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Successions - Acceptance and Renunciation - Applicability of Article 1030's Prescriptive Period

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there is an offer, acceptance, and *then* an attempted revocation. Thus the natural presumption is in favor of the offeree, rather than the offeror as in Article 1809. Since the offeror attempted revocation only after acceptance of the offer, the immediate inference is that he must have intended to allow a reasonable period at least up to the time of acceptance during which the offer could be effectively accepted.[31]

In conclusion it seems a fair inference that although Article 2462 will be held to control offers of sale, the applicability of Article 1809 to other types of offers will be recognized; if the parties so intend, the offer will be irrevocable notwithstanding the absence of consideration. However, when irrevocability is only implied, in an Article 1809 situation any presumption will be in favor of the offeror and the offeree will be required to show a clear implication that irrevocability was intended. Finally, in cases involving financing of the contract's performance, the court is likely to infer the parties intended to be bound by an immediate acceptance, performance of the contract being suspensively conditioned on the financing, rather than inferring the offeror intended his offer irrevocable for any extended period.

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SUCCESSIONS — ACCEPTANCE AND RENUNCIATION — APPLICABILITY OF ARTICLE 1030'S PRESCRIPTIVE PERIOD

Plaintiff, praying to be declared owner of immovable property by inheritance, brought a petitory action attacking the failure to include her father in a 1920 judgment of possession rendered in her grandfather's succession. Besides denying the legitimacy of the plaintiff's father, defendants pleaded the action was barred, under Article 1030 of the Louisiana Civil Code, by plaintiff's failure to accept or reject her grandfather's

like Ever-Tite Roofing Corp. v. Green, 83 So. 2d 449 (La. App. 2d Cir. 1955), discussed note 22 *supra*, had the revocation *preceded* acceptance the court would have found a period of irrevocability implied from the same facts implying a reasonable time for acceptance under Article 1802, since the significant change in order of events destroys the presumption in favor of offeree and creates one in favor of the offeror. See note 31 *infra*, and text accompanying.

31. The writer does not mean to imply these presumptions will be absolutely controlling, but merely that in Article 1809 situations a greater burden of proof will fall on the offeree than in 1802 situations.

succession within thirty years from his death.[1] The trial court rendered judgment for defendants on the merits, and also sustained the plea of prescription under Article 1030. The Second Circuit Court of Appeal affirmed on the merits,[2] but overruled the prescriptive plea. *Held, inter alia,* the thirty-year prescriptive period of Article 1030 is inapplicable to forced heirs, for they are presumed to have accepted a succession they have not renounced. *Edwards v. Smith,* 147 So. 2d 420 (La. App. 2d Cir. 1962).

Article 1030 of the Louisiana Civil Code has perplexed Louisiana courts,[3] just as the corresponding Article 789 of the French Civil Code has perplexed those of France.[4] Though the French appear to have had as many as eight different and conflicting interpretations of the meaning and effect of their code provision,[5] French jurisprudence has developed the expedient rule that *any* heir who has neither accepted nor renounced the succession within the thirty-year period is a stranger to the succession.[6] Louisiana has had only two conflicting interpreta-

1. LA. CIVIL CODE art. 1030 (1870): "The faculty of accepting or renouncing a succession becomes barred by the lapse of time required for the longest prescription of the rights to immovables." *Id.* art. 3548: "All actions for immovable property, or for an entire estate, as a succession, are prescribed by thirty years."

A plea of the ten-year acquisitive prescription was also made by the defendants, but was rejected by the trial court.

2. Plaintiff had not sustained her burden of proving the legitimacy of her father. 147 So. 2d at 423.

3. In Sun Oil Co. v. Tarver, 219 La. 103, 115, 52 So. 437, 441 (1951), Justice McCaleb said: "[T]here is probably no other provision of our code which has caused a greater diversity of opinion than [Article 1030]." In Harang v. Golden Ranch & Drainage Co., 143 La. 982, 1025, 79 So. 768, 788 (1918), Justice Provosty said: "[T]o invoke it [Article 1030] for throwing light upon the proper interpretation of some other article of the Code is simply to seek light out of Cimmerian darkness."

4. Article 789 of the French Civil Code "is one of the most difficult provisions of the Code to construe . . . is not susceptible of interpretation, and . . . the authors of the Code were not aware of the insoluble problem with which they have left us." 3 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1972 (1959). "Article 789 is an enigma. Pressed by practical necessity, the jurisprudence has had to give it a positive interpretation; it isn't certain that it responds to the true meaning of the text which remains obscure and debatable, and perhaps even unintelligible." 4 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANCAIS nº 269 (1928). "This subject (prescription of faculty of accepting or renouncing) requires interpretation of one of the texts of the Code which is justly reputed as being one of the most difficult ones, namely, Article 789." 3 COLIN ET CAPITANT, COURS ÉLÉMENTAIRE DE DROIT FRANCAIS nº 632 (1936). (Translations by Professor Carlos E. Lazarus of Louisiana State University Law School.)

5. In Bendernagel v. Foret, 145 La. 115, 128, 81 So. 869, 873 (1919), Justice O'Niell said: [A]s the French commentators entertained eight different and conflicting opinions of the meaning and effect of article 789 of the French Code, we were compelled to depart from at least seven of them."

6. Comment, 26 TUL. L. REV. 81, 88, n. 63 (1951): "[I]n France a succession which has not been accepted or renounced within 30 years is said to be

tions,[7] both more favorable to heirs than French interpretations.[8] Article 1030's perplexities apparently emanate from reference to the option of accepting or renouncing and in determining whether the option applies in all cases. The Louisiana courts have been undecided whether the article means one option — the option of accepting *or* renouncing; or two options — the option of accepting *and* the option of renouncing.[9]

The first Louisiana interpretation arose in *Generes v. Bowie Lumber Co.*,[10] following the two-option interpretation. In order to reconcile this interpretation with the literal language of Article 1030,[11] the court distinguished between regular and irregular heirs. Thus, the regular heir, considered seised of the succession from the moment of the *de cujus'* death, was held to

vacant and might terminate in favor of the state unless third parties have acquired the succession property through acquisitive prescription. See PLANIOL ET RIPERT III, [TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL DE MARCEL PLANIOL III (3d ed. 1948)] . . . nos. 2372, 2456, 2471, pp. 748, 769-771, 773."

7. See notes 10-20 *infra*, and accompanying text.

8. The result reached by the French jurisprudence seems to have been contemplated by the Louisiana court in the first case in point, Succession of Waters, 12 La. Ann. 97, 100 (1857). For a general discussion of the development of cases under Article 1030, see Comments, 14 LA. L. REV. 866 (1954), 26 TUL. L. REV. 81 (1951).

9. *Cf.* 14 DEMOLOMBE, TRAITÉ DES SUCCESSIONS nº 315 (1879): "But under Article 789, the faculty of accepting or of renouncing prescribes in thirty years. Thus, while the heirs have lost the faculty of accepting or of renouncing, it necessarily follows that the law itself has imposed upon them, as heirs with seizin, the obligation of paying all the debts and charges of the succession. What they have lost is the choice, the option which the law had given them; the prescription as we have already pointed out, does not apply alternatively either on the faculty of accepting, or in the faculty of renouncing; it does not apply exclusively to either one or the other; but it applies to both simultaneously, so that the prescription destroys the option which the heir might have been able to exercise between one or the other."

sion which has not been accepted or renounced within 30 years is said to be

4 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANCAIS nº 271 (1928): "The jurisprudence, forced to apply a text the precise sense of which cannot be established with certainty, has given it a simple interpretation and one which leads to plain and distinct results. The heir who has not done anything is considered as a stranger to the succession.."

Id. nº 269: "The law declares that at the end of thirty years of inaction the heir has lost the faculty of accepting or of renouncing. But it fails to state what the situation is in such a case: is he definitely invested with the succession or is he definitely excluded therefrom? One would know if the law had declared prescribed only the faculty of accepting or only the faculty of renouncing; the heir would then be considered as having adopted the opinion inverse to the one which the law prevented him from choosing. But it declares that both options are prescribed all at once; one does not know what to conclude." (Translations by Professor Carlos E. Lazarus, Louisiana State University Law School.)

10. 143 La. 811, 79 So. 413 (1918).

11. *Id.* at 821, 79 So. at 416: "Our own interpretation of Article 1030 of the Code is that what prescribes at the end of thirty years is, not both the right of an heir to accept *and* at the same time his right to renounce a succession, for that is impossible, but the right to accept *or* the right to renounce . . . within the 30 years." (Emphasis added.)

lose only the right to renounce.[12] Conversely, the irregular heir, considered without seisin and having to claim the succession to acquire any rights to it, lost only the right to accept. Consequently, at the end of Article 1030's thirty-year prescriptive period, the regular heir who had done nothing was conclusively presumed to have accepted; the irregular heir, to have renounced.[13]

Although the *Generes* interpretation was weakened by subsequent decisions allowing a regular heir in possession to plead Article 1030 against regular coheirs who had neither accepted nor renounced,[14] it was not until 1951, in *Sun Oil Co. v. Tarver*,[15] that the Louisiana Supreme Court expressly disapproved of the *Generes* interpretation. *Sun Oil* provided Louisiana's second interpretation of Article 1030 — that of the single option — by holding the article applicable to regular as well as irregular heirs; both classes lost the right to either accept or renounce after thirty years.[16] Analysis of *Sun Oil* shows that Article 1030 is limited in use not only to coheirs and their transferees,[17] but further to only those coheirs who have either been judicially sent into possession or have tacitly accepted the succession and have not recognized the inheritance rights of others.[18] Conse-

12. *But see* 3 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) nos. 1973, 1974 (1959): "Demolombe suggested, that a distinction should be made between heirs seised and those not entitled to seisin . . . . But this point of view, still espoused in some recent works, gives an exaggerated importance to seisin, which concerns only the exercise of the successoral rights, not their arbitration . . . . The various solutions proposed in the literature are wrong in applying Art. 789 distributively, for the text speaks only of one privilege, to accept or to renounce, not of two separate privileges. The collective privilege can only be the right to succession itself. This is the right which is lost, just as other rights, after thirty years."

13. Generes v. Bowie Lumber Co., 143 La. 811, 79 So. 413 (1918); *accord*, Dileo v. Dileo, 217 La. 103, 46 So. 2d 53 (1950); Dew v. Hammett, 150 La. 1094, 91 So. 523 (1922).

14. Tillery v. Fuller, 190 La. 586, 182 So. 683 (1938); Schreiber v. Beer's Widow, 150 La. 676, 91 So. 149 (1922); Bendernagel v. Foret, 145 La. 115, 81 So. 869 (1919); Harang v. Bowie Lumber Co., 145 La. 96, 81 So. 769 (1919); Harang v. Golden Ranch & Drainage Co., 143 La. 982, 79 So. 768 (1918).

15. 219 La. 103, 52 So. 2d 437 (1951).

16. *Id.* at 119, 52 So. 2d at 442: "The rationale of said article 1030 is that the public has an interest in not letting the ownership of property remain too long in uncertainty or suspense; and hence a time is fixed within which the heir must make up his mind *whether to accept or renounce.*"

17. *Id.* at 123, 52 So. 2d at 443. Justice McCaleb said: "The Article, placed as it is under the part of the Civil Code dealing with the acceptance and renunciation of successions, is a prescription and not a peremption and inures to the relief of the succession and its representatives and to the benefit of those heirs, who have accepted, from and against all claims of heirship after the 30 year period has accrued. For this reason alone, it seems . . . [Article 1030] can only be availed of by the succession or those claiming through it."

18. *Id.* at 122, 52 So. 2d at 443, n. 5. Justice McCaleb in dictum indicates that these other heirs would be conclusively presumed to have accepted.

quently, it seems possible for an heir to accept after the thirty-year prescriptive period.[19] Subsequent cases have followed this interpretation.[20]

Edwards v. Smith represents a reversion to the *Generes* interpretation by holding Article 1030 inapplicable to regular heirs.[21] Citing only a pre-*Sun Oil* case,[22] the court apparently failed to consider the more recent interpretations by the Supreme Court.[23] The instant case's interpretation of Article 1030 seems clearly erroneous because in conflict with that of *Sun Oil* and its progeny. However, since the instant decision could have been decided without reference to Article 1030 — plaintiff failed to establish her capacity of forced heirship — the instant case should not detract from the *Sun Oil* interpretation.[24]

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TORTS — DAMAGES FOR EMOTIONAL DISTRESS

Defendant intentionally shot a mare, owned by plaintiff's son, to frighten it away from his yard. The next morning plain-

19. Since creditors can force heirs to accept or renounce after thirty days of the succession's opening, it is submitted that renunciation of a succession after thirty years from its opening is unlikely due to the improbability of a succession's owing debts at that late date. See LA. CIVIL CODE arts. 1050-1055 (1870).

Furthermore, it should be pointed out that LA. R.S. 9:5682 (Supp. 1960), not applicable in *Edwards*, provides that an heir or legatee who has not been recognized as such in a judgment of possession may not assert any rights against succession property acquired by a third person from an heir or legatee who has been so recognized, if such third person has possessed continuously and peaceably for ten years from the registry of the judgment of possession.

20. Succession of Lapene, 233 La. 129, 96 So. 2d 321 (1957); Succession of Seals, 142 So. 2d 629 (La. App. 2d Cir. 1962). *Cf.* Mestayer v. Cities Service Development Co., 136 So. 2d 513 (La. App. 3d Cir. 1961).

21. It is submitted that the court inadvertently used the term "forced" heir rather than "regular" heir.

22. 147 So. 2d at 423: "It is the firmly established jurisprudence that forced heirs do not lose by prescription their right of inheritance in failing to accept the succession within thirty years because, if they have not renounced it, they are presumed to have accepted it. Le mort saisit le vif. Dileo v. Dileo, 217 La. 103, 107, 46 So. 2d 53, 56 (1950)."

23. See note 15 *supra*.

24. It must be noted that *Edwards* is a court of appeal decision, whereas *Sun Oil* was rendered by the Supreme Court. Moreover, it is submitted that the *Sun Oil* interpretation premised upon the existence of a single option to accept or reject in all cases is the preferable interpretation, permitting a just and workable solution while avoiding the harsh French rule which makes all inactive heirs stranger to the succession after the lapse of thirty years. In any event, it would seem that stability in the law requires the Louisiana courts to consistently adhere to one interpretation.