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Civil Code and Related Subjects: Prescription

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PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

Ryan v. Ribbeck[1] was decided on the basis of ten-year good faith prescription and it was not necessary to go into the validity of an old slave marriage and its progeny. Plaintiffs challenged the defendant's good faith on the ground that he had an abstract of the title which disclosed its defects. The evidence showed that he had in fact received such an abstract several days after his purchase but he put it away without reading it. In any case, the time at which good faith is tested is the time of the purchase, and here good faith is presumed with the burden of disproving it on the one who contradicts it.[2] An interesting question is raised by the error in the editorial head note of the case which places the receipt of the abstract several days *before* the sale. If there is no evidence of his having read it, it is doubtful that the mere possession of the abstract would be treated as constructive knowledge of its contents because there is no obligation to make a title examination in order to be in good faith.[3] If the abstract had been *requested* and received before the sale, this might be considered tantamount to a title examination even if the abstract had not actually been read.

Jacobs v. Southern Advance Bag & Paper Co.[4] discusses several points of acquisitive prescription, but the only one which might need emphasizing in this comment concerns the tax deed by which property was acquired at a tax sale and which may be a just title for the ten-year prescription when the deed appears valid on its face and translative of ownership. This was held to be so, even where the tax sale resulted from an erroneous assessment while the tax was actually paid under another assessment of the same property. The court relied upon the earlier case of *Eivers' Heirs v. Rankin's Heirs*, where it was stated that "it is not essential to the purchaser's good faith that he should investigate the assessment rolls or verify the recitals of the tax deed."[5]

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1. 228 La. 624, 83 So.2d 650 (1955).
2. LA. CIVIL CODE art. 3481 (1870).
3. Pattison v. Maloney, 38 La. Ann. 885 (1886); Dinwiddie v. Cox, 9 So.2d 68 (La. App. 1942).
4. 228 La. 462, 82 So.2d 765 (1955).
5. 150 La. 4, 9, 90 So. 419, 421 (1922).

If the tax deed were completely regular in all respects, there would be real ownership and no need to consider prescription. Merely because the original error originated in a public office is no reason why the general principles and rules of acquisitive prescription should not apply.

MINERAL RIGHTS*

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In *Union Oil Company of California v. Touchet*,[1] a landowner sold a 1/32 royalty interest. About five years later he leased the land. Thereafter, the lease was amended to give the lessee the right to pool the tract without further consent from the lessor and to allocate production on an acreage basis. A gas well was brought in in the vicinity within ten years from the royalty sale but was shut in for lack of market. A unit was then created and recorded, including this well and the tract affecting the royalty in question. The lands of a third person were also included but not listed in the recorded instrument. After ten years from the royalty sale, permission to include the lands of the third person was secured. A declaration of unitization, reciting the tract of the third person but otherwise identical with the first declaration, was then recorded. The Commissioner of Conservation authorized production from the shut-in gas well and dispute arose regarding ownership of the 1/32 royalty. Had production occurred within the ten year period on the tract carrying the royalty, the vendees would have been unquestionably entitled to their share. Since that event had not happened, their claim must rest upon the first unit declaration. The court found that despite the very broad power given by the amended lease provision on pooling, the provision could only mean that the lessee might unitize with other leases over which similar power had been given. As outlined above, the unit declaration upon which the royalty claim depended included the land of a third person who had not at that time given consent and thus the

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1. 229 La. 316, 86 So.2d 50 (1956).