Private Law: Security Devices

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any law to protect persons suffering personal injuries from the possibility of error inherent to quick releases, compromises, or settlements, and this court would not be justified in declaring a 'rush release' invalid simply because it was obtained within a very short time of the accident. In such cases, however, we feel that we are justified in recognizing that high potential for error in our consideration of all the facts and circumstances connected with the execution of this type of release.”

SECURITY DEVICES

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PLEDGE

In Montaldo Ins. Co. v. Cullotta,1 a judgment creditor brought a garnishment proceeding against a bank in which the judgment debtor had some money on deposit. However, to secure a loan, the depositor had executed a written pledge of his accounts to the bank. This was held to be a good pledge for which delivery was not necessary since the pledgee bank already had possession2 and there was no waiver of its rights by permitting activity of the checking account and withdrawals from the savings account. Thus, even though the plaintiff's garnishment was maintained, his rights were subject and subordinate to the bank's pledge which more than covered the funds in the accounts.

PRIVILEGES

The facts in the case of Pecora v. James8 were pregnant with several problems which remained stillborn. James purchased a trailer under a conditional sale contract executed and duly recorded in Mississippi. With a large balance still unpaid, he brought the trailer to Louisiana and parked it on the plaintiff's premises under a monthly rental agreement. When he disappeared leaving the rent unpaid, the plaintiff had the trailer seized under a writ of sequestration claiming a lessor's privilege.

8. Id. at 174, 151 So. 2d at 362.
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1. 153 So. 2d 899 (La. App. 4th Cir. 1963).
2. LA. CIVIL CODE art. 3152 (1870).
3. 150 So. 2d 90 (La. App. 4th Cir. 1963).
Whereupon an intervention and third opposition were filed by the assignee of the Mississippi conditional sale contract. The court treated the conditional sale as if it were a chattel mortgage, and since there was evidence that the trailer had been removed from Mississippi without the knowledge or consent of the conditional vendor, this creditor's lien was given priority because it attached prior in time to the lessor's privilege.

The numerous possibilities of choice-of-law treatment of this conflicts problem are swallowed up and remain unmentioned in the still-used old formula, quoted from a prior case, that under appropriate circumstances Louisiana recognizes a foreign conditional sale "through comity."

A conditional sale is not a chattel mortgage, and since the Louisiana law of privileges is *stricti juris*, the assimilation by this analogy is not warranted. If the creditor actually had a chattel mortgage, there might be some basis for applying the chronological ranking provision of the Louisiana Chattel Mortgage Law because it is later legislation than the Civil Code. If the Mississippi conditional sale were treated as a Louisiana sale so as to give the unpaid creditor a vendor's privilege, this would be primed by the lessor's privilege under Civil Code article 3263. Taking the common law effect of the conditional sale as reservation of title, the trailer did not belong to James, so that the lessor's privilege could not be claimed under article 2705 on the effects of the lessee but only under article 2707 on the effects of third persons. However, there would be no lessor's privilege under this latter article because the trailer was not there with any express or implied consent of the creditor who had title, and furthermore there is doubt as to whether this article would cover a trailer placed on open ground because the article says "contained in the house or store."

Under the Civil Code system of privileges, priority is fixed by their nature and they even come ahead of Civil Code mortgages. It is only because the Chattel Mortgage Law is later legislation which supersedes the Code that a chronological ranking is applied to chattel mortgages in competition with Code

5. LA. CIVIL CODE art. 3185 (1870).
7. See Boone v. Brown, 201 La. 917, 10 So. 2d 701 (1942).
8. LA. CIVIL CODE art. 3187 (1870).
9. Id. art. 3186.
privileges. The court further disregards the stricti juris rule of privileges by dismissing the plaintiff's alternative claim of a privilege for expenses of preservation because "such liens are subordinate to the lien and privilege accorded to chattel mortgages." While this is true where the chattel mortgage is earlier in date, it is not correct if the chattel mortgage is later in date. Thus, the blunt statement without qualification can be seriously misleading—even if there is a chattel mortgage, which was not so in the instant case. In the long run, more important than the result reached is the court's method of analysis and treatment of complicated problems. To begin with, a conflict of laws case should be given more direct treatment as such. Then, in applying the Louisiana choice-of-law rule which recognizes a common law conditional sale in appropriate circumstances, there should be a more careful and conscious analysis and determination of what it is that is being recognized in terms of Louisiana concepts and institutions together with an interpretation of the policies inherent in both the local statute and the foreign law. These comments do not purport to suggest or provide the answers; they are meant to emphasize the prime importance of getting at the proper questions.

BUILDING CONTRACT PRIVILEGES

R.S. 9:4816 provides for a single privilege on several buildings which are constructed on adjacent lots by the same contractor. In Bernard Lumber Co. v. John F. Cerise Co., the court of appeal gave a liberal interpretation to the word "adjacent" and held that the intent of the legislature was to cover the case of a subdivision or multi-building project where some of the houses are necessarily separated by streets and sometimes substantial distances. On its inherent logic, this seem reasonable enough. However, in view of the fact that privileges constitute an area of the law which is stricti juris, and since the extension of the privilege to more than one building was only a rather late amendment as section 15-1/2 added by Act 79 of 1944, it is questionable whether the above interpretation is appropriate and whether any weight should be given to the citation of Corpus

11. LA. CIVIL CODE arts. 3217(6), 3224-3226 (1870).
12. 150 So. 2d at 94.
13. 148 So. 2d 819 (La. App. 4th Cir. 1963), writ refused . . . no error of law, 150 So. 2d 767 (La. 1963).
Juris for definitions of the word "adjacent" as used in a Louisiana statute creating a stricti juris privilege.

In Lumber Products, Inc. v. Crochet, the court of appeal interpreted R.S. 9:4812 in relation to a difficult problem. A supplier duly recorded his claim and acquired a materialman's privilege, and a day before the expiration of one year he made a reinscription of it. Shortly thereafter, suit was instituted against the owner, and judgment was rendered in the trial court recognizing the privilege against the property. This part of the judgment was affirmed on appeal (with one dissent) because the plaintiff had kept his privilege alive by timely reinscription.

As reasonable as it might sound, this decision was reversed by the Supreme Court with a very able and a carefully analyzed opinion in Lumber Products, Inc. v. Crochet. The fact situation in which the building contract and the bond are not recorded is governed by R.S. 9:4812, which gives the creditor the protection of two unusual rights. One is a privilege against the property; the other is a personal right against the owner. Both are in derogation of the general law and must be strictly construed. In the present case, the exclusive issue centered on the in rem privilege against the property, and therefore the question before the court had to be determined on the basis of the statutory provision cited above.

Since there had been a timely reinscription, it was urged (and sustained by the court of appeal) that keeping the privilege alive was synonymous with the preservation of its benefits. The Supreme Court's interpretation of the statutory provision shows it to be more complicated, and that in addition to the basic element of the existing indebtedness (presumably subject to the ten-year prescription) there are two distinct elements in the statute: (a) the privilege and (b) the right to enforce it. In the strict interpretation of the statute, each of these two elements must be preserved, as prescribed, in order for the creditor to

14. 146 So. 2d 44 (La. App. 4th Cir. 1962).
15. "... The said privilege, recorded as aforesaid, shall constitute a privilege against the property for a period of one year from the date of its filing, and may be enforced by a civil action in any court of competent jurisdiction in the parish in which the land is situated and such right of action shall prescribe within one year from the date of the recordation of the privilege in the office of the recorder of mortgages. The effect of the registry ceases, even against the owner of the property or the property itself, if the inscription has not been renewed within one year from the date of the recordation. ..."
16. 156 So. 2d 438 (La. 1963).
17. See note 15 supra.
reap the benefits of the special protection afforded him. The effect of registry is to *create* the privilege, and it is kept alive by timely reinscription within one year. The right to *enforce* it must be exercised within one year, and there is no possibility of extending this by reinscription. Thus, to be successful on this score, the creditor must commence his action for enforcement within one year and he must also make a timely reinscription in the event that a final judgment is not rendered within one year from the date of the recordation. The institution of suit does not take the place of reinscription to keep the privilege alive.

In addition to this appropriate *stricti juris* interpretation of the statutory text *per se*, emphasizing these two distinct elements of this statute, Justice Summers' opinion goes on to substantiate it further by (a) the legislative history of the original provision and its amendments, (b) the public policy of preventing the creation of a perpetual encumbrance and cloud on property by the unilateral inscription and reinscription of the supplier's claim, and (c) the public records doctrine of protecting third persons who may rely on the records which showed no reinscription while a suit of enforcement might be pending. There is much strength in his conclusion that "if there are onerous implications to be drawn from the ambiguous language of this act, they must be resolved against the parties in whose favor the privilege is granted."

Another part of the same section of this statute was the basis of decision in *Kaplan v. Pettigrew.* Here, the issue centered on the right *in personam* against the owner. Claims were duly recorded for labor and materials, and just prior to the expiry of one year the recordation was reinscribed. A second reinscription was made a few days less than one year after the first reinscription. On the basis of a strict construction of the word "reinscription" in the singular, the court held that the statute permitted only one reinscription and after its effective duration of one year the personal claim against the owner was prescribed. From the policy viewpoint, it is not unreasonable to prevent the indefinite clouding of a property title by con-

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18. Justices Hamiter and Hawthorne dissenting.
19. 156 So. 2d at 442-43.
20. *Id.* at 443.
22. 150 So. 2d 600 (La. App. 4th Cir. 1963).
tinuous unilateral reinscriptions without adjudication or settlement of a claim. The ordinary prescriptions under the Civil Code are subject to interruption by acknowledgment, but by reason of the strict interpretation of this statute the prescription provided would be a peremptory one like a period of forfeiture.

PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

Occasionally, the juxtaposition of circumstances produces curious results. If a squatter occupies a piece of property without any color of right but physically fences it in and keeps everybody out, he is possessing “as owner,” and after thirty years he acquires the legal ownership by acquisitive prescription. On the other hand, when a municipality revokes the dedication of certain streets which then revert to the ownership of private individuals, who are unaware of the revocation, such persons do not possess “as owners” and cannot prescribe. This latter situation happened in the case of *Arkansas Fuel Oil Corp. v. Weber.*¹ Since the revocation ordinance had not been recorded, the transactions based on the existing records were protected. The public records doctrine prevails against an unrecorded assertion of ownership, but it yields to a proper claim of acquisitive prescription. An unrecorded basis of ownership being precluded, the attempt was made to plead good faith prescription, but lack of knowledge of the unrecorded revocation ordinance prevented possession “as owner.”² Presumably, the ordinance could not be a “just title” either, since the person did not know about it and could not claim it as the basis of a belief of ownership. There is unavoidably something disturbing about the conclusion that a person to whom ownership of property has reverted is denied the benefits of this ownership because the municipality failed to notify him or to record its revocation ordinance, without belaboring the fact that the municipality

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¹ *149 So. 2d 101 (La. App. 2d Cir. 1963), writ refused, judgment correct, 244 La. 205, 151 So. 2d 493 (1963).*

² *LA. CIVIL CODE art. 3478 et seq. (1870).*

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