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Quitclaim Deed - Basis of Ten Year Prescription Acquirendi Causa

J. N. H.

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A mineral servitude is an indivisible right.[17] It is admitted that the defendant used the servitude; therefore he was in possession of it; and if he was in possession of it, this possession interrupted the possession of the plaintiff. If this conclusion is adopted, the possession of the defendant was not "continuous and uninterrupted" as required by Article 3487[18] and therefore the prescription was not completed. According to the French authorities, once possession is interrupted, prescription stops running. When possession is regained, a new prescription begins to run. In the instant case, after the possession of the plaintiff had been interrupted by the drilling operations from 1922 to 1931, the plaintiff was no longer in good faith, since he knew the mineral servitude was owned by the defendant; therefore, in view of the French authorities, since the plaintiff was in bad faith, he should have been able to acquire ownership of the mineral rights only through thirty years bad faith prescription.

However, the Louisiana court in the instant case did not so hold, but decided that the possession which was started in good faith continued during the time the drilling and producing operations were carried on, and that the plaintiff was merely in bad faith during this period. The court based its decision upon Article 3482,[19] which states that possession started in good faith, followed by subsequent bad faith, does not prevent the running of ten years good faith prescription.

In view of the fact that the case involved a novel point of prescription and that no cases in point are available in Louisiana jurisprudence—it is submitted that the French authorities could have furnished a basis of a decision more in line with legal principles.

M.E.C.

QUITCLAIM DEED—BASIS OF TEN YEAR PRESCRIPTION ACQUIRENDI CAUSA—Defendant claims title to a twenty acre tract of land by ten years acquisitive prescription, basing his good faith on a quitclaim deed. Plaintiff contends that the unwarranted deed is not enough for acquiring in good faith: the non-warranty being enough to excite the defendant's suspicion, put him on guard, and induce him to make inquiries as to the validity of his title—the defendant remaining in bad faith until such inquiry is made.

17. Sample v. Whitaker, 172 La. 722, 135 So. 38 (1931); Clark v. Tensas Delta Land Co., 172 La. 913, 136 So. 1 (1931). Daggett, op. cit. supra note 4, at 24, § 6.

18. Art. 3487, La. Civil Code of 1870.

19. Art. 3482, La. Civil Code of 1870.

Held, a quitclaim deed may be the basis for good faith prescription acquirendi causa. *Smith v. Southern Kraft Corporation,* 13 So. (2d) 335 (La. 1943).

Prescription of ten years acquirendi causa applies when "the possessor has been in good faith and held by a just title during that time."[1] The good faith possessor spoken of in Article 3479 is defined by Article 503 as one "who possesses as owner by virtue of an act [a title] sufficient in terms to transfer property, the defects of which [title] he is ignorant of."[2] "The possessor in good faith is he who has just reason to believe himself the master of the thing which he possesses, although he may not be in fact the owner, as happens to him who buys a thing which he supposes to belong to the person selling it to him, but which, in fact, belongs to another."[3] Just title is defined as "a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property."[4]

Louisiana jurisprudence has not been uniform in holding that a quitclaim deed is a valid basis for the good faith prescription of ten years. Probably the first case on the subject was *Reeves v. Towles.*[5] The defendant purchased a tract of land at a tax sale. The contract of sale warranted to the purchaser only the right, title, and claim of the said owner to the tract of land. The issues that arose were whether such a title could form a basis of prescription, or whether it disclosed to the defendant a fatal defect of form in the title of his vendors which in the sense of the Code cannot serve as a basis of ten year prescription.[6] The court held that when the vendor is expressly exempted from warranty this prevents prescription of ten years if such title proves defective. *Carrel's Heirs v. Cabaret*[7] was cited in the argument for the proposition that a title defective in form is one on the face of which a defect is stamped; and if the latent defect is known to the possessor, he cannot prescribe.

A later case, *Eastman v. Beiller,*[8] labeled the deed a quitclaim when the vendor expressly excluded warranty against anyone except himself, his heirs, and those claiming under him. The court held the plea of prescription null in that to become the basis of

1. Art. 3474, La. Civil Code of 1870.
2. Art. 503, La. Civil Code of 1870.
3. Art. 3451, La. Civil Code of 1870.
4. Art. 3484, La. Civil Code of 1870.
5. 10 La. 276 (1836).
6. Art. 3486, La. Civil Code of 1870.
7. 7 Mart. (O.S.) 375 (La. 1820).
8. 3 Rob. 220 (La. 1842).

ten years prescription "the title must be apparently good, and of a kind calculated to induce a belief in the possessor that it is perfect."[9]

"Where the vendor sells only his right, title, and interest, and declines to give a general warranty, and sets out or shows the kind of claim, title, or interest he conveys, [this] brings home to his vendee a knowledge of his title. . . . The fact of a vendor refusing to guaranty the title he gives, is a circumstance calculated to excite suspicion as to it, and should put a vendee on his guard, and would, very probably, induce him to make inquiries as to the validity of the title."[10]

This case[11] is substantiated by two later cases holding that the sale of only the right, title, and interest of the various vendors to an uncertain thing is not an act translative of property and is not to be a basis for the plea of prescription.[12]

The first case where the court implied that a quitclaim deed could make prescription of ten years possible was *Templet v. Baker*,[13] stating that the exclusion of warranty in an act of sale is not evidence of bad faith on the part of the purchaser. However, the court held that where the vendee, in an act of sale, declared that he is acquainted with the title and the title appears defective when it is exhibited, there is made out against the purchaser a prima facie case of the want of that good faith necessary in order to prescribe.

The courts took a decided about face and began a new line of jurisprudence in the case of *Read v. Hewitt*.[14] In this case the former jurisprudence was disregarded and it was held that a deed which conveyed " 'all my right title and interest in a certain tract of land' "[15] can be the basis for good faith prescription. The court stated: "there is no material difference between the sale of property and the sale of all the vendor's right, title, and interest therein, because such a transfer includes all that the vendor can sell or the purchaser acquire.[16] The common law rule was cited and followed.[17]

9. Id. at 223.
10. Id. at 224.
11. 3 Rob. 220 (La. 1842).
12. Thomas v. Kean, 10 Rob. 80 (La. 1845); Avery v. Allain, 11 Rob. 436 (La. 1845).
13. 12 La. Ann. 658 (1856).
14. 120 La. 288, 45 So. 143 (1907).
15. 120 La. 288, 289, 45 So. 143, 144.
16. 120 La. 288, 291, 45 So. 143, 144.
17. 13 Cyclopedia of Law and Procedure (1904) 655, cited in Read v. Hewitt, 120 La. 288, 292, 45 So. 143, 144 (1907): "A conveyance of all the

In *Clayton v. Rickerson*[18] the court held that a quitclaim deed possessed no defect in form as is set out in the Code.[19] Such a decision was manifestly contrary to the rule of the *Towles* case,[20] which held that such a defect constituted a defect in form. The court refused to allow the lack of faith of the vendor in his title to affect the good faith of the vendee, holding that the lack of the seller's good faith is a matter of no importance with regard to the prescription of ten years.

The doctrine was again advanced in *Land Development Company v. Schultz*.[21] Here the court held that a deed that is a quitclaim only has no apparent defect and will not destroy the purchaser's good faith, saying: "The fact that the sale . . . was made without warranty of title does not affect the plea of prescription of ten years. A stipulation in an act of sale that the seller does not warrant the title might be regarded as an indication that the seller lacked faith in his title, but is not an indication that the buyer lacked faith in the title."[22]

Perkins v. Wisner[23] and *Perkins v. Louisiana Land and Exploration Company*[24] followed the old line of jurisprudence. The court, however, in both cases reversed itself upon rehearing, basing its decision upon *Read v. Hewitt*[25] and a United States Supreme Court case from the state of Nebraska.[26]

Seemingly, our early jurisprudence and the spirit of our Code have been disregarded. This has come about by permitting an infiltration of our jurisprudence[27] with rules applicable to the common law quitclaim deed, rather than by controlling our quitclaim deed with an interpretation of our own good faith articles.

It is the writer's opinion that a quitclaim deed certainly cannot offer the purchaser a positive belief that he is the true owner and therefore should be held to create a doubt that should prevent good faith.

J. N. H.

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grantor's right, title, and interest in and to certain described property will be construed as a conveyance of all his estate in such property, and the whole estate will vest in the grantee."

18. 160 La. 771, 107 So. 569 (1926).
19. Art. 3479, La. Civil Code of 1870.
20. Reeves v. Towles, 10 La. 276 (1836).
21. 169 La. 1, 124 So. 125 (1929). See also Nugent v. Urania Lumber Co., 16 La. App. 73, 133 So. 420 (1931).
22. 169 So. 1, 10, 124 So. 125, 128 (1929).
23. 171 La. 898, 132 So. 493 (1930).
24. 171 La. 913, 132 So. 499 (1930).
25. 120 La. 288, 45 So. 143 (1907).
26. Moelle v. Sherwood, 148 U.S. 21, 13 S.Ct. 426, 37 L.Ed. 350 (1893).
27. Ibid.