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Civil Code and Related Subjects: Prescription

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tention against the owner and a right of preference against other creditors. The articles do not limit the creditor to services rendered at the request or with the consent of the owner. Storage charges are generally accepted to be expenses of preservation.

In re *Parking Service, Inc.*[16] looks like a case of hardship against the owner, but it clarifies the principle that the creditor has a claim and privilege for storage charges regardless of a request or consent of the owner for the storage in question. On the day that the Federal Bureau of Investigation arrested a person accused of a crime, they seized his two automobiles, which they placed in storage. Later in the same day, the cars were sold to the present owner, but their release to him was refused because they were being held by the FBI as evidence. About ten months later, the owner secured a release order from the federal court, but he refused to pay the accumulated storage charges.

The court of appeal found that there was no privity of the owner to any contract for storage and therefore there was no liability or lien for the charges.[17] In reversing, the Supreme Court maintained that the FBI had authority "to store the cars taken by them as evidence at the expense of the owner and without his consent thereto."[18] This might seem to make the decisive issue whether the person ordering the storage had authority to do so, and leaves the unasked question why the FBI should not be responsible for the services which it engages. If the Civil Code articles are applicable without the request or consent of the owner, then it should not matter whether the cars were placed in storage by the authority of the FBI or by a thief who had stolen them in the first place.

PRESCRIPTION

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In matters of acquisitive prescription of ten years, a person is presumed to possess the full extent of the property described in his title.[1] In *Agurs v. Holt*[2] the court held that this presumption can be rebutted. In this case, there was undoubted identi-

16. 232 La. 133, 94 So.2d 7 (1957), reversing 88 So.2d 52 (La. App. 1956).
17. 88 So.2d 52 (La. App. 1956).
18. 232 La. 133, 138, 94 So.2d 7, 9 (1957).

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1. LA. CIVIL CODE art. 3498 (1870).

fication by the parties of the tract of land to be conveyed, as confirmed by the physical possession of this exact tract by the purchaser. However, while the description and acreage in the deed were correct, there was an error as to the starting point of the measurements so that the location fixed in the deed was considerably to one side of the tract actually intended by the parties. In the rebuttal of the presumption of full possession according to title description due emphasis was placed upon the element of "intent," making this rebuttal depend upon evidence that "no such possession was *intended.*"[3] (Emphasis added.) The legal possession required for acquisitive prescription must combine the corporeal possession of the thing with the intent of possessing as owner.[4] Accordingly, if the deed of sale described more property than the vendor thought he was selling, and the vendee went into corporeal possession of only a part, he would still have legal possession of the whole tract if it was his belief that he purchased the tract as described and if he intended to possess the whole as owner.[5]

The suit in question was an action for reformation of the original deed, which the court classified as a personal action subject to the general liberative prescription of ten years.[6] The significant feature of this prescription is that it begins to run only when the error is discovered or should have been discovered by due diligence.[7]

Another problem of description for purposes of acquisitive prescription came to attention in *Bruce v. Cheramie.*[8] The difficult question to answer is just how far can the reference in one deed be considered as incorporating descriptive details found in another deed. Here the plea of prescription was based upon a deed (1924) in which the description of the property included the phrase "by the depth thereto belonging and appertaining," and on the preceding deed (1918) in the chain of title wherein the corresponding part of the property description was "by depth of survey and Patent." There was full corporeal posses-

2. 232 La. 1026, 95 So.2d 644 (1957).
3. *Id.* at 1042, 95 So.2d at 649.
4. LA. CIVIL CODE art. 3436 (1870).
5. *Id.* art. 3437.
6. *Id.* art. 3544.
7. 232 La. 1026, 1040, 95 So.2d 644, 649 (1957).
8. 231 La. 881, 93 So.2d 202 (1956).

sion of all the land in question, and the specific issues were whether the first deed (1918) constituted a "just title" and whether the second deed (1924) was a sufficient link for tacking onto the prior possession.

The majority decided in the affirmative and sustained the plea of prescription. No firm generalization can be drawn because each case is enveloped in its own facts and surrounding circumstances. It is interesting to note that the dissenting opinion considered that the first deed did constitute a just title but that the second deed was not sufficient for tacking because it was considered as implying an intent to convey only the area in depth to which there was good title so as to avoid any warranty responsibility. The argument was that if the purchaser needs to consult other acts to determine the extent of his title, it involves an examination of title; then he cannot plead good faith if he failed to find the information that he should have discovered concerning the defect. It is significant that the majority of the Supreme Court agreed with the district court. It has been established (not without leaving some doubt) that a quitclaim deed can serve as the basis for ten-year acquisitive prescription,[9] and the question of whether the facts and circumstances were such as to provoke a title examination can be argued back and forth.

Another problem on which the evaluation of facts has to be made in each case is the amount of activity which suffices to constitute the corporeal possession necessary for the commencement of acquisitive prescription. The limited uses to which certain kinds of land can be put must constitute the standards for decision.[10] In *Boudreaux v. Olin Industries*[11] it was held that for timber lands possession was adequately established by the general and complete cutting of the timber, hauling out logs, as well as marking and patrolling the boundaries. The court also cited the sale of mineral rights and the grants of rights-of-way; these would not per se constitute acts of possession, but the lessee's mineral operations and the grantee's use of the passage do suffice to start a possession for the vendor and grantor.[12]

9. Smith v. Southern Kraft Corp., 202 La. 1019, 13 So.2d 335 (1943), 5 LOUISIANA LAW REVIEW 484 (1943).

10. Veltin v. Haas, 207 La. 650, 21 So.2d 862 (1945); Chamberlain v. Abadie, 48 La. Ann. 587, 19 So. 574 (1896).

11. 232 La. 405, 94 So.2d 417 (1957).

12. LA. CIVIL CODE arts. 3438, 3441, 3445 (1870).