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## Tacit Reconduction - A New Lease

Felix H. Lapeyre

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erence here is to the directness or remoteness of the effect on interstate commerce, then the view just stated is perhaps correct. However, if this expression refers to the "extent" of the effect on such commerce, such a view cannot stand. Considered in connection with the expression "close and substantial" which immediately precedes the use of the word "degree" in the *Jones and Laughlin* opinion, the latter meaning is indicated. This position is further supported by the statements in the *Santa Cruz* case that "the provision cannot be applied by a mere reference to percentages" and "The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a *close and substantial* relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."<sup>77</sup> In short, if one per cent of the output of a plant would have such an effect then jurisdiction would exist, if not, there would be an absence of power to control. The decisions of the Board seem to follow this view.

SIDNEY W. JACOBSON

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### TACIT RECONDUCTION—A NEW LEASE

A lease is said to be *tacitly reconducted*<sup>1</sup> when, upon the expiration of its term and without opposition by the lessor, the tenant remains in possession of the leased premises. The terms and conditions of the original agreement remain operative by reason of a legal presumption that this is the wish of the parties. To demonstrate that in Louisiana law<sup>2</sup> this tacit reconduction operates to create a *new* though implied agreement between the

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77. *Santa Cruz Fruit Packing Co. v. N.L.R.B.*, 303 U.S. 453, 467, 58 S.Ct. 656, 661, 82 L.Ed. 954 (1938) (italics supplied).

1. Arts. 2688, 2689, La. Civil Code of 1870.

"*C'est la continuation de la jouissance d'une ferme ou d'une maison au prix et aux conditions que portait le bail qui est expiré, et qui n'a point été renouvelé.*" 13 Merlin, Répertoire de Jurisprudence (4 ed. 1815) 379, vo. Tacite Reconduction.

"It is the continuation of the enjoyment of a farm or of a house at the same price and conditions which attached to the lease which has expired, and which has not been [expressly] renewed." (Translation by author.)

2. For the language of Articles 2688 and 2689, La. Civil Code of 1870, see text, *infra* p. 444.

parties and not a mere continuation of the original lease, is the purpose of this comment.<sup>3</sup>

The theory of reconduction is inescapably bound up with those provisions of law which treat of the *duration* of leases. It would therefore be well to preface any discussion of the nature of the reconducted lease with a brief investigation of the articles of the Civil Code dealing with the manner in which agreements of lease expire.

Article 2684 introduces this subject by enunciating the general rule that "the duration and the conditions of leases are generally regulated by contract, or by mutual consent." But the two following articles<sup>4</sup> then take up the situation where, with reference to a lease of urban property, the parties have not contracted and have not mutually consented concerning the duration of the lease. Article 2685 declares:

"If the renting of a house or other edifice, or an apartment,

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3. The establishment of this view would have wide effect. For example, if reconduction creates a new though tacit convention, it cannot operate when one of the parties is incapable of contracting. 10 Huc, *Commentaire Théorique et Pratique du Code Civil* (1897) 452, n° 334; 17 Duranton, *Cours de Droit Français* (3 ed. 1834) 144, n° 171; 4 Pothier, *Oeuvres* (Bugnet ed. 1861) 120, *Traité du Contrat de Louage*, n° 345; Troplong, *Droit Civil Expliqué, De l'Echange et du Louage*, II (3 ed. 1859) 7, n° 453; 20 Baudry-Lacantinerie, *Traité de Droit Civil, Du Contrat de Louage*, I (3 ed. 1906) 824, n° 1423; *Corpus Juris Civilis*, D.19.2.14. Further, where the validity of a lease is dependent upon the approval of the court, as is sometimes the case in the administration of property by a tutor or curator (Art. 346, *La. Civil Code of 1870*; *La. Act 116 of 1920*, § 1, construed with *Act 47 of 1934*, § 1, as amended by *Act 18 of 1935* [2 E.S.] § 1), no question of reconduction could arise, since the mere action or inaction of the parties could not, of itself, consummate a contract. Finally, in the field of liens and privileges, the determination of priority between the lessor's lien and the right of the mortgagee of the lessee's movables present upon the leased premises, is dependent upon the effect of reconduction in the case where the mortgagee records his mortgage after the execution of the lease but before its reconduction and the lessor is invoking his lien to recover rents falling due after the reconduction. *Remedial Loan Society v. Solis and Trepagnier*, 1 *La. App.* 164 (1924); *Comegys v. Shreveport Kandy Kitchen*, 162 *La.* 103, 110 *So.* 104, 52 *A.L.R.* 931 (1926), reversing 3 *La. App.* 692; and *McKesson Parker Blake Corporation v. Eaves & Reddit*, 149 *So.* 294 (*La. App.*, 1933).

4. Articles 2685 and 2686 were enacted in their present form as Articles 2655 and 2656 of the *Civil Code of 1825*. Neither article appeared in the *Civil Code of 1808*; however, the corresponding provision in that code was *La. Civil Code of 1808*, p. 374, Art. 11: "If in letting out a room or a house no time has been stipulated, the duration of said lease shall be at the will of either of the parties.

"But it shall be the duty of the party who wishes to cancel the lease, to give notice of the same to the other party. That notice must be given a month beforehand when the rent is payable quarterly and fifteen days only when the rent is payable by the month."

The period of notice required by Art. 2686 (*La. Civil Code of 1870*) (Art. 2656, *La. Civil Code of 1825*) was originally fifteen days, but was changed by *Act 9 of 1924* to ten days.

has been made without fixing its duration, the lease shall be considered to have been made *by the month.*" (Italics supplied.)

And according to Article 2686:

" . . . If no time for its duration has been agreed on, the party desiring to *put an end to it* must give notice in writing to the other, at least ten days before the expiration of the month, which has begun to run." (Italics supplied.)

It is apparent from these articles that our code draws a sharp distinction, at least with respect to urban property, between those leases which have a definite duration specified in the agreement and those which are silent in this regard. The former type terminate of their own effect upon the expiration of the time stipulated; whereas, the latter are considered as continuing indefinitely month by month, though terminable by either party at the end of any current month by the giving of timely written notice to the other.<sup>5</sup>

The same distinction, however, is not observed with respect to the leasing of farm lands. Article 2687 declares:

"The lease of a predial estate, when the time has not been specified, is presumed to be *for one year* as that time is necessary in this State to enable the farmer to make his crop, and to gather in all the produce of the estate which he has rented." (Italics supplied.)

Thus, the law here supplies a definite term where the parties

5. The French Civil Code draws a like distinction. 10 Huc, *op. cit. supra* note 3, at 448-9, n° 331. Following is the text of the corresponding French articles with translations by the author:

Art. 1736, French Civil Code: "*Si le bail a été fait sans écrit, l'une des parties ne pourra donner congé à l'autre qu'en observant les délais fixés par l'usage des lieux.*"

(Translation) "If the lease was made *without a stipulated duration*, one of the parties can give notice to the other only in accordance with the delays fixed by the custom of the locality." (Italics supplied.)

Art. 1737, French Civil Code: "*Le bail cesse de plein droit à l'expiration du terme fixé, lorsqu'il a été fait par écrit, sans qu'il soit nécessaire de donner congé.*"

(Translation) "The lease terminates by the operation of law at the expiration of the term specified, *when the duration has been fixed*, without the necessity of giving notice." (Italics supplied.)

The terms "*écrit*" and "*sans écrit*," as used here, do not have the literal meaning of these words. The former description refers specifically to a lease with a definite duration fixed by the parties; whereas, the latter refers to a lease of indefinite duration. Either type of lease may be written or verbal. 2 Colin et Capitant, *Cours Élémentaire de Droit Civil Français* (8 ed. 1935) 613, n° 671; 6 Marcadé, *Explication du Code Napoléon* (7 ed. 1875) 495; 10 Planiol et Ripert, *Traité Pratique de Droit Civil Français* (1932) 786, n° 624.

have neglected to declare their intention.<sup>6</sup> Unlike the urban lease, the lease of farm lands always has a definite term. It is fixed, either by the terms of the agreement itself or by provision of law.

Because reconduction can attach only to those leases which have expired,<sup>7</sup> this difference in the treatment of rural and urban

6. Where the parties fail to fix the duration of rural leases, a definite term is likewise established by the French Civil Code. 3 Mourlon, Répétitions Ecrites sur le Code Napoléon (4 ed. 1856) 289, at Arts. 1774-1776; 6 Marcadé, op. cit. supra note 5, at 532; 20 Baudry-Lacantinerie, op. cit. supra note 3, at 701, n° 1226. The corresponding French articles read as follows: (Translations by the author.)

Art. 1774, French Civil Code: "*Le bail, sans écrit, d'un fonds rural, est censé fait pour le temps qui est nécessaire afin que le preneur recueille tous les fruits de l'héritage affermé.*"

"*Ainsi le bail à ferme d'un pré, d'une vigne, et de tout autre fonds dont les fruits se recueillent en entier dans le cours de l'année, est censé fait pour un an.*"

"*Le bail des terres labourables, lorsqu'elles se divisent par soles ou saisons, est censé fait pour autant d'années qu'il y a de soles.*"

(Translation) "The rural lease without stipulated duration is deemed to be made for the time necessary for the farmer to harvest all the crops of the leased property."

"Thus, the rural lease of a pasture, a vineyard, and any other land, the fruits of which are completely harvested in the course of the year, is deemed to be made for a year."

"The lease of arable lands, when these rotate as to fallows or seasons, is deemed to be made for as many years as the period of rotation requires." (Italics supplied.)

Art. 1775, French Civil Code: "*Le bail des héritages ruraux, quoique fait sans écrit, cesse de plein droit à l'expiration du temps pour lequel il est censé fait, selon l'article précédent.*"

(Translation) "The lease of rural property, even though made with no stipulated duration, terminates by the operation of law at the expiration of the time for which it is deemed to be made according to the preceding article."

However, by the Law of October 24, 1919, Article 1775 was amended to read as follows:

"*Le bail des héritages ruraux, quoique fait sans écrit, ne cesse à l'expiration du terme fixé par l'article précédent que par l'effet d'un congé donné par écrit par l'une des parties à l'autre, six mois au moins avant ce terme.*"

"*A défaut d'un congé donné dans le délai ci-dessus spécifié, il s'opère un nouveau bail dont l'effet est réglé par l'article 1774 (1).*"

(Translation) "The lease of rural property, even though made with no stipulated duration, terminates at the expiration of the term fixed by the preceding article only by effect of a written notice given by one of the parties to the other at least six months before [the end of] the term."

"In default of such a notice, a new lease comes into operation, the effect of which is regulated by article 1774 (1)."

It is doubtful that this amendment made any real change in the principle above referred to. The writer submits that it merely establishes a special type of tacit reconduction for rural leases without a conventional term. It would seem to allow reconduction to operate, in such a case, by the mere failure of either party to give notice, without the necessity of a "holding-over" by the tenant.

7. This is clear from the language of Articles 2688 and 2689 (La. Civil Code of 1870), both of which refer to the lease having "expired." For the language of these articles, see text, infra p. 444. The French law is to the same effect. See 10 Planiol et Ripert, op. cit. supra note 5, at 790, n° 627; 25 Lau-

leases is of great significance in determining the applicability of the principle of reconduction in the case where the parties *have neglected to fix a term*. Farm leases of no stipulated duration expire at the end of the term fixed by law, and may therefore be reconducted by a "holding-over" by the lessee.<sup>8</sup> But the urban lease with no stipulated duration has no definite term which can expire and is therefore not normally the subject of reconduction.<sup>9</sup>

From the very fact that reconduction applies only to those leases which have *expired*, the conclusion would seem to be inevitable that any continuance of the lessor-lessee relationship must be in the nature of a *new* convention, as a contract which has expired can have no further operation unless renewed or extended by force of a new agreement, expressed or implied. Consequently, it at first seems strange to note that our courts have adopted the view that reconduction operates by mere force of law apart from any new agreement of the parties.<sup>10</sup>

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rent, *Principes de Droit Civil Français* (1877) 370, n° 331; 2 Planiol, *Traité Élémentaire de Droit Civil* (11 ed. 1937) 641, n° 1732; 20 Baudry-Lacantinerie, *op. cit. supra* note 3 at 812, n° 1406.

8. Troplong, *op. cit. supra* note 3, at 205-206, nos 770-772; 17 Duranton, *op. cit. supra* note 3, at 196, n° 215; 6 Marcadé, *op. cit. supra* note 5, at 532-533. See also 20 Baudry-Lacantinerie, *op. cit. supra* note 3, at 810, n° 1402.

9. When one of the parties has given notice of termination according to Art. 2686, La. Civil Code of 1870, the lease will expire at the end of the current month. Since the term of the lease thus becomes fixed, it may be possible for reconduction to result from the subsequent "holding-over" by the tenant. Where the notice is given by the lessor, it may also prevent reconduction. Art. 2691, La. Civil Code of 1870, declares: "When notice has been given, the tenant, although he may have continued in possession, can not pretend that there has been a tacit renewal of the lease." This notice to prevent reconduction is not the same as the notice required to terminate a lease with no stipulated duration. 20 Baudry-Lacantinerie, *op. cit. supra* note 3, at 812, n° 1406; 25 Laurent, *op. cit. supra* note 7, at 379-380, n° 339. Consequently, one view holds that reconduction may operate in such a situation. 20 Baudry-Lacantinerie, *supra*, at 817, n° 1413. However, another view considers that even a notice of termination will prevent the operation of reconduction because of the fact that it shows a contrary intention. 25 Laurent, *supra*, at 379, n° 331.

The Louisiana courts have mistakenly applied the principle of reconduction to termless urban leases even when no notice has been given. Remedial Loan Society v. Solis and Trepagnier, 1 La. App. 164 (1924); McKesson Parker Blake Corporation v. Eaves & Reddit, 149 So. 294 (La. App. 1933); see Hincks v. Hoffman, 12 Orleans App. 218, 225 (1915). These cases proceeded upon the mistaken premise that R.C.C. Article 2685 establishes one month as the duration of urban leases where the parties have not stipulated a term. This idea is amply refuted by the language of that article itself which refers to such leases as presumed to be made *by the month*, and by the language of Article 2686 which declares that the lease may be terminated at the end of any month by advance notice given in writing. Compare the language of Article 2687 regarding rural leases with no stipulated duration which are presumed to be *for one year*.

10. This question has never been accorded the close attention which it deserves. In the case of Bowles v. Lyon, 6 Rob. 262 (La. 1843), Justice Morphy clearly analyzed the whole problem and spoke of the reconducted lease as a

The position of our courts is apparently supported by arguments based upon the language of Articles 2688 and 2689<sup>11</sup> dealing with reconduction. These articles read as follows:

Article 2688. "If, after the lease of a predial estate has expired, the farmer should still continue to possess the same during one month without any step having been taken, either by the lessor or by the new lessee, to cause him to deliver up the possession of the estate, *the former lease shall continue* subject to the same clauses and conditions which it contained; but it shall continue only for the year next following the expiration of the lease." (Italics supplied.)

Article 2689. "If the tenant either of a house or of a room should continue in possession for a week after his lease has expired, without any opposition being made thereto by the lessor, *the lease shall be presumed to have been continued*, and he can not be compelled to deliver up the house or room without having received the legal notice or warning directed by article 2686." (Italics supplied.)

Taken literally these texts might support the view that reconduction merely *continues* the original lease. However, a critical analysis from the standpoint of legislative history discloses that the true meaning of these articles is not to be found by a slavish adherence to words used.

In the first place, when we trace the history of the latter article to the Civil Codes of 1808 and 1825, we note that there is a serious discrepancy between the French text (in which these

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"new lease." This early case was the basis for less careful generalizations in *Geheebe v. Stanby*, 1 La. Ann. 17 (1846) and *Dolese v. Barberot*, 9 La. Ann. 352 (1854). In *Waples v. City of New Orleans*, 28 La. Ann. 688 (1876), a lease without stipulated duration was properly held to *continue* until terminated by notice under Article 2686—despite abandonment by the lessee. In more recent years, the decisions become increasingly confusing. The case of *Remedial Loan Society v. Solis and Trepagnier*, 1 La. App. 164 (1924) held that reconduction resulted in the formation of a new agreement. But, in *Comegys v. Shreveport Kandy Kitchen*, 162 La. 103, 110 So. 104, 52 A.L.R. 931 (1926), the Supreme Court reversed the second circuit court of appeals, 3 La. App. 692 (1926), to hold that reconduction merely continues the original lease. In *Weeks Supply Co. v. Werdin*, 147 So. 838 (La. App. 1933) and in *McKesson Parker Blake Corporation v. Eaves & Reddit*, 149 So. 294 (La. App. 1933), the *Comegys* case, *supra*, is said to overrule the *Remedial Loan* case, *supra*.

11. These (Arts. 2688 and 2689, La. Civil Code of 1870) were Articles 2658 and 2659 of the Civil Code of 1825. The corresponding provisions of the Civil Code of 1808 are on p. 374, Articles 14 and 15. However, the words *during one month* and *for a week* respectively were not present in the Code of 1808. They first appear in the Code of 1825. See: Proposed Additions and Amendments to the Civil Code of the State of Louisiana (1823), 1 La. Legal Archives (1937) 321.

codes were originally drafted<sup>12</sup>) and the English translation which is now our Article 2689. The French text of the Civil Code of 1808 (p. 375, Art. 15) reads as follows:

“Si le locataire d’une maison ou d’un appartement continue de même sa jouissance après l’expiration du bail, sans opposition de la part du bailleur, *il sera censé les occuper aux mêmes conditions*, et ne pourra plus en sortir, ni en être expulsé qu’ après un avertissement ou congé préalable donné au tem(p)s d’avance fixé par l’article XI ci-dessus.” (Italics supplied.)

The mistranslation of the first independent clause is almost too obvious to be mentioned. Where the French text, literally translated, merely declares that “he [the tenant] shall be deemed to occupy them [the premises] upon the same conditions,” the English version supplies “the lease shall be presumed to have been continued.” Since the French text of the Civil Codes of 1808 and 1825 is controlling today in the event of a difference between the French and English versions,<sup>13</sup> and since the French text in this instance is utterly devoid of any suggestion that the effect of tacit reconduction is to merely continue the original lease, we must conclude that no such inference should be derived from the language of Article 2689.

Reverting now to the language of Article 2688,<sup>14</sup> we find conflicting terminology concerning the effect of reconduction. Although this article declares that the lease “shall continue,”<sup>15</sup>

12. Dubuisson, *The Codes of Louisiana (Originals Written in French; Errors in Translation)* (1924) 25 La. Bar Ass’n Rep. 143. See also, Tucker, *Source Books of Louisiana Law* (1932) 6 Tulane L. Rev. 280 (also in 1 La. Legal Archives xvii).

13. *Davis v. Houren*, 6 Rob. 255 (La. 1843); *Buard v. Lemée*, 12 Rob. 243 (La. 1845); *Phelps v. Reinach*, 38 La. Ann 547 (1886); *Strauss v. City of New Orleans*, 166 La. 1035, 118 So. 125 (1923); *Sample v. Whitaker*, 172 La. 722, 185 So. 38 (1931).

14. La. Civil Code of 1870.

15. Article 2688 is substantially taken from Article 25, Book III, Title XIII of the preliminary draft of the French Civil Code known as the *Projet de la Commission du Gouvernement*. The text of that article likewise refers to the continuation of the lease. 2 Fenet, *Recueil Complet des Travaux Préparatoires du Code Civil* (1836) 354. This draft was sent to the various courts of France for criticism, and concerning this article the Tribunal of Paris made the following remarks: “. . . *l’article 25 aura besoin de quelque amendement. Il y est dit que, dans le cas de la tacite reconduction, le bail se prolonge. L’expression est inexacte; ce n’est point l’ancien bail qui est prolongé, mais un nouveau bail qui se fait. . .*” 5 Fenet, *supra*, at 276.

(Translation) “. . . article 25 will need some amendment. It is there stated that, in the case of tacit reconduction, *the lease is extended*. The expression is inexact; it is decidedly not the old lease which is *extended*, but a new lease which is made.” (Italics supplied.)



its English version contains two, and the French<sup>16</sup> (for here again we encounter faulty translation) three, references to the "expiration" of the lease. Now, as has already been suggested, if the original lease has *expired*, it can be revived or extended only by force of a new agreement to that end. Consequently, the most that can be said of this provision of the Code is that it is ambiguous and must be construed with reference to other provisions of law in *pari materia*.<sup>17</sup>

In not one of the Louisiana decisions which discuss the nature of reconduction<sup>18</sup> is mention made of another article of our code which should be of great assistance in reaching a solution of this problem. The reference is to Article 1817<sup>19</sup> which reads as follows:

"Silence and inaction are also, under some circumstances, the means of showing an assent that creates an obligation; if, after the termination of a lease, the lessee continue in possession, and the lessor be inactive and silent, *a complete mutual obligation for continuing the lease, is created by the act of occupancy of the tenant on the one side, and the inaction and silence of the lessor on the other.*" (Italics supplied.)

By citing the reconduction of a lease as the classic example of the tacit *creation* of a valid conventional obligation this article completely refutes the view that reconduction merely effects a "continuance" of the original lease by operation of law. Declaring that a "complete mutual obligation . . . is created by the act of occupancy on the one side, and the inaction and silence of the lessor on the other," this provision renders it impossible to escape the conclusion that the reconducted lease is the result of a new convention.<sup>20</sup>

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This criticism was heeded and the final draft of the French Civil Code (Art. 1776) refers to reconduction as creating a new lease.

16. The French text of this article as found in the Civil Code of 1808 (p. 375, Art. 14) is as follows: "*Si après l'expiration du bail d'un héritage rural, le fermier continue sa jouissance, sans qu'il y ait été fait aucune diligence de la part du bailleur ou d'un nouveau fermier pour le contraindre à sortir, le bail se prolonge aux prix, clauses et conditions prescrits par celui qui est expiré, mais pour l'année seulement qui suit immédiatement la dernière du bail qui est expiré.*"

17. Art. 17, La. Civil Code of 1870.

18. See decisions cited in note 10, *supra*.

19. La Civil Code of 1870. The position of this article in our Code is of more than ordinary significance. Placed under the title "Of Conventional Obligations" and under the section entitled "Of the Consent Necessary to Give Validity to a Contract," this article from its very situation affirms the fact that tacit reconduction is nothing more nor less than a *contract*, even though the *consent* thereto is predicated upon a presumption of law.

20. In complete conformity with this view is the provision of Article 2691 which declares that "When notice has been given, the tenant, although he

Moreover, it is difficult from a practical point of view to regard reconduction as merely continuing the original lease. In order for reconduction to operate, the lessee must have remained in possession *after* the expiration of the term for a *month* in the case of the rural lease<sup>21</sup> and for a *week* in the case of the lease of urban property.<sup>22</sup> During this period either party is at perfect liberty to frustrate the operation of the reconduction—the lessor, by instituting ejectment proceedings; and the lessee, by merely removing from the premises. Consequently, there can be no legal or conventional tie which binds the parties. Now, since a *continuation* necessarily connotes an *uninterrupted* extension or succession, this hiatus or period of abeyance completely negatives any idea that the eventual resumption of the terms and conditions of the lease is in the nature of a *continuance* thereof. The lease might be re-established with retroactive effect by the convention of the parties, but under no circumstances can it be continued.<sup>23</sup>

Furthermore, the theory herein advanced is in complete harmony with the historical origin of the pertinent Louisiana codal articles and with the view entertained in other jurisdictions. The French law, from which our provisions were undoubtedly taken,<sup>24</sup>

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may have continued in possession, can not pretend that there has been a tacit renewal of the lease." Since the agreement is based upon a tacit consent legally presumed from the conduct of the parties, any action by one of them manifesting a contrary intention must necessarily destroy the operation of the reconduction. 4 Pothier, *op. cit. supra* note 3, at 119, n° 344. Also in substantiation of the position taken is Article 2690 which discharges the security given by the lessee from any obligation which might result under the reconducted lease. This latter provision may be justified only upon the theory that a *new* contract takes place.

21. Article 2688, La. Civil Code of 1870.

22. Article 2689, La. Civil Code of 1870.

23. This argument was advanced by Judge Odom, then sitting on the bench of the Second Circuit Court of Appeals, in the case of *Comegys v. Shreveport Kandy Kitchen*, 3 La. App. 692, 695 (1926). Although the decision of the court of appeals was reversed by the Supreme Court (see note 10, *supra*) Judge Odom's argument was not adequately refuted.

24. It appears that the redactors of the Louisiana Civil Code of 1808 relied more upon the French *Projet du Gouvernement* in drafting the articles on reconduction than upon the final draft of the Code Napoleon. Article 14 (p. 375) of Book III, Title VIII of the Code of 1808 (Art. 2688, La. Civil Code of 1870) dealing with reconduction of rural leases is essentially the same as Article 25 of Book III, Title XIII of the French *Projet*; whereas there was a substantial change in wording before this article was adopted as Article 1776 of the Code Napoleon. The succeeding article (Art. 2689, La. Civil Code of 1870) treating of reconduction of urban leases finds its counterpart both in Article 26 of the same section of the French *Projet* and in Article 1759 of the final French draft. However, the Code Napoleon contains another article (Art. 1738) on this subject which is found neither in the French *Projet* nor in the Louisiana Code of 1808. Article 16 of the same title of the Code of 1808 (Art. 2690, La. Civil Code of 1870) is literally the same as Article 27 of the same section of the French *Projet* and Article 1740 of the Code Napoleon. However, Art. 2691, La. Civil Code of 1870, is not to be found either in the

has always considered the reconducted lease as a new convention.<sup>25</sup> And the Roman law, which influenced the French in this regard,<sup>26</sup> was no less certain in adopting the same position.<sup>27</sup> Similarly, Spain,<sup>28</sup> and even the common law,<sup>29</sup> have concluded that such a situation results in the creation of a new contract.

In conclusion, therefore, it is submitted that, though mistranslations of our codal articles have created much confusion with regard to this subject, a proper analysis of the provisions of our code points inevitably to the conclusion that, regardless of any contrary decisions of our courts, Louisiana has adopted the traditional civil law view that reconduction operates to create a new, though tacit convention between the parties.

FELIX H. LAPEYRE\*

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Louisiana Civil Code of 1808 or the French *Projet*. It was first introduced into our law as Article 2661 of the Civil Code of 1825 and is taken verbatim from Article 1739 of the Code Napoleon.

25. Articles 1738 and 1776 of the Code Napoleon expressly declare that reconduction operates to create a new lease. 17 Duranton, op. cit. supra note 3, at 197, n° 216; Troplong, op. cit. supra note 3, at 5-6, n° 447; 10 Huc, op. cit. supra note 3, at 452, n° 334; 6 Marcadé, op. cit. supra note 5, at 533; 10 Planiol et Ripert, op. cit. supra note 5, at 794, n° 628; 20 Baudry-Lacantinerie, op. cit. supra note 3, at 809, n° 1401; 25 Laurent, op. cit. supra note 7, at 373, n° 334. But even prior to the enactment of these articles, the same view had obtained. 13 Merlin, op. cit. supra note 1, at 379, No. I; 2 Ferrière, Dictionnaire de Droit et de Pratique (1762) 1010; 7 Encyclopédie Méthodique (1787) 225; 4 Pothier, op. cit. supra note 3, at 119, n° 342.

26. 13 Merlin, op. cit. supra note 1, at 384, Nos. III-V; 4 Pothier, op. cit. supra note 3, at 119, n° 342; 1 Domat, Oeuvres (1828) 211, n. 3-5.

27. "*Qui ad certum tempus conducit, finito quoque tempore colonus est: intelligitur enim dominus cum patitur colonum in fundo esse, ex integro locare, et huiusmodi contractus neque verba, neque scripturam utique desiderant, sed nudo consensu convalescunt. Et ideo si interim dominus furere coeperit, vel decesserit, fieri non posse Marcellus ait, ut locatio redintegretur. Et est hoc verum.*" Corpus Juris Civilis, D. 19.2.14.

"When anyone rents land for a certain time, he remains a tenant even after it has expired; for it is understood that where an owner allows a tenant to remain on the land *he leases it to him again*. A contract of this kind does not require either words, or writing to establish it, but becomes valid by mere consent. Therefore, if the owner of the property should become insane or die in the meantime, Marcellus states that it cannot be held that the lease is renewed; and this is correct." 5 Scott, The Civil Law (1932) 82. (Italics supplied.) See Girard, Manuel Elémentaire de Droit Romain (6 ed. 1918) 583.

28. Las Siete Partidas, 5.8.20; 10 Manresa, Commentarios al Código Civil Español (4 ed. 1931) 542.

29. At common law, the term *reconduction* is unknown. However, a substantially similar theory is used when a tenant for a specified time *holds-over* at the expiration of the term. If the landlord does not eject the tenant, the latter becomes a *tenant at will* or a *tenant from year to year* according to the circumstances. In either case, a new agreement is implied. 2 Tiffany, A Treatise on the Law of Landlord and Tenant (1912) 1478, § 209(e); Kennedy v. City of New York, 196 N.Y. 19, 89 N.E. 360 (1909); Edward Hines Lumber Co. v. American Car & Foundry Co., 262 Fed. 757 (C.C.A. 7th, 1919); People's Trust Co. v. Oates, 68 F. (2d) 353 (C.C.A. 4th, 1934).

\*LL.B. 1938, Loyola University (New Orleans).