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Civil Code and Related Subjects: Prescription

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surety, but there can be no alternative for holding persons responsible for the clearly stated undertakings in the document which they signed voluntarily.

Building Contracts

In *Hero & Co. v. Farnsworth & Chambers Co.*[3] the materialman who furnished supplies to a subcontractor made a written accepted agreement with the prime contractor whereby in consideration of the contractor's making checks and payments jointly payable to subcontractor and supplier, the latter waived its "material lien privilege." Notwithstanding this agreement, the supplier recorded its affidavits for unpaid materials and brought suit for recognition of its lien. The court held the supplier to its waiver agreement and denied the lien, thereby indicating that the law which provides the lien is not a rule of public order and can be waived by proper agreement. The partial dissent raises what appears to be a serious point that since the prime contractor had withheld the last payment due to the subcontractor there had never been any payment for a part of the supplies furnished; accordingly, for these supplies the consideration of jointly payable checks had not been performed and to that extent the waiver should not apply. This point seems to have some validity but it is not clear from the evidence of complicated transactions and imputations of partial payments (as between subcontractor and supplier) that the supplier had not received enough money to pay for all the materials furnished and that there was the necessary identification of certain unpaid supplies with the final payment which had been withheld.

PRESCRIPTION

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Liberative Prescription

One of the principal problem areas in the subject of liberative prescription is the classification of the cause of action, on account of the differences in the length of time necessary in the respective cases. Among the specific problems, a troublesome

3. 236 La. 306, 107 So.2d 650 (1958).

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one is the three-year prescription for "accounts."[1] The court has stated the well-established principle that "the prescriptive period is fixed by the nature of the debt and not by the fact that an account is rendered showing that the debt is due" and also the interpretation that "in the Code it is intended that the word [accounts] shall include sales on account, and not the mere fact that an account must be rendered."[2] Nevertheless, this three-year prescription continues to be urged where it is shorter than the usual alternative of ten years for personal actions. It is unusual, however, for both plaintiff and defendant to plead this three-year prescription on "accounts" in the same case, and both pleas to be overruled by the court. This is exactly what happened in the case of *Jones v. Jones*,[3] where the plaintiff sued the defendant for an account of an undivided interest in a mineral lease, and the defendant filed a reconventional demand to recover an itemized account of funds which he had advanced or paid to the plaintiff. In both instances, the court held that these were not the kind of accounts included in Civil Code Article 3538 and, therefore, that the proper prescription was the ten-year prescription relating to personal actions.[4]

A similar problem involving classification of the cause of action occurred in *Loews, Inc. v. Don George, Inc.*[5] The court held that the claim based on violation of the Louisiana Monopoly Act[6] for unlawful conspiracy and anti-trust practices did not arise out of contract or quasi contract between theatre owner and film distributor, but was in the nature of a tort action for which the prescription was one year.[7]

The illegal seizure and detention of an automobile in connection with the foreclosure of a chattel mortgage constitutes a quasi offense and the claim for damages is subject to the prescription of one year.[8] In the case of *Hernandez v. Harson*[9] it was held that the time started to run in this case only from the date of the judgment which declared the seizure illegal. This is sound for two reasons. In the first place, the basic theory of lib-

1. LA. CIVIL CODE art. 3538 (1870).
2. Antoine v. Franichevich, 163 So. 784, 786 (La. App. 1935), *aff'd*, 184 LA. 612, 167 So. 98 (1936).
3. 236 La. 52, 106 So.2d 713 (1958).
4. LA. CIVIL CODE art. 3544 (1870).
5. 237 La. 132, 110 So.2d 553 (1959).
6. LA. R.S. 51:121 et seq. (1950).
7. LA. CIVIL CODE art. 3536 (1870).
8. *Ibid.*
9. 237 La. 389, 111 So.2d 320 (1959).

erative prescription is that time runs against a person only when he has a right of action and does not exercise it, and in the case of a wrongful seizure the rights of the parties are not finally determined until the rendition of judgment on this point. Secondly, the claim for damages includes the illegal detention (as well as the seizure) and the amount of damages cannot be fixed until the period of wrongful detention is ascertained.

MINERAL RIGHTS*

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The companion cases of *Reagan v. Murphy*[1] and *Jones v. Sun Oil Company*[2] presented for determination the question whether or not the liberative prescription of ten years could be properly applied to a mineral lease. This question was answered in the negative in the *Reagan* case, and that decision governed the *Jones* case. In the *Reagan* case, the plaintiff's vendor, in 1941, granted a mineral lease covering some 19,000 acres on several non-contiguous tracts for a primary term of ten years. In 1942, vendor sold to plaintiff a 40 acre tract, subject to the lease, and reserved the mineral rights. There was production on some of the tracts within the primary term and therefore the lease was in full effect beyond its primary term, at least as to those producing tracts. However, there had been no drilling operations on plaintiff's 40 acre tract, which was non-contiguous to the producing property, and the mineral servitude thereon prescribed. In 1954 plaintiff sued for cancellation of the lease insofar as it affected his tract on grounds of prescription. In reversing the lower court's decision that the mineral lease was prescribed as to the plaintiff's tract by ten years non-usage, the Supreme Court held that ten-year liberative prescription of mineral servitudes or real rights does not apply to a mineral lease. The court said a mineral lease creates only personal rights, and R.S. 9:1105,[3] even in its amended form, did not have the effect of changing these rights from personal to real rights. Since *Arent*

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1. 235 La. 529, 105 So.2d 210 (1958).

2. 235 La. 554, 105 So.2d 219 (1953).

3. LA. R.S. 9:1105 (1950): "Oil, gas, and other mineral leases, and contracts applying to and affecting these leases or the right to reduce oil, gas, or other