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Private Law: Prescription

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the supreme court once more refused to permit the filing of a reconventional demand for separation on the ground of abandonment.⁷

The only decision not on divorce or separation involved simple applications of the provisions of Section 13 of Act 228 of 1948 (Revised Statutes 9:433) and Article 7, Section 96 of the Constitution, as amended by Act 513 of 1948, on appeals and custody in adoption cases.⁸

PRESCRIPTION

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LIBERATIVE PRESCRIPTION

The case of *Antley v. Smith*¹ was an action for the reformation of a title description. One of the defenses was the liberative prescription of ten years against personal actions.² If the time ran from the date of the deed, the prescription would have elapsed. However, the court held that the prescription did not start to run until the date of the discovery of the error, and since the evidence established the discovery of the error only in 1948, the suit was timely brought in 1950.

In its opinion the court added "Further, this prescription does not run as long as possession of the land is exercised," and the facts showed an unbroken possession of the property. It is not clear whether this case requires an existence of both of the following elements before prescription will begin to run: discovery of the error and interruption of the possession. In the present case, it did not matter because there was no elapsed period of ten years anyway. However, there might be some question in the situation where there had been no break in the possession of the land, but ten years had elapsed since the discovery of the error.

7. *Bonvillion v. Papa*, 218 La. 203, 48 So. 2d 897 (1950). Previous decisions to the same effect are *Bullock v. Bullock*, 174 La. 839, 141 So. 852 (1932), and *Williams v. Williams*, 212 La. 334, 31 So. 2d 818 (1947), appraised in 9 LOUISIANA LAW REVIEW 197-199 (1949).

8. *Ball v. Campbell*, 219 La. 212, 52 So. 2d 754 (1951).

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1. 219 La. 525, 53 So. 2d 401 (1951).

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

ACQUISITIVE PRESCRIPTION

In the case of *Douglas v. Murphy*³ a new wrinkle was presented in an old case.⁴ After the previous extensive litigation, the plaintiff had finally acquired from the State of Louisiana the patent for certain land claimed by virtue of old warrants. Application was made in 1919 to have the lands located under the warrants, but the patent was not issued to the property until 1941. In the present suit, the defendant contended that acquisitive prescription by adverse possession started to run against the landowner from the date of application to locate the warrant. However, the court held that there was no passing of title until the patent was issued and, consequently, acquisitive prescription could not commence until that time. It would have been a little incongruous to penalize a person for failure to exercise the right of ownership before he had acquired it.

PROPERTY

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LOCATION OF "SHORE" AND "RIPARIAN RIGHTS"

In the case of *Doiron v. O'Bryan*¹ the sale of a property described a part of the boundary as "following the meanderings of the lake shore . . . together with all riparian rights belonging to the vendor." The dispute centered on the location of the meander line of the lake shore (Calcasieu Lake) and the scope to be attributed to the phrase "riparian rights."

By reason of both natural phenomena and artificial operations, the property involved had been subjected to a variety of shorelines since 1812. Both of the present litigants had been defendants in *State v. Erwin*,² and the present property was covered by the holding of that case in which the original 1812 shoreline was sustained as against the State of Louisiana. There was neither gain nor loss by reason of erosion. The overruling of this principle in *Miami Corporation v. State*³ did not change

3. 218 La. 888, 51 So. 2d 310 (1951).

4. *State ex rel. Hyam's Heirs v. Grace*, 173 La. 215, 136 So. 569 (1931); and 197 La. 428, 1 So. 2d 683 (1941).

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1. 218 La. 1069, 51 So. 2d 628 (1951).

2. 173 La. 507, 138 So. 84 (1931).

3. 186 La. 784, 173 So. 315 (1937).