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Civil Code and Related Subjects: Prescription

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PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

In *Martin v. Schwing Lumber & Shingle Co.*[1] the defendant pleaded the ten-year acquisitive prescription, and the only real point of issue was about the "good faith" necessary for this prescription, inasmuch as the other elements of legal possession and just title were present. The defendant's good faith was questioned on the ground that there had been a title examination made in 1924 in connection with the transaction upon which the plea of prescription rested. In the court of appeal's decision,[2] the emphasis was placed upon the issue of possession because the property was open swampland, sometimes dry and sometimes water-covered; and its finding that there was legal possession because the defendant had exercised possession in the only mode possible for such land (cutting timber, paying taxes, and so forth), was accepted by the Supreme Court. However, the Supreme Court differed from the court of appeal in the evaluation of the testimony of the man who had been treasurer of the company at the time of the transaction in question. The court of appeal found "that he did not remember whether they got a written title opinion from attorneys or not but he definitely states that he did not know of any claim anybody was making to the property until a short time before this lawsuit was brought";[3] therefore, the presumption of good faith[4] was sufficient. The Supreme Court thought differently, however, for it found that this witness "was in the office being taught the business, and knew all about the transaction as the matter was handled by his father; he further stated unequivocally and repeatedly, that the title to the property was examined at that time, and recalled that one of the attorneys who represents his company in this suit assisted in the examination of title, but did not remember whether they received a title letter from the examining attorneys at that time."[5] The court then reiterated the well-established principles that there is generally no duty to

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1. 228 La. 175, 81 So.2d 852 (1955).
2. 76 So.2d 328 (La. App. 1954).
3. *Id.* at 335.
4. LA. CIVIL CODE art. 3481 (1870).
5. 228 La. 175, 81 So.2d 852, 854 (1955).

make an investigation of the title, but if "instead of relying on the faith of his vendor's title, he instituted an investigation into its validity, he is then bound by what the record reveals and cannot claim to be in good faith if the record discloses a defect in the title of his vendor."[6]

The question which emerges from this difference of evaluation of testimony is what constitutes the kind of title examination which will rebut the presumption of good faith, as distinguished from the kind of inquiry or investigation about the property which will not destroy the presumed good faith. It can now be stated that it is not necessary to have received a written legal opinion incorporating the results of a title examination. However, it might go beyond what the Supreme Court intended to establish if any inquiry by an attorney or notary is treated as a title examination because that might almost exclude the good faith prescription from operation altogether. The Louisiana courts have often seemed to follow a liberal attitude in sustaining acquisitive prescription,[7] and this question of what constitutes a "title examination" might bear some further specification.

In *Richardson & Bass v. Board of Levee Commissioners of the Orleans Levee District*[8] the defendant tried to support its claim to the land in question by the plea of ten-year acquisitive prescription. A number of interesting differences appear in the majority, concurring, and dissenting opinions. Justice McCaleb, speaking for the majority, found that the defendant was in legal bad faith because "it caused abstracts to be made of the titles of all the lands it was acquiring under Act No. 99 of 1924 and the titles were examined and approved by its general counsel."[9] Justice Ponder placed a different interpretation upon the same abstracts and he concluded that "the opinion of the general counsel based on this information could not be considered a title opinion. . . . There is nothing in this record to show that any examination of the title is revealed therein."[10] As pointed out in the preceding paragraph of these comments, it would be help-

6. *Ibid.*
7. *E.g.*, Smith v. Southern Kraft Corp., 202 La. 1019, 13 So.2d 335 (1943), where a quitclaim deed was held to be sufficient basis for both good faith and just title for the ten-year prescription.
8. 226 La. 761, 77 So.2d 32 (1954).
9. *Id.* at 776, 77 So.2d at 37.
10. *Id.* at 781, 77 So.2d at 39.

ful to all concerned if more specific definition could be given to "title examination" as it affects good or bad faith in the ten-year acquisitive prescription.

On one point, Chief Justice Fournet (concurring) agreed with Justice Ponder that the deed in question was translative of title and was therefore a "just title" for purposes of prescription, but the majority felt otherwise on the ground that the deed did not contain an accurate description of the land in issue.

In the course of the majority opinion, reference was made to a point which is worth noting and about which there did not seem to be any disagreement. It was that "the constitutional provision [article 16, section 6] for payment of the assessed value to the owner for property used for levee purposes is merely a gratuity given to the owner whose land is burdened with the servitude imposed thereon by Article 665 of the Civil Code. Hence, appropriation of such land by a Levee Board for levee purposes neither conveys a title to the Board nor does the payment of the assessed value to the owner operate as a transfer of title."[11]

Alba v. Smith[12] was a partition action in which three co-owners were resisted by the defendant who had acquired a fractional interest in the property but who also contended for complete ownership on the grounds of acquisitive prescription of ten and thirty years. Apart from finding that he lacked legal good faith for the ten-year prescription, and had in fact paid rent for the use of the property during a certain period, the court further found that, when he acquired the fractional interest in the property, he became a co-owner and, therefore, the rule that prescription does not apply between co-owners was applicable.

LIBERATIVE PRESCRIPTION

In *Davis v. Lewis & Lewis*[13] damages were claimed as a result of an automobile collision which occurred on January 1, 1948. The suit was instituted on December 29, 1948, against the owner of the other vehicle and against the defendant's unidentified liability insurance company through its local agent and adjuster. The plaintiff was unable to obtain the name of the

11. *Id.* at 772, 77 So.2d at 35.
12. 228 La. 207, 81 So.2d 863 (1955).
13. 226 La. 1059, 78 So.2d 173 (1955).

insurance company until late in January, 1949, and at that time amended his petition accordingly. The insurance company pleaded the one-year prescription against tort actions.[14] The court affirmed the judgment of the court of appeal[15] which overruled the plea of prescription on the grounds that the filing of suit in a court of competent jurisdiction interrupted prescription[16] and that the insurer was represented by its agent who had refused to disclose its identity. It would indeed be out of keeping with established concepts of justice if such tactics were permitted to succeed.

Article 3519[17] of the Civil Code appears under a heading "Of the Causes Which Interrupt Prescription" but is only indirectly related to the topic. A lawsuit constitutes a legal interruption of prescription, but if no useful steps are taken for a period of five years the suit is deemed to have been abandoned and the interruption as having never happened. However, the abandonment does not take effect *ipso jure*. Consequently, the defendant can by definite action on his part waive the right to claim abandonment. In *Green v. Small*[18] this was held to have happened when defendant made an appearance, filed stipulations recognizing the interests of various heirs and entered a plea of prescription; later he also filed a motion for rehearing. Abandonment was likewise refused recently by the court of appeal in a case[19] in which five years had elapsed without any steps having been taken in the prosecution of an appeal. It was found that the case was on the ordinary docket and had never been reached for hearing, and the court felt that it would not be justified in dismissing the case. Instead, the case was transferred to the preference docket and fixed for hearing in due course.

14. LA. CIVIL CODE art. 3536 (1870).
15. 60 So.2d 230 (La. App. 1952).
16. LA. R.S. 9:5801 (1950).
17. "If the plaintiff in this case, after having made his demand, abandons or discontinues it, the interruption shall be considered as having never happened.
"Whenever the plaintiff having made his demand shall at any time before obtaining final judgment allow five years to elapse without having taken any steps in the prosecution thereof, he shall be considered as having abandoned the same.
"Any appeal, now or hereafter pending in any appellate court of the State, in which five years have elapsed without any steps having been taken in the prosecution thereof, shall be considered as abandoned, and the court in which said appeal is pending shall summarily dismiss such appeal." As amended, La. Acts 1954, No. 615, § 1, p. 1119.
18. 227 La. 401, 79 So.2d 497 (1955).
19. Veith v. Reynoir, 78 So.2d 543 (La. App. 1955).