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## Civil Code and Related Subjects: Prescription

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hardly be expected that there would have been a different decision if the term in this section were "delivered" or "furnished" instead of "used."

## PRESCRIPTION

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### LIBERATIVE PRESCRIPTION

There are different kinds of rules of law concerning the loss or change of rights by reason of the lapse of time, but the classification and characteristics of each have not been clearly indicated. In the case of liberative prescription, the running of the time is subject to interference through interruption and suspension, and the prescription can be renounced after accrual. However, in some cases, the running of time brooks no interference, and after the lapse of the stated period, the right is completely lost.

In *Cassiere v. Cuban Coffee Mills*<sup>1</sup> this question of classification of the nature of the prescription was directed at Article 3547 of the Civil Code, which provides that, in the absence of appropriate revival proceedings, "all judgments for money. . . shall be prescribed by the lapse of ten years." Petition to revive a judgment was filed twenty years after its rendition and was followed by allegations of interruption and suspension. After tracing the history of the Civil Code article, and the fluctuating jurisprudence, the court held that the only way to prevent accrual of this prescription was by means of an action to revive the judgment, stating, "[We] think it the wiser policy to regard Article 3547 as sui generis and we attach no particular importance to the circumstance that, because it has been placed in that part of the Civil Code which deals with the liberative prescription, the articles pertaining to the interruption of prescription are, or should be, applicable."<sup>2</sup>

It is sometimes a necessary technique to make a present policy decision as to which of two conflicting lines of jurisprudence should be followed. However, if the statement with reference to this article is implied for other Civil Code articles,

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1. 74 So.2d 193 (La. 1954).

2. *Id.* at 197.

namely, that no significance is to be attached to the chapter or section of the Civil Code of which it forms a part, it would sound like a denial of the meaning of a civil code altogether. The basic framework of a civil code is a system of classification, and the importance of the location of an article cannot be over-emphasized. It is true that this Article 3547 was not in the Civil Code of 1825, only entering the Revised Civil Code of 1870 as the incorporation of Act 274 of 1853, and the court's conclusion to classify it as *sui generis* may well be the best solution. Nevertheless, it would be detrimental to a proper understanding of the nature of a civil code to let the court's statement in this case serve in the future as a basis for an implication of wider and more general scope.

To support the position of the *Cassiere* case and to follow the holding of *Bailey v. Louisiana & N.W.R.R.*,<sup>3</sup> it is necessary to consider obsolete certain provisions of Civil Code Article 2278.<sup>4</sup> Perhaps more study should be given to this point than the assumption that the legislature approves this construction because it has done nothing about the matter.

In the same *Cassiere* case, one of the plaintiff's contentions was that the acknowledgments of the judgment debtor kept alive the original debt by interrupting any prescription that might be running against it. However, the court disposed of that argument by pointing out that the original debt was extinguished by the merger into the judgment, and that *res adjudicata* would foreclose any action based on such a debt.<sup>5</sup> A written promise to pay a judgment might create a valid new obligation, but that is a different thing entirely.

The classification of the nature of the cause of action is often the only real issue in a liberative prescription problem,

3. 159 La. 576, 105 So. 626 (1925).

4. "Parol evidence shall not be received:

"1. To prove any acknowledgment or promise to pay any judgment, sentence or decree of any court of competent jurisdiction, \* \* \* for the purpose or in order to take such judgment, sentence or decree out of prescription, or to revive the same, after prescription has run or been completed.  
\* \* \* \* \*

"But in all cases mentioned in this article, the acknowledgment or promise to pay shall be proved by written evidence signed by the party who is alleged to have made the acknowledgment or promise \* \* \*." Art. 2278, LA. CIVIL CODE of 1870, as quoted in *Cassiere v. Cuban Coffee Mills*, 74 So.2d 193, 196 (La. 1954).

5. The exact meaning of "merger" and the scope of "*res adjudicata*" in Louisiana civil law are not considered in these comments.

because the applicable period of time is unequivocally stated in the law. In *Lafleur v. Brown*<sup>6</sup> the suit was for damages which resulted from defendant's improper installation of a water pump and failure to lower the depth in a well. The lower court sustained the defendant's plea of one-year prescription against tort actions. It is heartening that this plea of prescription was overruled, thereby dealing a blow to the tendency of calling the suit a tort action whenever damages are sought. The action was classified as one for breach of contract, and the case was remanded.

In the case of *Pearlstine v. Mattes*<sup>7</sup> the judicially separated wife brought suit against the husband to be recognized as co-owner of two properties as community and for their partition by licitation. There had been a purported partition of one, and simulated transfers of the other, but after some years the record title to both was back in the husband's name. Without going through all of the facts and the husband's numerous arguments, which proved of no avail, there is one point of interest for mention here. As a bar to the wife's suit, the husband defendant pleaded the ten-year liberative prescription against personal actions.<sup>8</sup> The court held that Civil Code Article 3544 did not apply because this was a real action to have recognized the plaintiff's ownership in certain immovables. In view of the husband's obvious maneuvers to defraud his wife, the result reached can only be commended. However, the question may remain as to whether a separated (or divorced) spouse's right to a separation of the community property is to be considered real or personal depending upon which items of property are involved.

#### ACQUISITIVE PRESCRIPTION

Generally, a dispute involving acquisitive prescription is between two parties who have conflicting claims to the same property. It is therefore unusual to find a case where one of the parties has no claim and is trying to avoid the acquisition of any interest in the property. In *Cortinas v. Peters*<sup>9</sup> the defendant's refusal to comply with a promise to purchase five lots elicited from the plaintiff the assertion of the acquisitive prescription of his authors in title as proof of his present valid

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6. 223 La. 976, 67 So.2d 556 (1953).

7. 223 La. 1032, 67 So.2d 582 (1953).

8. Art. 3544, LA. CIVIL CODE of 1870.

9. 224 La. 9, 68 So.2d 739 (1953).

and merchantable title. There were twenty-four lots in the square involved, and the original possessor went into possession of the whole square although he had acquired only nineteen of them. As to the five lots here in question, he took possession as agent for the bank in which he was employed. The evidence that later "he took that property as his own" was not enough to change his precarious possession (for another) into a legal possession (for himself) which is indispensable for any acquisitive prescription.<sup>10</sup> Of significant value in deciding future cases is the court's clarification of the criteria that he "could not become an adverse possessor in the absence of a showing that he manifested such an intention by some *unequivocal act of hostility* which was brought to the attention of the bank."<sup>11</sup> (Italics supplied.)

## CONFLICT OF LAWS

*Joseph Dainow\**

In two cases the court was requested to give recognition to the custody decree of another jurisdiction, and in both instances this was refused. One was a foreign-country judgment rendered in Panama, and the other was a sister-state judgment from Tennessee. In the latter case, even the "full faith and credit" clause offered no help. Custody decrees frequently fail to finish the family fights for the offspring, because the desire of one parent for its child is not dissipated by a judicial award to the other. At the same time, courts usually seek a solution in the best interests of the children. In a conflict of laws case involving movement from one place to another, the question is kept open by non-recognition of the custody decree previously rendered in another jurisdiction. If, according to the general principles of conflict of laws, the court which rendered the custody decree did not have jurisdiction to do so, the refusal to recognize is simple enough. It is a little more involved but not much more difficult to disregard the custody decree even of a sister state and even where there may have been present all the elements for jurisdiction.

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10. Arts. 3436, 3441, 3446, 3489, 3490, 3510, LA. CIVIL CODE of 1870.

11. 224 La. 9, 14, 68 So.2d 739, 741 (1953).

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