁰ Even when a definite standard is developed, it is difficult to apply. In *MacKay*, it will be recalled, the North Carolina Supreme Court indicated that the *sine qua non* for applying the mistake doctrine was that the mistake form the basis of the contract.²¹ Although easily stated, in practice this test is extremely difficult to apply. Differentiating between basic and collateral matters is highly subjective. The Michigan Supreme Court, for example, refused to apply the mistake doctrine in *A&M Land Development Co. v. Miller*, even though nearly one-half of the ninety-one lots purchased were unsuitable for septic tanks, the only available form of sewage disposal.²² The court simply held that the buyer received the property for which he contracted.²³ Generally, when the courts apply the mistake doctrine their decisions are predicated on their perceptions about culpability, assumption of risk, and the relative hardships to the parties.²⁴ Although this balancing approach may reach an equitable result in a particular case it fails to provide any guidance to the seller or the purchaser.²⁵ In the *Hinson* case this uncertainty was, in the judgment of the supreme court, fatal to the mistake cause of action.

In contrast, a warranty action minimizes the discretionary judgment of the courts, and therefore increases the control the parties have over their own transaction. As applied in *Hinson* the warranty of fitness is coextensive with the restrictive covenant of the deed.²⁶ Thus, the legal obligations of the parties are defined by the provisions of the deed executed by the parties rather than by retrospective and unpredict-

18. 287 N.C. at 430-33, 215 S.E.2d at 108-09.

19. See text accompanying note 24 *infra*.

20. Rabin, *A Proposed Black-Letter Rule Concerning Mistaken Assumptions in Bargain Transactions*, 45 TEXAS L. REV. 1273, 1275 (1967).

21. See text accompanying note 17 *supra*.

22. 354 Mich. 681, 94 N.W.2d 197 (1959).

23. *Id.* at 694, 94 N.W.2d at 203.

24. D. DOBBS, *supra* note 13, at 723-32.

25. See text accompanying note 20 *supra*.

26. 287 N.C. at 435, 215 S.E.2d at 111.

able judicial analysis of factors such as culpability, unjust enrichment, or relative hardship. Another advantage of the *Hinson* opinion is the lighter evidentiary burden required to sustain a warranty action. Generally, plaintiffs in a warranty action must prove only: (1) the existence of a warranty; (2) the scope of the warranty; and (3) that the breach of the warranty was the proximate cause of the loss.²⁷ By contrast, because the mistake cases are based on subjective evaluations, the evidence required to prevail is much greater. This does not mean, however, that the warranty doctrine applied in *Hinson* removes all factual disputes. One very important but difficult element critical to the buyer's cause of action under the *Hinson* rationale is proving that at the time of the conveyance the property was unusable for its restricted purpose. If either the seller or the purchaser had actually known the physical condition of the land, at the time of the conveyance, the transaction undoubtedly would not have occurred in its present form. The passage of substantial periods of time between the conveyance and actual development will exacerbate the problem of proof.²⁸

The major difficulty with a warranty action and the *Hinson* decision in particular is not evidentiary but substantive. The decision leaves too many important warranty issues unresolved. Moreover, since the opinion departs substantially from previous statutory and case analogies,²⁹ these analogies are inadequate guides to resolve these issues

27. N.C. GEN. STAT. § 25-2-314 (1965), Comment 13.

28. The evidentiary problem was not at issue in *Hinson*; the Court determined that the physical conditions existed at the date of the conveyance. 287 N.C. at 426, 215 S.E.2d at 105. The evidentiary problem is closely related to selecting an appropriate statute of limitations. This problem has troubled many commentators discussing the implied warranty in new home cases. Note, *Real Property—Implied Warranty of Workmanlike Quality in New Housing Sales: New Protection for the North Carolina Homebuyer*, 53 N.C.L. REV. 1090, 1094 n.28 (1975). Generally, the duration of the warranty adopted by the courts in the new home area has been a case by case test of reasonableness. *Id.* at n.30. Although the types of defects in the *Hinson* context are less numerous than in new home construction (*see text accompanying note 40 infra*), nonetheless, the reasonableness standard is preferable to some fixed period. The reason for this lies with the nature of the product. Unlike goods which are used immediately after purchase, realty is sometimes acquired for future use and defects cannot be determined until later.

29. There are at least three analogous warranties. First, N.C. GEN. STAT. § 25-2-315 (1965) provides:

[w]here the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified . . . an implied warranty that the goods shall be fit for such purpose.

The second is the implied warranty of workmanlike quality for new homes. *Hartley v. Ballou*, 286 N.C. 51, 62, 209 S.E.2d 776, 783 (1974). Finally, a third analogy is the

without further court elaboration. In this respect the *Hinson* decision suffers from the same lack of guidance the court found so objectionable in the mistake cases.

The first serious omission in the *Hinson* decision was the court's failure to delineate a standard for determining what conditions constitute a breach of warranty. Because the land in *Hinson* was totally unusable in any practical sense for its restricted use,³⁰ it was clear that if a warranty existed at all, it was breached. Suppose however, the contemplated use was not frustrated but instead was \$3,000 more costly to achieve. Would this constitute a breach of warranty under *Hinson*? Similarly, suppose the land was restricted to both single and multifamily housing, and later it was learned that the land was only suitable for single family housing. Clearly the value of the land is worth less, but does this constitute a breach of an implied warranty? Although the *Hinson* decision is silent about these circumstances, it hints at a strict standard of liability. First, unlike analogies from the Uniform Commercial Code³¹ and implied warranties for new homes,³² where it is inferred that the businessman has superior knowledge on which the consumer relies, neither the seller nor the buyer had knowledge of the hydrologic conditions³³ in *Hinson*. Apparently, the court believed, as between two innocent parties, the party who imposed the restriction ought to bear the risks that are attributable to the restrictions. Second, in contrast to *Hartley v. Ballou*³⁴ and its kindred cases,³⁵ the *Hinson* decision omits language limiting the scope of liability. Whenever the courts have resorted to implied warranties and imposed liability in the past, as in the case of defective new home construction, they have carefully circumscribed the scope of liability.³⁶ For example, in *Hartley* the North Carolina Supreme Court specifically held that the implied

landlord's implied warranty of habitability. See Moskowitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CALIF. L. REV. 1444 (1974).

30. See text accompanying note 10 *supra*.

31. N.C. GEN. STAT. § 25-2-315 (1965); Covington & Medved, *The Implied Warranty of Fitness for A Particular Purpose: Some Persistent Problems*, 9 GA. L. REV. 149, 151 (1975).

32. Commentary, *Real Property—Implied Warranties—Sale of House by Builder—Vendor Creates an Implied Warranty of Fitness and Habitability*, 24 ALA. L. REV. 332, 335 (1972).

33. See text accompanying note 11 *supra*.

34. 286 N.C. 51, 209 S.E.2d 776 (1974).

35. See generally Annot., 25 A.L.R.3d 383, 413-15 (1969).

36. In *Bethlahmy v. Bechtel*, 91 Idaho 55, 415 P.2d 698 (1966) the Idaho Supreme Court held "[t]he implied warranty of fitness does not impose upon the builder an obligation to deliver a perfect house. No house is built without defects . . ." *Id.* at 68, 415 P.2d at 711.

warranty fell short of an absolute guarantee.³⁷ Therefore, in North Carolina liability for new home construction is imposed only when there is a breach of workmanlike quality.³⁸ In other states habitability³⁹ and reasonableness standards⁴⁰ are used to limit liability. These limitations are, however, based on policy considerations which are inapplicable to the *Hinson* land purchase context. The courts, for example, have recognized that there are too many considerations involved with housing construction and maintenance to require a builder-vendor or a landlord to build or rent a perfect house and that an absolute standard of liability would be unreasonable.⁴¹ By contrast, the concern in *Hinson* is unidimensional—whether the parcel is suitable to accommodate the restricted use—and as such, the seller can more easily avoid liability. Another important policy difference between *Hartley* and *Hinson* is the disparate transactional impact of the two decisions. Since the courts are involved with the indispensable commodity of shelter when deciding housing warranty cases, their decisions are likely to have broad societal consequences. For example, unreasonable court requirements could discourage housing construction, encourage disinvestment in housing, or increase drastically the cost of housing to consumers. However, since the fact situation in *Hinson* occurs less frequently, its probable impact is slight. Therefore, in this situation the courts should be willing to include lesser impairments within the protective scope of the warranty.

Finally, a stricter standard of liability is consistent with the remedial flexibility provided by a warranty action.⁴² Unlike the Hobbesian all-or-nothing choice of the mistake cases where the remedy is generally

37. 286 N.C. at 62, 209 S.E.2d at 783.

38. *Id.*

39. *See, e.g.,* Bethlahmy v. Bechtel, 91 Idaho 55, 68, 415 P.2d 698, 711 (1966).

40. *See, e.g.,* Smith v. Old Warson Dev., 479 S.W.2d 795, 801 (Mo. 1972) (en banc).

41. For a listing of the multitudinous types of defects that can occur in new home construction, see Commentary, *Real Property—Implied Warranties—Sale of House by Builder-Vendor Creates an Implied Warranty of Fitness and Habitability*, 24 ALA. L. REV. 332, 338-39 n.30 (1972). In the landlord-tenant field, although the landlord is not liable for all defects, *Green v. Superior Court*, 10 Cal. 3d 616, 637, 517 P.2d 1168, 1183, 111 Cal. Rptr. 704, 719 (1974), certain general principles have emerged for imposing liability on landlords. When defects deprive tenants of essential services, such as bathing, sleeping, and eating, liability is imposed. Similarly, liability is upheld when tenants are exposed to hazardous conditions which would result in tort liability if injury actually occurred. Moskowitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CALIF. L. REV. 1444, 1455-62 (1974).

42. For a discussion about the advantages of a warranty action and when a landowner may want damages instead of rescission, see Skillern, *Implied Warranties in Leases: The Need for Change*, 44 DENVER L.J. 387, 391-93 (1967).

limited to rescission,⁴³ damages are an available alternative in a breach of warranty action.⁴⁴ Thus, in other fact patterns, in which the hardship to the buyer is less severe than in *Hinson*, the courts can avoid the difficulties⁴⁵ of rescission and subsequent changes in property records by giving the buyer either the difference between the market value as implicitly warranted and the market value in its actual condition or the amount of money required to bring the property into compliance with the implied warranty.⁴⁶

The second major shortcoming of the *Hinson* decision related to the issue of liability is uncertainty about the right of the buyer and seller to exclude the implied warranty. Nowhere in the decision is this problem discussed. However, if the court applied the Uniform Commercial Code warranty of fitness analogy to the restrictive covenant warranty, then clearly a waiver clause is permissible. The code expressly provides a simple procedure for excluding implied warranties.⁴⁷ However, despite the obvious statutory parallel, the case law is hostile to waiver clauses. In new housing sales this hostility is evidenced by restrictive interpretation given to waiver clauses.⁴⁸ The courts are even more adamantly opposed to waiver clauses in cases involving landlords' implied warranty of habitability. For example, the Washington Supreme Court has held that a tenant does not waive the protection of an implied warranty even when he accepts a patently defective premise for reduced monthly rental payments.⁴⁹ Whether this reasoning will be followed by

43. See 13 S. WILLISTON, CONTRACTS, § 1542 (3d ed. 1970).

44. See *Hartley v. Ballou*, 286 N.C. 51, 63, 209 S.E.2d 776, 783 (1974).

45. *Id.* at 490, 219 S.E.2d at 194; see text accompanying notes 23-24 *supra*.

46. *Cf.* *Hartley v. Ballou*, 286 N.C. 51, 63, 209 S.E.2d 776, 783 (1974).

47. N.C. GEN. STAT. § 25-2-316(3)(a) (1965) provides: ". . . [A]ll implied warranties are excluded by expressions like as is, with all faults, or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty. . . ."

48. See, e.g., *Wawak v. Stewart*, 247 Ark. 1093, 1101, 449 S.W.2d 922, 926 (1970); *Smith v. Old Warson Dev. Co.*, 479 S.W.2d 795, 800 (Mo. 1972) (en banc).

49. *Foisy v. Wyman*, 83 Wash. 2d 22, 515 P.2d 160 (1973). In *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1081-82 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970), *Green v. Superior Court*, 10 Cal. 3d 616, 625 n.9, 517 P.2d 1168, 1173 n.9, 111 Cal. Rptr. 704, 709 n.9 (1974), and *Boston Housing Authority v. Hemingway*, 293 N.E.2d 831, 843 (Mass. 1973), explicit waiver clauses were not enforced by the courts. The decisions are based on two reasons. The *Javins* decision, for example, relied on the landlords' independent statutory duty imposed by the housing code to provide tenants with habitable premises as the basis for its opinion. Viewed in this context the prohibition against waiver clauses merely illustrates the principle that private parties can not by agreement remove a statutory duty. See *Narramore v. Cleveland, C., C.&St. L. Ry.*, 96 F. 298, 302 (6th Cir. 1899). Another reason which is given to support the court's determination that a tenant may not waive the implied warranty of habitability centers on the adverse societal impact of renting substandard housing. *Foisy v. Wyman*,

North Carolina courts in the *Hinson* land purchase context is uncertain.⁵⁰ It would be anomalous, however, for the court to create a warranty right based on a policy of stability and then allow the buyer and seller to easily undermine this policy. For if the mere inclusion of a waiver clause can protect sellers from an implied warranty action, buyers would have no choice but to sue on a mistake theory, and thus reintroduce the uncertainty the court attempted to prevent.

The third critical issue for a warranty action left unanswered by the *Hinson* decision is deciding which individuals are protected by the warranty. Traditionally, North Carolina has taken a restrictive attitude towards privity.⁵¹ In *Hartley*, for example, the implied warranty of workmanship protected only the "initial vendee."⁵² In *Hinson*, however, the warranty of the grantor extends to the initial grantee and any subsequent grantees through mesne conveyances.⁵³ The reason for this departure from past precedent is not discussed in the opinion. More importantly, it is unclear whether the court truly intends to protect all subsequent buyers. For example, the implied warranty does not protect a buyer with knowledge. The decision therefore fails to provide a framework for determining when privity should be extended to subsequent grantees.

A solution for obviating this confusion is for the court in future cases firmly to equate the *Hinson* warranty to privity decisions under restrictive covenant law.⁵⁴ Apparently, the supreme court had this in mind when it held that the restrictive covenants in *Hinson* ran with the land.⁵⁵ The advantage of such a holding is twofold. First it would provide lawyers with a readily identifiable area of the law from which

83 Wash. 2d 22, 28, 515 P.2d 160, 164-65. Whether these policies can be used to extend the prohibition against waiving implied warranties to other areas is uncertain. Pappas v. Hershberger, 85 Wash. 2d 152, 530 P.2d 642 (1975) (per curiam) (en banc).

50. The North Carolina Supreme Court has indicated that implied warranties do not protect buyers from patent defects or from reasonably ascertainable facts. *Hinson v. Jefferson*, 287 N.C. 422, 436, 215 S.E.2d 102, 111.

51. See, e.g., *Terry v. Double Cola Bottling Co.*, 263 N.C. 1, 138 S.E.2d 753 (1964); *Byrd & Dobbs, Torts Survey of North Carolina Case Law*, 43 N.C.L. Rev. 906, 936-38 (1965).

52. 286 N.C. at 62, 209 S.E.2d at 783.

53. 287 N.C. at 435, 215 S.E.2d at 111.

54. See, e.g., *Higdon v. Jaffa*, 231 N.C. 242, 56 S.E.2d 661 (1949).

55. 287 N.C. at 424, 215 S.E.2d at 104. It is not clear, however, whether characterizing the covenants in *Hinson* as running with the land is correct. In *Julian v. Lawton*, 240 N.C. 436, 440, 82 S.E.2d 210, 213 (1954), the court held that a covenant providing among other things that no building should be erected unless approved by the grantor or by an architect selected by him was a covenant personal to the grantor. *Accord*, *Chappell v. Winslow*, 144 F.2d 160, 162 (4th Cir. 1944).

they can delimit the warranty obligations. Second, because restrictive covenants that run with the land cannot be altered by subsequent buyers⁵⁶ absent court assistance,⁵⁷ it is only equitable that the original grantor who imposed the restriction be held liable.

Although the *Hinson* decision has left many important questions unanswered and therefore has undermined the efforts of the court to achieve stability in the land market, nevertheless, the problems are not insurmountable and future decisions along the lines suggested can achieve the desired objectives of the court. However, the North Carolina Supreme Court's novel decision in *Hinson v. Jefferson* does reflect an increasing willingness on behalf of the court to use implied warranties to protect purchasers of real property. Moreover, the decision may foreshadow future expansion of the implied warranty doctrine to other areas, such as landlord tenant relations.

IRA J. BOTVINICK

Security Interests—Garagemen's Liens and Duress of Goods

The doctrine that an artisan who enhances the value of a chattel at the request of its owner has a lien on that chattel for his reasonable charges is deeply rooted in the common law.¹ Equally venerable is the concept of duress of goods, a rule that protects an individual who finds himself coerced in some fashion through the wrongful seizure or detention of his property.² These two principles are similar in that each finds its application in a bailment of goods situation.³ In *Adder v. Holman & Moody, Inc.*,⁴ the North Carolina Supreme Court was presented with a question that involved an interplay between the two concepts: whether duress of goods was perpetrated when a garageman insisted that an owner-bailor sign a document purporting to waive all defenses based on poor workmanship before the garageman relinquished an automobile on which he had made repairs. The court, in

56. *Sheets v. Dillon*, 221 N.C. 426, 431, 20 S.E.2d 344, 347 (1942).

57. *E.g.*, *Muilenburg v. Blevins*, 262 N.C. 271, 87 S.E.2d 493 (1955).

1. R. BROWN, *THE LAW OF PERSONAL PROPERTY* § 13.1, at 394-95 (3d ed. 1975);
2 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 33.2, at 873 (1965).

2. This concept had its origin in the early eighteenth century. *See* note 23 *infra*.

3. *See* text accompanying notes 23-35 *infra*.

4. 288 N.C. 484, 219 S.E.2d 190 (1975).