

# Louisiana Law Review

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Volume 26 | Number 3

*The Work of the Louisiana Appellate Courts for the*

*1965-1966 Term: A Faculty Symposium*

*Symposium: Administration of Criminal Justice*

*April 1966*

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## Private Law: Security Devices

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### Repository Citation

Joseph Dainow, *Private Law: Security Devices*, 26 La. L. Rev. (1966)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol26/iss3/10>

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joint wrongdoing is an injury to a third person, while comparative negligence applies where the consequence of the joint wrongdoing is an injury to one of the wrongdoers himself. Had Louisiana enjoyed the benefit of a comparative negligence statute,<sup>72</sup> as well as a contribution measure, Evans would have recovered for only half of his own loss (since last clear chance doctrines should have no place where a scheme of comparative negligence prevails)<sup>73</sup> just as he was similarly obliged to pay only half the loss suffered by the blameless passengers (the present rule under the contribution statute).

## SECURITY DEVICES

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### SURETYSHIP

The contract of suretyship must be made in writing in order to have any existence even as between the parties.<sup>1</sup> However, instead of a secondary liability in the event of the debtor's default, another person may undertake a primary responsibility for the indebtedness, and this relationship can be established without any writing.

In *Star Sales Co. v. Arnoult*,<sup>2</sup> the defendant had undertaken responsibility for credit sales to Colonial Distributors. From its analysis of the facts, the court concluded that the running account on a credit basis was in essence with Colonial Distributors and that the defendant's position was intended by the parties to be one of secondary liability in the nature of a surety. Since there was no writing, there was no suretyship; and the case was dismissed. Actually, the plaintiff had expressly refused to open a credit account for Colonial Distributors and only agreed to open such an account in the name of the defendant. Nevertheless, the plaintiff knew that the purchases were being made for Colonial Distributors, and therefore the court treated the situation as if credit had been extended to Colonial Distribu-

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72. See the discussion in Malone, *Comparative Negligence—Louisiana's Forgotten Heritage*, 6 LA. L. REV. 125 (1945); INS. L.J. 217 (1946).

73. See the discussion in PROSSER, TORTS § 66, at 449 (3d ed. 1954).

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1. LA. CIVIL CODE art. 2278 (1870).

2. 169 So. 2d 178 (La. App. 4th Cir. 1964).

tors and on the basis that the parties intended only a suretyship for the defendant.

The court of appeal did not find any manifest error in this evaluation of the facts by the trial court; nor can these observations imply that there was. There does, however, seem to be a little inconsistency to say that the plaintiff who refused to open a credit account for Colonial Distributors eventually did make the credit sales with the intention of setting up a security which would give him no protection. The moral of the story is to see a lawyer first and be sure to have everything in proper written form.

#### PLEDGE

The requirement of delivery for the existence of a pledge, even as between the immediate parties, has been the subject of previous comments,<sup>3</sup> and a new decision in *Powers v. Motors Sec. Co.*<sup>4</sup> is significant in its reaffirmation of this point. A fuller discussion of this case and the issues involved has already appeared.<sup>5</sup>

#### PRIVILEGES

In connection with the lessor's privilege, the Civil Code, articles 2705-2709, provides for its operation not only on the effects of the immediate tenant but also on the effects of the undertenant (sublessee) and of third persons. If the effects seized on the leased premises belong to an undertenant, the liability is limited to the extent of the latter's indebtedness to the principal lessee. Thus, the decisive factor in a case may be the determination of the legal relationship between the lessee and the owner of the things seized on the leased premises.

Such a situation developed in the case of *Riverside Realty Co. v. Southern Bowling Corp.*<sup>6</sup> Upon a sequestration of all the movables in the leased bowling alley, the sublessee obtained a release of its property upon a showing that (1) there was a sublease, and (2) there was no rent due under this contract. Of course, the facts in each case must be evaluated by the tests

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3. *The Work of the Louisiana Supreme Court for the 1956-1957 Term — Security Devices*, 18 LA. L. REV. 49, 50 (1957).

4. 168 So.2d 922 (La. App. 2d Cir. 1964); writ refused, 170 So.2d 511 (1965).

5. Note, 26 LA. L. REV. 182 (1965).

6. 169 So.2d 228 (La. App. 4th Cir. 1964); writ refused, 170 So.2d 864 (1965).

of the contract of lease. Whether it be for food-vending concessions, as in the present case, or for other purposes, the determination as to whether there is a sublease will also determine the scope of the lessor's privilege on effects which do not belong to the principal lessee.

### MORTGAGES

A present mortgage may secure future debts,<sup>7</sup> and the so-called "collateral mortgage" may be reissued without the need for a new recordation. Since the mortgage's effectiveness against third persons is fixed by the date of recordation, it was considered that the original date of recordation continued to be the effective date of the collateral mortgage regardless of the number and actual dates of reissuances. The harshness of this result, with reference to other mortgages which were recorded against the property prior to the reissuance of the collateral mortgage, was alleviated by the decision in *Odom v. Cherokee Homes, Inc.*<sup>8</sup> The court held that in competition with other mortgages, the collateral mortgage ranks from the date of issuance or reissuance of the note secured by it and not from the original date of recordation. A very good discussion of this case and the issues has already appeared in this *Review*.<sup>9</sup>

### PRESCRIPTION

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#### ACQUISITIVE PRESCRIPTION

For acquisitive prescription of either ten years or thirty years, the basic requirement is possession, and this must be a possession *as owner*.<sup>1</sup> In *Journet v. Gerard*,<sup>2</sup> defendant had been using a strip of land between his residence property and the street, but the evidence showed record title in the plaintiff. To the plaintiff's petitory action, the defendant pleaded acquisitive

7. LA. CIVIL CODE art. 3292 (1870).

8. 165 So. 2d 855 (La. App. 4th Cir. 1964); writs denied, 246 La. 868, 167 So. 2d 677 (1965).

9. Note, 25 LA. L. REV. 789 (1965).

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1. LA. CIVIL CODE arts. 3436, 3500 (1870).

2. 173 So. 2d 263 (La. App. 3d Cir. 1965).