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Civil Code and Related Subjects: Security Devices

Joseph Dainow

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SECURITY DEVICES

*Joseph Dainow**

In the common law, a mortgage on land can have an identity and existence separate and independent from the principal obligation which it is intended to secure. In the civil law, and in Louisiana, this is not possible on account of the principle of "accessory";¹ without a valid and subsisting principal obligation there can be no mortgage. In *Baton Rouge Production Credit Association v. Alford*,² the court found that the mortgage note held by the debtor's brother-in-law did not represent any actual indebtedness but instead that the whole transaction was a simulation to defraud creditors. Accordingly, it was ordered that the mortgage be cancelled from the records — thereby raising into first position a subsequently recorded judicial mortgage.

PRESCRIPTION

*Joseph Dainow**

ACQUISITIVE PRESCRIPTION

The requisites for the ten-year acquisitive prescription of immovables include "good faith" and "just title" as two separate and distinct elements.¹ It is not unusual to find them discussed as inter-related and overlapping to a degree that destroys any individual identity of the respective concepts. A clear and well-drawn distinction is made in the case of *Bel v. Manuel*.² The plea of prescription was based principally upon a conveyance in which two sisters sold "all of our undivided interest . . . inherited by us from our deceased mother." Although a quit-claim deed, as such, has been accepted as a "just title" for purposes of acquisitive prescription,³ the court, in an understatement, reserved doubt as to whether the above conveyance would satisfy the requirement, even when taken in conjunction with other conveyances of additional undivided interests in the same property.

*Professor of Law, Louisiana State University.

1. LA. CIVIL CODE arts. 3284, 3285, 3293 (1870).

2. 235 La. 117, 102 So.2d 866 (1958).

*Professor of Law, Louisiana State University.

1. LA. CIVIL CODE art. 3479 *et seq.* (1870).

2. 234 La. 135, 99 So.2d 53 (1958).

3. *Smith v. Southern Kraft Corp.*, 202 La. 1019, 13 So.2d 335 (1943).