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## Execution Sales

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with the immediately preceding and subsequent articles — but with every related provision. An example of this is found in the earlier discussion in this Comment of the distinction between rendition and signing of final judgments. The new Code does not abolish this distinction since it is useful in matters relative to the application for new trial, but rather it removes the prior confusion as to the commencement of the delays for appeals by altering the articles concerning appeal.

Second, it is clear that the Code will greatly reduce *future* procedural problems. To accomplish this end, the redactors have not only borrowed thoroughly-tested rules from other jurisdictions, but they also employed unambiguous language and exhaustive comments to minimize any confusion relative to still unlitigated matters. Perhaps the best example of this within the purview of this Comment is the rule established for the granting of partial judgments. The Code specifically enumerates the cases in which partial judgments may be granted.

Last, the changes wrought by the Code of Civil Procedure in the area of rendition of judgments, such as the introduction of a complete notice system and the repeated grants of discretion to the trial courts, are entirely consistent with the evident intention of the procedural reform. The Code itself announces this intention when it enjoins the courts to construe it liberally "and with due regard for the fact that rules of procedure implement the substantive law and are not an end in themselves."<sup>59</sup>

*Jack P. Brook*

### Execution Sales

Prior to the adoption in 1960 of the Code of Civil Procedure, the law relative to execution of judgments was to be found in articles of the Louisiana Code of Practice of 1870, statutes, and cases. The new Code has compiled much of the material and, in addition, has made several important changes. The purpose of this Comment is to examine the law relative to execution sales under a writ of fieri facias<sup>1</sup> as it is under the Code of Civil Procedure and related statutes and to point out the major changes which have been made in the former law.

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59. LA. CODE OF CIVIL PROCEDURE art. 5051 (1960).

*Procedure Prior to the Sale*

When property of a judgment debtor has been seized under a writ of fieri facias, before the machinery for the sale of the property may be set in motion, the sheriff must serve upon the judgment debtor a written notice of the seizure and a list of the property seized in the manner provided for service of citation.<sup>2</sup> In requiring that notice be served in the manner of citation, the new Code makes a change in that the former article required that notice be delivered to the debtor in person or left at his place of ordinary residence.<sup>3</sup>

Three days, exclusive of holidays,<sup>4</sup> after having served the notice of seizure the sheriff may proceed to have the property appraised and advertisements of the sale published.<sup>5</sup> In this area several significant changes have been made. Under the prior law, in sales of movable property there had to be three advertisements within ten days, the sale not to take place until ten days after the first notice.<sup>6</sup> In sales of immovables, the sale could take place thirty days after the first notice with one advertise-

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1. The Code articles on the subject are contained in the Louisiana Code of Civil Procedure, Book IV (Execution of Judgments), Title II (Money Judgments), Chapter 2 (Judicial Sale Under Fieri Facias) and Chapter 3 (The Adjudication and its Effect).

A related subject not included in this Comment is judicial sales under a writ of seizure and sale. Code articles on this subject are found in LA. CODE OF CIVIL PROCEDURE arts. 2721-2724 (1960).

2. *Id.* art. 2293. For the manner of service of citation, see *id.* arts. 1231-1235. The former law is contained in LA. CODE OF PRACTICE arts. 654 (requirement of notice), 186 (service of process) (1870).

Under the jurisprudence prior to the adoption of the new Code a sale of property by the sheriff without giving this notice was a nullity and conveyed no title to the purchaser. *Graff v. Moylan*, 28 La. Ann. 75 (1876); *Birch v. Bates*, 22 La. Ann. 198 (1870); *Lamorandier v. Meyer*, 8 Rob. 152 (La. 1844).

Under certain limited conditions the nullity could be cured by the prescription of five years. See LA. R.S. 9:5642 (1950), which requires knowledge on the part of the owner, possession by the purchaser or those holding under him, and payment by the purchaser to the sheriff.

In the Comment to the article in the new Code, the redactors expressed an intention not to change these rules. See LA. CODE OF CIVIL PROCEDURE art. 2293, Comment (b) (1960).

3. This would appear to be a change only in terminology, since under *id.* arts. 1231-1235, service can be made on an individual either personally or at his domicile. The apparent purpose of the change would seem to be to reduce the number of rules relative to notice and to achieve some degree of uniformity in the manner of serving various notices.

4. *Id.* art. 2331.

5. An exception to this rule occurs where the property seized is perishable. In such a situation both past and present law provide that at the request of a party, the court may order the immediate sale of such property without appraisal or advertisement. *Id.* art. 2333. For the law prior to the adoption of the new Code, see LA. R.S. 13:4342 (1950).

6. LA. CODE OF PRACTICE art. 670 (1870); LA. CIVIL CODE art. 1117 (1870).

ment per week during that period.<sup>7</sup> Apparently, it was felt by the redactors that this requirement of three advertisements for movables and five for immovables was unnecessary and imposed an unwarranted burden on the parties.<sup>8</sup> Consequently, under the new Code, the number of advertisements required has been reduced to one for movables and two for immovables, with a saving clause which gives discretion to the court to order additional publications.<sup>9</sup> No change, however, has been made in the length of time that must elapse between the first advertisement and the sale — i.e., ten days for movables and thirty days for immovables.<sup>10</sup>

As to appraisal, the legislature transferred all relevant materials in the Code of Practice to the Revised Statutes<sup>11</sup> and included in the new Code of Civil Procedure the simple provision that property must be appraised prior to the sale according to law.<sup>12</sup>

It should be noted that the judgment debtor may prevent the sale of the property at any time prior to the adjudication by paying to the sheriff the amount of the judgment with interest and costs.<sup>13</sup> In addition, under various articles of both Codes, the judgment debtor or a third person claiming ownership may, in certain circumstances, obtain injunctive relief prohibiting the sheriff from proceeding with the sale of the property.<sup>14</sup>

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7. See note 6 *supra*.

8. See LA. CODE OF CIVIL PROCEDURE art. 2331, Comment (b) (1960).

9. *Id.* art. 2331. The manner of publication to which this article refers is contained in LA. R.S. 43:203 (1950), as amended, La. Acts 1960, No. 34, § 2.

10. LA. R.S. 43:203 (1950), as amended, La. Acts 1960, No. 34, § 2.

11. *Id.* 13:4363-4366, as amended, La. Acts 1960, No. 32, § 6. For the former law, see LA. CODE OF PRACTICE arts. 671-676 (1870).

12. LA. CODE OF CIVIL PROCEDURE art. 2332 (1960). However, although it is now to be found in the Revised Statutes, the substance itself remains the same. The procedure is as follows. Not less than three days before the sale, the sheriff serves written notice on the debtor and the seizing creditor directing each to name an appraiser to appraise the value of the property to be sold. If either party refuses to appoint one, the sheriff is authorized to appoint one in his name, and if the appraisers appointed are unable to agree on a value, the sheriff is authorized to appoint a third appraiser. When the appraisers have been named and sworn, they then appraise the property and submit the appraisal in writing to the sheriff. LA. R.S. 13:4363-4366 (1950), as amended, La. Acts 1960, No. 32, § 6. It should be noted that these provisions apply to all judicial appraisements and not just to those for judicial sales under a writ of fieri facias.

13. LA. CODE OF CIVIL PROCEDURE art. 2340 (1960). For former law, see LA. CODE OF PRACTICE art. 663 (1870).

14. Such provisions may be found in LA. CODE OF CIVIL PROCEDURE art. 2298 (1960), which lists four grounds for enjoining the sheriff from proceeding with the sale of property seized under a writ of fieri facias. The new Code requires a bond of an amount within the court's discretion where a temporary restraining order or a preliminary injunction is sought. *Id.* art. 3610. See also *id.* art. 1092,

### THE AUCTION

On the appointed day the property is put up for auction unless the judgment debtor has paid the judgment or an injunction has been obtained. The sale must be made at the parish seat of the parish where the seizure was made.<sup>15</sup> The sheriff is required to read aloud the advertisement describing the property, as well as a mortgage certificate and any other certificate required by law.<sup>16</sup> In addition, the sheriff is directed to announce that the property is to be sold subject to any mortgage, lien, or privilege superior to that of the seizing creditor.<sup>17</sup>

After complying with the above procedure, the sheriff then proceeds to offer the property and adjudicate it to the highest bidder,<sup>18</sup> subject, however, to two exceptions. First, the property cannot be sold if the highest bid is less than two-thirds of the appraised value.<sup>19</sup> This provision is designed for the protection

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which permits injunctive relief to third persons claiming ownership of seized property.

The law relative to obtaining a preliminary injunction to arrest the execution of a writ of fieri facias prior to the adoption of the new Code may be found in LA. CODE OF PRACTICE arts. 298(7), (9), (10) (1870). See *McInnis v. Wingate*, 138 La. 682, 70 So. 610 (1916), which indicates that a bond would be required of a plaintiff seeking an injunction under these articles.

LA. CODE OF PRACTICE art. 739 (1870) lists the grounds for enjoining the execution of writs of seizure and sale. Under the former jurisprudence, it was held that the defendant in an executory proceeding was not limited to the specific grounds mentioned in Article 739 in order to obtain an injunction; but that security had to be furnished if he did not rely exclusively on those grounds. *Jones v. Bouanchaud*, 158 La. 27, 103 So. 393 (1925). For the law relative to enjoining the execution of a writ of seizure and sale under the new Code, see LA. CODE OF CIVIL PROCEDURE arts. 2751-2754 (1960).

15. LA. R.S. 13:4341 (1950). *Cf.* LA. CODE OF PRACTICE arts. 664-666 (1870), which provided that the sale of plantations and goods attached thereto would take place on the plantation.

16. LA. CODE OF CIVIL PROCEDURE art. 2334 (1960). *Cf.* LA. CODE OF PRACTICE arts. 677, 678 (1870). In addition provision is made in the Revised Statutes for the reading of a conveyance certificate where immovable property is sold in Orleans Parish and for the reading of a written statement from the motor vehicle commission relative to ownership and the existence of any chattel mortgages when the property sold is a motor vehicle. LA. R.S. 13:4344 (1950), as amended, La. Acts 1960, No. 32, § 1.

Relative to the reading of the various certificates by the sheriff at judicial sales, attention should be called to LA. R.S. 13:4345 (1950), as amended, La. Acts 1960, No. 32, § 1, which provides for a penalty to be imposed on a sheriff who fails to read aloud the certificates required by law. For a similar provision under the prior law, see LA. CODE OF PRACTICE art. 678 (1870).

17. LA. CODE OF CIVIL PROCEDURE art. 2335 (1960). For former law, see LA. CODE OF PRACTICE art. 679 (1870).

18. LA. CODE OF PRACTICE art. 680 (1870); LA. R.S. 5:8 (1950).

19. LA. CODE OF CIVIL PROCEDURE art. 2336 (1960). For former law, see LA. CODE OF PRACTICE art. 680 (1870). A sheriff's sale under a writ of fieri facias at the first offering for less than two-thirds of the appraised value was held to be a nullity. *Monroe v. Jones*, 136 La. 143, 66 So. 759 (1914). Presumably this rule would still obtain under the new Code.

of the debtor.<sup>20</sup> In this event, under the new Code the sheriff is directed to readvertise the sale of the property in the same manner in which it was advertised for the first sale and to observe the same delays as in the first sale, after which the property is sold for cash for whatever amount it will bring.<sup>21</sup> This procedure differs from the former law in that the delay that must elapse between the first and second offerings of immovable property is increased from 15 to 30 days. A more significant change is the abolition of the twelve months' credit sale, under which the purchaser at the second sale was given twelve months' credit on the payment of the purchase price.<sup>22</sup> Presumably, this provision was intended to serve as a method for increasing the amount bid at the second sale. However, under the new Code the purchaser at the second sale is required to pay cash.<sup>23</sup>

The second exception occurs where there are mortgages, liens, or privileges on the property to be sold. If the highest bid is sufficient to cover all of the encumbrances *superior* to that of the seizing creditor, there is an adjudication, even though the price might not be sufficient to satisfy the mortgages and privileges of the seizing creditor or those inferior.<sup>24</sup> On the other hand, an adjudication does not take place where the price is not sufficient to discharge the privileges and mortgages superior to that of the seizing creditor.<sup>25</sup> The rationale for this rule would

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20. See *Egerton v. Creditors*, 2 Rob. 201 (La. 1842).

21. LA. CODE OF CIVIL PROCEDURE art. 2336 (1960).

22. LA. CODE OF PRACTICE art. 681 (1870). With the abolition of the twelve months' credit sale many of the provisions of the old Code of Practice relative to this type of transaction are not carried over into the new law. See Articles 681 (security), 693(5), 693(7) (contents of the act of sale), 696 (recording of the credit sale and mortgage), 702 (the sheriff's return), and 703 (the bond).

23. LA. CODE OF CIVIL PROCEDURE art. 2336 (1960).

24. *Id.* art. 2338. For former law, see LA. CODE OF PRACTICE art. 685 (1870).

25. LA. CODE OF CIVIL PROCEDURE art. 2337 (1960). For former law, see LA. CODE OF PRACTICE art. 684 (1870).

Under the former law it was well settled that there could be no valid adjudication where the bid was insufficient to discharge the privileges and mortgages on the property which outranked the claim of the judgment creditor. *Security Bank v. Tangipahoa Parish News, Inc.*, 173 La. 716, 138 So. 519 (1930); *Keller v. Summers*, 159 So. 198 (La. App. 1935). However, if the mortgages on the property were no longer valid or enforceable, they could be ignored in determining the minimum valid adjudication price. *Markham v. Lacaze*, 192 La. 285, 187 So. 669 (1939).

There was apparently some conflict in the jurisprudence as to whether the inadequacy of the price to discharge a mortgage which had a preference on the property was such a nullity as to be within the provisions of LA. CIVIL CODE art. 3543 (1870). This article provided for a two-year prescriptive period on "informalities" in the judicial sale. The case of *Keller v. Summers*, 159 So. 198 (La. App. 1935), citing former cases, held that the inadequacy of the price was "substantive" and not a mere informality. But in the case of *Morris v. Foster*, 192 La. 996, 189 So. 601 (1939), the Louisiana Supreme Court stated that such a defect was relative only. However, this would seem to be dicta in that the

seem to be to protect those persons with prior recorded rights against the property. It should be noted that this rule is the same under the old and new Codes and that it is applicable to all sales, including a second sale which may be necessitated by reason of the highest bid being less than two-thirds of the appraised value.<sup>26</sup>

One further important change, incorporated into the Revised Statutes, deals with the payment of a deposit by the purchaser and a subsequent failure to comply with his bid. Under the prior law, if the person to whom the property had been sold refused to pay to the sheriff the price of the adjudication, or to offer good security in a credit sale, the sheriff was directed to have the property resold.<sup>27</sup> The Civil Code contains an article in the chapter dealing with public sales providing that in such a situation, the first bidder is liable for any deficiency between the first and second sale.<sup>28</sup> However, the Louisiana Supreme Court held that this provision, known as the sale *a la folle enchere*, was inapplicable to a sheriff's sale under a writ of fieri facias<sup>29</sup> with the consequence that the first purchaser was not liable for any difference between the price of adjudication in the first and second sales. In New Orleans, however, a special statute obtained,<sup>30</sup> which provided for a deposit to be made at the time of the adjudication which would be credited toward payment of the full price. In the event that the adjudicatee failed to pay the balance, the statute provided for a resale of the property and for the liability of the first adjudicatee for the difference between the price obtained in the two sales, to be paid out of the deposit money.

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court stated that tax privileges and liens, such as the one before it, were not contemplated under LA. CODE OF PRACTICE art. 684 (1870).

The new Code makes no provisions as to the effect of such a sale, but apparently the court would look to the former jurisprudence in such a situation.

Under the former law it was held that the provisions of Article 684 were not applicable to general mortgages with the consequence that the general mortgages were not considered in determining whether the highest bid was sufficient to discharge the encumbrances superior to that of the seizing creditor. See *Young v. Municipality Number 1*, 5 La. Ann. 736 (1850).

26. See LA. CODE OF CIVIL PROCEDURE art. 2336 (1960).

27. LA. CODE OF PRACTICE art. 689 (1870). See *Lehman, Newgass & Co. v. Ranson*, 27 La. Ann. 279 (1875), stating that where the adjudicatee fails to comply with his bid, the sheriff may disregard the adjudication. In *Ash v. Southern Chemical & Fertilizing Co.*, 107 La. 311, 31 So. 656 (1902), it was held that the sheriff may proceed by rule against an adjudicatee to set aside an adjudication because of nonpayment of the amount of the bid.

28. LA. CIVIL CODE art. 2611 (1870).

29. *Roussell v. Hughes*, 159 La. 864, 106 So. 332 (1925); *Weil v. Schwartz*, 49 La. Ann. 582, 21 So. 859 (1897).

30. LA. R.S. 13:4401-4404 (1950).

Under the new legislation, with a few modifications, this statute was made applicable to the whole state.<sup>31</sup>

#### THE ADJUDICATION AND ITS EFFECTS

The adjudication has the effect of transferring to the purchaser all the rights and claims of the judgment debtor as completely as if the judgment debtor had sold the property conventionally.<sup>32</sup> As proof of the adjudication, the sheriff is directed to pass an act of sale to the purchaser. The period within which the act of sale must be passed has been extended from three to five days by the new Code.<sup>33</sup> In addition various detailed matters relative to the sheriff's act of sale have been transferred from the Code itself to the Revised Statutes.<sup>34</sup>

The new Code has made several important changes in the method of payment of the purchase price. Under both Codes, the purchaser pays the price to the sheriff who, after deducting costs, is directed to pay first the amount due the seizing creditor, then any amount due because of inferior encumbrances on the property sold, and then whatever remains to the debtor.<sup>35</sup> However, if there are mortgages, liens, or privileges on the property *superior* to that of the seizing creditor, the purchaser pays to the sheriff only the portion of the sale price which exceeds the amount of the superior mortgages, liens, or privileges, retaining amounts sufficient to discharge these superior mortgages.<sup>36</sup>

Under the Code of Practice the existence of a general mortgage superior to that of the seizing creditor did not authorize the purchaser to withhold payment of the purchase price unless

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31. *Id.* 13:4359-4362 (Supp. 1960).

32. LA CODE OF CIVIL PROCEDURE art. 2371 (1960). For the former law see LA. CODE OF PRACTICE art. 690 (1870).

33. LA. CODE OF CIVIL PROCEDURE art. 2342 (1960). For former law see LA. CODE OF PRACTICE arts. 691-698 (1870).

34. Compare LA. R.S. 13:4353-4356 (Supp. 1960), with LA. CODE OF PRACTICE arts. 691-698 (1870).

35. LA. CODE OF CIVIL PROCEDURE art. 2373 (1960). For the former law see LA. CODE OF PRACTICE arts. 683, 704, 706, 707 (1870) and LA. R.S. 13:4284 (1950).

36. LA. CODE OF CIVIL PROCEDURE art. 2374 (1960); LA. CODE OF PRACTICE arts. 683, 706 (1870). See *Oden v. First Nat. Bank of Shreveport*, 182 La. 591, 162 So. 189 (1933); *Ash v. Southern Chemical & Fertilizing Co.*, 107 La. 311, 31 So. 656 (1902). See *Cason v. Cecil*, 201 La. 890, 10 So.2d 692 (1942), where the court indicated that the purchaser who retains the amount of the prior special mortgages is bound for the interest which may accumulate on such mortgages after such sale. The rationale of this rule was stated as: "Otherwise it would be to the advantage of the purchaser to delay the payment of the portion of the price left in his hands as long as possible, and the debtor would be deprived of his property, while interest would be accumulating against him."

he had been evicted or had just reason to fear eviction.<sup>37</sup> Even then he could be required to pay if security was furnished.<sup>38</sup> This distinction between the general and the special mortgage was probably intended as a means of keeping on the market real estate burdened with general mortgages in favor of married women and minors which were often uncertain in amount and difficult to remove.<sup>39</sup> The new Code, however, authorizes the purchaser to withhold payment as long as a prior general mortgage is recorded against the property.<sup>40</sup> The theory underlying this change is that the purchaser should be able to protect himself against a general mortgage in the same manner as with a conventional mortgage.<sup>41</sup>

With reference to mortgages and privileges *inferior* to that of the seizing creditor, the new Code makes several significant changes. Under the former law, the purchaser only paid to the sheriff the costs and the amount of the privilege or special mortgage of the seizing creditor, retaining an amount to cover the inferior mortgages.<sup>42</sup> In addition, the Code of Practice provided that if there were no proceeds from the sale to discharge the mortgages subsequent to that of the seizing creditor, the sheriff was to give the purchaser a release from any inferior mortgages.<sup>43</sup> However, no provision was made for a method of cancelling inferior encumbrances when there remained an amount in excess of the claim of the seizing creditor and the costs, though not sufficient to discharge all the inferior encumbrances. This

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37. LA. CODE OF PRACTICE art. 710 (1870). See *Fortier v. Slidell*, 7 Rob. 398 (La. 1844) and *Collins v. Duly*, 4 Rob. 112 (La. 1843). In the former case it was stated by the court that the purchasers at sales made under executions were not bound personally for anterior general mortgages existing on the property which they had purchased. The court continued: "They are only liable to an hypothecary action. If such action be actually brought, they have a right to retain the price of the adjudication, or any part of it not yet paid, until the disturbance ceases, or they are properly secured against eviction." 7 Rob. 398, 402 (La. 1844).

38. LA. CODE OF PRACTICE art. 710 (1870). See *Sauvinet v. Landreaux*, 1 La. Ann. 219 (1846).

39. See *Robinson & Co. v. Cosner*, 136 La. 595, 615, 67 So. 468, 475 (1915).

40. LA. CODE OF CIVIL PROCEDURE art. 2374 (1960).

41. *Id.* Comment (a).

42. LA. CODE OF PRACTICE art. 707 (1870). See *J. Quertier & Co. v. Succession of Hille*, 18 La. Ann. 65 (1866); *Pepper v. Dunlap*, 16 La. 163 (1840). In the former case it was held that a mortgage creditor next in rank to one who has been paid is entitled to a judgment against the purchaser as a third possessor of the property subject to his mortgage. He is to be paid out of the funds which the purchaser should have retained for that purpose, even though he had paid the funds to the sheriff.

43. LA. CODE OF PRACTICE art. 708, (1870). See *Heines v. Henry*, 127 La. 770, 54 So. 24 (1911); *Passebon v. Prieur*, 1 La. Ann. 10 (1846); *LaGourgue v. Summers*, 8 Rob. 175 (La. 1844); *Cassanova's Minors v. Aregno*, 3 La. 211 (1831).

lack of positive law created uncertainty in the jurisprudence.<sup>44</sup> Under the new Code, however, the burden of distributing any excess is placed upon the sheriff.<sup>45</sup> The purchaser pays everything to the sheriff except the amounts retained to satisfy superior encumbrances. The sheriff then gives the purchaser a release from the mortgage, lien, or privilege of the seizing creditor and from all inferior mortgages, liens, or privileges.<sup>46</sup> In the event that the amount paid is insufficient to discharge all the inferior claims, the sheriff may deposit the remainder with the court, and proceed by contradictory motion against the inferior creditors to have them assert their claims to the proceeds of the sale.<sup>47</sup>

The purchaser is allowed to retain out of the purchase price amounts sufficient to discharge any superior encumbrances on the property, with the expectation that he will pay them off as they become due. If the purchaser should fail to pay them as they mature, under the Code of Practice, the remedy of the mortgagee was a hypothecary action properly speaking, that is, a hypothecary action against property in the hands of a third person.<sup>48</sup> In the new Code this action was simplified and the delays incidental to the hypothecary action properly speaking were modified. As a result under the new Code the holder of a mortgage may enforce it by the simplified hypothecary action and the holder of a lien or privilege by an ordinary suit against the pur-

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44. In *Fortier v. Slidell*, 7 Rob. 398 (La. 1844), the Supreme Court approved a procedure whereby the purchaser would proceed by rule against the inferior mortgagees to compel them to establish their rights to the surplus price held by the purchaser and thus obtain a cancellation of the inferior mortgages. See *Robinson v. Cosner*, 136 La. 595, 67 So. 468 (1915), where the court indicated that where the junior mortgages are general, the purchaser should pay the surplus to the sheriff to be applied by him to their payment, or he may deposit it in court and call in the mortgagees to litigate their respective rights.

45. LA. CODE OF CIVIL PROCEDURE art. 2377 (1960).

46. *Id.* art. 2376.

47. *Id.* art. 2377.

48. LA. CODE OF PRACTICE art. 709 (1870). This article granted the holder of a mortgage on property sold the right to proceed against the purchaser in the same manner and under the same rules and restrictions as were applicable to a third possessor of mortgaged property. Where the property was not in the possession of the debtor or of his heirs, but was in the hands of a third person, the action by the creditor against that person in order to compel him either to give up the property or to pay the amount for which it stood hypothecated was called the hypothecary action properly speaking. See *id.* art. 68. See also *J. Quertier & Co. v. Succession of Hille*, 18 La. Ann. 65 (1866) and *Pepper v. Dunlap*, 16 La. 163 (1840), indicating that the holder of an inferior mortgage could bring the hypothecary action against the purchaser, at least up to the surplus which the purchaser had retained or should have retained.

chaser, or, if he has sold the property, against the new owner of the property.<sup>49</sup>

If, on the other hand, the adjudicatee is evicted on the ground that the property belonged to someone other than the judgment debtor, he is allowed recourse against the judgment debtor and the seizing creditor for reimbursement.<sup>50</sup> However, it should be noted that the purchaser loses this right if a suit is filed and he neglects to notify the judgment debtor in time for the latter to defend the suit and it can be shown that the judgment debtor could have successfully defended such suit.<sup>51</sup> In addition, it is provided that the purchaser must execute the judgment thus obtained against the judgment debtor first,<sup>52</sup> and that the seizing creditor may recover from the judgment debtor whatever amount he had to pay to the evicted adjudicatee.<sup>53</sup>

#### SUMMARY

In the area of execution sales under a writ of fieri facias, the new Code of Civil Procedure and related legislation have made several important changes in the law. The former law has been consolidated and much minutia has been transposed from the Code itself to the Revised Statutes. The following important changes have been made—the number of advertisements required has been reduced, the sale at twelve months' credit has been abolished, the purchaser is authorized to retain amounts sufficient to discharge a superior general mortgage, the burden of paying inferior mortgages is placed upon the sheriff, and the sale *a la folle enchere* is made applicable to sales under a writ of fieri facias throughout the whole state.

*George C. Herget, Jr.*

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49. LA. CODE OF CIVIL PROCEDURE art. 2378 (1960). For provisions on the hypothecary action against third persons, see *id.* arts. 3741-3743.

50. *Id.* art. 2379. For the former law, see LA. CODE OF PRACTICE art. 711 (1870) and LA. CIVIL CODE art. 2621 (1870).

51. LA. CODE OF CIVIL PROCEDURE art. 2380 (1960). For the former law, see LA. CODE OF PRACTICE art. 714 (1870).

52. LA. CODE OF CIVIL PROCEDURE art. 2379 (1960). For the former law, see LA. CODE OF PRACTICE art. 711 (1870) and LA. CIVIL CODE art. 2621 (1870).

53. LA. CODE OF CIVIL PROCEDURE art. 2380 (1960). For the former law, see LA. CODE OF PRACTICE art. 712 (1870).