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Substantive Law - Private Law: Prescription

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need for compelling them to perform their obligations, it is shocking to think that one might be accused—and much more so, convicted—of crime for not supporting a child whose paternity he might well have questioned. To permit a civil suit to establish paternity and the duty to support, even for a period prior to the suit, and to permit criminal prosecution for failure to support once the obligation had been established would be quite different things. This is not to say that the legislature cannot provide otherwise, and unfortunately it has provided otherwise since these decisions.[36]

PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

The case of *Ramsey v. Murphy*[1] illustrates the usefulness of the thirty-year prescription[2] in providing stability for land titles and in making unnecessary a probe concerning the actual validity of very old transactions (which may very well have been perfectly good). Fifty years after the settlement of a succession, the plaintiffs claimed an interest in property which once belonged to their grandparents. In the settlement of the original succession, the property had been sold to pay debts and then it was repurchased by another grandchild who lived on the property. The latter fenced it in, paid taxes, sold timber, granted mineral leases, and mortgaged the property, and then he conveyed it to another, who continued the physical possession by himself and through a tenant until the present suit. Without investigating the plaintiff's charge of invalidity against the succession sale and repurchase half a century ago, the court held that by reason of privity of contract, the present possession could be tacked on to the preceding one, thereby making over thirty years since the plaintiff's majority in 1917.[3] Cases like this demonstrate force-

36. Act 368 of 1952, amending Criminal Code Article 74 (La. R.S. 14:74). Under this amendment, there is no provision for the establishment of the parenthood of the defendant when the civil law establishes a presumption of legitimate paternity in another person. Thus the result which the state sought to achieve in State v. Randall, 219 La. 578, 53 So. 2d 689 (1951), mentioned in the text above, is not possible under this amendment.

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1. 220 La. 745, 57 So. 2d 670 (1952).

2. Art. 3499 et seq., La. Civil Code of 1870.

3. This also eliminated any need to investigate the effects of the 1920 and 1924 amendments of Civil Code Art. 3478.

fully one of the fundamental policy considerations for the existence and continuation of the long term acquisitive prescription.

In *Kelso v. Caffery*[4] the Supreme Court likewise found it simpler and easier to settle a petitory action on the basis of prescription than to reinvestigate the direct issues of conflicting title claims on which the trial court had made its original adjudication. The land in question was low coastal marsh land, and the plaintiff challenged the defendant's possession because it was not enclosed, inhabited, or cultivated. The defendant did have a "just title" in a deed translative of ownership, and the presumed good faith, for the ten-year acquisitive prescription.[5] With regard to his possession, the facts showed that he had had the land surveyed, maintained visible boundary markers, and that it had been leased for actual trapping operations for many years. In view of the variety of the kinds of lands in Louisiana, it would be impossible to establish cultivation or habitation or any other exclusive tests for determining the question of possession for purposes of prescription. Under the circumstances of this case, the court considered that the defendants had exercised all the acts of possession which can customarily be supported by the type of land involved.[6]

In *Blanchard v. Norman-Breaux Lumber Company*[7] one of the problems concerned the elements necessary for the kind of possession which would support the ten-year acquisitive prescription in good faith with just title. The warrantor in the case asserted ownership of the land in question by reason of its possession through timber operations, tax payments, boundary markers, and the granting of mineral and trapping leases. In all of this, the court found no possession for purposes of prescription: the cutting of trees was under a timber deed only, the markers had been put up for the timber operations, and while the other elements (taxes, leases) might show an interest to act as owner, they did not satisfy the physical requirement for the establishment of a "possession as owner" which is indispensable for any kind of acquisitive prescription.

The concept of possession—as the indispensable element for any kind of acquisitive prescription—has always been a source

4. 221 La. 1, 58 So. 2d 402 (1952).
5. Art. 3478 et seq., La. Civil Code of 1870.
6. Cf. Veltin v. Haas, 207 La. 650, 21 So. 2d 862 (1945), where similar principle was applied to sustain possession of swamp lands whose only use was for their timber.
7. 220 La. 633, 57 So. 2d 211 (1952).

of difficulty in practical application. A similar concept of possession is likewise the basic requirement for the possessory action.[8] In *Hill v. Richey*[9] the court re-examined these two concepts of possession and their relationship. In the process, there is an excellent refresher discussion of the whole subject, covering the code provisions and containing the citations of many old as well as recent appropriate cases together with several good lengthy quotations. In addition to the criteria of possession necessary to support the possessory action—which the court assimilates to the possession for the thirty-year acquisitive prescription—there is also discussion of the problems connected with "enclosures" and "boundaries" and "disturbances." The details are not for repetition, and the whole should be read in the court's original.

For the ten-year acquisitive prescription, good faith is a necessary element.[10] Although there is a presumption in favor of good faith,[11] this can be rebutted by evidence to the contrary. The weighing of this evidence becomes a factual issue for particularization in each case; nevertheless, general principles also emerge from the decisions. In *Juneau v. Laborde*[12] the plaintiffs claimed an interest as heirs of their mother in certain property which had belonged to the community of their parents. The defendant asserted acquisition of title by the ten-year prescription based on his author's purchase from the father who sold the property after his wife's death, together with possession in good faith. However, the court found that at the time of this purchase the defendant and his author both knew the family and the property history. They knew that the wife had died leaving children. In deciding this case, the court made a broad general statement as follows:

> "With the information that he [defendant] possessed, which was certainly sufficient to excite inquiry, a duty devolved upon him to investigate the title before purchasing. If he had made the investigation, actual knowledge of the outstanding interest would have been acquired. Having failed in that duty, he is in law chargeable with the knowledge."[13]

8. Arts. 47, 49, La. Code of Practice of 1870.
9. 221 La. 402, 59 So. 2d 434 (1952).
10. Art. 3479, La. Civil Code of 1870.
11. Art. 3481, La. Civil Code of 1870.
12. 219 La. 921, 54 So. 2d 325 (1951).
13. 219 La. 921, 932, 54 So. 2d 325, 329.

While there may be no doubt in the present case, there might well be situations in which it would not be as easy to say that information was "sufficient to excite inquiry" thereby imposing a "duty . . . to investigate the title." Furthermore, in such a case, if the investigation failed to reveal the defect, the purchaser might be in moral good faith, but he could still be held to lack legal good faith for prescription, on the grounds that once an investigation was actually undertaken, there was responsibility to discover everything that should have been found.[14] Is the purchaser to be caught between two fires? Once there is a duty to investigate beyond the immediate vendor, it would appear that the purchaser is responsible for the accuracy of the report. If there is an undiscovered defect, he can look only to the thirty-year curative prescription because the ten-year one is denied to him.

LIBERATIVE PRESCRIPTION

One of the fundamental principles of liberative prescription is that a person will lose the power to exercise a right if he fails to act within a stated period during which he could have acted. Thus prescription does not start to run until the obligation is due and demandable,[15] and in the case of damages only from the discovery of the wrongful act.[16] Similarly, there are suspensions of the running of time in favor of minors and others while under legal incapacity to act in the exercise of their rights. An unusual basis for asserting suspension was made in *Ayres v. New York Life Insurance Company*,[17] where physical incapacity through illness was urged as a proper situation for the maxim "*contra non volentem agere nulla currit praescriptio*" (prescription does not run against one who lacks the will—legal capacity—to act). The court dismissed the contention, pointing out that (1) this maxim does not have general application in Louisiana, (2) when applicable, it refers to a different kind of fact situation, and (3) the present situation is not covered within the contemplation of Article 3521 of the Civil Code.

14. Dinwiddie v. Cox, 9 So. 2d 68 (La. App. 1942); Heirs of Dohan v. Murdock, 41 La. Ann. 494, 6 So. 131 (1889); Blair v. Dwyer, 110 La. 332, 34 So. 464 (1903).

15. Darby v. Darby, 120 La. 847, 45 So. 747 (1908).

16. Art. 3537, La. Civil Code of 1870; Agnew v. Hopper, 28 So. 2d 375 (La. App. 1946); Dupuy v. Blotner, 6 So. 2d 560 (La. App. 1942).

17. 219 La. 945, 54 So. 2d 409 (1951).