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Private Law: Property

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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).

the res judicata effect of the *Erwin* decision concerning the property involved.

The approach of the court in the case at bar is on the basis of the interpretation of the basic agreement between the parties, but since the words "shore" and "riparian rights" have not received very extensive interpretation in this kind of context, the holding is particularly significant. From the wording of the deed, the court concluded that the parties intended to describe the lands above water and, accordingly, held that the word "shore" referred to the edge of the high land as it existed at the time of the transaction.

To ascertain the intent of the parties in the conveyance of "all riparian rights," the court admitted extraneous evidence and concluded that the term embraced all rights of the riparian landowner not only in the use of the waterway itself but also potential rights in the submerged land forming part of the bed of the water course. Accordingly, the plaintiff was held to have transferred "all his right, title and interest in and to the submerged lands" involved in the controversy. The defendant's ownership therefore extended to the shoreline of Calcasieu Lake as it existed in 1812.

SERVITUDES

An unusual problem concerning the servitude of drainage was presented in the case of *Elam v. Cortinas*.[4] The dry bed of an old bayou had been filled in by the adjoining proprietors, and this resulted in reversing the natural drainage direction of these properties. The plaintiff was among the proprietors who had participated in this operation, and in the present case he sought an injunction to prevent interference by the defendant with this new drainage direction. The court held that the impediment imposed by the defendant on this new drainage direction did not constitute a violation of Article 660 of the Civil Code. In view of the language of the article which provides that the lower estate must "receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude," the court concluded that the natural drainage no longer existed and that the article had no application to this case.[5]

4. 219 La. 406, 53 So. 2d 146 (1951).

5. The original French text in the Louisiana Civil Code of 1808 and in the Louisiana Civil Code of 1825 contains a phrase which would be more accu-

This case may bring to mind, but must be distinguished from, the Ruston swimming pool case[6] where the pool was emptied across the plaintiff's land, but even though a violation was found the court awarded damages instead of an injunction.

RIGHT-OF-WAY; SERVITUDE OR OWNERSHIP

Questions concerning the juridical nature of a right-of-way have long been troublesome in Louisiana.[7] Sometimes the right acquired is a servitude, but sometimes the complete ownership of the land is transferred. These possibilities are present both in the establishment of private rights-of-way as well as public rights-of-way. When parties conclude a voluntary agreement, the right-of-way may be either a servitude or a conveyance of perfect ownership, depending upon their intent. When the right-of-way is established by a public body in virtue of statutory authorization, the nature of the right-of-way is determined in accordance with the provisions and interpretation of the statute under which the particular action is taken. One of the statutory provisions for the establishment of a public right-of-way was Section 3369 of the Revised Statutes of 1870 (now Title 48, Section 492 of the Revised Statutes of 1950).

The dispute in *Ham v. Strenzke Realty Company, Incorporated*,[8] started when the East Baton Rouge Parish Police Jury commenced proceedings under Section 3369 to obtain a right-of-way over certain lands in order to complete a road to Louisiana State University along what is now Nicholson Drive. However, instead of the proceedings being pursued to a conclusion, the landowner made a voluntary conveyance to the police jury by a deed which the police jury claims to be a transfer of perfect ownership but which the landowner claims to have conveyed only a servitude. If only a servitude was conveyed, the right-of-way would have been lost by ten years non-use.[9] However, if the conveyance was one of ownership, the police jury would not have lost any rights by non-use. On the basis of the clear language of the deed, the court held that it was a conveyance of

rately translated into English as follows: "provided the industry of man has not contributed to the flow." This correct translation gives a more accurate reflection of the situation covered by the code article, and is certainly a clearer basis for excluding the present situation from the scope of the article's application.

6. Adams v. Town of Ruston, 194 La. 403, 193 So. 688 (1940).
7. Comment, 8 LOUISIANA LAW REVIEW 553 (1948).
8. 218 La. 499, 50 So. 2d 11 (1951).
9. Art. 789, La. Civil Code of 1870.

ownership, and the price paid was found to represent the full market value at the time. Although the words of a deed may be superseded by information on a map in accordance with the intent of the parties, the present facts disclosed no such data. Furthermore, there was affixed to the document the United States revenue stamp for a deed of sale whereas no such stamp would have been necessary for a deed conveying only a servitude. The fact that under Section 3369 the police jury would have acquired only a servitude became irrelevant when the proceedings under that statute were dropped by reason of the voluntary conveyance.

SALES

*J. Denson Smith**

The court was called upon to consider the effectiveness of an out-of-state conditional sales contract in *Cobb v. Davidson.*[1] The decision of the court of appeal that held the transaction ineffective in Louisiana on the ground that the evidence did not establish lack of knowledge on the part of the vendor and assignee of removal from the State of Texas, where the transaction occurred, was reversed. The supreme court took the view that the burden of proving knowledge of removal was on the defendant as a special affirmative defense. The decisions of the supreme court have heretofore recognized the effectiveness of foreign conditional sales except when to the knowledge of the seller at the time of the transaction the property is being bought for removal to Louisiana. In the instant case the court seems to have accepted the view expressed earlier in lower court opinions that the vendor's protection is destroyed also if he has knowledge of the subsequent removal of the thing sold. Perhaps the present case will not be considered conclusive on the point.

Another conditional sales contract came before the court in *Lee Construction Company v. L. M. Ray Construction Corporation.*[2] The court relied on the *Barber* case[3] to the effect that the distinction between a lease with an option to purchase and a sale is that in the latter the vendee promises to pay a price while in the former he merely has an option to pay. It found a so-called

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1. 219 La. 434, 53 So. 2d 225 (1951).

2. 219 La. 246, 52 So. 2d 841 (1951).

3. Barber Asphalt & Paving Co. v. St. Louis Cypress Co., 121 La. 152, 46 So. 193 (1908).