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Civil Code and Related Subjects: Prescription

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area of law which is *stricti juris* like privileges, there is no room to make any concessions.

As a question of getting at legislative intent or as a matter of re-examining policy considerations on the issue of the principal case, there is room for a different point of view. The current Civil Code provision[14] and all its antecedents to 1808[15] gave the protection of a privilege to those who did direct work or who supplied materials for a construction or repair job. Planiol refers to this privilege as coming from the old French law with even older Roman origins, and he gives as the reason for the privilege that the creditor has contributed something to the patrimony of another.[16] Since 1916, the Louisiana statutes have superseded the Code provisions, and with the increasingly complex operations involved in modern construction and repair work, the scope of the statutory protection has been expanded to include more categories of protected creditors and secured claims for necessary services and supplies which contributed to the accomplishment of the job.

In the drafting of the current statute, there was probably no thought given specifically to the lessor of machinery who performs no work. Since this area of the law must remain one of *stricti juris*, the only proper answer is one of legislative consideration. In this process, it might well be an improvement toward clarification if the category of those who contribute services be treated separately from the category of those who furnish supplies, instead of having two complicated subject elements and two separate verb phrases in one clause of a much longer sentence which in turn incorporates a variety of other similar but not the same enumerations.

PRESCRIPTION

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Acquisitive Prescription (Ten-Year)

The case of *Boyet v. Perryman*[1] raises several points of in-

14. LA. CIVIL CODE art. 3249(2,3) (1870).
15. Compiled Edition of the Civil Codes of Louisiana, under Art. 3249.
16. 2 PLANIOL, TREATISE ON THE CIVIL LAW no. 2913 *et seq.* (Eng. transl. 1959).

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1. 240 La. 339, 123 So.2d 79 (1960), reversing 98 So.2d 593 (La. App. 2d Cir. 1957).

terest. These comments deal with the issues of good faith and just title; the discussion of estoppel by warranty appears elsewhere.[2]

Good faith. Article 3481 of the Civil Code provides: "Good faith is always presumed in matters of prescription; and he who alleges bad faith in the possessor, must prove it." One aspect of this presumption seems to be the long-established rule that a possessor need not "examine the title" of his acquisition. On the other hand, if he does undertake a title examination, he is responsible for everything in the records even though his particular investigation did not discover it. In this latter situation, the good faith presumption is deemed rebutted.

A further judicial development in this matter is the conclusion that in some situations the known facts suffice to serve as a warning and that further inquiry is called for. Where this duty exists, there is responsibility again for everything in the records although in fact no such investigation was made. By this whittling away process, the strength and significance of the good faith presumption is considerably weakened despite the same honest subjective belief in perfect ownership.

This is what happened in the present case. Two children sold and conveyed to the other children "all of our right, title and interest in the estates of our deceased father . . . and mother," referring to the property described in the judgment of possession in the succession proceedings. When the significance of this conveyance was examined, the court concluded that the reference for a property description was "sufficient notice to put the plaintiffs on their guard and to make inquiry into the records."[3] Accordingly, the parties who relied on this transaction were deemed to have the knowledge of what the public records would have disclosed (that the original owner had sold the disputed property before his death), and with this knowledge they lacked the good faith requirement for the ten-year acquisitive prescription.

The concept that where known facts are "sufficient to excite inquiry, a duty devolved upon him to investigate the title" was first clearly established in the fairly recent case of *Juneau v.*

2. Note, 22 LOUISIANA LAW REVIEW 499 (1962).
3. 123 So.2d at 83.

Laborde,[4] where the issue of good faith was completely separate from any confusion with the question of just title. It is surprising that the *Juneau* case was not cited in either the court of appeal or Supreme Court opinions.

Just title. It is often difficult to separate the elements of good faith and just title because some of them occasionally overlap. A just title is necessarily a defective title, but one which purports to transfer ownership and which appears on its face to be good.[5] In the present case, the court found that the deed in question did not constitute a just title because it did not purport to transfer the ownership of the property in dispute. The deed contained no description of the disputed property, and the conveyance of all their rights in their parents' estates could not include property which had been alienated by the father inter vivos.

Impliedly, the deed in the present case would be not only a just title but a good title with reference to the property that actually was in the parents' estates although not described beyond the reference to the succession proceedings. This question of adequacy of description through incorporation by reference was directly dealt with in the case of *Bruce v. Cheramie*[6] but the question must remain for individualization according to the facts and circumstances of each case.

Acquisitive Prescription (Thirty-Year)

An unusual situation for the application of the thirty-year acquisitive prescription occurred in *Watson v. Crown Zellerbach Corporation.*[7] In the conveyance of a tract of land, the description exceeded the intent of the transferor but the excess was never delivered. Instead, the transferor continued to possess this strip as part of the adjacently owned land. The possession of this strip had all the attributes of being open, notorious, corporeal, and as owner, and there was complete proof of this actual possession for over thirty years. Accordingly, their prescriptive

4. 219 La. 921, 54 So.2d 325 (1951); see *Work of the Louisiana Supreme Court for the 1951-1952 Term — Prescription*, 13 LOUISIANA LAW REVIEW 264 (1953).

5. LA. CIVIL CODE arts. 3483-3486 (1870).

6. 231 La. 881, 93 So.2d 202 (1956); see *Work of the Louisiana Supreme Court for the 1956-1957 Term — Prescription*, 18 LOUISIANA LAW REVIEW 53 (1957).

7. 240 La. 500, 124 So.2d 138 (1960), affirming 110 So.2d 862 (La. App. 1st Cir. 1959).

title was sustained. It does not necessarily follow from this decision that a demand by the transferee (of the strip unintentionally included in the deed description), before the lapse of thirty years, could not be met successfully by other defenses to prevent him from obtaining the extra strip which was not intended for him in the first place.[8]

Tacking

Another problem involving an "extra strip" of land was dealt with in *Stutson v. McGee*.[9] The defendant pleaded the thirty-year acquisitive prescription against the plaintiff's recorded claim of title. The defendant's own possession was just a little short (29 years and 10 months) but he proposed to supplement this with the additional possession of his predecessor from whom he had purchased the adjacent land. However, while there was chronological continuity in the physical possessions, there was no juridical link or privity between the possessors because the strip in question was not included in the conveyance description. Accordingly, the previous possessor was not the defendant's author in title, and tacking of the possessions was not permitted.[10] With only 49 days left to complete a thirty-year prescription, it could not be much consolation for the defendant to recognize the truth of *lex dura lex*.

MINERAL RIGHTS

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Rights of Usufructuary and Naked Owner

The decision rendered in *Gueno v. Medlenka*[1] left many questions unanswered.[2] Fundamentally that decision applied Article 552[3] of the Civil Code governing the rights of a usufructuary in mines and quarries as determinative of the relative rights of a

8. *Cf.* LA. CIVIL CODE arts. 1819, 1842 *et seq.*, 1861, 2494-5, 2589 *et seq.*, 2665 (1870). Also, the possibility of reformation for mutual error, Wilson v. Levy, 234 La. 719, 101 So.2d 214 (1958), and Ker v. Evershed, 41 La. Ann. 15, 6 So. 566 (1889).

9. 241 La. 646, 130 So.2d 403 (1961).

10. LA. CIVIL CODE arts. 3493-4 (1870).

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1. 238 La. 1081, 117 So.2d 817 (1960).

2. For a discussion of some of the problems raised by *Gueno v. Medlenka*, see 34 TUL. L. REV. 784 (1960) and 20 LOUISIANA LAW REVIEW 773 (1960).

3. LA. CIVIL CODE art. 552 (1870): "The usufructuary has a right to the enjoyment and proceeds of mines and quarries in the land subject to the usufruct,