

# Louisiana Law Review

---

Volume 9 | Number 2

*The Work of the Louisiana Supreme Court for the*

*1947-1948 Term*

*January 1949*

---

## Civil Code and Related Subjects: Prescription

Joseph Dainow

---

### Repository Citation

Joseph Dainow, *Civil Code and Related Subjects: Prescription*, 9 La. L. Rev. (1949)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol9/iss2/10>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

opinion had merely supported its decision in favor of divisibility by the principles in Article 803, that would have been a straight policy determination. There was no need to try reading into the code itself alien meanings which it does not contain and distinctions which do not exist.

### *Revocation of Dedication of Street*

Streets are usually planned at the time of the creation of a new subdivision, and actual developments sometimes take unexpected turns. In order to permit readjustments and the return of dedicated areas into complete private ownership, the legislature has provided, as last expressed in Act 382 of 1938, for the revocation by proper authorities of such dedications. In the case of *Caz-Perk Realty, Incorporated v. Police Jury of Parish of East Baton Rouge*,<sup>12</sup> the plaintiff had created a new subdivision in 1921, with the recordation of a survey for the purpose of dedicating the streets and roads shown thereon. After the subdivision had been developed, and as a result of one person having acquired several lots as one consolidated estate, the roadway in controversy was never improved or incorporated into the parish system of roads. In 1942 the Police Jury of East Baton Rouge officially revoked the dedication of the strip of road in question. This action of the police jury was taken by virtue of the express authority granted under Act 382 of 1938 when a street is abandoned or not necessary for public purposes. Since the action of the police jury was so directly within the statutory authorization, the contest and the bulky record could only have been directed at the question of whether it had abused the power by acting capriciously or arbitrarily. Although there was conflicting evidence as to the necessity and usefulness of retaining the dedication, the court did not find sufficient basis to reject the police jury's conclusion that the street was no longer used or needed for public purposes.

### PRESCRIPTION

*Joseph Dainow\**

### *Acquirendi Causa*

For the ten-year acquisitive prescription, the Civil Code requires possession coupled with good faith and just title.<sup>1</sup> Each of these three elements has received extensive treatment by the

12. 213 La. 935, 35 So.(2d) 860 (1948).

\* Professor of Law, Louisiana State University.

1. Art. 3478 et seq., La. Civil Code of 1870.

courts, including the decision that a quitclaim deed may be the basis for this short prescription *acquirendi causa*.<sup>2</sup> Whether this basic decision was due to the examination of the quitclaim deed as meeting the requirements of *just title* instead of evaluating its significance in relation to the *good faith* element<sup>3</sup> or whether it was a deliberate policy determination is not a matter of further concern, although the court in the recent case of *Waterman v. Tidewater Associated Oil Company*<sup>4</sup> gives an excellent footnote history of the judicial torment which was experienced. Since this point is no longer open to question, it was quite appropriate for the court to insist that a quitclaim deed must satisfy the same requirements as a regular warranty conveyance in the complete description of the property involved. Accordingly, the court rejected this petitory action based on the ten-year acquisitive prescription because the quitclaim deed gave an omnibus description of two entire townships without meeting the essential requirement of clear identification of the actual land involved.

#### *Cancellation of Interruption*

Since acquisitive prescription does not run against the state, there would be an interruption of the running time if a property which was in the course of being prescribed came into the hands of the state through a tax forfeiture. Act 310 of 1936 expressly precluded (cancelled) any such interruption or suspension if the property was redeemed by a purchaser in good faith with just title, thereby putting everything into the same status as if no tax forfeiture had occurred. *Saucier v. Sondheimer Company*<sup>5</sup> is the first case whose facts come directly within the contemplation of the statute, which was applied. This resulted in the recognition of defendant's ownership by acquisitive prescription because he was a legally authorized<sup>6</sup> purchaser in good faith with just title, even though he was not the person who had lost the property at the tax sale. In the earlier case of *Ward v. South Coast Corporation*,<sup>7</sup> the situation appeared to be similar, yet Act 310 of 1936 was not even discussed; however, a careful examination shows that the omission was proper because the fact situation was not an appropriate one for the application of this statute.<sup>8</sup>

2. *Smith v. Southern Kraft Corp.*, 202 La. 1019, 13 So.(2d) 335 (1943).

3. See Note (1944) 5 LOUISIANA LAW REVIEW 484.

4. 35 So.(2d) 225, 231, n. 2 (La. 1948).

5. 212 La. 490, 32 So.(2d) 900 (1947).

6. La. Act 41 of 1912, as amended by La. Act 175 of 1934.

7. 198 La. 433, 3 So.(2d) 689 (1941).

8. See *The Work of the Louisiana Supreme Court for the 1940-1941 Term* (1942) 4 LOUISIANA LAW REVIEW 165, 208; Note (1942) 4 LOUISIANA LAW REVIEW 335; Note (1942) 16 Tulane L. Rev. 297.