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# Prescription of Movables - Meaning of "Stolen" in Articles 3506 and 3507, Louisiana Civil Code of 1870

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make a quick settlement before there is any collusion between the parties. Another design of notification clauses is to provide a means of preventing unnecessary litigation by allowing the insurer to deal directly with the injured party before he feels the need of consulting counsel. This latter consideration is the only basis on which the defendants may have claimed prejudice in the instant case, as all of the witnesses were on hand and there appeared to be no evidence of collusion.

Liability insurance, besides being a benefit to the insured, is also for the benefit of society in that the loss is distributed and not borne by one individual. The State of Massachusetts has recognized this social problem and has attempted to solve it by requiring compulsory automobile liability insurance.<sup>13</sup> On the basis of the decisions of the Louisiana Supreme Court only substantial compliance with provisions requiring notice seems to be necessary. In determining this issue, an inquiry must be made as to whether the delay has been prejudicial to the insurer. The decisions appear to place the burden of proving substantial compliance on the plaintiff. To require the insurer to prove that it has been prejudiced by the delay in order to escape liability would probably effectuate the social objective of Act 55 of 1930.

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PRESCRIPTION OF MOVABLES—MEANING OF "STOLEN" IN ARTICLES 3506 AND 3507, LOUISIANA CIVIL CODE OF 1870—A Florida automobile dealer permitted a prospective customer to use one of its automobiles for a short trip within that state. The customer, however, drove the car to Louisiana and sold it. After the car had passed through several hands in Louisiana, the dealer sued the last purchaser, a possessor in good faith by just title, for its recovery. The supreme court gave judgment for plaintiff on two grounds: First, the sale from the prospective customer to a Louisiana purchaser and all other sales were nullities under Article 2452 of the Louisiana Civil Code. Second, the act of driving the car out of Florida constituted *larceny* under Florida law, and hence a good faith possessor under a just title in Louisiana could acquire ownership only by such possession for ten years. Articles 3506 and 3509 of the Civil Code were cited to sustain the latter position. *Packard Florida Motors Company v. Malone*, 24 So. (2d) 75 (La. 1945).

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13. 5 Mass. Ann. Laws (1933) c. 175, § 112. See Blanchard, *Compulsory Motor Vehicle Liability Insurance in Massachusetts* (1936).

The question<sup>1</sup> of revendication of movables in any jurisdiction is essentially one of adjusting harmoniously to the views of the particular society the claims of an owner who has not voluntarily transferred his interest as against the claims of an innocent party who has acquired the thing in a manner which ordinarily should entitle him to ownership. In short, the issue is one of the security of the transaction.<sup>2</sup> For example, in France the security of the transaction is emphasized, while in Louisiana security of ownership seems preferred. Under the French Civil Code the good faith purchaser by just title acquires the ownership of the thing immediately, unless it was lost by the owner or stolen from him, in which case the owner may revendicate within three years from the date of loss or theft.<sup>3</sup> The Louisiana Civil Code provides that if a thing be not stolen or lost, a good faith purchaser under just title can acquire ownership through uninterrupted possession for three years.<sup>4</sup> If the thing be stolen or lost, uninterrupted possession for a period of ten years is necessary.<sup>5</sup>

A comparison of the two systems might show that a parallel exists between them. Under both the owner of a thing stolen or lost is given an opportunity to revendicate if the goods are stolen or lost. Under each system the fact that they were stolen or lost increases the owner's possibility of revendicating. Under both systems, therefore, the right to revendication may depend upon the construction given to the word "stolen." If the word "stolen" is made to include, for example, all acts prejudicial to ownership,

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1. Assuming for the sake of this discussion that the case was to be decided wholly upon the basis of Louisiana law (the conflicts of laws problem in this case will not be discussed for it is the sole purpose of the writer to consider the meaning to be given to the word "stolen" in Articles 3506 and 3507 of the La. Civil Code), there was no need for the court to consider whether the automobile had been stolen; for this consideration can come into play only if the possessor in good faith and by just title has possessed for more than three years. In this case the various possessors had held the automobile for a period of less than three years, and therefore if Louisiana law was to apply the plaintiff should have been entitled to recover whether the automobile had been stolen or not. But the court did, as a matter of fact, interpret the word stolen in Article 3506 as possibly including offenses against ownership as well as offenses against possession.

2. Franklin, *Security of Acquisition and of Transaction: La possessionnant titre and Bona Fide Purchase* (1932) 6 *Tulane L. Rev.* 589.

3. Art. 2279, French Civil Code: "With respect to movables, possession is equivalent to title. Nevertheless, he who has lost a thing, or from whom a thing has been stolen, has three years within which to reclaim it, commencing on date of the loss or theft, from anyone who has it in his custody; saving to the latter his recourse against the person from whom he obtained it."

4. Art. 3506, La. Civil Code of 1870: "If a person has possessed in good faith and by just title, as owner, a movable thing, during three successive years without interruption, he shall acquire the ownership of it by prescription unless the thing was stolen or lost."

5. Art. 3509, La. Civil Code of 1870.

the possibility of revendication is increased. On the other hand, if "stolen" is limited to involuntary deprivations of possession, the possibility of revendication is to that extent limited.

A search through Louisiana jurisprudence has revealed no case in which the meaning of the word "stolen" was at issue, and the dicta have been conflicting. Upon consideration of the dictum in *Campbell v. Nichols*,<sup>6</sup> one must conclude that "stolen" does not include the case where the owner of a thing has voluntarily surrendered possession. In contrast, dictum in *Security Sales Company v. Blackwell*<sup>7</sup> expresses the opinion that a thing illegally transferred by a purchaser under a conditional sale agreement would be "assimilated" to a thing "stolen."

The French writers in discussing the point indicate that "stolen" has always been, and even now is, limited to cases where the owner has been *involuntarily* dispossessed. In instances where the owner *voluntarily* has surrendered possession of the thing, as in cases of escrow, deposit, loan or lease, he is not allowed to revendicate the movable. He is limited to a personal remedy in damages against the party to whom the owner surrendered possession.<sup>8</sup> In Article 464 of the Spanish Civil Code<sup>9</sup> it is said that one who has lost or has been "involuntarily deprived" of a thing may recover it; but the word "stolen" itself is used later in the article apparently as the equivalent of "unlawfully deprived," so that one might conclude that the modern Spanish law is similar to the French. The ancient Spanish law as stated in *Las Siete Partidas*<sup>10</sup> appears to be in accord, for it refers to "theft, robbery, or violence."

An additional reason for not extending the meaning of the word "stolen" is that, prior to 1942 that term, as used in our criminal law, had not included all acts which constituted mere abuse of confidence, embezzlement or obtaining property by false pretenses. The modern theft statute does cover all "misappropriations" and "taking" from the owner.<sup>11</sup> Certainly from a historical viewpoint there is no need for adopting the broad mean-

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6. 11 Rob. 16 (La. 1845).

7. 167 La. 667, 120 So. 45 (1928).

8. 3 Planiol et Ripert, *Traité Pratique de Droit Civil Français* (1926) 374-376, §§ 390-392.

9. Art. 464, Spanish Civil Code.

10. Part 3, title 29, law 4.

11. Art. 67, La. Crim. Code of 1942: "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential. . . ."

ing of "stolen" as given in the principal case, for the historical meaning of the word has been limited to cases where the owner has not voluntarily dispossessed himself. Looking at the problem from the social and economic need of today, such a broad interpretation is not necessary. Due to the numerous and rapid transfers of movables under modern trade conditions, emphasis should be given "security of transaction" without unduly sacrificing "security of acquisition." Surely a delimitation of the word "stolen" in Articles 3506 and 3507 would be more in accord with the needs of our time. Under it one who voluntarily surrenders possession has at least three years in which to bring suit; one who has been wrongfully deprived of possession has ten years. This is even more time than may be necessary for an alert owner to repossess his property.

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