Louisiana Law Review

Volume 4 | Number 2
January 1942

Prescription Against the State - Act 310 of 1936

E. L. L.

if the act is designed to be comprehensive—it follows that, regardless of what the previous powers of equity may have been, the statute must be followed,[14] and the broad scope of its operation cannot be restricted by any distinction which may be drawn between temporary and permanent receivers.

The distinction between temporary and permanent receivers is readily made in the exercise of equity jurisdiction in other states,[15] but its application marks a new addition to the vocabulary of the legal practitioner in Louisiana.

It is conceded that the courts of the state should have the power of appointing temporary receivers, ex parte if need be, when an immediate appointment is necessary, but, for the reasons already stated, the subject is regarded as a matter for legislative consideration. Doubtless the time is ripe for a thorough reexamination of the state's receivership legislation with a view to such revision as the times require.

R. O. R.

PRESCRIPTION AGAINST THE STATE—ACT 310 OF 1936—In 1903 Emmett Alpha forfeited a tract of land to the state for taxes. In 1938 he redeemed the land and quit-claimed it to the plaintiffs. Alleging that the defendant claimed ownership of the property, the plaintiffs brought this action to try title. The defense relied upon pleas of ten and thirty years prescription, no mention being made of Act 310 of 1936.[1] The defendant alleged possession in his

14. In determining the question of equity, we do not consider that the court has any right to substitute its personal judgment as to what is equitable when positive law has spoken and told the parties what their legal rights are." See Bryson v. Lee, 181 La. 1019, 1024, 160 So. 797, 798 (1935). See Federal Land Bank v. Rester, 164 La. 926, 931, 114 So. 839, 840 (1927).

15. The power to appoint a receiver pendente lite is incidental to the jurisdiction of a court of equity, but should be exercised only in case of necessity. See National Guarantee Credit Corp. v. Worth & Co., Inc., 274 Pa. 148, 117 Atl. 914 (1922). Accord: Herring v. New York, L. E. & R. R., 105 N.Y. 340, 12 N.E. 763 (1887); Decker v. Gardner, 124 N.Y. 334, 26 N.E. 814 (1891); Gallagher v. Asphalt Co. of America, 67 N.J. Eq. 441, 58 Atl. 403 (1904). High, Receivers (4 ed. 1910) 128, § 111; Tardy, Smith on Receivers (2 ed. 1920) 14, § 3; 53 C.J. (1931) "Receivers," 17-18, 19-20, §§ 1, 3.

1. Dart's Stats. (1939) 8455.2: "In all cases where immovable property has been, or may be, adjudicated or forfeited to the state of Louisiana for nonpayment of taxes and has been or is subsequently redeemed by a purchaser in good faith and by just title, or by the heirs or assigns of such purchaser, prescription shall not be interrupted or suspended during the period that title to such immovable property is vested in the state of Louisiana, provided that this act shall not apply to or affect the three-year prescription provided

authors back to 1892, and furthermore purchase of the land in question under a sheriff's deed translative of title at a foreclosure sale in 1927. *Held,* that regardless of whether the defendant had possession sufficient to start the running of prescription,[2] the pleas of prescription are unavailing. Prescription does not run against the state; therefore the forfeiture of the land to the state had the effect of interrupting any adverse possession. *Ward v. South Coast Corporation,* 198 La. 433, 3 So. (2d) 689 (1941).

The rule that acquisitive prescription ceases to run when title to property becomes vested in the state "has been settled for centuries, and is supported by all courts in all civilized countries."[3] This rule has been deemed essential to the protection of public rights. However, the legislature has authority to provide that in designated cases, prescription *shall* run against the state.[4] Act 310 of 1936 seems to be an exercise of that power; it provides that whenever property is adjudicated or forfeited to the state for non-payment of taxes, and is subsequently redeemed by a purchaser in good faith, prescription shall not be interrupted or suspended during the time title is vested in the state.[5] Is the act applicable to the facts of the *Ward* case? Does it provide for prescription of the state's rights?

---

by law for tax liens, and in all cases where immovable property has been adjudicated to the state of Louisiana for non-payment of taxes, such property shall only be redeemed upon paying the amounts now fixed and provided by law." (Sections 2 and 3 omitted.)

2. Although both courts were inclined to believe that the defendant had not such possession as would enable him to prescribe, their holdings were based on the fact that prescription does not run against the state. Therefore, for the purposes of this note, it will be assumed that the defendant *did* have possession which under ordinary circumstances would have enabled him to prescribe.

3. Armstrong v. Morrill, 81 U.S. 120, 145, 20 L.Ed. 765, 772 (1871). See Note (1874) 13 Am. L. Reg. (N.S.) 465: "The English common-law rule that the limitation will not run against the King has been adopted in every one of the United States, and *nullum tempus occurit reipublicae,* is now established law here." See the following Louisiana cases holding that prescription does not run against the state. Bright v. New Orleans Rys., 114 La. 679, 38 So. 494 (1905); In re August Chabaud Praying for Possession, 3 Orl. App. 420 (La. App. 1906); Cordill v. Quaker Realty Co., 130 La. 933, 58 So. 819 (1912); State v. F. B. Williams Cypress Co., 131 La. 62, 58 So. 1033 (1912); Quaker Realty Co. v. Maierwatt Realty Co., 134 La. 1030, 64 So. 897 (1914). See also Atchafalaya Land Co. v. F. B. Williams Co., 146 La. 1047, 84 So. 351 (1920).

4. La. Const. of 1921, Art. XIX, § 16: "Prescription shall not run against the State in any civil matter, unless otherwise provided in this Constitution or expressly by law."

". . . the framers of the Constitution left the authority with the Legislature to say whether any particular statute of prescription should operate against the state." Atchafalaya Land Co. v. F. B. Williams Cypress Co., 146 La. 1047, 1067, 84 So. 351, 356 (1920), affirmed in 258 U.S. 190, 42 S.Ct. 284, 66 L.Ed. 559 (1922).

5. Supra note 1.

At first blush it might appear that the defendant's claim to continued and uninterrupted possession for over forty-five years,[6] commencing before the state acquired possession and terminating subsequent to the alienation by the state, comes within the scope of the act. It will be noted, however, that if the defendant's possession began in 1892 as he alleges, the thirty year prescription would have been complete in 1922, while the state was in possession. Under such conditions, who would then be owner? The solution to this problem involves three possibilities: (1) prescription was running against state rights and the defendant is the owner, or (2) prescription was not running against state rights and the state is the owner, or (3) prescription was running in favor of the defendant against everyone except the state, and his right to claim absolute ownership is conditioned upon the alienation of the property by the state.

The last of these three possibilities is untenable. In cases where a possessor's assertion to ownership is held in abeyance simply by the state's ownership, the state could convey no valid title, for immediately after the alienation the possessor could step in and claim ownership. To permit the state to make such a conveyance, and leave no recourse to the innocent purchaser against the possessor, would be to allow the state to perpetrate a fraud on him. That could not have been the intent of the legislature. Therefore, either the state is absolute owner, or else the possessor is. The outcome depends upon whether the act was intended to prescribe state rights.

The writer does not believe that the act provides for prescription to run against the rights of the state. A careful reading of the act shows that it contemplates "redemption by one in good faith and by just title." If the privilege of claiming the non-interruption of prescription provided by the act is intended for anyone who may be in possession, why should any restriction be placed on who may redeem the land? Why is it necessary that the land be *redeemed* before the act becomes effective? There can be but one logical answer, the act was passed for the benefit of those who redeem the land that they have forfeited to the state for taxes. They, and only they, can assert the claim of non-interruption of prescription while the state was in possession. The act then goes further and states that even these persons cannot assert the claim until after they have redeemed the land.

6. Supra note 2.

In the principal case the defendant had never forfeited the land to the state, and consequently had no right to redeem it. Therefore, the act had no application and could not be pleaded.

E.L.L.

WORKMEN'S COMPENSATION—VALIDITY OF COMPROMISE—Plaintiff, with approval of the district judge, compromised his claim under the Workmen's Compensation Act[1] before the duration of his disability was definitely ascertainable. It later appeared that he was totally disabled and he now seeks to set aside the compromise agreement. *Held,* the compromise was not binding and full compensation under the Workmen's Compensation Act was allowed.[2] *Puchner v. Employers' Liability Assurance Corporation,* La. Sup. Ct. Docket No. 36,146 (1941).

No provision of the Louisiana Workmen's Compensation Act mentions compromise by name, but Section 17[3] gives interested parties "the right to settle all matters of compensation between themselves" provided such settlement is (1) "reduced to writing," (2) "substantially in accord with the various provisions of this act," and (3) "approved by the court."

The courts of appeal have consistently held valid a compromise entered into by an injured workman and his employer and approved by the proper court[4] where there was a bona fide dispute as to the liability of the employer,[5] the extent of the injury,[6] the

1. La. Act 20 of 1914 [Dart's Stats. (1932) §§ 4391-4434].

2. The penalty of fifty per cent under the act originally imposed on the defendant was eliminated on rehearing because the defendant had acted in reliance upon the prior jurisprudence of the courts of appeal holding such compromises valid.

3. La. Act 20 of 1914, § 17, as last amended by La. Act 38 of 1918, § 1 [Dart's Stats. (1932) § 4407].

4. Bradford v. New Amsterdam Casualty Co., 190 So. 210 (La. App. 1939). See Calhoun v. Louisiana Delta Hardwood Lumber Co., 182 So. 362 (La. App. 1938).

5. Horney v. Scott, 171 So. 172 (La. App. 1936); Calhoun v. Louisiana Delta Hardwood Lumber Co., 182 So. 362 (La. App. 1938); Cognolatti v. Legion Pants Co., 186 So. 377 (La. App. 1939); Weaver v. Mutual Building & Homestead Association, 195 So. 384 (La. App. 1940); White v. Osterland & Knight Timber Co., 200 So. 674 (La. App. 1941). See Faircloth v. Stearns-Roger Mfg. Co., 147 So. 368, 370 (La. App. 1933); Young v. Marx & Son, 189 So. 167, 168 (La. App. 1939); Self v. Wyatt Lumber Co., 189 So. 327, 329 (La. App. 1939); Bradford v. New Amsterdam Casualty Co., 190 So. 210, 211 (La. App. 1939); Walding v. Caldwell Brothers & Hart, 193 So. 501, 502-503 (La. App. 1940); McDaniel v. Great Southern Lumber Co., Inc., 197 So. 812, 815 (La. App. 1940). In all cases, to sustain a compromise there must be a bona fide dispute. Fluitt v. New Orleans, T. & M. Ry., 187 La. 87, 174 So. 163 (1937). See Eaglin v. Southern Kraft Corp., 200 So. 63 (La. App. 1941).

6. Crawford v. Crawford Lumber Co., 1 La. App. 636 (1925); Grace v.