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Civil Code and Related Subjects: Prescription

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Ownership

It is not so long ago that a vast amount of property which had no previous value of any consequence, became the subject of extensive litigation involving every phase of property law. The swamps and the wastelands and every sort of water bottom received a full legal treatment and respectable classification. The cases are now thinning out and getting down to some of the more specific details. *Amerada Petroleum Corporation v. Case*¹⁷ was a concursus proceeding to determine the ownership of certain oil royalties, which in turn depended upon the ownership of the property from which the oil was produced. The land was alluvion or accretion which had accumulated gradually to a riparian property, but there was dispute as to whether it was on Grand Lake or on the body of water called the Arm of Grand Lake. It has already been decreed that Grand Lake itself is a navigable lake, and that its bed belongs to the state.¹⁸ Since the law of accretion¹⁹ applies to the shores of rivers and streams, the natural question is how to draw the line between the two bodies of water where one flows into the other. Still the court must decide cases, and in the present case they followed their prior decision regarding the adjacent lot,²⁰ that the land in question was on the Arm of Grand Lake which was classified as a navigable stream, and that the accretion belonged to the riparian proprietor.

PRESCRIPTION

*Joseph Dainow**

Acquirendi causa

In *Meridian Land & Mineral Corporation v. Bagents*,¹ two petitory actions were brought by the record owners of a certain property. The defendants were in physical possession and they pleaded ownership by virtue of the thirty-year prescription. The basic concept of acquisitive prescription is *possession*, and this concept is quite different from actual physical control of the property. In the present case, there was evidence that the defendants' ancestor had fenced the land about 1911 and used it as a pasture. However, there

17. 210 La. 630, 27 So. (2d) 431 (1946).

18. *Miami Corp. v. State*, 186 La. 784, 173 So. 315 (1937).

19. Art. 509, La. Civil Code of 1870.

20. *Amerada Petroleum Corporation v. State Mineral Board*, 203 La. 473, 14 So. (2d) 61 (1943).

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1. 211 La. 627, 30 So. (2d) 563 (1947).

was also evidence that he did so with the consent and permission of the then record owner. Under such circumstances, actual use of land cannot commence a possession for prescription, because any physical relationship to property which is predicated upon an inherent acknowledgment of somebody else's ownership is merely a precarious possession and not the requisite "possession as owner." In addition, Article 3500 requires (among other things) that this possession as owner be "unequivocal," which burden was not discharged by the defendant. In the present case, there were also other corroborating circumstances, such as the defendants' failure to have the property assessed in their name, as well as the fact that the taxes were actually paid by the plaintiffs. Likewise, a 1940 transfer of the succession property described other specific property but failed to mention the land in dispute.

"Just title" is another very technical concept, and in the case of *Everett v. Clayton*² an unusual situation was analysed carefully. The property involved had been acquired by the defendant in 1910 by way of succession from his father. The plaintiffs appeared in 1943 as other legal heirs whose existence had been hitherto unknown to the defendant. The defendant's plea of ten-year prescription *acquirendi causa* was not based on the court judgment recognizing him as sole heir to his father, because that mode of acquisition is not translatiue of ownership as it must be in order to constitute a just title. However, in 1923 the defendant sold the property to an uncle, and in 1925 it was sold back to him; both of these transactions were in legal good faith.

The plaintiffs contended that the defendant could not, by this transfer and retransfer, improve his title which was no good. However, the court clearly outlined the full analysis of what had occurred, and properly held that each of these two deeds fulfilled the requirements of a just title, and that there had been a continuous possession (by tacking) since 1923, as well as more than ten years on the basis of the second deed alone. Of course, the element of good faith was indispensable and was fully established without dispute. While one person cannot convey to another a title better than his own, it is the very nature of acquisitive prescription to cure a defective title where the deed is valid in form.

2. 211 La. 211, 29 So. (2d) 769 (1947).

Liberandi causa

In the absence of questions regarding interruption or suspension, the application of the rules of liberative prescription may sometimes be relatively as simple as the calendar computation of the required lapse of time. Even so, there are nevertheless questions on which a major dispute can arise. One of these is the determination of the starting point for the computation, as illustrated in the case of *Lake Front Land Company v. Department of Highways*.³ In 1926 the plaintiff expected to derive certain benefits to its land from the construction of a proposed highway, and deposited in escrow \$50,000 to pay for the construction of a muck canal and embankment. The highway was never built and when the plaintiff sued in 1945 to recover its money, the defendant pleaded the liberative prescription of ten years against personal actions.⁴ The fundamental theory of this prescription is the loss of a right by reason of failure to use it during a period when it could have been exercised. Thus, liberative prescription could not have commenced to run from the time when the money was put up in 1926 because there was no right then to demand its return. It was not until a formal report in 1938 that the highway project was abandoned, and it was not until 1943 that the plaintiff was informed of this action. Since both of these dates were well within the ten years prior to suit, the court dismissed the prescription plea. In the light of basic principles, it might be stated more specifically that it was not until 1943 that there was any delinquency in the exercise of an existing right.

SALE

*Alvin B. Rubin***Nature of the Contract*

The Civil Code defines the contract of sale as "an agreement by which one gives a thing for a price in current money."¹ The "contract of rent of lands" (*rente foncière*), on the other hand "is a contract by which one of the parties conveys . . . to the other a tract of land . . . and stipulates that the latter shall hold it as owner, but reserving to the former an annual rent of a certain sum of money, or of a certain quantity of fruits, which the other party binds himself to pay him."²

3. 81 So. (2d) 280 (La. 1947).

4. Art. 3544, La. Civil Code of 1870.

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1. Art. 2439, La. Civil Code of 1870.

2. Art. 2779, La. Civil Code of 1870.