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Civil Code and Related Subjects: Prescription

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excess of the \$4,000, so that two lower ranking encumbrances were paid out of the \$4,000 because they were not subject to the homestead exemption. One was a federal income tax lien which is unaffected by state laws,⁴ and the other was for building materials (used to repair and improve the homestead) within the constitutional exception from homestead exemption.⁵ The poor debtor was left with only \$768.04 out of the \$18,000 foreclosure sale price, but "he has no cause for complaint."⁶

PRESCRIPTION

*Joseph Dainow**

Liberative Prescription

In *Succession of Picard*,¹ plaintiff sought to recover the amount of certain promissory notes executed by the decedent, and the plea of prescription was overcome by proof of a pledge which had been given to secure the indebtedness and which served as a continuing acknowledgment constantly interrupting the running of time.² A point of particular interest was the defendant's contention that the things pledged (other notes and shares of stock) had no value, some of them having been of no value even at the time they were pledged. Based upon the conclusion that there was a valid pledge, written on the back of the notes representing the principal indebtedness, the court made the point that the value or lack of value of the thing pledged is irrelevant, because it is the pledgee's detention of the thing which serves as the continuing acknowledgment and because the pledgee is also under an obligation to return the pledged things (upon payment of the debt) regardless of their value.

In *Martin v. Mud Supply Co.*,³ the plaintiff brought suit in tort against the owner of an automobile for damage (wrongful death) caused by an employee who was using the car with permission but not in the scope of his employment. However, the owner's insurer was not joined in the suit until long after the

4. 239 La. 510, 518, 119 So.2d 446, 449 (1960), and authorities cited.

5. LA. CONST. art. XI, § 1, par. 2.

6. 239 La. 510, 520, 119 So.2d 446, 449 (1960).

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1. 238 La. 455, 115 So.2d 817 (1959).

2. LA. CIVIL CODE art. 3520 (1870).

3. 239 La. 616, 119 So.2d 484 (1960).

liberative prescription of one year had run. The question was whether the suit against the owner (the insured) interrupted prescription as against his insurer. The trial court and court of appeal⁴ held that there was no interruption and therefore that the action against the insurer had prescribed. On first hearing, the Supreme Court reversed, but on rehearing came back to what the lower courts had held in the first place.

If there had been a solidary liability between the insured and the insurer, suit against one would also have interrupted prescription against the other;⁵ but since there was no liability here on the respondeat superior doctrine, the car owner was not liable altogether. The insurer's liability would have been based upon the omnibus provision covering damage caused by any person using the car with permission.

On the first hearing, the court held that the filing of a suit interrupts prescription as to one not impleaded originally when he is affected by the cause of actions involved, is closely associated with the named and cited defendant, and is fully informed of the claim and the suit thereon.

With the existing law as it now stands, the court's opinion on rehearing is correct in disregarding these connections as bases for the interruption of prescription, because they are nowhere included in the legal provisions for interruption. Actual knowledge by the debtor, or the creditor's ignorance of his identity, are not causes of interruption.

The court's sympathy for the plaintiff in the first hearing is understandable. When parents lose a child in a fatal car accident, it may well be some time before they get around to the idea and the action of seeking a base monetary compensation. In the present case, the suit against the car owner was instituted on the last day before the end of the one-year prescription. It was about six weeks later when the defendant disclosed the name of its insurer. Even if the plaintiff had acted immediately against the insurer, it was already too late. Of course, the answer is that the plaintiff should have acted sooner to ascertain the name of the insurer; but perhaps a more realistic remedy for the situation would be a legislative change increasing the time for such a serious prescription.

4. *Martin v. Mud Supply Co.*, 111 So.2d 375 (La. App. 1959).

5. LA. CIVIL CODE art. 3552 (1870).